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DEPARTMENT OF THE PRIME MINISTER.

No. 299.]

[6th March, 1968.

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

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No. 5 of 1968: Land Bank Amendment Act, 1968 .. 20

ACT

To amend the provisions of the Land Bank Act, 1944, relating to remuneration of members of the board of the Land and Agricultural Bank of South Africa, dipping tank advances, fencing advances, silo advances, advances to provide for a supply of water, advances to provide for a supply of electricity, advances to farmers in the form of a cash credit account, advances to farmers on hypothec of movable property, remedies of the bank against defaulting debtors, the application of the proceeds of the sale of immovable property belonging to debtors of the bank, to effect certain consequential amendments, including amendments arising from the modification of other laws, to effect certain changes in the terminology of the Land Bank Act, 1944, to repeal the Dipping Tanks (Advances) Act, 1911, the Dipping Tanks Further Provision Act, 1913, and section 12 (2) of the Fencing Act, 1963, and to provide for other incidental matters.

*(English text signed by the Acting State President.)
(Assented to 27th February, 1968.)*

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

Amendment of section 10 of Act 13 of 1944, as amended by section 1 of Act 10 of 1952, section 3 of Act 47 of 1959 and section 3 of Act 46 of 1965.

Substitution of section 27 of Act 13 of 1944.

1. Section 10 of the Land Bank Act, 1944 (hereinafter referred to as the principal Act), is hereby amended by the addition of the following subsection:

“(4) The Minister may from time to time determine that a gratuity on the basis approved by him be paid out of the funds of the bank to or in respect of a member of the board whose term of office has expired or who has died.”

2. The following section is hereby substituted for section 27 of the principal Act:

“Dipping tank advances.

27. (1) Whenever an owner of a holding desires to construct thereon a dipping tank, the bank may, upon written application in such form as the board may prescribe, make an advance to such owner for the purpose: Provided that the plans and specifications of the dipping tank shall be subject to the approval of the Secretary for Agricultural Technical Services or an official deputed thereto by him.

(2) For the purposes of this section any number of holdings may be regarded as one holding provided they are contiguous to each other and the aggregate extent thereof does not exceed three thousand morgen or such greater extent as the Minister of Agricultural Technical Services, having regard to the practice of the owners, may determine, but in every such case the owners shall be liable for repayment, in equal proportions, of the amount of the advance together with interest and costs.

(3) The bank shall before any payment is made in respect of the advance transmit in writing to the registrar of deeds concerned information stating—

- (a) the date and amount of the advance made in terms of this section, and, where the advance is made in respect of more than one holding, the amount which each owner is liable to pay;
- (b) the person or persons to whom the advance has been made; and
- (c) the holding or holdings in respect of which the advance is made,

and upon receipt of such information the registrar of deeds shall cause a note thereof to be made in his registers in respect of the holding or holdings and shall transmit forthwith to the bank a certified copy of such note.

(4) The making of a note in terms of subsection (3) shall have the effect of creating in favour of the bank a charge upon the holding until the amount of the advance together with interest and costs has been repaid.

(5) Upon receipt of written information from the bank that the amount of the advance together with interest and costs has been repaid the registrar of deeds shall delete from his registers the note referred to in subsection (3).

(6) If an instalment or interest in respect of an advance be unpaid three months from the date on which payment thereof became due, or if, in the opinion of the board, the advance has not been applied for the purpose for which it was made, the bank may at any time require the debtor to repay forthwith the whole advance together with interest and costs or such portion thereof as he is liable to repay, and any interest due.

(7) For the purposes of this section—

‘dipping tank’ includes any structure erected for or incidental to the dipping, spraying or disinfecting of stock as defined under any law relating to stock disease;

‘holding’ means—

- (a) any area of land (not being an erf or stand) held by any person under separate grant, deed of transfer or certificate of title; or
- (b) any area of land held under lease, licence, or allotment, from the State, with an option to purchase such area, provided the instrument of lease, licence or allotment is registered in a deeds office or deeds registry or other registration office;

‘owner’ means, in respect of a holding described in paragraph (a) of the definition of holding, the person registered in any deeds office or deeds registry as the owner; and in respect of a holding described in paragraph (b) of such definition, the person registered as the holder of the lease, licence or allotment.”

Substitution of section 28 of Act 13 of 1944.

3. The following section is hereby substituted for section 28 of the principal Act:

“Fencing advances.

