

LAND BANK ACT

NO. 13 OF 1944

[ASSENTED TO 29 MARCH, 1944]

[DATE OF COMMENCEMENT: 1 SEPTEMBER, 1944]

(Signed by the Officer Administering the Government in English)

as amended by

Land Bank Amendment Act, No. 42 of 1951

Land Bank Amendment Act, No. 10 of 1952

Land Bank Amendment Act, No. 13 of 1953

Land Bank Amendment Act, No. 31 of 1954

Land Bank Amendment Act, No. 60 of 1957

Land Bank Amendment Act, No. 47 of 1959

Land Bank Amendment Act, No. 35 of 1961

Land Bank Amendment Act, No. 7 of 1962

Land Bank Amendment Act, No. 38 of 1963

Land Bank Amendment Act, No. 14 of 1964

Land Bank Amendment Act, No. 46 of 1965

Land Bank Amendment Act, No. 5 of 1968

General Law Amendment Act, No. 70 of 1968

[with effect from 21 June, 1968—see title GENERAL LAW AMENDMENT ACTS]

Land Bank Amendment Act, No. 31 of 1969

General Law Further Amendment Act, No. 92 of 1970

[with effect from 9 October, 1970—see title GENERAL LAW AMENDMENT ACTS]

Suretyship Amendment Act, No. 57 of 1971

[with effect from 16 June, 1971—see title DEBTOR AND CREDITOR]

Land Bank Amendment Act, No. 41 of 1972

Land Bank Amendment Act, No. 52 of 1975

Land Bank Amendment Act, No. 109 of 1976

Land and Agricultural Bank of South West Africa Proclamation, No. 147 of 1979

Land Bank Amendment Act, No. 20 of 1980

Finance Act, No. 21 of 1980

[with effect from 31 March, 1980—see title FINANCE]

Land Bank Amendment Act, No. 88 of 1981

Land Bank Amendment Act, No. 40 of 1983

Land Bank Amendment Act, No. 89 of 1985

Land Bank Amendment Act, No. 93 of 1986

Transfer of Powers and Duties of the State President Act, No. 97 of 1986

[with effect from 3 October, 1986—see title CONSTITUTIONAL LAW]

Finance Act, No. 88 of 1988

[with effect from 13 July, 1988—see title FINANCE]

Land Bank Amendment Act, No. 93 of 1988

Finance Act, No. 80 of 1989

[with effect from 14 June, 1989—see title FINANCE]

STATUTES OF THE REPUBLIC OF SOUTH AFRICA—AGRICULTURE
Land Bank Act, No. 13 of 1944

Transfer of Powers and Duties of the State President Act, No. 51 of 1991
[with effect from 29 April, 1991—see title CONSTITUTIONAL LAW]

Abolition of Racially Based Land Measures Act, No. 108 of 1991
[with effect from 1 April, 1992—see title LAND]

Land Bank Amendment Act, No. 24 of 1995

Land Bank Amendment Act, No. 21 of 1998

GENERAL NOTES

In terms of Proclamation No. R.27 of 27 March, 1997, the administration of Act No. 13 of 1944 has been assigned to the Minister of Agriculture.

The attention of subscribers is drawn to Proclamation No. 147 of 1979, published in *Government Gazette* No. 6600 of 27 July, 1979 (see page 901). Certain sections of this Act, as it is applicable in the territory, appear on page 859 (1).

ACT

To consolidate the laws in force in the Republic relating to the Land and Agricultural Bank of South Africa.

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PRELIMINARY

1. **Repeal of laws.**—The laws mentioned in the First Schedule to this Act are hereby repealed to the extent set out in the third column of that Schedule, together with so much of any other law as may be repugnant to or inconsistent with the provisions of this Act.

2. **Interpretation of terms.**—(1) In this Act, unless inconsistent with the context—

“adviser”

[Definition of “adviser” deleted by s. 1 (a) of Act No. 21 of 1998.]

“bank” means the bank established under section *three* of the Land Bank Act, 1912 (Act No. 18 of 1912);

“board” means the board of directors of the bank as constituted under section *four*;

[Definition of “board” substituted by s. (1) (b) of Act No. 21 of 1998.]

“cash credit account” means an account through which moneys may, from time to time, during its currency as fixed by the board, be drawn from or repaid to the bank, so that the total amount owing to the bank under such account shall not at any time exceed a maximum amount to be fixed by the board;

“chairperson” means the chairperson of the board designated under section *four*;

[Definition of “chairperson”, previously definition of “chairman”, amended by s. 1 of Act No. 42 of 1951 and substituted by s. 1 (c) of Act No. 21 of 1998.]

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

[Definition of “close corporation” inserted by s. 1 (a) of Act No. 89 of 1985.]

“company” means a company as defined in the Companies Act, 1973 (Act No. 61 of 1973), whether the expression occurs on its own or in conjunction with the expression ‘co-operative society’;

[Definition of “company” inserted by s. 1 (a) of Act No. 41 of 1972 and substituted by s. 1 (d) of Act No. 21 of 1998.]

“co-operative company”

[Definition of “co-operative company” or “company” amended by s. 5 (a) of Act No. 31 of 1969 and substituted by the definition of “co-operative company” by s. 1 (b) of Act No. 41 of 1972. Definition of “co-operative company” amended by Proclamation No. 147 of 1979, and deleted by s. 1 (e) of Act No. 21 of 1998.]

“co-operative society” means a co-operative as defined in section 1 of the Co-operatives Act, 1981 (Act No. 91 of 1981);

[Definition of “co-operative society” substituted by s. 1 (f) of Act No. 21 of 1998.]

“department” means the Department of Agriculture;

[Definition of “department” inserted by s. 1 (g) of Act No. 21 of 1998.]

“farmer” means a person who carries on farming operations in the Republic;

[Definition of “farmer” substituted by s. 1 (c) of Act No. 41 of 1972.]

“**financial intermediary**” means any institution which, as part of its activities, obtains loans from the bank and, on the basis of such loans, advances monies or extends credit to the public or a sector of the public involved in agriculture or agriculture-related activities or for the acquisition of property for agricultural purposes;

[Definition of “financial intermediary” inserted by s. 1 (h) of Act No. 21 of 1998.]

“**futures contract**” means a futures contract as defined in section 1 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989);

[Definition of “futures contract” inserted by s. 5 (a) of Act No. 80 of 1989.]

“**general manager**”

[Definition of “general manager” inserted by s. 1 of Act No. 60 of 1957 and deleted by s. 1 (f) of Act No. 21 of 1998.]

“**institution**” means any company, co-operative society, trust, communal property association or voluntary association, whether incorporated or not;

[Definition of “institution” inserted by s. 1 (i) of Act No. 21 of 1998.]

“**managing director**” means the managing director appointed under section 13;

[Definition of “managing director”, previously definition of “general manager”, substituted by s. 1 of Act No. 13 of 1953 and by s. 1 (k) of Act No. 21 of 1998.]

“**mortgage**” includes any bond in which it is stipulated that the bond is intended to secure future advances and a sum is fixed as an amount beyond which future advances shall not be secured by the bond;

[Definition of “mortgage” inserted by s. 1 (a) of Act No. 47 of 1959.]

“**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;

[Definition of “mortgagor” substituted by s. 1 (d) of Act No. 41 of 1972 and by s. 1 (b) of Act No. 89 of 1985.]

“**Minister**” means the Minister for Agriculture and Land Affairs;

[Definition of “Minister” substituted by s. 1 (l) of Act No. 21 of 1998.]

“**option contract**” means an option contract as defined in section 1 of the Financial Markets Control Act, 1989;

[Definition of “option contract” inserted by s. 5 (b) of Act No. 80 of 1989.]

“**provincial bank**” means the Land and Agricultural Loan Fund of the Province of Natal, or the Transvaal Land and Agricultural Bank or the Land and Agricultural Loan Fund of the Province of the Orange Free State;

“**registrar**”, in relation to any co-operative society or company, means the Registrar of Co-operative Societies appointed under section *three* of the Co-operative Societies Act, 1939 (Act No. 29 of 1939);

[Definition of “registrar” amended by s. 5 (b) of Act No. 31 of 1969 and by Proclamation No. 147 of 1979.]

“Republic”

[Definition of “Republic” inserted by s. 5 (c) of Act No. 31 of 1969 and deleted by Proclamation No. 147 of 1979.]

“sheriff” means a sheriff, deputy sheriff or acting sheriff within the meaning of the Sheriffs Act, 1986.

[Definition of “sheriff” inserted by s. 1 (1) of Act No. 93 of 1986.]

“staff”

[Definition of “staff” deleted by s. 1 (m) of Act No. 21 of 1998.]

“territory”

[Definition of “territory” inserted by s. 5 (d) of Act No. 31 of 1969 and deleted by Proclamation No. 147 of 1979.]

“this Act” includes the regulations and notices promulgated thereunder;

[Definition of “this Act” substituted by s. 1 (n) of Act No. 21 of 1998.]

“valuator” means a valuator appointed under section *seventy*, and for the purpose of subsection (3) of section *seventy-three*, includes any member of the board and any adviser or officer of the bank who values any property offered as security for an advance under this Act.

(2) Notwithstanding anything to the contrary in any law contained, any bond in which it is stipulated that it is intended to secure future advances and a sum is fixed as an amount beyond which future advances shall not be secured by the bond, shall until such time as it is expressly cancelled, serve as security for any amount which may be advanced thereunder from time to time, whether or not previous advances made thereunder have been repaid wholly or in part.

[Sub-s. (2) added by s. 1 (b) of Act No. 47 of 1959.]

CHAPTER I

CONTROL AND MANAGEMENT OF THE BANK

3. Bank to be a corporate body and to be exempt from banking laws.—(1) The bank shall be a body corporate and shall in its corporate capacity under the name of the Land and Agricultural Bank of South Africa, be capable of suing and being sued, and, subject to the provisions of this Act, of purchasing or otherwise acquiring, holding or alienating property, movable or immovable, and of performing such acts as bodies corporate may by law perform.

(2) The bank shall be administered and managed as in this Act is provided, and shall be exempt from the provisions of any other law specially governing banks.

[Sub-s. (2) amended by s. 6 of Act No. 31 of 1969.]

4. Control of operation of bank by board.—(1) (a) The business of the bank shall be controlled by a board of directors appointed by the Minister and who shall—

- (i) direct and conduct the operations and business of the bank; and

(ii) determine and implement policies to administer this Act.

(b) The board shall consist of—

(i) a chairperson;

(ii) the managing director;

(iii) not less than six or more than ten other members.

[Sub-s. (1) substituted by s. 2 (a) of Act No. 42 of 1951, by s. 1 of Act No. 46 of 1965, by s. 7 of Act No. 31 of 1969 and by s. 2 of Act No. 92 of 1970, amended by s. 9 of Act No. 51 of 1991 and substituted by s. 2 (a) of Act No. 21 of 1998.]

(2) The members of the board (other than the chairman) shall be appointed for such period, not exceeding five years, as the Minister may in the case of each member determine, and any retiring member may be reappointed as a member of the board unless removed from his office or disqualified as hereinafter provided.

[Sub-s. (2) amended by s. 2 (b) of Act No. 42 of 1951 and by s. 9 of Act No. 51 of 1991.]

(3)

[Sub-s. (3) substituted by s. 7 (b) of Act No. 31 of 1969, amended by Proclamation No. 147 of 1979 and deleted by s. 2 (b) of Act No. 21 of 1998.]

(4)

[Sub-s. (4) deleted by s. 2 (b) of Act No. 21 of 1998.]

(5)

[Sub-s. (5) amended by s. 9 of Act No. 51 of 1991 and deleted by s. 2 (b) of Act No. 21 of 1998.]

4bis.

[S. *4bis* inserted by s. 3 of Act No. 42 of 1951, amended by s. 2 of Act No. 46 of 1965 and by s. 9 of Act No. 51 of 1991 and repealed by s. 3 of Act No. 21 of 1998.]

4ter. Delegation of powers.—The board may from time to time delegate to the managing director, a general manager or an officer of the bank any of its powers under this Act and may delegate any such power for such period and for such purposes and subject to such conditions and restrictions as it may deem expedient.

[S. *4ter* inserted by s. 2 of Act No. 47 of 1959.]

5. Appointment, vacancies and removal from office of members of board.—(1) No person may be appointed as a member of the board if he or she is disqualified to act as a director of a company incorporated in terms of the Companies Act, 1973 (Act No. 61 of 1973).

(2) (a) Members of the board have to disclose their personal, professional and business interests on appointment to the bank and notify it when these change.

(b) The bank shall cause a written record of members' interests to be kept.

(3) A member of the board shall vacate his or her office if—

(a) he or she becomes of unsound mind;

(b) he or she has been absent from more than two consecutive meetings without leave of the chairperson for each absence;

(c) he or she resigns and has notified the chairperson in writing of his or her resignation; or

(d) he or she becomes subject to the criteria set out in subsection (1).

(4) If the office of a member of the board becomes vacant before the expiry of the period for which he or she was appointed, the Minister shall appoint a person to fill the vacancy for the unexpired period of office of such member.

(5) The Minister may, on the term of office of the board lapsing without a new board having been appointed, reappoint the existing board for a maximum period of three months at a time until a new board has been appointed.

[S. 5 amended by s. 8 of Act No. 31 of 1969, Proclamation No. 147 of 1979 and by s. 9 of Act No. 51 of 1991 and substituted by s. 4 of Act No. 21 of 1998.]

6. Meetings of board.—(1) The members of the board shall, not less than once in every four months, meet at such times and places and in the manner as the chairperson may from time to time determine.

(2) The chairperson may at any time convene an extraordinary meeting of the board to be held at a time and place and in the manner determined by him or her and shall, upon a written request of the managing director or two other members, convene an extraordinary meeting to be held within two weeks after the date of receipt of such request.

(3) The board may publish the procedure to be followed at a meeting thereof by notice in the *Gazette*.

(4) In the absence of a published procedure under subsection (3), the person presiding at a meeting of the board shall determine the procedure to be followed at such meeting.

(5) (a) The quorum for a meeting of the board shall be half of the members plus one.

(b) The decision of the majority of the members of the board present at a meeting thereof shall constitute a decision of the board.

(c) In the event of any equality of votes on any matter the person presiding at a meeting of the board has a casting vote in addition to his or her deliberative vote.

(6) No decision taken by the board or act performed under the authority of the board shall be invalid by reason only of a casual vacancy on the board or of the fact that any person not entitled to sit as a member of the board sat as such a member at the time the decision was taken or the act was authorised.

(7) (a) If the board takes a decision in any other manner than at a formal meeting such decision shall come into effect immediately but must be reduced to writing and submitted for noting at the first formal meeting of the board following such decision.

(b) The board shall cause a written record of its proceedings to be kept.

[S. 6 substituted by s. 5 of Act No. 21 of 1998.]

