

REPUBLIC OF SOUTH AFRICA

AGRICULTURAL DEBT MANAGEMENT BILL

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of the
Bill published in Government Gazette No 22546 of 10 August 2001)
(The English text is the official text of the Bill)*

(MINISTER FOR AGRICULTURE AND LAND AFFAIRS)

[B 54—2001]

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BILL

To provide for the administration of this Act; to establish the Agricultural Debt Account; to provide for the use of the account as a mechanism to manage agricultural debt repayment; to administer monies in the account; to determine the purpose for which funds in the account may be used; to provide for the auditing and reporting on the account; to provide for various matters relating to debt agreements, interest rates, the collection and writing off of debt, the registration of bonds and property; and for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Definitions

1. In this Act, unless the context otherwise indicates—
 - “account” means the Agricultural Debt Account referred to in section 3; 5
 - “agreement” means any oral or written agreement relating to debt, and includes a unilateral undertaking by any person in favour of the State;
 - “Agricultural Credit Act” means the Agricultural Credit Act, 1966 (Act No. 28 of 1966);
 - “Coloured Farmers Assistance Law” means the Coloured Farmers Assistance Law, 1973 (Act No. 1 of 1973) (Coloured Persons Representative Council); 10
 - “debt” means any amount contractually or statutorily owed to the State as a result of assistance, loans or subsidies in terms of the provisions of the Agricultural Credit Act, the Coloured Farmers Assistance Law or financial assistance schemes, and includes any amount owed as rent or interest or resulting from or relating to such debt; 15
 - “department” means the national Department of Agriculture;
 - “Director-General” means the Director-General of the department;
 - “financial assistance scheme” means subsidies, loans and other advances administered by the department; 20
 - “Minister” means the Minister responsible for agriculture in the national government;
 - “officer” means an officer as defined in section 1(1) of the Public Service Act, 1994 (Proclamation No. 103 of 1994);
 - “Public Finance Management Act” means the Public Finance Management Act, 25 1999 (Act No. 1 of 1999); and
 - “rent” means rent charged by the department for the use of land.

Administration of Act

2. (1) The Minister is responsible for the administration of this Act.
- (2) Subject to the provisions of subsection (3), the Minister may delegate any of his 30 or her powers or duties in terms of this Act, to an officer of the Department.

(3) Any power or duty capable of being exercised or performed under the provisions of section 5 may only be delegated to the chief financial officer in the department who has been designated as such under the Public Finance Management Act.

(4) The Minister must designate an officer of the department to administer this Act, and such officer may be assisted by as many officials or other persons as are deemed necessary to give effect thereto. 5

(5) Subject to the provisions of subsection (3), the Director-General may delegate any of his or her powers or duties to an officer designated under subsection (4), or to an officer assisting that officer.

Agricultural Debt Account 10

3. (1) The Agricultural Credit Account kept in terms of section 20A of the Agricultural Credit Act, continues to exist despite the repeal of that Act and is to be called the Agricultural Debt Account.

(2) The monies standing to the credit of the account on the date of commencement of this Act, consist of all— 15

- (a) monies standing to the credit of the Agricultural Credit Account immediately before that date and received as repayment of debt under or as a result of the provisions of the Agricultural Credit Act;
- (b) monies received before that date as repayment of debt under or as a result of the provisions of the Coloured Farmers Assistance Law; 20
- (c) such other monies standing to the credit of the Agricultural Credit Account on that date and received by the department as repayment of debt under or as a result of financial assistance schemes or as rent.

(3) The monies standing to the credit of the account consist of all obligations relating to debt referred to in subsection (2), on the date of commencement of this Act. 25

(4) The Director-General is the accounting officer of the account.

(5) The account ceases to exist when all outstanding debts have been collected in terms of this Act and monies standing to the credit of the account have been appropriated by Parliament.

Crediting and debiting of account 30

4. (1) The account must be credited with—

- (a) all monies received after the date of the commencement of this Act as repayment of debt referred to in section 3(2);
- (b) all monies resulting from the collection of outstanding debt referred to in section 3(2); 35
- (c) interest earned from monies invested; and
- (d) monies accruing from any other source.

(2) The account must be debited with—

- (a) the purchase price and any expense or cost relating to the purchase and management of property acquired under this Act; 40
- (b) any fee, expense or cost incurred in terms of section 8(6);
- (c) any amount—
 - (i) which has been erroneously paid into the account;
 - (ii) which is not owed to the State; or
 - (iii) the reimbursement of which safeguards the interests of the State; and 45
- (d) any amount appropriated by Parliament for agricultural or other purposes must be transferred to the National Revenue Fund in terms of section 5.

(3) All monies received by the department as repayment or collection of debt other than that referred to in subsection (1), must be deposited into the National Revenue Fund. 50

(4) Monies standing to the credit of the account that are not immediately needed as contemplated under subsection (2), may be invested with the—

- (a) Corporation for Public Deposits; and
- (b) approval of the Minister given in consultation with the Minister of Finance, with any financial institution registered as such by the Registrar of Financial Institutions.