28. (1) Advances may be made in accordance with the Fencing Act, 1963 (Act No. 31 of 1963), or any amendment thereof—

- (a) to any owner (as defined in that Act or any amendment thereof), of a holding, as so defined, in respect of the cost of any boundary fence, as so defined, or any other fence, including any fence on one side or both sides of any public road;

(b) to the owners (as so defined) of any block of holdings, for the purpose of fencing the outside boundaries of such block if each such owner is eligible for an advance under the said Act and makes application therefor in a form prescribed by the board: Provided that—

- (i) each of the holdings comprising the block shall, in the absence of agreement, approved by the board, between the owners as to their respective shares, be charged with a share of the advance proportionate to the extent of that holding;
 - (ii) the amount of the advance to each owner shall be noted by the registrar of deeds in respect of the holding owned by that owner in the manner prescribed in section 27 (3), and that the noting shall have the same effect as in section 27 (4) provided; and
 - (iii) each owner shall be liable for repayment of the amount so noted in respect of his holding as if that amount had been advanced to him under the said Fencing Act, 1963, as modified by this Act;
- (c) in respect of the cost of the alteration, improvement or repair of any boundary fence approved by the board, whether erected under the Fencing Act, 1963, or otherwise, or in respect of a contribution made under that Act towards the cost of such alteration, improvement or repair; or
- (d) for the purpose of defraying the costs of erection and maintenance of any fence erected under the provisions of section 22 (1) of the Bantu Trust and Land Act, 1936 (Act No. 18 of 1936), read with paragraph 2 of Part I of the Second Schedule to that Act:

Provided that no advance shall be made except against a certificate by the Secretary for Agricultural Technical Services or an official deputed thereto by him, to the effect that the provisions of the Fencing Act, 1963, have been complied with.

(2) The provisions of section 27, except those contained in subsection (2) thereof, shall *mutatis mutandis* apply to such advances.”.

Substitution of section 29 of Act 13 of 1944, as amended by section 6 of Act 46 of 1965

4. The following section is hereby substituted for section 29 of the principal Act:

“Silo advances.

29. (1) Whenever an owner, as defined in section 27 (7), of a holding, as so defined, desires to construct thereon a tank, silo or other contrivance for the making or storage of ensilage, the bank may make an advance to such owner for the purpose: Provided that the specifications of the tank, silo or other contrivance shall be subject to the approval of the Secretary for Agricultural Technical Services or an official deputed thereto by him.

(2) The provisions of section 27 shall *mutatis mutandis* apply to any such advance.”.

Substitution of section 30 of Act 13 of 1944, as amended by section 7 of Act 46 of 1965.

5. The following section is hereby substituted for section 30 of the principal Act:

“Advances to provide for a supply of water.

30. (1) An advance may be made to an owner (as defined in the Fencing Act, 1963, or any amendment thereof) of a holding, as so defined, for the purpose of providing a supply of water by boring or otherwise and to purchase and erect windmills or other mechanical contrivances for the pumping of water.

(2) The provisions of section 27 shall *mutatis mutandis* apply to any such advance.”.

Substitution of section 30bis of Act 13 of 1944, as inserted by section 11 of Act 47 of 1959.

6. The following section is hereby substituted for section 30bis of the principal Act:

“Advances to provide for a supply of electricity.

30bis. (1) An advance may be made to an owner, (as defined in the Fencing Act, 1963, or any amendment thereof) of a holding, as so defined, for the purpose of providing a supply of electricity by an undertaker, as defined in the Electricity Act, 1958 (Act No. 40 of 1958), and for the purchase, erection, installation or maintenance of any plant, apparatus or equipment required for the use of such electricity and to pay any connection fee.

(2) The provisions of section 27 shall *mutatis mutandis* apply to any such advance.”.

Substitution of section 32 of Act 13 of 1944, as substituted by section 13 of Act 47 of 1959.

7. The following section is hereby substituted for section 32 of the principal Act:

“Liability for repayment of fencing, dipping tanks, silo and water and electricity supply advances in respect of *fidei-commissary* holdings.

32. Whenever an advance for the construction of a dipping tank or a silo or other contrivance for the making or storage of ensilage, or the erection of or contribution towards the cost of erecting or altering a fence, or the provision of a supply of water or electricity has been made by the bank to the owner, as defined in section 27 (7) or the Fencing Act, 1963, or any amendment thereof, of a holding, as so defined, which is subject to a *fidei-commissum* or to any restriction on alienation or hypothecation, the holding shall, on transfer to the *fidei-commissary* or any other person, continue to be charged in respect of any amount of capital and interest still owing to the bank under the advance, and the owner for the time being shall be liable for payment of all amounts due in respect of the advance in the same manner as if that advance had originally been made to him.”.

Amendment of section 33 of Act 13 of 1944, as substituted by section 14 of Act 47 of 1959.