7. Executive committees.—(1) (a) The board may appoint committees consisting of as many members of the board, staff of the bank and advisers to the bank as may be deemed necessary to perform such functions or exercise such powers of the board as the board may perform or exercise under this Act, and may at any time dissolve or reconstitute such a committee.

(b) The chairperson of any such committee shall be a member of the board.

(c) The provisions of section 5 (3) and (4), 6 (1) and (3) up to and including (7) and 10, shall *mutatis mutandis* apply to any such committee.

(2) The board is not divested of any function or power conferred upon a committee under subsection (1).

(3) Any decision of a committee performing a function or exercising a power of the board shall be tabled at a board meeting and may be withdrawn or amended by the board or referred back to such committee and shall, until it has been so withdrawn or amended, be deemed to be a decision of the board.

[S. 7 amended by s. 2 of Act No. 13 of 1953, by s. 2 of Act No. 93 of 1986 and substituted by s. 6 of Act No. 21 of 1998.]

8. Advisory committees.—The board may appoint committees consisting of as many members of the board, staff of the bank, advisers to the bank and other persons as may be deemed necessary to advise the board in general or on any particular matter.

[S. 8 substituted by s. 7 of Act No. 21 of 1998.]

9.

[S. 9 amended by s. 3 of Act No. 13 of 1953 and repealed by s. 8 of Act No. 21 of 1998.]

10. Remuneration of members of board.—A member of the board other than the managing director shall be paid for his or her services as member such remuneration and allowances out of the funds of the bank as determined by the Minister.

[S. 10 amended by s. 1 of Act No. 10 of 1952, by s. 3 (1) of Act No. 47 of 1959, by s. 3 of Act No. 46 of 1965, by s. 1 of Act No. 5 of 1968, by s. 24 of Act No. 70 of 1968, by s. 9 of Act No. 51 of 1991, and substituted by s. 9 of Act No. 21 of 1998.]

11. Appointment of advisers.—(1) The board may, upon such conditions as it may determine, appoint in respect of the bank or any branch of the bank, advisers to advise the bank in such matters as may be referred to them.

[Sub-s. (1) amended by s. 46 of Act No. 97 of 1986 and substituted by s. 10 (a) of Act No. 21 of 1998.]

(2)

[Sub-s. (2) deleted by s. 10 (b) of Act No. 21 of 1998.]

12. Circumstances in which members of the board may not vote, and advisers not advise, on applications for advances.—No member of the board or official of the bank shall at any meeting of the board or of any committee thereof or at a meeting of officials of the bank take part in the discussion of or vote upon, and no adviser shall give any advice in connection with—

- (a) any application for an advance under this Act by any person who is related to that member, official or adviser within the third degree of affinity or blood relationship or, if the applicant is a company, any director or shareholder thereof, or, if the applicant is a close corporation, any member thereof, who is related to that member, official or adviser within the third degree of affinity or blood relationship;
- (b) any such application by any person or who is a debtor or creditor of that member, official or adviser or in partnership with or in the employ of that member, official or adviser; or
- (c) any such application by any person who is a debtor or creditor under a mortgage bond of any body of persons, whether incorporated or not, of which that member, official or adviser is a director or under which he or she holds any office or position other than that of auditor.

[Sub-s. (1) amended by s. 2 of Act No. 41 of 1972, by s. 2 of Act No. 89 of 1985 and substituted by s. 11 (a) of Act No. 21 of 1998.]

(2)

[Sub-s. (2) deleted by s. 11 (b) of Act No. 21 of 1998.]

13. Appointment of staff.—(1) The Minister shall appoint a suitable person as managing director of the bank.

(2) The managing director shall—

(a) be responsible for—

(i) the management of the day-to-day affairs of the bank, subject to the directions of the board; and

(ii) administrative control over the staff appointed under paragraph (b);

(b) on such conditions as the board may determine, appoint general managers and other officials or contract with any person to supply such services as may be necessary to perform the work connected with the business of the bank;

(c) be paid and pay staff such remuneration, allowances, subsidies and other service benefits in accordance with a remuneration structure as may be determined from time to time in consultation with the board.

[S. 13 amended by s. 4 of Act No. 42 of 1951, repealed by s. 4 of Act No. 13 of 1953, inserted by s. 2 of Act No. 60 of 1957, amended by s. 4 of Act No. 46 of 1965, by s. 9 of Act No. 51 of 1991 and substituted by s. 12 of Act No. 21 of 1998.]

14.

[S. 14 amended by s. 5 of Act No. 13 of 1953 and repealed by s. 13 of Act No. 21 of 1998.]

14bis.

[S. 14bis inserted by s. 1 of Act No. 38 of 1963 and repealed by s. 13 of Act No. 21 of 1998.]

15. Expenditure by bank on administration.—(1) The salaries and allowances of the managing director and the general manager and of the staff and other persons employed by the bank, and all other expenditure incurred by the bank, shall be paid out of its funds.

[Sub-s. (1) amended by s. 5 of Act No. 42 of 1951, by s. 6 of Act No. 13 of 1953 and by s. 3 of Act No. 60 of 1957.]

(2) The board may out of the funds of the bank pay such allowances as it may deem fit, to a pensioner of a pension fund established under any regulation made under section 69, or to a seconded or retired public servant who occupies or who has retired from a post in the bank, or to the wife, widow, child, or such other dependant as the board may determine, of such a pensioner, or such a seconded or retired public servant, as the case may be.

[Sub-s. (2) added by s. 1 of Act No. 31 of 1954, substituted by s. 9 of Act No. 31 of 1969 and amended by Proclamation No. 147 of 1979.]

16. Preparation and execution of documents and exemption from stamp duties and other fees.—Notwithstanding anything to the contrary contained in any law or in any regulation made thereunder—

(a) any mortgage, document of pledge or other security under this Act, and any transfer of property sold by the bank by virtue of the provisions of this Act, may be prepared and executed by any officer of the bank specially appointed by the board for the purpose, and such officer may with respect to such mortgage,

- (c) no stamp duty or transfer duty shall be payable in respect of any transfer of property to the bank and no charge or fee of office shall be payable in respect of any note made on any document at the request of the bank in any deeds registry or other registration office or in respect of the cancellation of any such note;
- (d) no certificate, document or instrument issued by the board in giving effect to the powers conferred upon it by law, shall be subject to stamp duty, fee or any charge whatsoever, nor shall the bank be liable for the payment of any search or inspection fee in any master's office, surveyor-general's office, deeds registry or other registration office;
- (e) no stamp duty shall be payable in respect of—
 - (i) the issue of Land Bank debentures or Land Bank stock or the other Land Bank securities referred to in section 20 (1) (dA); or
 - (ii) the buying, selling, negotiation, acceptance, endorsement or discounting of the securities, options, option contracts and futures contracts referred to in section 20 (1) (e),or the registration of transfer thereof.

[Para. (e) added by s. 4 of Act No. 47 of 1959 and substituted by s. 1 of Act No. 20 of 1980, by s. 5 of Act No. 88 of 1988 and by s. 6 of Act No. 80 of 1989.]

17. Execution of documents.—Subject to the provisions of section *sixteen*, all deeds, instruments, contracts, cheques and other documents shall be deemed to be duly executed by or on behalf of the bank or the board, as the case may be, if signed by the general manager and any officer deputed thereto by him or by any two officers so deputed thereto.

[S. 17 amended by s. 7 of Act No. 13 of 1953 and by s. 4 of Act No. 60 of 1957.]

18. Agents or representatives outside the Republic.—The board may, subject to the approval of the Minister, appoint agents or representatives of the bank outside the Republic, and may out of its funds establish offices for such agents or representatives.

CHAPTER II

FUNDS AND BUSINESS OF THE BANK

19. Funds of the bank.—(1) The funds of the bank shall consist of—

- (a) the capital vested in the bank at the commencement of this Act;
- (b) funds raised by the board under the provisions of section 20;
- (c) the capital amounts paid to the bank under the provisions of section 46 (6);
- (d) such moneys as Parliament may from time to time by appropriation authorize the Minister to pay to the bank as part of its funds; and
- (e)

[Sub-s. (1) substituted by s. 10 of Act No. 31 of 1969. Para. (e) deleted by Proclamation No. 147 of 1979.]

(2) The bank shall pay to the Minister interest upon the moneys which under paragraphs (a), (c) and (d) of subsection (1) form part of its funds.

[Sub-s. (2) substituted by s. 10 of Act No. 31 of 1969 and amended by Proclamation No. 147 of 1979.]

(3) The interest shall be payable upon such dates as the Minister may from time to time direct, and shall, subject to the provisions of sub-section (6) of section *forty-six*, be at the rate of three and one half per cent. per annum or, in the case of moneys advanced to the bank by the Minister on or after the first day of April, 1940, at the rate applicable when the advance is made, as fixed by the Minister under section *one* of the Financial Adjustments Act, 1917 (Act No. 42 of 1917).

20. Power to raise further funds.—(1) The board shall have power to raise funds upon such conditions as it shall determine, by—

- (a) discounting, with other banks, bills of co-operative societies or companies;
- (b) obtaining overdrafts from other banks;
- (c) issuing Land Bank bills and Land Bank debentures;
- (d) issuing Land Bank stock with an initial period of more than three years;
- (dA) issuing other Land Bank securities;

[Para. (dA) inserted by s. 6 (a) of Act No. 88 of 1988.]

- (e) (i) buying, selling, negotiating, accepting, endorsing and discounting securities of any description;
- (ii) entering into option contracts in respect of securities or the buying, selling, negotiation, acceptance, endorsement and discounting of options in respect of securities;
- (iii) entering into futures contracts in respect of securities;
- (iv) obtaining membership, registration or any licence required by virtue of the provisions of this subsection in respect of any society, exchange or institution,

notwithstanding anything to the contrary contained in any law; and

[Para. (e) substituted by s. 7 (a) of Act No. 80 of 1989.]

- (f) receiving moneys on deposit.

[Sub-s. (1) amended by s. 5 (a) of Act No. 47 of 1959 and substituted by s. 2 (a) of Act No. 20 of 1980.]

(2) Any funds raised under the authority of this section, shall be chargeable upon and payable out of the revenues and assets of the bank.

(3) Land Bank bills, Land Bank debentures, other Land Bank securities and, subject to the provisions of subsection (1) (d), Land Bank stock may be issued in the Republic or elsewhere for such periods and upon such conditions and in such amounts as the board may prescribe, and such bills, debentures, stock or other securities may be renewed or extended from time to time for such period as the board may deem fit: Provided that no Land Bank debentures or stock shall be issued without the Minister's approval.

[Sub-s. (3) substituted by s. 5 (b) of Act No. 47 of 1959, by s. 2 (b) of Act No. 20 of 1980 and by s. 6 (b) of Act No. 88 of 1988.]

(4) Such bills, debentures, stock and other securities shall be issued in such form as the board shall determine, and records thereof shall be kept in such registers as the board shall prescribe.

[Sub-s. (4) amended by s. 5 (c) of Act No. 47 of 1959 and substituted by s. 2 (c) of Act No. 20 of 1980 and by s. 6 (c) of Act No. 88 of 1988.]

(5) Neither the board, nor any agent appointed as hereinafter provided, shall be under any obligation as regards the due fulfilment of any trust, whether expressed, implied or constructive, to which—

- (a) bills, debentures, stock or other securities or options issued, bought, sold, negotiated, accepted, endorsed or discounted; or
- (b) option contracts or futures contracts entered into,

under this section may be subject, notwithstanding that the board or such agent has had notice that the bills, debentures, stock or other securities, options or contracts are held subject to a trust.

[Sub-s. (5) amended by s. 5 (d) of Act No. 47 of 1959 and substituted by s. 2 (d) of Act No. 20 of 1980, by s. 6 (d) of Act No. 88 of 1988 and by s. 7 (b) of Act No. 80 of 1989.]

(6) Anything to the contrary notwithstanding in the Public Investment Commissioners Act, 1984 (Act No. 45 of 1984), Land Bank bills, Land Bank debentures, Land Bank stock and the other Land Bank securities referred to in subsection (1) (dA) shall be regarded as included in the securities in which the Public Investment Commissioners may make investments.

[Sub-s. (6) amended by s. 5 (e) of Act No. 47 of 1959 and by s. 1 (1) of Act No. 35 of 1961 and substituted by s. 2 (e) of Act No. 20 of 1980 and by s. 6 (e) of Act No. 88 of 1988.]

(7) The board may make regulations as to Land Bank bills, Land Bank debentures, Land Bank stock or the securities, options or contracts referred to in subsection (1) (dA) or (1) (e), defaced, lost, burnt or otherwise destroyed, and also as to such further matters arising out of its power to issue bills, debentures, stock, securities, options or contracts as may from time to time be necessary, but no such regulation shall be of force or effect until it has been approved by the Minister and published in the *Gazette*.

[Sub-s. (7) amended by s. 5 (f) of Act No. 47 of 1959 and substituted by s. 2 (f) of Act No. 20 of 1980, by s. 6 (f) of Act No. 88 of 1988 and by s. 7 (c) of Act No. 80 of 1989.]

(8) The board may appoint any bank or any other person as its agent—

- (a) for the issue or repayment of any bills, debentures, stock or securities issued under this section;
- (b) for the buying, selling, negotiating, accepting, endorsing or discounting of the securities or options referred to in subsection (1) (e);
- (c) for the entering into of the option contracts or futures contracts referred to in subsection (1) (e); or
- (d) to do any other act which under this section may or shall be done by the board,

and may enter into an agreement with such agent as to the duties to be performed and the remuneration therefor.

[Sub-s. (8) amended by s. 5 (g) of Act No. 47 of 1959 and substituted by s. 2 (g) of Act No. 20 of 1980, by s. 6 (g) of Act No. 88 of 1988 and by s. 7 (d) of Act No. 80 of 1989.]

(9) and (10)

[Sub-ss. (9) and (10) added by s. 1 of Act No. 7 of 1962 and repealed by s. 3 (1) of Act No. 21 of 1980.]

21. Business of the bank.—(1) The business of the bank shall be—

- (a) to advance money to farmers—
 - (i) on mortgage of land within the Republic; or
 - (ii) on Crown land held under agreement of purchase or under lease the unexpired portion whereof is not less than ten years; or
 - (iiA) against security of stock issued by the Republic Government; or
 [Sub-para. (iiA) inserted by s. 1 of Act No. 88 of 1981.]
 - (iiB) on the provision of such collateral or on such other conditions as may from time to time be determined by the board; or
 [Sub-para. (iiB) inserted by s. 14 (a) of Act No. 21 of 1998.]
 - (iii) in such other manner as may be provided by this Act;
 [Sub-para. (iii) substituted by s. 1 (a) of Act No. 52 of 1975.]
 - (iv)

[Sub-para. (iv) added by s. 6 (a) of Act No. 47 of 1959 and deleted by s. 1 (b) of Act No. 52 of 1975.]

