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REPUBLIC OF SOUTH AFRICA

# GOVERNMENT GAZETTE

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# STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

*Registered at the Post Office as a Newspaper*

*As 'n Nuusblad by die Poskantoor Geregistreer*

Price 10c Prys  
Overseas 15c Oorsee  
POST FREE—POSVRY

ISBN 0 621 00051 5

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Vol. 83.]

CAPE TOWN, 24TH MAY, 1972.

[No. 3512.

KAAPSTAD, 24 MEI 1972.

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DEPARTMENT OF THE PRIME MINISTER.

DEPARTEMENT VAN DIE EERSTE MINISTER.

No. 862.

24th May, 1972.

No. 862.

24 Mei 1972.

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 41 of 1972: Land Bank Amendment Act, 1972.

No. 41 van 1972: Wysigingswet op die Landbank, 1972.

# ACT

To amend the provisions of the Land Bank Act, 1944, in order to provide for the granting of advances to companies which carry on farming operations in the Republic and South-West Africa; and to provide for incidental matters.

*(Afrikaans text signed by the State President.)*  
*(Assented to 16th May, 1972.)*

**BE IT ENACTED** by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:—

1. Section 2 (1) of the Land Bank Act, 1944 (hereinafter referred to as the principal Act), is hereby amended—

- Amendment of section 2 of Act 13 of 1944, as amended by section 1 of Act 42 of 1951, section 1 of Act 13 of 1953, section 1 of Act 60 of 1957, section 1 of Act 47 of 1959 and section 5 of Act 31 of 1969.
- (a) by the insertion after the definition of "chairman" of the following definition:  
 "‘company’ a company as defined in section 229 of the Companies Act, 1926 (Act No. 46 of 1926);”;
  - (b) by the substitution for the definition of "co-operative company" or "company" of the following definition:  
 "‘co-operative company’ means a co-operative agricultural company or a central or federal co-operative agricultural company or a farmers’ special co-operative company or a central or federal farmers’ special co-operative company, registered or deemed to be registered as such under the Co-operative Societies Act, 1939 (Act No. 29 of 1939), or the Co-operative Societies Ordinance, 1946 (Ordinance No. 15 of 1946 of the territory);”;
  - (c) by the substitution for the definition of "farmer" of the following definition:  
 "‘farmer’ means a person who carries on farming operations in the Republic;”;
  - (d) by the substitution for the definition of "mortgagor" of the following definition:  
 "‘mortgagor’ includes any person to whom, or company or co-operative company or society to which an advance has been made under this Act, and the legal representatives of such person or company or co-operative company or society;”.

2. Section 12 (1) of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph: Amendment of section 12 of Act 13 of 1944.

- “(a) any application for an advance under this Act by any person who is related to that member or adviser within the third degree of affinity or consanguinity or, if such person is a company, any director or shareholder thereof, who is related to that member or adviser within the third degree of affinity or consanguinity; or”.

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3. Section 21 of the principal Act is hereby amended—
- (a) by the substitution for subsection (2) of the following subsection:  
 “(2) No advance shall be made out of the funds of the bank to any member of the board, or to any general manager, or to any adviser or any member of the staff of the bank, or to any company, or to any co-operative society or company in which any member of the board or any general manager or any adviser or any member of the staff is directly or indirectly interested as director, manager, shareholder or member other than as a member of a co-operative society or company: Provided that nothing in this subsection contained shall be construed as preventing the deposit of money with any bank;”;
- (b) by the substitution for subsection (3) of the following subsection:  
 “(3) No advance *bona fide* made—  
 (a) to any person, who is discovered, after the advance or any part thereof has been made, not to be or not to have been a farmer; or  
 (b) to any society or company which is discovered, after the advance or any part thereof has been made, not to be or not to have been a co-operative society or company,  
 shall entail any personal liability upon the board or any officer of the bank, but the board may refuse to pay any further instalments of the authorized advance, and may at once proceed to call in and recover in the manner hereinafter provided, the amount already advanced.”.
4. Section 23 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:  
 “(3) A magistrate to whom any such application is transmitted, shall—  
 (a) unless the board otherwise directs, refer that application to a valuator for the purpose of valuation of the security in question; and  
 (b) after such enquiry as he may deem necessary, return the application to the board together with his report as to the value of the security, the character, ability, occupation and general suitability of the applicant or, if the applicant is a company, the character, ability, occupation and general suitability of every director and shareholder thereof, and the desirability or otherwise of making the desired advance.”.
5. Section 34bis of the principal Act is hereby amended—
- (a) by the substitution for paragraph (a) of subsection (5) of the following paragraph:  
 “(a) Whenever an advance has in terms of this section been made to any person, the board shall transmit a copy of the deed of hypothecation to the magistrate of the district wherein such person carries on farming operations, or if there is a branch of the bank operating in that district, to the officer in charge of that branch.”;
- (b) by the substitution for subsection (7) of the following subsection:  
 “(7) If any person to whom an advance has been made under this section, dies, or is detained under order of a competent court as a mentally disordered or defective person, or is declared by a competent court incapable of managing his own affairs, or if such person is a company, such company has been placed under judicial management or is being wound up, the executor of his estate or his legal representative

Amendment of section 21 of Act 13 of 1944, as amended by section 6 of Act 47 of 1959, section 2 of Act 35 of 1961, section 1 of Act 14 of 1964, section 5 of Act 46 of 1965 and section 13 of Act 5 of 1968.

Amendment of section 23 of Act 13 of 1944.

Amendment of section 34bis of Act 13 of 1944, as inserted by section 16 of Act 47 of 1959 and amended by section 3 of Act 35 of 1961, section 9 of Act 46 of 1965, section 10 of Act 5 of 1968 and section 13 of Act 31 of 1969.

