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**SUMMARY OF THE AGRICULTURAL DEBT MANAGEMENT ACT AND THE AGRICULTURAL DEBT
MANAGEMENT REPEAL BILL**

1. Background

In order to address anomalies in accounting practices of the Department of Agriculture, the Department introduced the Agricultural Debt Management Repeal Bill (the Bill), which was tabled in Parliament in April 2008.¹ The Bill seeks to repeal the Agricultural Debt Management Act (Act No. 45 of 2001), whose purpose was to establish the Agricultural Debt Account that was used as a mechanism to manage agricultural debt repayment.² The Act's purpose was also to administer funds in the Agricultural Debt Account and to determine the purpose for which funds in the account may be used.

2. The Agricultural Debt Management Act (Act No. 45 of 2001)

The Agricultural Debt Management Act (Act No. 45 of 2001) was formed to establish the Agricultural Debt Account and to provide for the administration of the Act itself. In addition, other objectives of the Act were:

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

The Agricultural Debt Account was formerly the Agricultural Credit Account that was kept in terms of section 20A of the Agricultural Credit Act (Act No. 28 of 1966), which had since been repealed together with all its amendments. The Credit Act was enacted to provide for assistance to persons carrying on or undertaking to carry on farming operations; for the exercise of control in respect of assistance rendered; and for other incidental matters. On the commencement of the Agricultural Debt Management Act (the Act), the Agricultural Debt Account consisted of all -³

- monies that were standing to the credit of the Agricultural Credit Account immediately before the 7th December 2001, when the Act was assented to by the President and received as payment of debt under or as a result of the provisions of the Agricultural Credit Act;
- monies received before the 7th December 2001 as repayment of debt under or as a result of the provisions of the Coloured Farmers Assistance Law (Act No. 1 of 1973), which was also repealed in 1995 by the State President;
- such other monies standing to the credit of the Agricultural Credit Account on 7th December 2001 and received by the Department as repayment of debt under or as a result of financial assistance schemes or as rent.

¹ Parliamentary Monitoring Group, 2008.

² Agricultural Debt Management Repeal Bill, 2008.

³ Agricultural Debt Management Act, 2001.



The monies standing to the credit of the Agricultural Debt Account consisted of all obligations relating to debt as referred to above, on the date of commencement of the Act. The Accounting Officer of the Account is the Director-General of the Department, who must keep accounting records in accordance with the generally recognised practice as set out in the Public Finance Management Act (Act No.1 of 1999). The Agricultural Debt Management Act also provides for the crediting and debiting of the Debt Account, the utilisation of monies in the Account, auditing and reporting, validity of agreements under the Act, debt administration by the Director-General, as well as tendering of documents for registration and exemptions.

According to the Act and on approval from the Minister, the Director-General may transfer any surplus money standing to the credit of the Debt Account to the National Revenue Fund. Such monies may be appropriated by Parliament on the Departmental Vote to be utilised for agricultural development programmes in a specific financial year and in terms of a business plan submitted by the Director-General. The business plan must be approved by the Minister and submitted to the National Treasury at least three months before the beginning of a financial year or the tabling of the adjustments estimates in Parliament.

The Debt Account, and therefore the Act, ceases to exist when all outstanding debt have been collected or written off in terms of the Act and monies standing to the credit of the Account have been appropriated by Parliament.⁴

3. The Agricultural Debt Management Repeal Bill (B24 - 2008)

In addition to the repealing of the Agricultural Debt Management Act (Act No. 45 of 2001), the Agricultural Debt Management Repeal Bill seeks to do away with the Agricultural Debt Account, which is currently a separate entity (account) of the Department of Agriculture. The Department is administering the recovery of the debt until it is fully recovered or otherwise extinguished. The Bill seeks to incorporate the Agricultural Debt Account into Vote 23 – Agriculture.⁵ Since the Debt Account will cease to exist as a separate entity (account), there will then be no need for the Act. Surplus monies standing to the credit of the Account and future collections will be deposited in the National Revenue Fund and will be earmarked for agricultural development - thus the Department will no longer be required to produce a separate audit report.⁶ By agreement between the Department and the National Treasury, the funds will essentially be treated as Micro Agricultural Finance Institutions of South Africa (MAFISA) funds for agricultural development.⁷

Despite the repeal of the Act, certain provisions of that Act as outlined in Appendix 1 will remain in force until all agreements referred to in that Act have been terminated and the debt associated with those agreements have been recovered or otherwise extinguished. The Repeal Bill or the repeal of the Agricultural Debt Management Act (Act No. 45 of 2001) does not affect any rights of the Department of Agriculture or the State to collect debt referred to in that Act.⁸

The National Treasury and the State Law Advisers were consulted about the Bill. The State Law Advisers and the Department of Agriculture advised that the Bill be dealt with in accordance with the procedure established by

⁴ Agricultural Debt Management Act, 2001.