- (b) to advance money to owners of certain holdings for the purpose of—
 - (i) constructing dipping tanks;
 - (ii) erecting, altering, improving or repairing boundary or other fences;
 [Sub-para. (ii) amended by s. 13 (b) of Act No. 5 of 1968.]
 - (iii) constructing tanks, silos or other contrivances for the making or storage of ensilage;

- (iv) providing a supply of water by boring or otherwise, and purchasing or erecting windmills or other mechanical contrivances for the pumping of water; or
- (v) providing a supply of electricity by an undertaker, as defined in the Electricity Act, 1958 (Act No. 40 of 1958), and purchasing, erecting, installing or maintaining any plant, apparatus or equipment required for the use of such electricity, and paying any connection fee;

[Sub-para. (v) added by s. 6 (b) of Act No. 47 of 1959.]

- (c) to advance money—
 - (i) to any co-operative society or company;
 - (ii) to any regulatory board established under the Marketing Act, 1937 (Act No. 26 of 1937), as amended; or
 - (iii) against warehouse receipts, as defined in the Agricultural Warehouse Act, 1930 (Act No. 42 of 1930), presented to it by any bank or any co-operative society or company); or
 - (iv) to any body established by an Act of Parliament which, in the opinion of the board, has as an object the promotion of any division of the agricultural industry;

[Sub-para. (iv) inserted by s. 2 of Act No. 35 of 1961.]

(c)*bis* to advance money to any joint venture, partnership or institution;

[Para. (c)*bis* inserted by s. 1 of Act No. 109 of 1976, deleted by s. 17 of Act No. 108 of 1991 and inserted by s. 14 (b) of Act No. 21 of 1998.]

(c)*ter*

[Para. (c)*ter* inserted by s. 1 of Act No. 93 of 1988 and deleted by s. 1 of Act No. 24 of 1995.]

- (d) to discount bills secured by warehouse receipts as so defined;
- (e) to guarantee the performance of contracts by any co-operative society or company;
- (e)*bis* to guarantee the payment of any amount of money which may be or become owing by any person to whom any advance has been made by the board in terms of this Act or any other law or who has deposited any money with the bank, if such amount does not exceed the amount of the advance or deposit, as the case may be;

[Para. (e)*bis* inserted by s. 5 of Act No. 46 of 1965.]

(e)*ter* to invest money on short term;

[Para. (e)*ter* inserted by s. 8 of Act No. 80 of 1939.]

(e)*quat* to make investments, either on its own or in conjunction with other bodies or persons involved in agriculture or agriculture-related activities;

[Para. (e)*quat* inserted by s. 14 (c) of Act No. 21 of 1998.]

(f) to make grants to agricultural unions or similar farmers' organizations or to educational institutions;

[Para. (f) amended by s. 6 (c) of Act No. 47 of 1959.]

(f)*bis* to make grants in aid of research in connection with farming or agriculture;

[Para. (f)*bis* inserted by s. 6 (d) of Act No. 47 of 1959.]

- (g) out of moneys appropriated by Parliament for the purpose, and on behalf of the Republic Government, to advance money to farmers in accordance with the provisions of section *forty-six*;
- (g)*bis* to enter into agreements with financial intermediaries;
[Para. (g)*bis* inserted by s. 14 (d) of Act No. 21 of 1998.]
- (h) for the purpose of effecting the discharge of any amount which may still be owing by any of its debtors to the bank at the death of such debtor, and of any additional amount which may be payable in connection therewith—
- (i) to undertake insurance and by the acquisition of shares to acquire a controlling interest in the business of any insurer who in pursuance of an arrangement contemplated in this paragraph undertakes insurance solely for the said purpose, and to enter into any agreement with such

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insurer for the due fulfilment by that insurer of his liabilities in respect of such insurance;

[Sub-para. (i) substituted by s. 1 (a) of Act No. 14 of 1964.]

- (ii) to arrange with any insurer for—
 - (aa) the undertaking by such insurer of insurance;
 - (bb) the transfer to such insurer of any insurance undertaken by the bank under this paragraph;
- (iii) to arrange with any insurer for the transfer to the bank of any insurance undertaken by such insurer for the purpose of effecting the discharge of any such amount;
- (iv) to arrange with any insurer for the undertaking of re-insurance by such insurer in respect of any insurance undertaken by the bank under this paragraph,

[Para. (h) inserted by s. 6 (e) of Act No. 47 of 1959.]

and generally to make all such advances and do all such acts as the bank may by this Act or any other law be authorized to make or do.

(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 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.

[Sub-s. (2) substituted by s. 3 (a) of Act No. 41 of 1972 and by s. 3 (a) of Act No. 89 of 1985.]

(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, 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, company or close corporation,

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.

[Sub-s. (3) substituted by s. 3 (b) of Act No. 41 of 1972 and by s. 3 (b) of Act No. 89 of 1985.]

(4) The bank shall not exercise any power conferred on it by sub-paragraph (i) or (iii) of paragraph (h) of sub-section (1) except with the approval of the Minister and in accordance with such conditions as the Minister may deem fit.

[Sub-s. (4) added by s. 6 (f) of Act No. 47 of 1959.]

(5) The provisions of the Insurance Act, 1943 (Act No. 27 of 1943), shall not apply to the bank or an insurer in whose business the bank has acquired a controlling interest in terms of sub-paragraph (i) of paragraph (h) of sub-section (1) in respect of any insurance business carried on by the bank or any such insurer under this Act.

[Sub-s. (5) added by s. 6 (f) of Act No. 47 of 1959 and amended by s. 1 (b) of Act No. 14 of 1964.]

GENERAL POWERS TO MAKE ADVANCES

22. **Purposes for which advances may be made.**—The bank may make advances for any of the following purposes, namely—

- (a) improvements, which shall include the construction or erection of farm buildings, fences, tanks and other structures for the dipping or spraying of stock, the clearing of land for cultivation, the blocking of sluits, dongas and water-courses to prevent denudation of soil, and the planting of trees, orchards, vineyards, sugar cane and tea;
- (b) the purchase of stock and plant of any kind and of agricultural requirements generally;

- (c) the discharge of existing liabilities on land or, in special circumstances, any other liabilities incurred or to be incurred;
- (d) the payment of costs incidental to the sub-division of land held in undivided shares;
- (e) the establishment or promotion of agricultural and rural industries, including, in addition to other such industries, tobacco, dairy and like industries, and the cultivation, sale and export of fruit;
- (f) the purchase of land for any of the purposes mentioned in paragraphs (a), (b) and (e) of this section, by any person or group of persons whose financial resources are in the opinion of the board adequate for any such purpose;
- (f)*bis* any other purpose connected with or incidental to farming or agriculture, whether or not connected with any matter mentioned in the preceding paragraphs; and
[Para. (f)*bis* inserted by s. 7 of Act No. 47 of 1959.]
- (g) any other purpose in respect of which advances by the bank are specially authorized by this Act or any other law.
[Para. (g) substituted by s. 7 of Act No. 47 of 1959.]

23. Applications for advances.—(1) No advance shall be made to any person, except—

- (a) upon a written application which shall be in the form prescribed by the board and shall indicate the purpose for which the advance is required; and
- (b) until the bond or other security which is proposed to be given in respect of the advance has been registered as required by law or otherwise completed, or until such conditions as the board may determine have been complied with.

[Sub-s. (1) amended by s. 2 of Act No. 88 of 1981 and substituted by s. 15 of Act No. 21 of 1998.]

(2) Any application for an advance against the security of mortgage shall be transmitted—

- (a) to the magistrate of the district in which is situated the greater part of the security proposed for the advance, for the purpose of valuation of that security by a valuator appointed under this Act; or
- (b) if the board so directs, to the officer in charge of any branch of the bank operating in that district, for the purpose of valuation of that security by a valuator so appointed or by an adviser or officer of the bank:

Provided that the board may in its discretion dispense with the valuation of any such security which has previously been valued by a valuator so appointed or by the board or a member thereof or an adviser or officer of the bank.

(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 or a close corporation, the character, ability, occupation and general suitability of every director, shareholder or member thereof and the general suitability of the applicant, and the desirability or otherwise of making the desired advance.

[Sub-s. (3) substituted by s. 4 of Act No. 41 of 1972 and by s. 4 of Act No. 89 of 1985.]

(4) A valuator to whom an application has been referred by a magistrate, for the purpose of valuation of the security proposed for the advance to which that application relates, shall record his valuation of that security on the relevant form of application and return it to the magistrate concerned.

24. Conditions and period of repayment of advances.—(1) Advances may be made on such conditions as the board may deem fit, and the board may direct—

- (a) that any such advance be repaid in such instalments and within such period, not exceeding forty years; and
- (b) that interest be paid on the balance of such advance outstanding from time to time, at such intervals and at such rates,

as the board may determine.

(2) Any such advance shall, save as is otherwise provided in this Act, be secured—

- (a) by mortgage bond in the form prescribed by the board; or
- (b) if the mortgagor is a holder of Crown land held under agreement of purchase or lease, in the form and manner so prescribed.

(3) The restrictions against hypothecation of allotments referred to in the Agricultural Lands Further Amendment Extension Act, 1906 (Act No. 40 of 1906), and the Elliott Commonages Subdivision Act, 1908 (Act No. 41 of 1908), of the Cape of Good Hope, shall not apply in respect of hypothecations to secure advances made under this Act to holders of such allotments.

24bis. Substitution of debtors.—Notwithstanding anything to the contrary contained in this Act, any person who acquires the whole of any land hypothecated to the bank under a registered mortgage bond may, with the consent of the board granted upon an application in the form prescribed by the board, take over all the obligations of the debtor under that mortgage bond and be substituted as debtor in respect of that bond, and upon that person being so substituted the advance secured by that mortgage bond shall for the purposes of this Act be deemed to have been made to that person by the bank.

[S. 24bis inserted by s. 2 of Act No. 31 of 1954.]

25. Security for advances.—(1) Save as is otherwise provided in this Act no advance shall be made—

- (a) except—
 - (i) on first mortgage of land within the Republic; or
 - (ii)

[Para. (a) substituted by s. 3 of Act No. 88 of 1981. Sub-para. (ii) deleted by s. 16 (a) of Act No. 21 of 1998.]

- (b) on property which is already encumbered by a mortgage or charge other than—
 - (i) a mortgage or charge created under the Land Bank Act, 1912, or any amendment thereof, or under this Act; or

[Sub-para. (i) substituted by s. 11 of Act No. 31 of 1969 and amended by Proclamation No. 147 of 1979.]

- (ii) a charge created under any law to secure an advance made by the bank or the Republic Government under that law; or

(iii) a mortgage bond passed to secure an amount due to the Republic Government as purchase price of such property if no interest is payable under the bond or, if the interest, if any, payable thereunder does not exceed four per cent per annum,

unless the advance be for the purpose of discharging a mortgage or charge of prior date and the board has, after due consideration of the circumstances, directed that an advance for the redemption of such prior mortgage or charge be sanctioned;

(c) on security of unsurveyed land or any piece of land less than one morgen in extent;

[Para. (c) amended by s. 8 (a) of Act No. 47 of 1959.]

(d) on security of land which is not permanently occupied and beneficially cultivated or worked, unless the board is satisfied that such land is used exclusively for the grazing of livestock;

(e) on security of Crown land held under lease, unless the lease has been duly registered in a deeds registry and unless at the date of application for the advance all conditions contained or implied in the lease have been duly complied with by the lessee:

Provided that any land may be accepted as additional security for an advance, whether or not on first mortgage.

(2) The board may deviate from the provisions of subsection (1) by determining alternative security or other conditions on which advances under this Act are made.

[S. 25 amended by s. 8 (b) of Act No. 47 of 1959. Sub-s. (2) added by s. 16 (b) of Act No. 21 of 1998.]

26.

[S. 26 amended by s. 9 of Act No. 47 of 1959, by s. 1 of Act No. 40 of 1983 and repealed by s. 17 of Act No. 21 of 1998.]

26A.

[S. 26A inserted by s. 4 of Act No. 88 of 1981 and repealed by s. 17 of Act No. 21 of 1998.]

26B.

[S. 26B inserted by s. 4 of Act No. 88 of 1981 and repealed by s. 17 of Act No. 21 of 1998.]

ADVANCES FOR DIPPING TANKS, FENCING, SILOS AND THE PROVISION OF
WATER SUPPLIES AND ELECTRICITY

[Superscription amended by s. 10 of Act No. 47 of 1959.]

27. **Dipping tank Advances.**—(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.

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(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.

[S. 27 substituted by s. 2 of Act No. 5 of 1968.]

28. Fencing Advances.—(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:
- (d)

[Para. (d) deleted by s. 18 of Act No. 108 of 1991.]

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.

(1A)

[Sub-s. (1A) inserted by s. 12 (a) of Act No. 31 of 1969 and deleted by Proclamation No. 147 of 1979.]

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

[S. 28 substituted by s. 3 of Act No. 5 of 1968. Sub-s. (2) substituted by s. 12 (b) of Act No. 31 of 1969.]

29. **Silo advances.**—(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

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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.
 [S. 29 amended by s. 6 of Act No. 46 of 1965 and substituted by s. 4 of Act No. 5 of 1968.]

30. Advances to provide for a supply of water.—(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.
 [S. 30 amended by s. 7 of Act No. 46 of 1965 and substituted by s. 5 of Act No. 5 of 1968.]

30bis. Advances to provide for a supply of electricity.—(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.
 [S. 30bis inserted by s. 11 of Act No. 47 of 1959 and substituted by s. 6 of Act No. 5 of 1968.]

31. Conditions of advances for fencing, dipping tanks, silos and water and electricity supply.—(1) An advance for the erection of or contribution towards the cost of erecting or altering any fence, or the construction of a dipping tank or a silo or other contrivance for the making or storage of ensilage or for the provision of a supply of water or electricity, may be made on such terms as the board may deem fit, and the board may direct that any such advance shall be repaid in such instalments, with interest on the balance outstanding from time to time and within such period, not exceeding forty years, as it may prescribe.

(2) Any advance approved by the board in respect of the erection of a fence or the construction of a dipping tank shall be paid over to the person to whom the advance is to be made at such times and in such instalments as the board may determine.

(3) If the holding in respect of which any advance is granted by the board for the erection of a fence, the construction of a dipping tank or the provision of a supply of electricity be mortgaged, the board, upon receipt of the application, shall give written notice to the registered holder of such mortgage of its intention to grant the advance.

[S. 31 substituted by s. 12 of Act No. 47 of 1959.]

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

[S. 32 substituted by s. 13 of Act No. 47 of 1959 and by s. 7 of Act No. 5 of 1968.]

33. Liability of owners of holdings for fencing, dipping tanks, silo and water and electricity supply advances, and the noting of such advances.—(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.