Utilisation of monies 5

5. (1) The Director-General may request the transfer of any surplus money standing to the credit of the account to the National Revenue Fund if—
- (a) such monies will not be needed as contemplated in section 4(2)(a), (b) or (c);
 - (b) the Minister, in consultation with the Minister of Finance, has approved such transfer. 10
- (2) Monies transferred to the National Revenue Fund from the account may be appropriated by Parliament on the vote of the Department to be utilised in a specific financial year in terms of a business plan submitted by the Director-General, if such business plan is—
- (a) approved by the Minister with or without amendments; and 15
 - (b) submitted to the National Treasury at least three months before the beginning of a financial year or the tabling of the adjustments estimates in Parliament.

Auditing and reporting

6. (1) The financial year in respect of the account ends on 31 March every year.
- (2) The account must be audited by the Auditor-General. 20
- (3) The Director-General must keep such accounting records as are necessary in accordance with the generally recognised accounting practice, as set out in the Public Finance Management Act, to reflect accurately the status of the account.

Validity of agreements

7. (1) Any agreement which is still in force immediately before the commencement of this Act and which directly or indirectly relates to a debt, remains a legally binding agreement and is enforceable as such, despite the repeal of any legislation under which or as a result of which that agreement was concluded. 25
- (2) Any provision of the repealed legislation referred to in subsection (1), is considered to be valid and may be invoked as if it had not been repealed, in so far as it directly or indirectly relates to or is connected with any agreement contemplated in that subsection. 30
- (3) Any mortgage bond, condition or restriction relating to a debt and registered against immovable property on the date of commencement of this Act, remains in force despite the repeal of any legislation under which that mortgage or condition was effected. 35
- (4) Any provision of the repealed legislation referred to in subsection (3) is, in so far as it is necessary to give effect to any bond, condition or restriction registered against the title deed of that property, considered to be valid and may be invoked as if it had not been repealed. 40
- (5) Any reference to the “Agricultural Credit Board”, the “Coloured Persons Agricultural Assistance Board”, “Secretary” or any other person or officer in legislation or in an agreement referred to in subsection (1) or (2), or in legislation or a bond, condition or restriction referred to in subsection (3) or (4), must be considered to be a reference to the Minister, and he or she may exercise the powers or perform duties attributed to such person. 45

Debt

8. (1) The Director-General—
- (a) must on a continuous basis monitor the repayment of debt and investigate any factor that may influence the timeous repayment thereof; 50

- (b) must audit all securities relating to debt;
 - (c) must collect a debt that is outstanding;
 - (d) may consider the writing off of a debt;
 - (e) may acquire movable or immovable property in the course of debt collection in terms of this Act; and 5
 - (f) may exercise any power or take any other action relating to a debt that may be required to safeguard the interests of the State.
- (2) Any immovable property bought by the Director-General under subsection (1) must, as soon as practicable, be registered in the name of the Government of the Republic of South Africa. 10
- (3) The Director-General may, at the request of a debtor or any person having a legitimate interest therein and on such conditions as he or she may determine—
- (a) consolidate amounts and interest owed as debt under different agreements;
 - (b) substitute debtors, vary or substitute bonds, impose or vary conditions or restrictions, vary securities or accept other securities; 15
 - (c) vary or waive any right of the State subject to the provisions of this Act, consent to any legal act and vary or waive any term of an existing agreement;
 - (d) determine any other condition subject to which an agreement is concluded or amended, including interest rates, the payment of collection costs or legal fees incurred in the collection of debt, and the incorporation of any bond, condition or restriction or other provision of an existing agreement into that agreement. 20
- (4) The Director-General may write off a debt relating to the account in accordance with the provisions of the Public Finance Management Act.
- (5) The Director-General may, on such conditions as he or she may determine—
- (a) contract with any person to collect the debt that is outstanding and to take all such actions relating thereto as may be necessary to ensure the collection thereof; 25
 - (b) appoint any person to represent him or her at auctions where assets of a debtor are sold and buy such assets on behalf of the State;
 - (c) from time to time enter into agreements with such other persons as may be necessary to safeguard the interests of the State in terms of this Act. 30
- (6) The fees of or the expenses or costs incurred by a person referred to in subsection (5) must be paid out of the account.

Tendering of documents for registration and exemptions

- 9.** (1) An officer in the department may, despite the provisions of any other Act, tender a mortgage bond, agreement, consent, authorisation or other document at any deeds registry for registration or filing, and the registrar must on receipt thereof, cause the necessary endorsements to be made in his or her records despite any requirement of the Deeds Registries Act, 1937 (Act No. 47 of 1937). 35
- (2) No duties, taxes or other fees are payable in respect of an endorsement under subsection (1). 40
- (3) The provisions of the Stamp Duties Act, 1968 (Act No. 77 of 1968), do not apply to any agreement existing on or entered into after the commencement of this Act.

