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OF THE REPUBLIC OF SOUTH AFRICA

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STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 1419.

3 July 1985

No. 1419.

3 Julie 1985

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. 89 of 1985: Land Bank Amendment Act, 1985.

No. 89 van 1985: Wysigingswet op die Landbank, 1985.

Act No. 89, 1985

LAND BANK AMENDMENT ACT, 1985

GENERAL EXPLANATORY NOTE:

[Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the Land Bank Act, 1944, so as to provide for the granting of advances to close corporations which carry on farming operations in the Republic, for the safeguarding of the Land Bank's interests in the event of the deregistration of a debtor company, and for matters connected therewith.

*(Afrikaans text signed by the State President.)
(Assented to 20 June 1985.)*

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

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, section 5 of Act 31 of 1969, section 1 of Act 41 of 1972 and Proclamation 147 of 1979.

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

(a) by the insertion in subsection (1) after the definition of “chairman” of the following definition:

“‘close corporation’ means a close corporation contemplated in section 2 of the Close Corporations Act, 1984 (Act No. 69 of 1984);” and

(b) by the substitution in subsection (1) for the definition of “mortgagor” of the following definition:

“‘mortgagor’ includes any person to whom, or company or close corporation 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 close corporation or co-operative company or society;”.

Amendment of section 12 of Act 13 of 1944, as amended by section 2 of Act 41 of 1972.

2. Section 12 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph: 20

“(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, or, if such person is a close corporation, any member thereof, who is related to that member or adviser within the third degree of affinity or consanguinity; or”.

Amendment of section 21 of Act 13 of 1944, as amended by section 6 of Act 47 of 1959,

3. Section 21 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection: 30

“(2) No advance shall be made out of the funds of the bank to any member of the board, or to any gener-

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section 2 of Act 35 of 1961, section 1 of Act 14 of 1964, section 5 of Act 46 of 1965, section 13 of Act 5 of 1968, section 3 of Act 41 of 1972, section 1 of Act 52 of 1975, section 1 of Act 109 of 1976, and section 1 of Act 88 of 1981.

- al manager, or to any adviser or any member of the staff of the bank, or to any company or to any close corporation 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.”; and 10
- (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 15 or not to have been a farmer; or
- (b) to any society, **[or]** company or close corporation 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 or close corporation, 20

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 man- 25 ner hereinafter provided, the amount already advanced.”.

Amendment of section 23 of Act 13 of 1944, as amended by section 4 of Act 41 of 1972 and section 2 of Act 88 of 1981.

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 trans- 30 mitted, 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 35 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 or a close corporation, the character, ability, occupation and general suitability of 40 every director, **[and]** shareholder or member thereof and the general suitability of the applicant, and the desirability or otherwise of making the desired advance.”.

Amendment of section 34 of Act 13 of 1944, as substituted by section 3 of Act 52 of 1975.

5. Section 34 of the principal Act is hereby amended—
- (a) by the substitution for paragraph (g) of subsection (2) 45 of the following paragraph:
- “(g) the debtor is a company which has been placed under judicial management or is being wound up or is being deregistered; or”;
- (b) by the insertion after paragraph (g) of subsection (2) of 50 the following paragraph:
- “(gA) the debtor is a close corporation which is being wound up or is being deregistered; or”; and
- (c) by the substitution for paragraph (h) of subsection (2) 55 of the following paragraph:
- “(h) the debtor is a company or close corporation and any director, **[or]** shareholder or member thereof is sentenced to imprisonment without the option of a fine; or”.

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

6. Section 55 of the principal Act is hereby amended— 60
- (a) by the substitution for paragraph (gA) of subsection (1) of the following paragraph:
- “(gA) the debtor is a company, such company has been

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Act 46 of 1965,
section 11 of
Act 5 of 1968,
section 14 of
Act 31 of 1969,
section 6 of
Act 41 of 1972,
Proclamation 147 of
1979
and section 6 of
Act 88 of 1981.

- placed under judicial management or is being wound up or is being deregistered; or”;
- (b) by the substitution for paragraph (gB) of subsection (1) of the following paragraph:
“(gB) the debtor is a company or close corporation and any director, **[or]** shareholder or member thereof be sentenced to imprisonment without the option of a fine; or”;
- (c) by the insertion after paragraph (gB) of subsection (1) of the following paragraph:
“(gC) the debtor, being a close corporation, is being wound up or is being deregistered; or”;
- (d) 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) or (gC), 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 22ter 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, or if such debtor is a company, such company has been placed under judicial management or is being wound up or is being deregistered or, if such debtor is a close corporation, such close corporation is being wound up or is being deregistered, as the board may deem expedient;”;
- (e) 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 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 the judicial manager or the liquidator of a company or close corporation, 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 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 that the company has been placed under judicial management or that the company or close corporation is being wound up or is being deregistered.”.

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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, section 15 of Act 31 of 1969, section 7 of Act 41 of 1972, Proclamation 147 of 1979 and section 7 of Act 88 of 1981.

Amendment of section 73 of Act 13 of 1944, as amended by section 9 of Act 13 of 1953, section 8 of Act 60 of 1957 and section 8 of Act 41 of 1972.

Insertion of section 74C in Act 13 of 1944.

Short title and commencement.

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

“(bC) if the debtor is a close corporation which is being wound up, to the liquidator;”.

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 10 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 con-15 sanguinity; or
- (d) if the applicant is a close corporation, being a member thereof, or being related to such member within the third degree of affinity or consanguinity,

acts as a valuator in connection with the land offered as se- 20
curity 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 ad-
vance, shall be liable to a penalty of not less than one hun-
dred rand and not more than four hundred rand, which 25
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.”.

9. The following section is hereby inserted in the principal Act after section 74B: 30

“Provisions relating to close corporations. 74C. No provision of any other law shall derogate from the provisions of this Act relating to close corporations.”.

10. This Act is called the Land Bank Amendment Act, 1985, and is deemed to have come into operation on 1 January 1985. 35