[Sub-s. (1) substituted by s. 8 (a) of Act No. 5 of 1968.]

(2) In the event of any such holding being partitioned or a portion thereof being transferred, the general manager or an officer authorized thereto by him shall determine whether and, if so, the extent to which the advance shall attach to each separate portion of the holding, and every successive owner of any such portion shall be liable for the instalments and interest as they fall due during his ownership in respect of the proportionate amount which attaches to that portion, as if the advance had been made to him.

(3) No transfer of any such holding or any portion thereof, or registration of any partition deeds of transfer in respect thereof, shall be passed before any registrar of deeds except upon production to him of a certificate signed by the general manager or an officer authorized thereto by him and indicating—

- (a) that all instalments and interest then due to the bank in respect of the advance have been paid; and
- (b) the amount still owing in respect of the advance, and, if the holding is being partitioned or any portion thereof is being transferred, the amount of the advance still owing which shall attach to each separate portion of the holding.

(4) The certificate mentioned in subsection (3) shall be conclusive evidence of the facts stated therein, and the amount of any liability which in terms of that certificate attaches to any holding or any portion thereof, shall be noted by the registrar of deeds on the document of title or deed of transfer of that holding or of the relevant portion thereof.

(5) The provisions of this section relating to a transfer shall apply to any Crown grant issued pursuant to a lease or agreement of purchase of Crown land and, upon the registration of any such Crown grant and the noting thereon of the amount of any advance, the contingent liability of the Consolidated Revenue Fund for that advance in terms of subsection (1) of section *fifty-eight* shall cease.

(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.

[S. 33 amended by s. 8 of Act No. 13 of 1953 and by s. 5 of Act No. 60 of 1957 and substituted by s. 14 of Act No. 47 of 1959 and by s. 8 (b) of Act No. 5 of 1968.]

ADVANCES TO FARMERS FOR CARRYING ON FARMING

[Heading substituted by s. 2 of Act No. 52 of 1975.]

34. Advances to farmers for carrying on farming.—(1) (a) Notwithstanding the provisions of section 25 the bank may, on the conditions that the board may determine make an advance to a farmer to enable him or her to defray any costs which, in the opinion of the bank, are connected with the production, cultivation, gathering, processing or marketing of any crops by him or her or pay any debts incurred by him or her to defray such costs including costs or debt relating to the purchase of livestock or farming machinery or other implements or equipment and the instalment of such machinery or equipment and property.

(b) Notwithstanding the provisions of any other law, any advance made under paragraph (a) to a person deemed to be a minor as the result of the customary marriage or customs of such a person, shall for the purposes of this Act be deemed to be an advance made to a person who is emancipated by law.

[Sub-s. (1) substituted by s. 18 of Act No. 21 of 1998.]

(2) If—

- (a) at any time payment of any sum of money, due in respect of any advance referred to in subsection (1), is in arrear, whether it is the capital sum or interest thereon; or
- (b) in the opinion of the board, any such advance has not been applied for the purposes for which it was made; or
- (c) any other condition to which the advance is subject has not been complied with; or
- (d) the debtor becomes insolvent or is sentenced to imprisonment without the option of a fine, or judgment is obtained against the debtor for the payment of any sum of money, or any of his assets is by order of a competent court declared executable or is attached in pursuance of an order of any such court or under section 37 of the Agricultural Credit Act, 1966 (Act No. 28 of 1966), or becomes the subject of a direction under subsection (1) of the said section 37; or
- (e) the debtor is deceased and his estate is about to be dealt with in terms of the provisions of section 34 of the Administration of Estates Act, 1965 (Act No. 66 of 1965), or has been sequestrated; or
[Para. (e) substituted by s. 3 (1) (a) of Act No. 93 of 1986.]
- (f) a notice has with reference to the debtor been published in terms of section 22 of the Agricultural Credit Act, 1966; or
- (g) the debtor is a company which has been placed under judicial management or is being wound up or is being deregistered; or
[Para. (g) substituted by s. 5 (a) of Act No. 89 of 1985.]
- (gA) the debtor is a close corporation which is being wound up or is being deregistered; or
[Para. (gA) inserted by s. 5 (b) of Act No. 89 of 1985.]
- (h) the debtor is a company or close corporation and any director, shareholder or member thereof is sentenced to imprisonment without the option of a fine; or
[Para. (h) substituted by s. 5 (c) of Act No. 89 of 1985.]
- (i) the advance is not, within such time as the board may consider reasonable, applied to the purpose for which it was made,

the board may proceed as in subsection (3) prescribed.

(3) Whenever any circumstance contemplated in subsection (2) arises, the board may—

- (a) refuse to pay any portion of the advance which has been approved, but not yet been paid;
- (b) after the expiry of seven days after demand for the repayment of the advance has been made 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, require any sheriff or any other person designated by the board for the purpose, to attach and (whether or not such sheriff or such other person is a licensed auctioneer) sell by public auction so much of the movable property of the debtor as may be necessary to liquidate the amount owing in respect of the advance, together with interest and costs in respect thereof, or the board may itself sell the property so attached by public tender and on the conditions which it may determine;

[Para. (b) substituted by s. 3 (1) (b) of Act No. 93 of 1986.]

- (c) if, after the sale of all the available movable property of the debtor in terms of paragraph (b), an amount in respect of the advance and the said interest and costs is still owing, after due notice to mortgagees, and without recourse to a court of law, but subject to the provisions of subsection (4), attach any immovable property of the debtor by written notice thereof by registered letter, addressed to the debtor at the address referred to in paragraph (b), 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, but subject to the provisions of subsection (4), and upon such conditions as it may deem to be just, cause to be sold by public auction, through an auctioneer or a sheriff, whether or not such sheriff is a licensed auctioneer, the said immovable property;

[Para. (c) substituted by s. 3 (1) (c) of Act No. 93 of 1986.]

- (d) transfer the immovable property referred to in paragraph (c) which has been sold 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 deed, provided it is certified that the board has been unable to obtain that title deed; and
- (e) make an advance in terms of the provisions of this Act and on such conditions as it may deem fit, to the purchaser of such immovable property, 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.

(4) A sale in terms of subsection (3) (c) shall not take place until the expiry of fourteen days since the publication in the *Gazette* and in some newspaper circulating in the district in which the property in question is situated, of a notice stating the date, hour and place of the sale, a description, according to the title deed, of that property, and the terms of payment of the purchase price, and unless the conditions of sale have been announced immediately before commencement of the sale, and if there was default only in respect of the circumstances contemplated in subsection (2) (a), the attachment and sale of immovable property of the debtor shall not take place until the expiry of three months from the date on which payment was due of the sum of money in respect of which the default has occurred.

(5) The proceeds of a sale referred to in subsection (3) (b) shall, after payment of the costs incurred in connection with the attachment and sale, be applied towards reducing or liquidating the amount owing in respect of the advance, together with interest and costs in respect thereof, and if any balance remains, it shall be paid to the debtor or his legal representative.

(6) The proceeds of a sale referred to in subsection (3) (c) shall, after payment of the costs incurred in connection with the attachment and sale, and after payment of the amount owing in terms of any bond or other real right, be applied towards reducing or liquidating the amount owing in respect of the advance, together with interest and costs in respect thereof, and if any balance remains, it shall be paid out in accordance with the provisions of section 56.

(7) To enable the bank, for the purpose of the recovery of an amount owing under an advance referred to in subsection (1), to participate in any sale in the execution of a judgment of any court, or to take steps in terms of section 65 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), in respect of a debtor, a decision of the board in terms of subsection (3) (b) or (c) to attach movable or immovable property of the debtor, shall be deemed to be a judgment of a court of law.

(8) Notwithstanding anything to the contrary in this Act contained, such fees as the board may determine, and no other fees, shall be payable in connection with any application for an advance referred to in subsection (1).

(9) Any person who obstructs or hinders the attachment or sale of any property in terms of subsection (3) shall be guilty of an offence and, on a first conviction, liable to a fine not exceeding two thousand rand or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment and, on a second or subsequent conviction, liable to a fine not exceeding five thousand rand or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Sub-s. (9) substituted by s. 3 (1) (d) of Act No. 93 of 1986.]

(10) Notwithstanding anything to the contrary in any law contained, a magistrate's court shall have jurisdiction to impose any sentence provided for in subsection (9).

[S. 34 amended by s. 15 of Act No. 47 of 1959, by s. 8 of Act No. 46 of 1965 and by s. 9 of Act No. 5 of 1968 and substituted by s. 3 of Act No. 52 of 1975. Sub-s. (10) added by s. 3 (1) (e) of Act No. 93 of 1986.]

[Heading immediately before s. 34bis repealed by s. 4 of Act No. 52 of 1975.]

34bis.

[S. 34bis inserted by s. 16 of Act No. 47 of 1959, amended by s. 3 of Act No. 35 of 1961, by s. 9 of Act No. 46 of 1965, by s. 10 of Act No. 5 of 1968, by s. 13 of Act No. 31 of 1969 and by s. 5 of Act No. 41 of 1972 and repealed by s. 4 of Act No. 52 of 1975.]

ADVANCES TO CO-OPERATIVE SOCIETIES AND COMPANIES

35. Advances to co-operative societies and companies.—(1) The bank may, on the conditions determined by the board, lend money to a co-operative society or a company.

(2) A loan in terms of subsection (1) shall only be made to a co-operative society or company involved in agriculture or agriculture-related activities or for the acquisition of property for agricultural purposes.

[S. 35 amended by s. 17 of Act No. 47 of 1959 and substituted by s. 19 of Act No. 21 of 1993.]

35bis. Cession of bonds to bank.—(1) The bank may on such conditions and against payment of such an amount as the board may deem fit, obtain cession in the name of the bank of a mortgage bond or notarial bond passed by a co-operative society or company in favour of some other person.

(2) Any bond in respect of which the bank has obtained cession in terms of subsection (1), shall upon the registration of such cession be deemed to be a bond in respect of which an advance has been made by the bank to the co-operative society or company concerned, and the provisions of this Act shall apply thereto as if such bond had originally been passed by the co-operative society or company in favour of the bank.

[S. 35bis inserted by s. 2 of Act No. 14 of 1964.]

36. Advances under section 35 to be in form of loans or cash credit accounts.—

(1) An advance made in pursuance of an application under section *thirty-five*, may be made in the form of—

- (a) a cash credit account; or
- (b) a loan repayable within such period, not exceeding forty years, and in such instalments as the board may determine.

(2) The society or company to which an advance has been made in the form of—

- (a) a cash credit account, shall pay to the bank, on the daily amount outstanding on that account, interest as such a rate as the board may determine;
- (b) a loan, shall pay to the bank interest thereon, which shall become due periodically in arrear, at such rate and upon such dates as the board may prescribe.

(3) The board may at any time reduce the maximum amount of any cash credit account or close that account, and—

- (a) if such amount is reduced, the amount owing to the bank in excess of the reduced amount; or
- (b) if such account is closed, the whole amount owing to the bank in respect of that account,

shall forthwith be payable to the bank by the society or company concerned, and the board may, in default of payment thereof within fourteen days after demand by registered letter addressed to that society or company at its address as recorded in the books of the bank, exercise any powers conferred upon the bank by this Act for the recovery of moneys due to it.

[Sub-s. (3) amended by s. 18 of Act No. 47 of 1959.]

37. Members of society to remain liable.—Notwithstanding anything to the contrary contained in any law, every member of a co-operative society shall remain liable after his withdrawal from the society for every debt or obligation to the bank which was incurred by the society while he was a member thereof and was undischarged at the date of his said withdrawal until the board is satisfied that the society and its remaining members are capable of discharging the debt or obligation.

38. Security for advance to co-operative societies.—(1) A co-operative society to which any advance has been made under section *thirty-five*, may notwithstanding anything to the contrary contained in its memorandum, if any, and articles of association or regulations as security for that advance, cede to the bank all the co-operative society's right and title to—

- (a) the amount of subscribed but unpaid capital and to the amount of any contingent liability attaching to its shares; and
- (b) the amount of any debts owing or which may thereafter be owing to the co-operative society.

(2) Such cession shall be in such form as the board may determine, shall be exempt from stamp duty, and shall—

- (a) if the board so directs, be accompanied by a list, certified by two persons duly authorized thereto, showing as at the date of the cession—

- (i) the names and addresses of all persons holding shares in the co-operative society;
 - (ii) the number of shares registered in the name of each such person and the amount paid up in respect thereof;
 - (iii) the nominal value of such shares; and
 - (iv) the amount of any contingent liability attaching to the shares; and
- (b) bind such of the agricultural produce of the member of the co-operative society as was actually in the possession of, or in transit to the co-operative society or its agents, and in respect of which the advance was made.

(3) Every list mentioned in paragraph (a) of subsection (2), shall, when certified as in that paragraph prescribed, be evidence in favour of the bank, that the persons mentioned therein are liable to pay the amount stated therein, and the board may enforce payment of that liability as if it were a liability mentioned in subsection (2) of section *sixty-three*.

(4) The bank may require lists similar to those mentioned in subsection (2), to be furnished to it from time to time in respect of any further shares which may be issued by the co-operative society concerned, and the cession referred to in subsection (1) shall be deemed to include the shares appearing in such lists.

(5) When a co-operative society has, in terms of subsection (1), ceded its right to an amount mentioned in paragraph (a) of that subsection, the board may, by notice in writing addressed to the co-operative society at the place which it has mentioned to the board or to the bank as its address, prohibit the co-operative society from effecting or registering, without the board's consent in writing, the transfer of any share in the co-operative society which is not paid-up in full or to which any contingent liability attaches, and thereafter while the co-operative society owes the bank any money by virtue of the advance which was secured by the cession in question, the co-operative society shall not effect or register the transfer of any such share as aforesaid without the board's consent in writing.

(6) While a co-operative society owes the bank any money by virtue of an advance mentioned in subsection (1)—

- (a) all agricultural produce and all products manufactured by the co-operative society from any agricultural produce; and
- (b) all articles or substances purchased by the co-operative society with money so advanced to it,

which are in the possession of or in transit to the co-operative society or an agent of the co-operative society, shall be deemed to have been pledged to the bank as effectually as if they had been expressly pledged and delivered to the bank, and any disposal thereof by or on behalf of the co-operative society, without the consent in writing of the board, shall be null and void.

(7) The board may require a co-operative society to furnish such further security for any advance aforesaid as the board may deem necessary in order that the advance may be adequately secured.

[S. 38 amended by s. 19 of Act No. 47 of 1959 and substituted by s. 20 of Act No. 21 of 1998.]