⁵ Agricultural Debt Management Repeal Bill, 2008.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*



section 75 of the Constitution as it contains no provisions for section 74 or 76 procedures. The State Law Advisers are also of the opinion that it is not necessary to refer the Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003) as the Bill contains no provisions pertaining to customary law or customs of traditional communities.⁹

Questions

1. Can the Department give the Committee an indication of how much debt is still outstanding and still needs to be recovered? With the repeal of the Act, is there a deadline that the Department has set itself to ensure that all agricultural debt is recovered, or extinguished where necessary?
2. How does the Department plan to ensure that funds standing to the credit of the Agricultural Debt Account and future collections that are deposited in the National Revenue Fund are used solely for agricultural development?
3. Is the deposition of such funds in the National Revenue Fund a permanent arrangement? Given the fact that MAFISA has not been implemented in all 9 provinces, what strategy or criteria will the Department use to disburse the additional funds for the intended purpose of agricultural development as opposed to the funds sitting with National Revenue and earning interest?

REFERENCES

Government Gazette, 2001. Agricultural Debt Management Act, Act No. 45 of 2001. Vol. 438 No.22913. Cape Town, 7 December.

Government Gazette, 2008. Agricultural Debt Management Repeal Bill (B24 – 2008). No. 30979. Cape Town, 15 April.

Parliamentary Monitoring Group, 2008. Agricultural Debt Management Repeal Bill: Deliberations and Adoption.

www.pmg.org.za - Accessed 06 June 2008.

⁹ Agricultural Debt Management Repeal Bill, 2008.



APPENDIX 1

The following Sections of the Agricultural Debt Management Act (Act No. 45 of 2001) remain in force until all agreements and debt associated with those agreements as referred to in the Act have been terminated or extinguished:

Section 2 - Administration of Act

- (1) The Minister is responsible for the administration of this Act.
- (2) Subject to the provisions of subsection (3), the Minister may delegate any of his or her powers or duties in terms of this Act, to an officer of the Department.
- (3) Any power or duty capable of being exercised or performed under the provisions of section 5 may only be delegated to the chief financial officer in the Department who has been designated as such under the Public Finance Management Act.
- (4) The Minister must designate an officer of the Department to administer this Act, and such officer may be assisted by as many officials or other persons as are deemed necessary to give effect thereto.
- (5) Subject to the provisions of subsection (3), the Director-General may delegate any of his or her powers or duties to an officer designated under subsection (4), or to an officer assisting that officer.

Section 7 - Validity of agreements

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

Section 8 - Debt

- (1) The Director-General-
 - (a) must on a continuous basis monitor the repayment of debt and investigate any factor that may influence the timeous repayment thereof;
 - (b) must audit all securities relating to debt;
 - (c) must collect a debt that is outstanding;
 - (d) may acquire movable or immovable property in the course of debt collection in terms of this Act; and

(e) may exercise any power or take any other action relating to a debt that may be required to safeguard the interests of the State.

(2) Any immovable property acquired by the Director-General under subsection (1) must, as soon as practicable, be registered in the name of the Government of the Republic of South Africa.

(3) The Director-General may, at the request of a debtor or any person having a legitimate interest therein and on such conditions as he or she may determine - .

(a) consolidate amounts and interest owed as debt under different agreements;

(b) substitute debtors, vary or substitute bonds, impose or vary conditions or restrictions, vary securities or accept other securities;

(c) vary or waive any right of the State subject to the provisions of this Act, consent to any legal act and vary or waive any term of an existing agreement;

(d) determine any other condition subject to which an agreement is concluded or amended, including interest rates, the payment of collection costs or legal fees incurred in the collection of debt, and the incorporation of any bond, condition or restriction or other provision of an existing agreement into that agreement.

Section 9 - Tendering of documents for registration and exemptions

(1) An officer in the department may, despite the provisions of any other Act, tender a mortgage bond, agreement, consent, authorisation or other document at any deeds registry for registration or filing, and the registrar must on receipt thereof, cause the necessary endorsements to be made in his or her records despite any requirement of the Deeds Registries Act, 1937 (Act No. 47 of 1937).

(2) No duties, taxes or other fees are payable in respect of an endorsement under subsection (1).

(3) The provisions of the Stamp Duties Act, 1968 (Act No. 77 of 1968), do not apply to any agreement existing on or entered into after the commencement of this Act.