8. Section 33 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) Whenever an advance has been made by the bank for dipping tanks, silos, fencing or the provision of a supply of water or electricity or the purchase and erection of windmills or other mechanical contrivances for the pumping of water or the purchase, erection, installation or maintenance of any plant, apparatus or equipment required for the use of electricity or to pay the connection fee required for such use, and has been noted by the registrar of deeds concerned in the manner prescribed in section 27 (3), the amount of the advance (or as much as may still be owing) shall attach to the holding in respect of which the advance was made, and each successive owner shall be liable for the instalments and interest as they fall due under the advance during his ownership as if the advance had been made to him.”; and

(b) by the substitution for subsection (6) of the following subsection:

“(6) For the purposes of this section, the word ‘owner’ shall, when used with reference to advances—

(a) for dipping tanks or silos, have the meaning assigned thereto in section 27;

(b) for fencing or the provision of a water or an electricity supply, have the meaning assigned thereto in the Fencing Act, 1963, or any amendment thereof.”.

Amendment of section 34 of Act 13 of 1944, as amended by section 15 of Act 47 of 1959 and section 8 of Act 46 of 1965.

9. Section 34 of the principal Act is hereby amended by the substitution for subsection (7) of the following subsection:

“(7) The board may, if the debtor in respect of any advance under subsection (1) fails—

- (a) to cultivate, to the satisfaction of the board, the land upon which crops which are subject to a pledge in terms of subsection (4), are grown or to be grown; or
- (b) to pay, when due, any amount for which he has become liable under this section, or to observe any condition of the advance,

after giving seven days' notice by registered letter addressed to the address of the debtor stated in the form of application for the advance, without recourse to a court of law, seize and sell the crops or the articles or substances which are in terms of subsection (4) or (4)*bis* subject to a pledge, and, in the case referred to in paragraph (a) itself cultivate such land and gather and sell the crops.”.

Amendment of section 34*bis* 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 and section 9 of Act 46 of 1965.

10. Section 34*bis* of the principal Act is hereby amended by the substitution for subsection (8) of the following subsection:

“(8) (a) If the estate of a person to whom an advance has been made under this section is sequestrated or assigned, or if a compromise is effected with his creditors in terms of section 24 of the Agricultural Credit Act, 1966 (Act No. 28 of 1966), or his assets are being dealt with in terms of section 28 of that Act, the hypothecated property shall not vest in the Master of the Supreme Court concerned or the trustee or the assignee or the liquidator, as the case may be, unless the board notifies such Master or trustee or assignee or liquidator as provided in paragraph (e).

(b) The board may after giving written notice to the Master concerned or the trustee or the assignee or the liquidator, as the circumstances may require, cause the hypothecated property to be sold in the manner provided by subsection (6).

(c) If the sale price realized, after payment of any costs incurred in connection with the seizure and sale, exceeds the amount owing under the advance together with interest and costs, the balance shall be paid to the Master concerned or the trustee or the assignee or the liquidator, as the circumstances may require.

(d) If such sale price, after such payment, is less than the amount owing under the advance together with interest and costs, the board may prove a claim against the estate in respect of the deficit.

(e) If the board elects not to deal with the hypothecated property in terms of paragraph (b), it shall notify the Master or the trustee or the assignee or the liquidator, as the circumstances may require, accordingly, whereupon the property shall vest in the Master or the trustee or the assignee or the liquidator, as the case may be, who shall deal with the property as if this section had not been enacted: Provided that such property shall be deemed to have been pledged to the bank as security for the due fulfilment by the debtor of his obligations under the hypothec, in the same manner as if it had been delivered to the bank as a pledge.”.

Amendment of section 55 of Act 13 of 1944, as amended by section 11 of Act 46 of 1965.

11. Section 55 of the principal Act is hereby amended—

(a) by the substitution for paragraph (d) of subsection (1) of the following paragraph:

“(d) the security for the advance be declared executable by order of a competent court or be attached in pursuance of a judgment of any such court or under section 22*ter* of the Farmers' Assistance

Act, 1935 (Act No. 48 of 1935) or section 37 of the Agricultural Credit Act, 1966 (Act No. 28 of 1966), or becomes the subject of a direction under subsection (2) of the said section 22^{ter} or subsection (1) of the said section 37; or”;

(b) by the substitution for paragraph (e) of subsection (1) of the following paragraph:

“(e) the debtor being deceased, his estate is about to be dealt with under the provisions of section 48 (3) of the Administration of Estates Act, 1913 (Act No. 24 of 1913), or section 34 (2) or (5) of the Administration of Estates Act, 1965 (Act No. 66 of 1965), or has been sequestrated as insolvent; or”;