39. Sale of produce by a co-operative society indebted to the bank under a cash credit account.—Notwithstanding anything contained in any law or in the regulations of a co-operative society, any produce delivered to that society, and any product manufactured therefrom by the society shall, while such society is indebted to the bank in respect of an advance in the form of a cash credit account, be realisable only by the society in the ordinary

course of its business or by the bank in the exercise of the powers conferred on it by this Act, and such produce or product, or the proceeds thereof shall not, while such debt with interest and costs remains unpaid, be attached in execution by any person other than the bank, except with the written consent of the bank.

[S. 39 substituted by s. 21 of Act No. 21 of 1998.]

40. Liability of members of co-operative society for advance in form of a cash credit account.—(1) If an advance in the form of a cash credit account has been made by the bank to any co-operative society—

- (a) every member of that co-operative society shall, in addition to any other amount for which he or she may have become liable to the bank in respect of such advance, be liable to the bank as surety for the repayment of the advance, with interest and costs, by the co-operative society, in an amount equal to the amount which he or she has received from the co-operative society out of the advance or which has been paid out of the advance for any goods supplied or in respect of any services rendered to him or her by the co-operative society;
- (b) such co-operative society shall, whenever required by the bank to do so, furnish to the bank a list, certified by two persons duly authorized thereto, showing the name and address of every member of the co-operative society who is liable to the bank in terms of paragraph (a), the amount in which he or she is so liable, and any other particulars which the bank may require.

(2) Every such list so certified shall be evidence in favour of the bank that each person mentioned therein is so liable in the amount stated therein.

(3) If any list required by the bank under paragraph (b) of subsection (1) is not furnished to the bank within thirty days after the date upon which the co-operative society concerned was required to furnish such list, the members of the co-operative society shall be jointly and severally liable to the bank in respect of the advance made to the co-operative society.

(4) The board shall—

- (a) in respect of the liability of any member of a co-operative society under the provisions of subsection (1) of this section, have the same powers of recovery and obligations incidental thereto as it has in terms of section *sixty-three* in respect of any contingent liability attaching to shares; and
- (b) in respect of the liability of any such member under the provisions of subsection (3) of this section, have the powers of recovery and obligations incidental thereto which it would have had under this Act.

[S. 40 amended by s. 20 of Act No. 47 of 1959 and substituted by s. 22 of Act No. 21 of 1998.]

41. Advances to co-operative societies to facilitate export of produce, and security for such advances.—(1) A co-operative society which exports agricultural produce, may, if authorized in the manner prescribed by its constitution, apply to the bank in a form prescribed by the board, for an advance from the bank in the form of a cash credit account, on such security as is hereinafter described, to enable the co-operative society to meet the cost incidental to such export.

(2) Such cost shall include the moneys expended or to be expended on packing materials, railage, port charges, shipping freight and all other expenditure reasonably incurred or to be incurred in placing and selling the produce on a market outside the Republic of South Africa.

(3) The application for the advance shall be signed by two persons duly authorized thereto, and when so signed shall bind the co-operative society for the repayment of the advance and interest due to the bank and all charges incurred by the bank in recovering such advance and interest.

(4) The board may grant such application on such conditions as it may determine, the rate of interest being such as is lawfully charged for the time being by the board for advances on cash credit accounts.

(5) No such advance shall be made except in respect of produce which is to be or has been exported outside the Republic of South Africa, and which is consigned to or the sale whereof is controlled by a co-operative organisation outside the Republic of South Africa approved by the board.

(6) Every such advance and the interest thereon shall be repayable to the bank within one year from the date thereof, and no further advance shall be made under this section to any co-operative society as long as any prior advance thereunder and the interest thereon remain unpaid.

(7) Any such advance may be made on the security only of produce of any of the members of the co-operative society, if the board is satisfied that such produce is to be exported and, in accordance with the co-operative society's constitution, is being sold through the co-operative society: Provided that the board may, before making any such advance, require the co-operative society to furnish other and additional security which it may think necessary adequately to secure the advance.

(8) As from the date of the advance and until the amount thereof and the interest due thereon and the aforesaid charges for the recovery thereof have been repaid to the bank, the ownership of the produce in respect of which the advance is made shall, notwithstanding that there has been no delivery thereof to the bank, become divested from the owner thereof and be vested in the bank as if it had been actually delivered to it.

(9) The proceeds of the sale of such produce outside the Republic of South Africa shall also be deemed, as from the date of sale, to be vested in the bank or its agent or representative outside the Republic of South Africa, and it shall be a breach of the conditions of the advance for the co-operative society to direct or permit any such proceeds to be paid over without the board's consent to any person other than the bank or such agent or representative.

(10) Nothing in this section contained shall be construed as rendering the bank liable, either to the said owner, the co-operative society, the purchaser or any other person, in respect of any contract of sale of the produce or in respect of any obligation for which a person is liable by reason of ownership.

(11) If the co-operative society fails to pay when due, any amount for which it has become liable under this section, or to observe any of the conditions of the advance thereunder, the board may, after giving seven days' notice by registered letter addressed to the co-operative society at the address recorded in the bank's books, without recourse to a court of law, seize and sell either by public auction or private treaty, any of the produce aforesaid forming the security for the advance, or so much thereof as will suffice to pay the amount then owing to the bank by the co-operative society, and shall apply the proceeds of the sale to the liquidation or reduction of the amount and any expenses incurred by the board in connection with the seizure and sale.

(12) If part of the security is a cession in favour of the bank of all the co-operative society's right and title to the amount of subscribed but unpaid capital and to the amount of any contingent liability attaching to shares and the amount of any debts owing or which may thereafter be owing to the company, the provisions of section *sixty-three* shall *mutatis mutandis* apply in respect of the realization thereof.

[S. 41 amended by s. 21 of Act No. 47 of 1959 and substituted by s. 23 of Act No. 21 of 1998.]

GUARANTEE OF CONTRACTS OF CO-OPERATIVE SOCIETIES AND COMPANIES

42. **Guarantee of contracts of co-operative societies.**—(1) The board may guarantee the performance of any contract, entered into or to be entered into—

- (a) by any co-operative society, whether jointly with any other society, or otherwise; or
- (b) by any person or co-operative society approved by the board and acting on behalf of any one or more co-operative societies,

and relating to the supply of produce or to payment for grain bags and farming requisites generally or to the repayment of loans or to any other business which the society concerned may lawfully perform: Provided that any such guarantee in respect of a contract referred to in paragraph (b) shall be limited to the extent to which a co-operative society is interested in the performance of that contract.

(2) In the event of the failure of any such person or society to carry out the term of any such contract in so far as the person or society is liable to do so, or to conduct the business which is the subject of that contract to the satisfaction of the board, the board may complete the contract or abandon the same on such terms as it may be able to arrange or (in the case of a contract referred to in paragraph (b) of subsection (1)) as it may determine, and—

- (a) in the case of any such contract referred to in paragraph (a) of subsection (1), recover from the society which is in default, and its members, any loss sustained by the bank; or
- (b) in the case of any such contract referred to in paragraph (b) of the subsection, recover from every society on whose behalf the relevant guarantee was given, and its members, its shares of any such loss,

in the same manner as an advance in the form of a cash credit account made by the bank to a co-operative society, may be recovered from the society and its members under the provisions of this Act, and any such provisions relating to the recovery of any such advance shall *mutatis mutandis* apply in respect of the recovery of any such loss.

(3) The co-operative society shall in respect of any guarantee given under this section indemnify the bank to the extent of its interests in the contract, and any such indemnity shall, subject to the provisions of subsections (1) and (2), if signed by two persons duly authorized thereto, bind the society and all the members thereof.

(4) The society shall in respect of any guarantee given under this section, pay to the bank a fee to be determined by the board, not exceeding one-fifth of one per cent on the amount guaranteed, but no other charge or fee shall be payable in respect of such guarantee and no stamp duty shall be payable in respect of such guarantee or of any indemnity given under subsection (3).

[S. 42 amended by s. 22 of Act No. 47 of 1959 and substituted by s. 24 of Act No. 21 of 1998.]

43. **Examination of books of society or company.**—(1) The board shall at all reasonable times have full access to all accounts, documents, papers and books of any co-operative society or company to which an advance has been made by the bank or for which a contract has been guaranteed by the bank or of any society or company from which an

application for an advance or a guarantee has been received, and may cause all such accounts, documents, papers or books to be examined by a member of the staff or by any person appointed thereto.

(2) The board shall not make an advance to or guarantee a contract of a co-operative society or company unless satisfied that all such accounts, documents, papers or books are in order.

ADVANCES TO REGULATORY BOARDS

44. **Advances to regulatory boards.**—The bank may, on the application of a regulatory board, established under the Marketing Act, 1937 (Act No. 26 of 1937), as amended, lend money to that regulatory board on such conditions and against such security as the board of the bank may determine, for any of the purposes for which such regulatory board may borrow money in terms of the said Act.

ADVANCES AGAINST WAREHOUSE RECEIPTS

45. **Advances against warehouse receipts.**—The bank may discount bills secured by warehouse receipts issued under section *twelve* of the Agricultural Warehouse Act, 1930 (Act No. 42 of 1930), or make advances against such receipts presented to it by any bank, co-operative society or company.

ADVANCES TO STATUTORY AGRICULTURAL INSTITUTIONS

[Heading inserted by s. 4 of Act No. 35 of 1961.]

45*bis*. **Advances to certain statutory agricultural institutions.**—The bank may on the application of any body established under an Act of Parliament which, in the opinion of the board, has as an object the promotion of any division of the agricultural industry, lend money to that body on such conditions and against such security as the board may determine, for the purpose of the promotion of such object.

[S. 45*bis* inserted by s. 4 of Act No. 35 of 1961.]

45*ter*. **Advances to financial intermediaries, joint ventures, partnerships, trusts and associations.**—Notwithstanding the provisions of section 25, the bank may, on the conditions that the board may determine, lend money—

- (a) to financial intermediaries in order to facilitate the advancement of money or the extension of credit by such intermediaries to the public or a sector of the public involved in agriculture or agriculture-related activities or for the acquisition of property for agricultural purposes;
- (b) to any joint venture, partnership or institution in order to enhance agriculture or any agriculture-related activity or for the acquisition of property for agricultural purposes.

[S. 45*ter* inserted by s. 2 of Act No. 109 of 1976, repealed by s. 19 of Act No. 108 of 1991 and inserted by s. 25 of Act No. 21 of 1998.]

ADVANCES TO FINANCING INSTITUTIONS

[Heading inserted by s. 2 of Act No. 93 of 1988.]

45quat.

[S. 45quat inserted by s. 2 of Act No. 93 of 1988 and repealed by s. 2 of Act No. 24 of 1995.]

ADVANCES ON BEHALF OF THE GOVERNMENT

46. **Advances on behalf of the Government.**—(1) Advances may be made on behalf of the Republic Government, out of moneys appropriated by Parliament for the purpose, to any farmer, or to any committee or board of management of a settlement, for the purpose of—

- (a) redeeming any farm mortgage, as defined in section *one* of the Farm Mortgage Interest Act, 1933 (Act No. 34 of 1933), as amended from time to time, which

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- the Minister has recognized as a farm mortgage by a certificate issued in terms of section *twelve* of that Act; or
- (b) redeeming any registered notarial bond whereby were hypothecated any rights under a lease of land or under an agreement for the purchase of land (including any agreement for the purchase of land from the State) or any movable property; or
 - (c) enabling any farmer to whom such an advance is made—
 - (i) to obtain transfer of any land from the estate of a deceased person of whom he is the surviving spouse or a child or an heir; or
 - (ii) to perform his obligations under a contract of purchase and sale entered into by him before the first day of April, 1933, whereby he purchased land of which he was formerly the owner; or
 - (d) enabling any such farmer, or the wife or a child of that farmer, to acquire land of which that farmer was formerly the owner, but of which he ceased to be the owner by reason of its having been sold in execution or in consequence of the sequestration or assignment of his estate; or
 - (e) securing any loan made in terms of section *twenty-one* of the Farmers' Assistance Act, 1935 (Act No. 48 of 1935); or
 - (f) redeeming a bond passed to secure an advance made by the bank before or after the commencement of this Act for any of the purposes set out in this sub-section,

and for the purpose of enabling the farmer or committee or board to whom the advance is made to pay all amounts which in the opinion of the board it is necessary to pay in order that the security for the advance may be completed.

(2) The board may dispense with any application under section *twenty-three*, or any requirement incidental to any such application, in respect of any advance described in paragraph (e) of sub-section (1).

(3) Any advance under sub-section (1) shall be secured by mortgage bond (including any notarial bond) passed in such form as the board may prescribe, whereby is hypothecated—

- (a) land; or
 - (b) the rights of a purchaser under a contract whereby he has purchased land from the State; or
 - (c) the rights of the lessee under a registered lease of land.
- (4) No such advance shall be made—
- (a) except upon first mortgage bond, or notarial bond, save where the Republic Government or the bank holds the first mortgage bond or notarial bond, in which event an advance may be made on mortgage bond or notarial bond ranking immediately after the bond or bonds so held; or
 - (b) for an amount which, together with any amounts secured by prior mortgage bonds (in favour of the Republic Government or the bank) on the land, rights or interest upon which the advance is to be secured, exceeds the value of such land, rights or interest, as determined by the board.

(5) The administration of any advance made for any of the purposes set out in sub-section (1) shall devolve upon the bank, which shall for that purpose have all the powers and rights incidental to the recovery of advances made on mortgage of land under this Act, and the provisions of this Act shall, save as is otherwise provided in this section, apply in respect of such advance.

(6) Whenever the capital amount outstanding of any such advance is reduced to an amount which does not exceed the limits prescribed by section *twenty-six*, such outstanding amount shall, if the Treasury and the board so resolve, become part of the funds of the

bank, which shall pay to the Treasury interest upon such amount from the due date of interest thereon last preceding the date on which the resolution of the Treasury and the board was taken, at a rate not exceeding the rate at which interest is payable by the Republic Government on the moneys appropriated for the purpose of making such advance.

(7) The unpaid capital amount of any advance which has under sub-section (6) become part of the funds of the bank shall, without the consent of the mortgagor, and without formal cession, become owing to the bank, and all powers and rights conferred by any mortgage bond passed to secure such advance shall vest in and be exercised by the bank.

(8) The board may, notwithstanding the provisions of sub-section (5), with the consent of the secretary, submit any bond securing an advance mentioned in that sub-section, to the registrar of deeds in charge of the deeds registry in which the bond is registered, and in writing direct such registrar to note on the bond and in the appropriate registers, the cession of such bond to the secretary.

(9) As from the date of noting of any cession in the manner provided in sub-section (8)—

- (a) the secretary shall be the bondholder in respect of the relevant bond, and the provisions of sub-section (1) of section *twenty-two* of the Finance Act, 1937 (Act No. 50 of 1937), as substituted by section *twenty* of the Finance Act, 1942 (Act No. 41 of 1942), shall apply in respect of the property subject to such bond: Provided that the secretary shall not be vested with any powers conferred upon the bank by section *fifty-five*; and
- (b) the provisions of paragraph (d) of the said sub-section (1) of section *twenty-two* of the Finance Act, 1937, relating to the sale of mortgaged property bought in by the secretary on behalf of the State, shall apply in respect of any property which was subject to such bond and has been bought in by the bank on behalf of the State before the thirtieth day of September, 1938.