Repeal of laws

- 10.** The laws set out in the Schedule are hereby repealed to the extent set out in the third column thereof. 45

Short title and commencement

- 11.** This Act is called the Agricultural Debt Management Act, 2001, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

Schedule

No. and year of law	Short title	Extent of repeal
Act 28 of 1966	Agricultural Credit Act, 1966	The whole
Act 45 of 1968	Agricultural Credit Amendment Act, 1968	The whole
Act 66 of 1970	Agricultural Credit Amendment Act, 1970	The whole
Act 10 of 1971	Agricultural Credit Amendment Act, 1971	The whole
Act 15 of 1972	Agricultural Credit Amendment Act, 1972	The whole
Act 81 of 1977	Agricultural Credit Amendment Act, 1977	The whole
Act 67 of 1979	Agricultural Credit Amendment Act, 1979	The whole
Act 87 of 1979	Designated Areas Development Act, 1979	The whole
Act 27 of 1980	Agricultural Credit Amendment Act, 1980	The whole
Act 73 of 1981	Agricultural Credit Amendment Act, 1981	The whole
Act 18 of 1982	Agricultural Credit Amendment Act, 1982	The whole
Act 67 of 1982	Second Agricultural Credit Amendment Act, 1982	The whole
Act 42 of 1983	Agricultural Credit Amendment Act, 1983	The whole
Act 51 of 1987	Agricultural Credit Amendment Act (House of Assembly), 1987	The whole
Act 53 of 1993	Agricultural Credit Amendment Act (House of Assembly), 1993	The whole
Act 175 of 1993	Agricultural Development Fund Act, 1993	The whole
Act 65 of 1995	Agricultural Credit Amendment Act, 1995	The whole
Act 21 of 1998	Land Bank Amendment Act, 1998	Items 1, 2 and 3 of the 3rd column of the Schedule

MEMORANDUM ON THE OBJECTS OF THE AGRICULTURAL DEBT MANAGEMENT BILL, 2001

1. The Agricultural Debt Management Bill, 2001, is proposed to replace the Agricultural Credit Act, 1966 (Act No. 28 of 1966). The Agricultural Credit Act, 1966 (Act No. 28 of 1966) (“the Act”) used to provide assistance to persons carrying on or undertaking to carry on farming operations and to exercise control in respect of the assistance rendered. As part of recommendations arising from the final Report of the Commission of Inquiry into the Provision of Rural Financial Services (Strauss Commission), the direct credit delivery function in terms of the Act was terminated by the Land Bank Amendment Bill, 1998 (Act No. 21 of 1998).

2. In spite of the cessation of the credit delivery function, there are still outstanding debts in the form of financial assistance that had been rendered in terms of the Act and which still have to be repaid. It was decided that the national Department of Agriculture would be responsible for the collection of the debt under the Act, as well as other agricultural debt. The relevant agricultural debt primarily consists of debt that originated from loans granted by the now defunct Agricultural Credit Board in terms of the Agricultural Credit Act, 1966, and debt which originated from loans granted in terms of other relevant agricultural legislation as well as debt that originated from financial assistance schemes that were administered by the Department in the past. In the light of an urgent need that exists, it has now become imperative to rationalise and consolidate the different remnants of pieces of legislation dealing with agricultural debt in its various forms. Apart from the legislation itself, rationalisation and consolidation must also be effected with regard to matters connected therewith, such as interest rates, management of the debt, contractual matters, the attachment of securities of the State and — in broad terms — the utilisation of monies.

3. The proposed Bill provides for the continuation and administration of the Agricultural Credit Account, which will in future be known as the Agricultural Debt Account in accordance with the Bill’s emphasis on debt collection. The Bill further provides for the use of the account as a mechanism or a tool for managing agricultural debt repayment, the administration of monies in the account, the utilisation of funds in the account for agricultural development and finance purposes in accordance with a business plan submitted to and approved by the Minister in consultation with the Minister of Finance, auditing of and reporting on the account, matters relating to debt agreements, and matters relating to debt collection and relevant securities.

4. PERSONS CONSULTED

The Bill was published in the Government *Gazette* for general public comment. The following bodies were also consulted:

- * Agri South Africa
- * Banking Council of South Africa
- * House of Traditional Leaders
- * Members of executive councils of the provinces
- * National African Farmers Union
- * National Treasury
- * Regional farmers’ organisations

5. FINANCIAL IMPLICATIONS FOR STATE

There are no additional financial implications for the Department as far as the managing of agricultural debt collection and relevant securities are concerned, as structures that are already in existence will be used to implement the Act.

6. PARLIAMENTARY PROCEDURE

The State Law Advisers and the national Department of Agriculture are of the opinion that the Bill must be dealt with in accordance with the procedure set out in section 75 of the Constitution of the Republic of South Africa Act, 1996 (Act No. 108 of 1996) (“the Constitution”), since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies. The loans granted by the now defunct Agricultural Credit Board and which are the origin of the agricultural debt to be collected in terms of this Bill, were granted on national level. The collection of the debt will similarly be done

on a national level by the national Department of Agriculture. The Bill is therefore an ordinary Bill not affecting provinces. It must thus be dealt with in accordance with the procedure set out in section 75 of the Constitution of the Republic of South Africa Act, 1996 (Act No. 108 of 1996).