(c) by the substitution for paragraph (f) of subsection (1) of the following paragraph:

“(f) a notice has been published with reference to the debtor under section 22 of the Agricultural Credit Act, 1966; or”;

(d) by the substitution for subsections (2) and (3) of the following subsections:

“(2) Whenever any circumstance mentioned in subsection (1) arises, the board may—

(a) refuse to pay any portion of the advance which has been approved, but not yet paid;

(b) after demand by registered letter, addressed to the address of the debtor stated in the form of application for the advance, has been made for the repayment of the advance, and, if the land or other security is mortgaged to any person other than the bank, after due notice to the mortgagee, and without recourse to a court of law, attach the whole or any part of the security for the advance by giving written notice thereof by registered letter, to the debtor to the address as stated above and to the registrar of deeds concerned who shall cause a note of the attachment to be made in his registers, and the board may in its discretion sell by public auction, through an auctioneer or a sheriff or his deputy, whether or not such sheriff or his deputy is a licensed auctioneer, the whole or any part of the said security upon such conditions as it may deem just: Provided that—

(i) if the default be only in respect of the circumstances mentioned in subsection (1) (a), such attachment and sale shall not take place until after the expiration of three months from the date on which payment was due of the sum of money in respect of which the default has occurred;

(ii) in the circumstances mentioned in subsection (1) (c), (d), (e) or (f) 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} (2) 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 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, as the board may deem expedient;

- (c) transfer such land or other security to the purchaser and give him a good and valid title thereto, notwithstanding that it may then be hypothecated or subject to a lien or charge in favour of some other person, and without production to the registrar of deeds of the title deeds, provided it is certified that the board has been unable to obtain the same; and
- (d) make an advance under the provisions of this Act, on such conditions as it may deem fit, to the purchaser of such land or other security, for the purpose of defraying the whole or part of the purchase price, notwithstanding that such advance may exceed the limits prescribed by section 26:

Provided that no such sale shall take place—

- (aa) until the expiry of at least fourteen days from the date of a notice in the *Gazette* and in some newspaper circulating in the district, stating the date, hour and place of the sale, a description (according to the title deed) of the security which is being sold and the terms of payment of the purchase price; and
- (bb) unless the conditions of sale have been announced immediately before commencement of the sale.

(3) No property mortgaged to the bank shall be sold in execution 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 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, 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 the messenger, sheriff, trustee of the insolvent estate, assignee, executor or liquidator, or the trustee so appointed, 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 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.”; and

(e) by the addition of the following subsection:

“(4) No land or other security in respect of which an attachment mentioned in subsection (2) (b) has been noted by the registrar of deeds in his registers shall in any manner be hypothecated or charged, whether under the provisions of any Act or otherwise, except with the written consent of the bank.”.

Amendment of section 56 of Act 13 of 1944, as amended by section 25 of Act 47 of 1959 and section 5 of Act 35 of 1961.

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

“(bA) if any assets of the debtor are in terms of the Agricultural Credit Act, 1966 (Act No. 28 of 1966), vested in a liquidator or trustee elected or appointed under section 27 or 28 of that Act, to such liquidator or trustee, as the case may be;”.

Amendment of sections 21 (1) (b), 31 (3) and 33 (2), (3) and (4) of Act 13 of 1944.

13. The principal Act is hereby amended—

- (a) by the substitution in the Afrikaans text of section 21 (1) (b) for the word “besittings” of the word “hoewes”;
- (b) by the substitution in section 21 (1) (b) (ii) for the word “dividing” of the word “boundary”; and

(c) by the substitution in the Afrikaans text of sections 31 (3) and 33 (2), (3) and (4) for the word "besitting", wherever it occurs, of the word "hoewe".

Repeal of laws and savings.

14. (1) The Dipping Tanks (Advances) Act, 1911 (Act No. 20 of 1911), the Dipping Tanks Further Provision Act, 1913 (Act No. 14 of 1913), and section 12 (2) of the Fencing Act, 1963 (Act No. 31 of 1963), are hereby repealed.

(2) Notwithstanding anything in this Act contained, any provision of section 27, 28, 29, 30 or 30*bis* of [the principal Act or of any law mentioned in subsection (1) which, immediately prior to the date of commencement of this Act, applied in respect of any dipping tank advance, fencing advance, silo advance, advance to provide for a supply of water or advance to provide for a supply of electricity made prior to such date, shall continue to apply in respect thereof as if this Act had not been passed.

Short title.

15. This Act shall be called the Land Bank Amendment Act, 1968.