(10) In this section—

“secretary” means the Secretary of the State Advances Recoveries Office, established under section *one* of the State Advances Recoveries Act, 1935 (Act No. 37 of 1935), as representing the Farmers’ Assistance Board established under section *two* of the Farmers’ Assistance Act, 1935 (Act No. 48 of 1935);

“Treasury” means the Minister or any officer in the Department of Finance authorized by the Minister to perform the functions assigned to the Treasury in the Financial Adjustments Act, 1933 (Act No. 29 of 1933).

GRANTS TO AGRICULTURAL UNIONS AND SIMILAR BODIES

47. Grants by the bank.—The board may, out of any net profit earned by the bank, before such profit is credited to the reserve fund as prescribed, make grants, on such conditions as it may determine—

- (a) to any agricultural union or similar organization of farmers, which the Minister of Agricultural Economics and Marketing certifies to be fully representative of the farming community in any area and to have been formed for the acquisition and distribution of information as to the best manner of carrying on farming operations and agricultural co-operation in general;
- (b) to any educational institution;
- (c) in aid of research in connection with farming or agriculture.

[S. 47 substituted by s. 23 of Act No. 47 of 1959.]

GENERAL PROVISIONS AS TO ADVANCES

48. Loans approved of to be taken up within three months.—As often as any advance has been approved by the board, and the applicant fails, within a period to be fixed by the board, but not exceeding three months after notification to him of the approval of the advance, to execute any documents necessary to complete the security and to lodge the same with the board, together with the title-deeds of the property, if the same is to be hypothecated, the board may withdraw its approval of the advance, and in that event no part of the fees paid in connection with the application shall be refunded.

49. Application of moneys repaid above amount of prescribed instalments.—(1) If any mortgagor at any time pays to the bank an amount in excess of the prescribed instalment, the board may apply such excess towards reduction of the advance.

(2) Any such excess payment or its application by the bank as provided in subsection (1) shall not be deemed to exempt the mortgagor from paying his next prescribed unpaid instalment or to alter the amount of any prescribed unpaid instalments, unless the board shall otherwise in special cases determine, in which event the instalments shall be recalculated on the basis of the balance of capital owing by the debtor over the remainder of the period for which the advance was made.

50. Conditions set out in the Second Schedule to be implied in mortgages.—(1) In every mortgage bond to secure an advance made under this Act, there shall be implied on the part of the mortgagor and in favour of the bank the conditions set out in the Second Schedule to this Act.

(2) All such conditions shall extend to and include the legal representatives of the mortgagor.

(3) The Minister may, on the recommendation of the board, from time to time, by notice in the *Gazette*, alter any of such conditions, but no such notice shall affect any mortgage existing at the date of the first publication of the notice in the *Gazette*.

[Sub-s. (3) amended by ss. 46 and 47 of Act No. 97 of 1986.]

50bis.

[S. 50bis inserted by s. 10 of Act No. 46 of 1965 and repealed by s. 2 of Act No. 57 of 1971.]

51. Interest on advances.—(1) The rate of interest payable to the bank in respect of advances shall be prescribed by the board from time to time, and the rate so prescribed shall be sufficient to ensure that the bank is not worked at a loss.

[Sub-s. (1) substituted by s. 24 (1) of Act No. 47 of 1959.]

(2) If any amount owing to the bank is paid off on a date other than the due date for payment of any instalment or interest, the board may claim interest in respect of such amount up to the date of such payment only.

52. Extension of periods and suspension of capital redemption of advances.—(1) The board may at any time in respect of any advance made by the bank under any law extend the period of such advance by such further period as it may deem fit, or suspend the capital redemption of such advance during such period as it may deem fit, or so extend the period of such advance, and also so suspend the capital redemption thereof, and if necessary recalculate the prescribed instalments: Provided that the period or periods by which the period of the advance has been extended, or during which the capital redemption of the advance has been suspended, together with the period for which the advance was granted, shall not in the aggregate exceed forty years.

(2) It shall not be necessary to cause any such extension of the period of the advance or any such suspension of capital redemption to be recorded in a deeds registry but the debtor shall be liable to repay the advance to the bank in terms of such extension or suspension, and the preference conferred by any instrument whereby the advance is secured shall continue to be available to the bank in respect of the amount of the advance outstanding and the interest thereon.

53. Variation of instalments or due dates thereof.—The board may at any time, with the consent of any debtor of the bank, vary the instalments prescribed in respect of the advance made to him, or the due dates of such instalments, and the bond or other document securing the advance shall thereupon be deemed to have been amended accordingly without such variation being recorded thereon or in the deeds registry or other office in which such bond or other document is registered.

54. Consolidation of existing advances.—(1) The board may, on such conditions as it may deem fit, consolidate debts owing to the bank, whether incurred before or after the commencement of this Act, including accrued interest thereon and costs, notwithstanding that the total amount of the debts so consolidated may, in relation to the value of the land, rights or interests upon which the consolidated debts are secured, exceed the limits prescribed by section 26, 26A or 26B: Provided that no debt owing to the bank and secured by a mortgage bond or charge upon land which is mortgaged in favour of the Republic Government by a mortgage bond which ranks prior to the bond or charge in favour of the bank, shall be consolidated under the provisions of this section except with the written consent of the Treasury, as defined by sub-section (10) of section *forty-six*.

[Sub-s. (1) amended by s. 5 of Act No. 83 of 1981.]

(2) The registrar in charge of any deeds registry in which is registered any bond or in which is recorded any charge whereby is secured any one or more of the debts consolidated under this section shall, on production to him of a statement signed by the general manager, or an officer authorized thereto by him, and by the debtor, setting forth the amount of the consolidated debts and the conditions of the consolidation, cause a note to be made in terms of such statement on that bond or on the document in which that charge is recorded.

[Sub-s. (2) amended by s. 9 of Act No. 13 of 1953 and by s. 6 of Act No. 60 of 1957.]

(3) It shall not be necessary to make any endorsement on the title deeds or other documents of title of or to the land, rights or interests affected in respect of any such statement.

(4) The registrar concerned shall cause any such statement to be filed in the deeds registry, and shall transmit forthwith to the bank a certified copy of the note so made.

(5) The making of such note shall have the effect of—

- (a) securing under the existing bond or charge in respect of which such note has been made (or, where there are two or more bonds or charges, under the bond or charge registered or recorded first), the sum total of the consolidated debts as set out in the said statement and such interest and costs as may as from the date specified in that statement accrue thereon or become due in respect thereof, in the same manner as if such bond or charge had originally been passed or recorded for such sum total upon all the land, rights or interests hypothecated or charged under any bond or charge whereby any of the debts so consolidated were secured; and
- (b) varying the conditions of such bond or charge in the manner and to the extent set out in the said statement,

and such bond or charge shall rank preferent to every mortgage bond, hypothec or charge upon the land, rights or interests, and any waiver of preference, suretyship, renunciation or any other undertaking or agreement in favour of the bank executed upon or after registration of such bond or recording of such charge shall remain of full force and effect in respect of such consolidated debts.

(6) The provisions of any law which applied to any debts consolidated under the provisions of this section, before they were so consolidated, shall, subject to the provisions of this section, apply to the consolidated debt, after such consolidation.

55. Remedies of bank against defaulting debtors.—(1) If—

- (a) at any time any sum of money, whether principal or interest, due in respect of any advance made by the bank, be unpaid; or
- (b) in the opinion of the board, any such advance has not been applied for the purposes for which it was made or has not been carefully and economically expended; or
- (c) the debtor become insolvent, or be sentenced to imprisonment without the option of a fine, or assign his estate; or
- (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

[Para. (d) substituted by s. 11 (a) of Act No. 46 of 1965, by s. 11 (a) of Act No. 5 of 1968 and by s. 14 (a) of Act No. 31 of 1969 and amended by Proclamation No. 147 of 1979.]

- (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 of the Administration of Estates Act, 1965 (Act No. 66 of 1965), or has been sequestrated as insolvent; or

[Para. (e) substituted by s. 11 (b) of Act No. 5 of 1968 and by s. 14 (b) of Act No. 31 of 1969, amended by Proclamation No. 147 of 1979 and substituted by s. 4 (1) (a) of Act No. 93 of 1986.]

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

[Para. (f) substituted by s. 11 (c) of Act No. 5 of 1968 and by s. 14 (c) of Act No. 31 of 1969 and amended by Proclamation No. 147 of 1979.]

- (g) the debtor, being a co-operative society, has been placed in liquidation or has, in the opinion of the board, ceased to carry on business, or the period of its establishment, if any, has expired; or

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

[Para. (gA) inserted by s. 6 (a) of Act No. 41 of 1972 and substituted by s. 6 (a) of Act No. 89 of 1985.]

- (gB) the debtor is a company or close corporation and any director, shareholder or member thereof be sentenced to imprisonment without the option of a fine; or

[Para. (gB) inserted by s. 6 (a) of Act No. 41 of 1972 and substituted by s. 6 (b) of Act No. 89 of 1985.]

- (gC) the debtor, being a close corporation, is being wound up or is being deregistered; or

[Para. (gC) inserted by s. 6 (c) of Act No. 89 of 1985.]

- (h) there be a breach of any other condition of the advance; or

- (i) the advance be not applied within such time as the board may consider reasonable to the purpose for which it was made,

the board may proceed as prescribed in subsection (2) or, if or in so far as the security for the advance concerned consists of stock issued by the Republic Government, in subsection (2A).

[Sub-s. (1) amended by s. 6 (a) of Act No. 88 of 1981.]

- (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, whether or not such sheriff 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), (f), (gA), (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 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 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;

[Para. (b) amended by s. 4 (1) (b) of Act No. 93 of 1986. Para. (ii) substituted by s. 14 (d) of Act No. 31 of 1969 and by s. 6 (b) of Act No. 41 of 1972, amended by Proclamation No. 147 of 1979 and substituted by s. 6 (d) of Act No. 89 of 1985 and by s. 4 (1) (c) of Act No. 93 of 1986.]

- (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.

[Sub-s. (2) amended by s. 11 (b) of Act No. 46 of 1965 and substituted by s. 11 (d) of Act No. 5 of 1968.]

(2A) Whenever in any case where the security for the advance concerned consists of stock issued by the Republic Government, 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) realize the stock concerned after the expiry of seven days after demand for the repayment of the advance has been made by registered letter addressed to the address of the debtor stated in the form of application for the advance, and the provisions of paragraphs (i) and (ii) of the proviso to subsection (2) (b) with regard to the sale of the security contemplated in that subsection in the circumstances mentioned in paragraphs (a) and (c), (d), (e), (f), (gA) or (gB), respectively, of subsection (1), shall *mutatis mutandis* apply in the case of the realization of that stock in the circumstances concerned.

[Sub-s. (2A) inserted by s. 6 (b) of Act No. 88 of 1981.]

(3) No property mortgaged to the bank shall be sold by 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 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 sheriff, trustee of the insolvent estate, assignee, executor, that liquidator or trustee so elected or appointed or that judicial manager or liquidator, 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.

[Sub-s. (3) substituted by s. 11 (d) of Act No. 5 of 1968, by s. 14 (e) of Act No. 31 of 1969 and by s. 6 (c) of Act No. 41 of 1972, amended by Proclamation No. 147 of 1979 and substituted by s. 6 (e) of Act No. 89 of 1985 and by s. 4 (1) (d) of Act No. 93 of 1986.]

(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.

[Sub-s. (4) added by s. 11 (e) of Act No. 5 of 1968.]

56. Application of balance of proceeds of sale.—When the bank has realized immovable property, other than the property of a co-operative society or company, or stock issued by the Republic Government, by virtue of special powers conferred upon the bank under any law, the surplus (if any) of the proceeds of the realization shall, after payment of the amount owing under any bond which ranks prior to the bond of the bank (which amount shall be paid from the proceeds of the realization of the said immovable property only) and of all amounts owing to the bank and any costs incurred by the bank, be paid—

- (a) if the debtor is deceased, to the executor of his estate;
- (b) if the estate of the debtor is insolvent or assigned, to the trustee or assignee, as the case may be;
- (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;

[Para. (bA) inserted by s. 12 of Act No. 5 of 1968, substituted by s. 15 of Act No. 31 of 1969 and amended by Proclamation No. 147 of 1979.]

- (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;

[Para. (bB) inserted by s. 7 of Act No. 41 of 1972.]

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

[Para. (bC) inserted by s. 7 of Act No. 89 of 1985.]

- (c) if the property so realized has been declared executable or has been attached by a sheriff, to the sheriff;

[Para. (c) substituted by s. 5 of Act No. 35 of 1961 and by s. 5 (1) of Act No. 93 of 1986.]

- (d) in all other cases to the debtor, unless, in the case of the immovable property concerned, it is subject to a bond other than that of the bank and that which ranks prior thereto, in which case payment of the surplus of the proceeds of the realization of such immovable property shall be made to the legal holder of such bond against evidence of the amount owing thereunder: Provided that no such payment shall be made until at least seven days' notice thereof has been given to the debtor by registered letter posted to his last-known place of address, and, in the event of the debtor objecting to the amount being so paid, the surplus shall be transmitted to the sheriff of the province in which the realization took place for payment to the person entitled thereto.

[S. 56 amended by s. 25 (a) of Act No. 47 of 1959 and by s. 7 (a) of Act No. 88 of 1981.

Para. (d) amended by s. 25 (b) of Act No. 47 of 1959 and substituted by s. 7 (b) of Act No. 88 of 1981.]

57. Ejectment of occupiers of property sold by the bank.—Whenever under the special powers conferred upon it by this Act or any other law, the board has, without recourse to a court of law, entered upon, taken possession of or sold immovable property, it may, in order to give possession of that property to the purchaser, give written directions to the sheriff of the province in which the property is situate, summarily to eject any person in occupation of that property, who in the opinion of the board is not entitled to occupy the same, and the sheriff is hereby authorized and empowered to carry out the board's directions.

[S. 57 substituted by s. 6 (1) of Act No. 93 of 1986.]

57bis. Mortgages of land by persons who are not debtors.—(1) The board may accept, as additional security for any advance made under this Act, a mortgage (whether or not a first mortgage) of land belonging to a person (referred to in this section as the additional mortgagor) other than the person to whom the advance is made.

(2) Any such mortgage shall be subject to such of the conditions set out in the Second Schedule (with such modifications as the board may deem fit) as the board may determine.