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(including any person empowered by law to administer or give directions as to the administration of his estate), or the judicial manager, or the liquidator, as the case may be, shall take charge of the property which has been hypothecated and hold it at the disposal of the board, which may deal with it under this section as if the debtor were still alive, or had not been so detained, or had not been so declared incapable of managing his affairs, or had not been placed under judicial management, or were not being wound up: Provided that if the board causes the property to be sold and the sale price realized exceeds the amount owing under the advance together with interest and costs and the costs incurred in connection with the seizure and sale, the balance shall be paid over to the executor or the legal representative, or the judicial manager, or the liquidator, as the case may be: Provided further that if such sale price is less than the amount owing under the advance together with interest and costs and the costs incurred in connection with the seizure and sale, the board may prove a claim against the estate or the company, as the case may be, in respect of the deficit.”.

## 6. Section 55 of the principal Act is hereby amended—

- (a) by the insertion after paragraph (g) of subsection (1) of the following paragraphs:

“(gA) the debtor is a company, such company has been placed under judicial management or is being wound up; or

(gB) the debtor is a company and any director or shareholder thereof be sentenced to imprisonment without the option of a fine; or”;

- (b) by the substitution for paragraph (ii) of the proviso to subsection (2) (b) of the following paragraph:

“(ii) in the circumstances mentioned in subsection (1) (c), (d), (e), (f), (gA) or (gB), the board may so attach and sell the whole or any part of such security as soon after the debtor's estate has been finally sequestrated or assigned, or the debtor has been sentenced, or the property has been declared executable or attached or become the subject of a direction under section 22*ter* of the Farmers' Assistance Act, 1935, or section 37 (1) of the Agricultural Credit Act, 1966, or the debtor's estate is being dealt with under the provisions of section 48 (3) of the Administration of Estates Act, 1913, or that section as applied to the territory or section 34 (2) or (5) of the Administration of Estates Act, 1965, or a notice has been published with reference to the debtor under section 22 of the Agricultural Credit Act, 1966, or section 10 of the Farmers' Assistance Ordinance, 1962, of the territory, or if such debtor is a company, such company has been placed under judicial management or is being wound up, as the board may deem expedient;”;

- (c) by the substitution for subsection (3) of the following subsection:

“(3) No property mortgaged to the bank shall be sold by a messenger of the court, or a sheriff, or the trustee of an insolvent estate, or the assignee of an assigned estate, or the executor dealing with the estate of a deceased person under the provisions of section 48 (3) of the Administration of Estates Act, 1913, or

Amendment of section 55 of Act 13 of 1944, as amended by section 11 of Act 46 of 1965, section 11 of Act 5 of 1968 and section 14 of Act 31 of 1969.

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that section as applied to the territory or section 34 (2) or (5) of the Administration of Estates Act, 1965, or a liquidator or trustee elected or appointed under section 27 or 28 of the Agricultural Credit Act, 1966, or section 15 or 16 of the Farmers' Assistance Ordinance, 1962, of the territory, or the judicial manager or the liquidator of a company, unless the bank agrees in writing to such sale or has failed to sell such mortgaged property within six months after receipt of a notice from that messenger, sheriff, trustee of the insolvent estate, assignee, executor, that liquidator or trustee so elected or appointed or that judicial manager or liquidator of a company, as the case may be, to the effect that the property mortgaged has been attached, or that the estate of the debtor has been finally sequestrated or assigned or is being dealt with under the aforesaid provisions of the Administration of Estates Act, 1913, or that Act as applied to the territory, or the Administration of Estates Act, 1965, or that a notice with reference to the debtor has been published under section 22 of the Agricultural Credit Act, 1966, or section 10 of the Farmers' Assistance Ordinance, 1962, of the territory, or that the company has been placed under judicial management or is being wound up."

7. Section 56 of the principal Act is hereby amended by the insertion after paragraph (bA) of the following paragraph:

"(bB) if the debtor is a company which has been placed under judicial management or is being wound up, to the judicial manager or the liquidator, as the case may be;"

Amendment of section 56 of Act 13 of 1944, as amended by section 25 of Act 47 of 1959, section 5 of Act 35 of 1961, section 12 of Act 5 of 1968 and section 15 of Act 31 of 1969.

8. Section 73 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) Any person who—

- (a) having any pecuniary interest in any land offered as security for an advance under this Act; or
- (b) being a partner, creditor or debtor of an applicant for an advance, or being related to such an applicant within the third degree of affinity or consanguinity; or
- (c) if the applicant is a company, being a director or shareholder thereof, or being related to such director or shareholder, within the third degree of affinity or consanguinity,

acts as a valuator in connection with the land offered as security for such advance, or as an adviser in connection with such advance, or sits at any meeting of the board and votes upon any resolution having reference to such land or advance, shall be liable to a penalty of not less than one hundred rand and not more than four hundred rand, which shall be recoverable by action in any competent court at the suit of the Minister, and when recovered, shall be paid into the Consolidated Revenue Fund."

Amendment of section 73 of Act 13 of 1944, as amended by section 9 of Act 13 of 1953 and section 8 of Act 60 of 1957.

9. The following section is hereby inserted after section 74A of the Principal Act:

"Provisions relating to companies. 74B. No provision of any other law shall derogate from the provisions of this Act relating to companies."

Insertion of section 74B in Act 13 of 1944.

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10. This Act shall be called the Land Bank Amendment Act, Short title and 1972, and the provisions thereof, other than the provisions of commencement. section 4, shall be deemed to have come into operation on the date of commencement of the principal Act.