(3) Whenever any circumstances mentioned in sub-section (1) of section *fifty-five* arises in respect of the debtor, the provisions of paragraphs (b), (c) and (d) of sub-section (2) of that section and of sections *fifty-six* and *fifty-seven* shall, irrespective of any steps which the board takes or may take under this Act against the debtor, apply in relation to the additional mortgagor and the land mortgaged by him under this section as if the additional mortgagor were the debtor in respect of the advance in question.

(4) The provisions of sub-section (3) of section *fifty-five* shall apply in respect of any land mortgaged by the additional mortgagor under this section as if such land were property mortgaged to the bank by the debtor.

[S. 57bis inserted by s. 26 of Act No. 47 of 1959.]

58. Recovery by the bank of advances to Crown lessees, etc.—(1) Whenever any advance has, with the approval of the Minister of Lands, been made by the bank under any law to a holder of land under lease or agreement of purchase from the Crown, or to a co-operative society or company composed mainly of such holders of land, there shall be paid to the bank out of the Consolidated Revenue Fund so much of the advance as the bank is unable to recover from such holder, society or company, as the case may be: Provided that the bank shall first excuss such holder, society or company, unless the Minister of Lands certifies that in his opinion the amount would not be recovered by legal proceedings taken in respect thereof.

(2) The amount so paid from the Consolidated Revenue Fund shall thereupon be regarded as a debt owing by such holder, society or company, as the case may be, to the

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Minister of Lands, and shall be paid to the said Minister on such conditions as to period, instalments or otherwise as he may determine.

(3) If the debtor is at any time in default in complying with any such condition, then, without prejudice to any right of recovery of the Minister of Lands to recover the amount due, the debtor shall be deemed to have committed a breach of the conditions upon which the land was allotted, and the said Minister may enforce any penalty prescribed in those conditions of allotment for any breach thereof.

(4) In this section "advance" includes the interest due to the bank on any such advance, and any costs or charges incurred by the bank in respect thereof.

59. Recovery by the bank of advances in respect of property resumed by the Crown — Whenever any property has been resumed by the Crown owing to non-payment of quitrent or under any condition whatever provided by law or under the conditions of the grant of the property, there shall be paid to the bank out of the Consolidated Revenue Fund so much of any advance which may have been made by the bank in respect of that property as is unpaid at the date of the resumption, together with any interest due to the bank thereon.

60. Rights of bank in the event of cancellation of Crown leases.—In the event of the cancellation or abandonment of any lease, licence or allotment from the Crown, in respect whereof an advance has, with the consent of the Minister of Lands, been made by the bank for the purpose of erecting a fence or constructing a dipping tank, there shall, when such land is resumed by the Crown, or abandoned by the lessee, licensee or allottee, be paid out of the Consolidated Revenue Fund to the bank so much of the advance (and of the interest due thereon) as the bank is unable to recover from the holder of such lease, licence or allotment.

61. Additional remedies in respect of advances made to co-operative societies.—(1) If the debtor be a co-operative society, the board may either before or if necessary after realisation of the assets of the society in the manner prescribed in section *fifty-five*, frame a plan of contribution, apportioning the debt in equal shares amongst all persons who were members of the society when a resolution was taken to raise a loan or thereafter became members, including any persons who may have subsequently withdrawn or been expelled from the society.

(2) The board may cause any such plan of contribution to be published by notice in the *Gazette* and in a newspaper circulating in the district in which the society carried on operations, and such notice shall state that if, within fourteen days from the date of publication thereof in the *Gazette*, the liability due to the bank in respect of the advance and interest thereon be not paid to the bank by each such person to the amount shown in the said plan of contribution, the board will, without recourse to any court of law, seize and sell through the sheriff or messenger, as the case may be (as it is hereby authorized to do), so much of the property and effects of each of the defaulting persons, as may be necessary to meet the liability of that person as shown in the plan of contribution, together with any costs that may be incurred by the bank in connection with such seizure and sale.

(3) In framing the said plan of contribution the board may require the registrar to furnish and transmit (as the registrar is hereby required to do) a list certified by him of those persons who were members of the society at the date the debt or obligation to the bank was incurred or entered into by the society, and a list, similarly certified, of those persons who became members of the society after that date, and all persons included in such lists shall be the persons liable for the debts and obligations of the society.

(4) Every list of members so furnished to the bank shall be conclusive evidence in favour of the bank that every person whose name appears on that list was a member of the society at the date specified in that list.

(5) The registrar shall, at the request of the board, furnish such further lists and other information as the board may require regarding any society or company registered under the law relating to co-operative societies and companies.

(6) If any person liable to contribute under the plan of contribution has not paid his contribution, and has not, to the knowledge of the board, property or effects sufficient to meet his liability, the board may recover *pro rata* from each of the other persons liable in manner aforesaid, the share of such first-mentioned person's unsatisfied liability, and if any person liable to pay *pro rata* a share of another person's liability under this section be unable to pay the same, the other persons shall be liable to pay *pro rata* a further share to meet that liability, and such further share shall be recoverable from such other persons liable in the manner aforesaid, and so on, until the whole liability to the bank be paid off.

(7) The board in having recourse to the remedies provided by this section shall in every case sell as aforesaid movable property before selling immovable property, and the provisions of paragraph (c) of subsection (2) of section *fifty-five* shall apply to any immovable property so sold.

(8) Nothing in this section contained shall be construed as taking away or diminishing the right of any one debtor who has paid more than his *pro rata* share in satisfying his liability under this Act to proceed at common law against his co-principal debtor upon the joint and several liability aforesaid.

(9) For the purposes of this section "liability" shall include, in addition to the advance and the interest thereon, the expenses incurred by the board in making the advance and in recovering the same, with the interest thereon.

62. Special remedies for recovering advances made to co-operative societies.—

(1) In the event of the board deciding to exercise the remedies conferred upon it by sections *fifty-five* and *sixty-one*, in respect of an advance made to a co-operative society, the board may, in addition to the said remedies, without recourse to a court of law enter upon and take possession of and sell by public auction, after advertisement, the whole or any part of the assets of the society even if they are not specially hypothecated to the bank.

(2) If any such assets are immovable property, the provisions of paragraph (c) of subsection (2) of section *fifty-five* shall be applicable thereto.

(3) The board shall, in addition, have power to collect all amounts due and owing to the society, to give valid receipts for such payments, to institute action to enforce payment thereof, and to abandon such amounts as are, in its opinion, irrecoverable.

(4) All amounts recovered by the board under subsection (1) or (3) of this section, or under section *fifty-five* or *sixty-one*, in respect of an advance made to a co-operative society, shall be employed to reduce the society's debt to the bank: Provided that if any of the assets of a co-operative society realized by the board by virtue of special powers conferred by this Act or any other law, are not specially hypothecated to the bank, but are specially hypothecated to some other person, or are subject, in favour of some other person, to a hypothecation of a date prior to any hypothecation in favour of the bank, the board shall pay to such person the proceeds of such sale (after deducting any costs incurred by the bank in connection therewith) or so much of the proceeds as may be owing to that person under the deed of hypothecation.

63. Remedies in respect of advances to co-operative societies.—(1) If a co-operative society indebted to the bank—

- (a) is dissolved for any reason whatsoever; or
- (b) is removed from the register of co-operative societies kept by the registrar; or
- (c) fails to observe the conditions of any advance made by the board; or

- (d) fails to pay any amount upon due date; or
- (e) fails to make payment to the bank when required to do so in accordance with subsection (3) of section *thirty-six*; or
- (f) has ceased, in the opinion of the board, to carry on business; or
- (g) was established for a period and that period has expired,

the board may, after giving seven days' notice by registered letter, addressed to the co-operative society at the address recorded in the bank's books, and after due notice to the mortgagees, without recourse to a court of law, seize and sell, either by public auction or by private treaty, any or all of the co-operative society's assets which have been specially mortgaged to the bank, and exercise, in such order as it shall determine, any one or all of the powers vested in it by virtue of the cession mentioned in subsection (1) of section *thirty-eight*.

(2) If any person, whose liability to pay any subscribed but unpaid capital or any contingent liability attaching to shares, has accrued in terms of the co-operative society's memorandum, if any, and articles of association or regulations, fails, upon written demand being made by the board, to pay such amount within seven days after the date of demand, the board may, after notice to the mortgagees and without recourse to a court of law, seize and sell through the sheriff so much of the immovable or movable property of such person as may appear to be necessary to make good the amount including the costs incurred by such seizure and sale.

(3) The board in having recourse to the remedies provided by this section, shall, in every case sell as aforesaid movable property before selling immovable property, and the provisions of paragraph (c) of subsection (2) of section *fifty-five* and the proviso to that subsection shall apply to any immovable property so sold: Provided that, if any property so sold is not specially hypothecated to the bank, but is specially hypothecated to some other person, or is subject in favour of some other person to a hypothecation of a date prior to any hypothecation in favour of the bank, the board shall pay to such person the proceeds of such sale (after deducting any costs incurred by the bank in connection therewith) or so much thereof as may be owing to that person under the deed of hypothecation.

(4) The persons liable to pay any subscribed but unpaid capital or any contingent liability attaching to shares, shall be the persons whose names appear on the list of shareholders furnished by the co-operative society at the time of signing the cession mentioned in subsection (1) of section *thirty-eight*, or from time to time thereafter, and they shall be liable to the extent stated in those lists: Provided that if any shares have, after the signing of such cession, been transferred with the board's written consent, the transferee, and not the person mentioned in any such list, shall be liable in respect of the shares so transferred.

(5) All amounts collected by the board and, subject to the provisions of subsection (3) of this section, the proceeds of the sale of immovable or movable property, shall be employed to reduce or liquidate the co-operative society's debt to the bank, and any surplus after liquidation of such debt shall be paid over to the co-operative society or its legal representative.

(6) For the purposes of this section 'debt' includes, in addition to an advance and the interest thereon, the expenses incurred by the board in making the advance and in recovering it with interest as aforesaid.

[S. 63 amended by s. 27 of Act No. 47 of 1959 and substituted by s. 26 of Act No. 21 of 1998.]

64.

[S. 64 substituted by s. 3 of Act No. 14 of 1964 and repealed by s. 3 (1) of Act No. 21 of 1980.]

CHAPTER IV

ACCOUNTS

65. Publication and keeping of accounts of the bank.—(1) The managing director shall, within three months after the thirty-first day of December in each year, transmit to the Minister, to be published in the *Gazette*, a statement of account showing—

- (a) the assets and liabilities of the bank as on the said date; and
- (b) the profit and loss account for the preceding year.

[Sub-s. (1) amended by s. 9 of Act No. 13 of 1953, substituted by s. 12 of Act No. 46 of 1965 and amended by s. 6 of Act No. 97 of 1986.]

(1A)

[Sub-s. (1A) inserted by s. 16 of Act No. 31 of 1969 and deleted by Proclamation No. 147 of 1979.]

(2) Every such statement shall be signed as correct by the managing director, two members of the board and the chief accountant of the bank, and shall be laid before Parliament within seven days after it has been so transmitted, if Parliament be then in session, or if Parliament be not then in session, within seven days after the commencement of its next ensuing session.

[Sub-s. (2) amended by s. 9 of Act No. 13 of 1953 and substituted by s. 12 of Act No. 46 of 1965.]

(3) In addition to the accounts in this section mentioned, the board shall render to the Minister from time to time such other accounts, reports and statements as the Minister may require.

66. Inspection of accounts and documents by Minister.—The Minister or any officer in the public service deputed by him, shall have full access to all the accounts, documents and papers in the bank, and the board shall at all times furnish to him all such information as he may require.

67. Reserve fund of the bank and purpose to which profits devoted.—(1) The reserve fund of the bank shall be credited with any nett profit earned by the bank from time to time and shall be applied by the board in making good any loss or deficiency which may occur in any transaction of the bank.

[Sub-s. (1) substituted by s. 17 of Act No. 31 of 1969 and by Proclamation No. 147 of 1979.]

(2) Any balance remaining in the reserve fund after providing for any loss or deficiency aforesaid, may be invested in Government or municipal stock or securities or in any other stock or securities approved by the board, or be devoted to any of the purposes to which any other funds of the bank may in terms of this Act be devoted.

(3) Whenever the reserve fund, together with the capital of the bank, being the funds mentioned in sub-section (1) of section *nineteen*, totals an amount which is, in the board's opinion, adequate to enable the bank fully to carry out its objects, there shall, as soon as possible after the close of each year, be paid to the Minister such amount as the board shall direct out of—

- (a) the profits of the bank;
- (b) the reserve fund of the bank: Provided that the amount of the reserve fund shall not be reduced below one million pounds; and
- (c) any other funds of the bank.

(4) All amounts paid to the Minister in terms of this section shall be applied towards redemption of the capital funds of the bank, and shall be applied by the Minister to repay such portion of those capital funds as the board shall direct.

(5) Interest upon any amount repaid to the Minister under this section shall cease to be payable as from the date of such repayment.

68. **Audit of accounts of bank.**—The accounts of the bank shall be audited by the Controller and Auditor-General at a fee to be determined by the Treasury after consultation with the Controller and Auditor-General, which shall be defrayed out of the funds of the bank and paid into the Consolidated Revenue Fund.

CHAPTER V

GENERAL AND MISCELLANEOUS

69. **Power of Minister to make regulations on recommendation of the board.**—(1) The Minister may make, upon the recommendation of the board, regulations, not inconsistent with this Act, as to all or any of the following matters, namely—

- (a) the meetings and proceedings of the board;
- (b) the rights, privileges and duties of the staff, and the duties of other persons employed by the bank, and the manner in which such duties shall be performed;
- (c) the establishment of agencies;
- (d) the management of the bank and its agencies;
- (e) the specific cases in which property given as security shall be insured;
- (f) the rules of good husbandry;
- (g) the conditions which may be imposed in regard to advances for improvements or new works, and the payment of such advances as work proceeds;
- (h) the forms to be used and the books, accounts and records to be kept;
- (i)

[Para. (i) inserted by s. 28 of Act No. 47 of 1959 and deleted by s. 5 of Act No. 52 of 1975.]

- (j) insurance under sub-paragraph (i) of paragraph (h) of sub-section (1) of section *twenty-one* and arrangements under sub-paragraphs (iii) and (iv) of the said paragraph,

[Para. (j) inserted by s. 28 of Act No. 47 of 1959.]

and generally for fully and effectually carrying out and giving effect to the objects and purposes and for guarding against violations of this Act.

[Sub-s. (1) amended by s. 46 of Act No. 97 of 1986.]

(2) Every such regulation shall be of force and effect unless and until during the session in which it has been laid upon the Tables of both Houses of Parliament as provided by law, both Houses have, by resolution, disapproved of the terms of the regulation.

70. **Appointment of valuers.**—(1) The board shall from time to time appoint a reasonable number of fit and proper persons in each district as valuers to inspect and value properties for the purposes of this Act, and may in its discretion remove any person so appointed.

(2) The fees and travelling expenses of valuers so appointed shall be payable by the bank in accordance with tariffs framed by the board and approved by the Minister.

(3) Every magistrate, every police officer, the Postmaster-General and any officer under him, shall without additional emolument, when required by the board, report on any cases submitted to him and generally act as agent of the bank.

(4) The board shall have access without fee or charge to the valuation roll of any local rating authority, and it shall be the duty of officers of every such authority to supply without fee or charge to the board, upon application, particulars as to any valuation of rateable property in respect of which such local authority has power to levy rates.

71. Inspections on behalf of bank.—For the purpose of ascertaining whether an advance has been or is properly applied and whether the conditions of any advance are being observed, the board may by means of any of the staff, or by means of inspectors or other persons deputed by it, institute such inspections as it may deem advisable.

[S. 71 amended by s. 29 of Act No. 47 of 1959 and substituted by s. 6 of Act No. 52 of 1975.]

72. Bank may only hold land temporarily or for business premises.—(1) It shall not be lawful for the bank to hold land other than land required for its business premises or land mortgaged to and bought in by the bank or land otherwise acquired on account of debt: Provided that the bank may, with the approval of the Minister, acquire land for the accommodation of any person whose remuneration is paid out of the funds of the bank and may, on such conditions as the board deems fit, provide accommodation for any such person on land so acquired.

[Sub-s. (1) amended by s. 30 (1) (a) of Act No. 47 of 1959.]

(1)*bis* The bank may at any time dispose of any land which it holds for its business premises or for the accommodation of any person whose remuneration is paid out of the funds of the bank if such land is no longer required for the said business premises or accommodation.

[Sub-s. (1)*bis* inserted by s. 30 (1) (b) of Act No. 47 of 1959.]

(2) All land bought in or otherwise acquired by the bank on account of debt shall be sold at the earliest favourable opportunity upon such special conditions as may be approved by the board, which may allow the purchase price or any portion thereof to be secured by a mortgage bond over the land in favour of the bank.

[Sub-s. (2) amended by s. 30 (1) (c) of Act No. 47 of 1959.]

(3) Any amount so secured shall for the purposes of this Act be deemed to be an advance under the provisions of this Act, and the provisions of this Act relating to advances, except the provisions of paragraph (a) of sub-section (1) of section *twenty-six*, shall apply to such amount.

(4) It shall not be lawful for the managing director, the general manager, any member of the board or any adviser or any member of the staff to buy directly or indirectly any land sold in accordance with this section.

[Sub-s. (4) amended by s. 9 of Act No. 13 of 1953 and by s. 7 of Act No. 60 of 1957.]

73. Penalties.—(1) If the managing director or the general manager, or any member of the staff or of the board, or any adviser, agent, inspector or valuator, directly or indirectly receive any fee or reward (other than is authorized under this Act) from any person in respect of or in connection with an advance under this Act or an application for such advance, he shall be guilty of an offence and liable to a fine not exceeding five hundred pounds or to imprisonment with hard labour for a period not exceeding five years or to both such fine and such imprisonment.

[Sub-s. (1) amended by s. 9 of Act No. 13 of 1953 and by s. 8 of Act No. 60 of 1957.]

(2) Any person who, in respect of or in connection with any advance under this Act, or any application for such an advance, bribes or attempts to bribe, or corruptly influences or attempts corruptly to influence the managing director or the general manager, or any member of the board or of the staff, or an adviser, agent, inspector or valuator, shall be guilty of an offence and liable to a fine not exceeding five hundred pounds or to imprisonment with hard labour for a period not exceeding five years or to both such fine and such imprisonment.

[Sub-s. (2) amended by s. 9 of Act No. 13 of 1953 and by s. 8 of Act No. 60 of 1957.]

(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; 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 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.

[Sub-s. (3) substituted by s. 8 of Act No. 41 of 1972 and by s. 8 of Act No. 89 of 1985.]

74. Fees, costs, etc.—(1) Save as in this Act otherwise provided, every applicant for an advance under this Act shall pay to the bank in advance—

- (a) fees in accordance with the scale set out in the Third Schedule to this Act; and
- (b) the valuator's fee and his travelling expenses, according to tariffs framed by the board and approved by the Minister.

(2) In the event of the application not being dealt with by the board, the board may refund the fees paid by the applicant in terms of sub-section (1), or such portion thereof as it deems fit, and the valuator's fee and travelling expenses may be paid out of the funds of the bank.

[Sub-s. (2) substituted by s. 31 of Act No. 47 of 1959.]

(3) The costs and fees of preparing, completing or discharging any mortgage, pledge or other security shall be payable by the mortgagor or pledgor to the bank according to the scale set out in the Fourth Schedule to this Act.

(4) The Minister may, from time to time, on the recommendation of the board, alter or add to such scale of costs and fees, and the alteration or addition shall be notified in the *Gazette*.

74A.

[S. 74A inserted by s. 18 of Act No. 31 of 1969 and repealed by Proclamation No. 147 of 1979.]

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

[S. 74B inserted by s. 9 of Act No. 41 of 1972.]

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

[S. 74C inserted by s. 9 of Act No. 89 of 1985.]

75. Short title and date of commencement.—This Act shall be called the Land Bank Act, 1944, and shall come into operation upon a date to be fixed by the State President by Proclamation in the *Gazette*.

First Schedule
LAWS REPEALED

NO. AND YEAR OF LAW	TITLE AND SUBJECT OF LAW	EXTENT OF REPEAL
Act No. 18 of 1912 . . .	The Land Bank Act, 1912	So much as is unrepealed
Act No. 30 of 1916 . . .	The Land Bank Act, 1912, Amendment Act, 1916	So much as is unrepealed
Act No. 36 of 1921 . . .	The Land Bank Acts Further Amendment Act, 1921	So much as is unrepealed
Act No. 40 of 1922 . . .	The Land Bank Acts Further Amendment Act, 1922	So much as is unrepealed
Act No. 35 of 1923 . . .	The Financial Adjustments Act, 1923	Sections <i>fifteen</i> , <i>sixteen</i> and <i>seventeen</i>
Act No. 32 of 1924 . . .	The Land Bank Acts Further Amendment Act, 1924	So much as is unrepealed
Act No. 43 of 1925 . . .	The Financial Adjustments Act, 1925	Sections <i>sixteen</i> and <i>seventeen</i>
Act No. 27 of 1927 . . .	The Financial Adjustments Act, 1927	Sections <i>fifteen</i> and <i>sixteen</i>
Act No. 34 of 1930 . . .	The Financial Adjustments Act, 1930	Sections <i>seven</i> and <i>eight</i> and sub-section (2) of section <i>nine</i>
Act No. 42 of 1930 . . .	The Agricultural Warehouse Act, 1930	Section <i>twenty-three</i> in so far as it relates to discounting of or making of advances against warehouse receipts presented by any bank, co-operative society or company or any loan company

NO. AND YEAR OF LAW	TITLE AND SUBJECT OF LAW	EXTENT OF REPEAL
Act No. 45 of 1931	The Financial Adjustments Act, 1931	Sections <i>sixteen</i> and <i>seventeen</i>
Act No. 25 of 1932	The Financial Adjustments Act, 1932	Section <i>five</i>
Act No. 29 of 1933	The Financial Adjustments Act, 1933	Sections <i>fifteen, sixteen, eighteen, nineteen</i> and <i>twenty</i>
Act No. 58 of 1934	The Land Bank Amendment Act, 1934	So much as is unrepealed, except section <i>twenty-one</i>
Act No. 53 of 1935	The Land Bank Amendment Act, 1935	The whole, except section <i>three</i>
Act No. 18 of 1936	The Development Trust and Land Act, 1936	Paragraph 5 of Part I of the Second Schedule
Act No. 21 of 1936	The Land Bank Amendment Act, 1936	The whole
Act No. 22 of 1937	The Land Bank Amendment Act, 1937	The whole
Act No. 26 of 1937	The Marketing Act, 1937	Section <i>thirty-one</i>
Act No. 50 of 1937	The Finance Act, 1937	Section <i>twenty-one</i>
Act No. 24 of 1938	The Land Bank Amendment Act, 1938	The whole
Act No. 12 of 1940	The Land Bank Amendment Act, 1940	The whole
Act No. 27 of 1940	The Finance Act, 1940	Section <i>twenty-six</i>
Act No. 38 of 1941	The Land Bank Amendment Act, 1941	The whole
Act No. 18 of 1942	The Land Bank Amendment Act, 1942	The whole, except section <i>fifteen</i>
Act No. 36 of 1943	The Land Bank Amendment Act, 1943	The whole

Second Schedule

CONDITIONS TO BE IMPLIED IN EVERY MORTGAGE BOND ON THE PART OF THE PERSON EXECUTING THE SAME, OR HIS LEGAL REPRESENTATIVE, AS A MORTGAGOR IN FAVOUR OF THE LAND AND AGRICULTURAL BANK OF SOUTH AFRICA, ITS SUCCESSORS AND ASSIGNS, AS MORTGAGEE.

(1) That the mortgagor will pay the principal sum mentioned in the mortgage bond, with interest thereon in accordance with the provisions of the Land Bank Act, 1944, or any amendment thereof, and at the due dates thereof.

(2) That the mortgagor will from time to time so long as money remains owing on this security, well and substantially repair, and keep in good and substantial repair and condition, all buildings and other improvements erected and made upon the said land; and the bank shall at all times be at liberty by itself, its agents or servants, to enter upon the said land to view and inspect the said buildings and improvements.

(3) That if the mortgagor fail or neglect to repair the said buildings and improvements or to keep them in good and substantial repair and condition as aforesaid, then and in any such case and as often as the same shall happen, it shall be lawful for, but not obligatory upon, the bank, at the cost and expense in all things of the mortgagor, to repair the said buildings and improvements and keep them in good and substantial repair and condition.

(4) That all moneys expended by the bank in and about repairing or keeping in repair any of the said buildings and improvements as aforesaid, or in the insurance thereof or in attempting to exercise or enforce any power, right or remedy herein contained or implied, in favour of the bank, shall be payable to the bank by the mortgagor on demand, and until paid shall be charged on the said land together with interest at the rate of not more than the rate prescribed for the time being under the said Act, or any amendment thereof, computed from the date or dates of such moneys being expended.

(5) That insurance shall be effected as may be prescribed by regulations or instruction of the board. Every policy of insurance so effected or renewal thereof shall be ceded to the bank as collateral security.

(6) That the power of sale and incidental powers in that behalf conferred upon the bank under the Land Bank Act, 1944, or any amendment thereof, shall be implied herein and that they may be exercised if and whenever the mortgagor makes default in the full and punctual payment of any instalment of interest

or principal in accordance with the respective conditions for payment thereof herein contained, or if and whenever the mortgagor makes default in the faithful observance and performance of any other condition on his part herein contained or implied.

(7) That if and whenever the mortgagor makes any such default as in the last preceding condition mentioned, it shall be lawful for the bank to call up and compel payment of all principal, interest and other moneys for the time being owing under this security, notwithstanding that the time or times hereinbefore appointed for the payment thereof, respectively, may not have arrived.

(8) That the mortgagor will at all times cultivate and manage the lands hypothecated in a skilful and proper manner and according to the rules of good husbandry. Failure in the performance of this condition shall entail the immediate recovery of the advance should the bank so desire: Provided that this condition shall not apply to a co-operative society or a company or to land used exclusively for stock-farming and described as such in the application for the advance.

(9) That this mortgage bond is subject to all the provisions of the Land Bank Act, 1944, or any amendment thereof, relating to mortgages under that Act.

Third Schedule

[Third Schedule amended by Government Notice No. R.201 of 19 February, 1971.]

SCALE OF APPLICATION FEES TO BE PAID BY APPLICANTS IN ANY EVENT AND TO ACCOMPANY THE APPLICATION

	R c
On application for an advance not exceeding R1 000	2 00
On application for an advance exceeding R1 000 and not exceeding R2 000	3 00
On application for an advance exceeding R2 000 and not exceeding R3 000	4 00
On application for an advance exceeding R3 000 and not exceeding R4 000	6 00
On application for an advance exceeding R4 000 and not exceeding R6 000	8 00
With an additional fee of R3 for every additional R2 000 or fraction thereof, subject to a maximum fee of	25 00

Fourth Schedule

[Fourth Schedule amended by s. 19 of Act No. 31 of 1969, by Government Notice No. R.201 of 19 February, 1971, by Proclamation No. 147 of 1979 and by General Notice No. 807 of 25 August, 1995.]

SCALE OF COSTS AND FEES FOR PREPARING AND COMPLETING A MORTGAGE BOND OR DEED OF TRANSFER, OR DISCHARGING A MORTGAGE OR NOTARIAL BOND, AND FOR OTHER WORK PERFORMED BY THE BANK

	R c
1. (a) Preparing and completing any principal mortgage bond—	
where the amount secured does not exceed R200	4 00
where the amount secured exceeds R200 but does not exceed R1 000	6 00
where the amount secured exceeds R1 000 but does not exceed R2 000	8 00
where the amount secured exceeds R2 000 but does not exceed R3 000	10 00
where the amount secured exceeds R3 000 but does not exceed R4 000	12 00
with an additional fee of R4 in respect of every R2 000 or fraction thereof over R4 000 subject to a maximum fee of	100 00
(b) Preparing and completing collateral mortgage bond or surety (mortgage) bond not embodied in the principal bond: Half the fee charged in respect of the principal bond but not exceeding	20 00
2. Preparing power of attorney to pass notarial (principal, collateral or surety) bond	NIL
3. (a) Drawing deed of sale of property sold by the bank in terms of section 72 of the Act	NIL
(b) Preparing and registering deed of transfer of property sold by the bank in terms of section 55 or section 72 of the Act, when the purchase sum—	
does not exceed R400	12 00
exceeds R400 but does not exceed R1 000	16 00
exceeds R1 000 but does not exceed R2 000	20 00
exceeds R2 000 but does not exceed R4 000	24 00
with an additional fee of R4 in respect of every R2 000 or fraction thereof, over R4 000 subject to a maximum fee of	40 00

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Sch. 4

Sch. 4

4. Waivers of preference—	
(a) in respect of usufructs, etc., in terms of section 3 (h) and (i) of the Deeds Registries Act, 1937 (Act No. 47 of 1937)	NIL
(b) in respect of leases on property to be mortgaged to the bank.....	NIL
(c) in respect of rights of pre-emption and other rights over property mortgaged or to be mortgaged to the bank	NIL
5. Surety bonds (underhand) by spouses, guardians, curators, partners, etc.....	NIL
6. (a) Consent to discharge of or release from mortgage or notarial bond or to substitution or partition of mortgaged property.....	NIL
If two or more bonds by the same mortgagor over the same property are affected, then, in respect of each second or further bond	NIL
(b) All consents not relating to the foregoing	NIL
7. Guarantees issued by the bank.....	NIL

