

CHAPTER 18:02

AGRICULTURAL FINANCE ACT

Acts 6/1971, 15/1974 (s. 27), 20/1974, 1/1975 (s. 31), 22/1976 (s. 87), 10/1979, 24/1982 (s. 20), 35/1982, 29/1990; 14/1999; 22/2001 (s. 4), 13/2002 (s. 142); R.G.N. 380/1972; S.I. 468/1979.

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title.
2. Interpretation.

PART II

[Repealed]

PART III

FUNCTIONS AND POWERS OF CORPORATION

20. Business of Corporation.
21. Restrictions on advances.
22. Application of provisions of Cap. 24:20 to Corporation.
23. Corporation empowered to administer special funds.
24. Corporation exempt from certain duties, fees and charges.
25. Corporation may authorize employee of Corporation to make advances or render assistance.
26. Corporation to submit reports and furnish information.

PART IV

FINANCIAL PROVISIONS RELATING TO CORPORATION

27. Object of financial operations.
28. Funds of Corporation.
29. Creation of reserve fund of Corporation.
30. Accounts of Corporation.
31. Audit of Corporation's accounts by Comptroller and Auditor-General.
32. [Repealed]
33. Investigation into affairs of Corporation.
34. Sums borrowed and interest thereon payable out of income and assets.

PART V

PROVISIONS RELATING TO ADVANCES AND SECURITIES AND REMEDIES THEREFOR

35. Notes of hand.
36. Security for advance where borrower holds land in terms of agreement with State.
37. Cession of securities.
38. Remedies of Corporation against defaulting debtor.
39. Cession of rights by co-operative agricultural company or co-operative society.
40. Special remedies in respect of co-operative agricultural companies and co-operative societies.

PART VI

SPECIAL PROVISIONS RELATING TO DESIGNATED LIVESTOCK AND IMPLEMENTS AS SECURITY FOR CERTAIN LOANS

41. Designated property purchased by borrower may become Corporation property.
42. Borrower may not dispose of designated article.
43. Borrower deemed to be owner of designated articles for certain purposes.
44. Loss of designated article not to affect liability of borrowers.
45. Marking, care and inspection of designated articles and returns by borrowers.
46. [Repealed]
47. Designated articles not liable to attachment.
48. Seizure and sale of designated articles.

49. Insolvency of borrower.

PART VII

SCHEMES

50. Establishment of Schemes.
51. Amendment, suspension or revocation of Scheme.
52. Moneys required for implementation of Scheme.
53. Guarantees in connection with Scheme.

PART VIII

GENERAL

54. Corporation to pay certain debts to State.
55. Corporation to pay for and administer loans made by African Loan and Development Trust.
56. Indemnity to Corporation.
57. Minister may guarantee repayment of advances.
58. Officials as agents of Corporation.
59. Valuation roll of local authority.
60. Accounts of co-operative agricultural companies or co-operative societies.
61. Holding of land by Corporation.
62. Exemption of Corporation from liability.
63. [Repealed]
64. Regulations.
65. Offences and penalties.

SCHEDULES

First Schedule: [Repealed]

Second Schedule: Sale of Property of Defaulting Debtor.

Third Schedule: Agricultural Assistance Scheme.

AN ACT to provide for a company to make advances to persons engaged in agriculture and to make provision for its functions; to regulate the financial affairs of the Agricultural Finance Corporation; to provide for the establishment of schemes for the assistance of persons engaged in agriculture and for the implementation of such schemes; to set out the terms and conditions of an Agricultural Assistance Scheme providing for assistance as previously afforded by the Agricultural Assistance Board; and to provide for matters incidental to the foregoing.

[Date of commencement: 1st April, 1971.]

PART I

PRELIMINARY

1 Short title

This Act may be cited as the Agricultural Finance Act [*Chapter 18:02*].

[Section amended by Act 14 of 1999]

2 Interpretation

In this Act—

“advance” means a loan in any form made by the Corporation and includes any arrangement whereby the Corporation becomes or has become guarantor or surety for the performance by a borrower of an obligation;

“Board” means the Corporation’s Board of Directors;

[Definition inserted by Act 14 of 1999]

“borrower” means any person to whom an advance has been made by the Corporation and includes—

- (a) his legal representative;
- (b) any surety for an advance;
- (c) any mortgagor under a duly registered hypothecation;

“co-operative agricultural company” means a co-operative company registered under the Companies Act [*Chapter 24:03*];

“co-operative society” means a society registered under the Co-operative Societies Act [*Chapter 24:05*];

“Corporation” means the company, formed in terms of the Companies Act [*Chapter 24:03*], which the Minister declares, by notice in the *Gazette*, shall exercise the functions of the Corporation;

[Definition substituted by Act 14 of 1999]

“debt” means an amount owing to the Corporation under an advance and the interest thereon and includes the expenses incurred by the Corporation in making the advance and in recovering the same, together with interest thereon;

“designated articles” means any livestock or implements which are, in terms of Part VI, the property of the Corporation;

“employee of the corporation” ...

[Definition repealed by Act 14 of 1999]

“financial year”

[Definition repealed by Act 14 of 1999]

“general manager”

[Definition repealed by Act 14 of 1999]

“implements” includes any fencing, piping, machinery, equipment, installation, engine or vehicle, whether or not it is affixed to or incorporated in any immovable property;

“member”

[Definition repealed by Act 14 of 1999]

“Minister” means the Minister of Agriculture or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“note” means an entry made in the Deeds Registry in terms of section *thirty-five* which constitutes a special hypothecation of immovable property;

“Scheme” means a scheme established in terms of Part VII and includes the Scheme set out in the Third Schedule;

“Sheriff” means the Sheriff referred to in section 55 of the High Court of Zimbabwe Act [*Chapter 7:06*];

“urban residential property” means—

- (a) any piece of land registered as a lot or stand in the Deeds Registry which is included in a township as defined in the Land Survey Act [*Chapter 20:12*]; or
- (b) any small-holding or other piece of land, not exceeding twenty hectares in extent, situated in the vicinity of a township as defined in the Land Survey Act [*Chapter 20:12*] which is used or is intended primarily for residential purposes; or
- (c) an undivided share in any land referred to in paragraph (a) or (b) coupled with an exclusive right of occupation, in respect of which a notarial deed has been registered against the title to the land concerned in terms of section 27 of the Deeds Registries Act [*Chapter 20:05*]; or
- (d) any other land or real right in land which the Minister may, by notice in writing to the Corporation, classify as urban residential property for the purposes of this Act.

PART II

[Part II repealed by Act 14 of 1999]

PART III

FUNCTIONS AND POWERS OF CORPORATION

20 Business of Corporation

(1) Subject to subsection (2), the functions of the Corporation shall be—

(a) subject to such terms and conditions as the Board may impose, to make advances—

- (i) to any person for any purpose which, in the opinion of the Board, is incidental to or connected, directly or indirectly, with the production, processing, storage, packing or marketing of any produce obtained from agriculture or any operations carried on or to be carried on by that person relating to agriculture, including—
 - A. the acquisition of land;
 - B. measures for the supply of electricity or the conservation or control of soil or water;
 - C. advances for the discharge of any liabilities, including death, estate and similar duties;
- (ii) to any co-operative agricultural company or co-operative society for a purpose referred to in subparagraph (i);
- (iii) to any association, union, society or other such body of persons for a purpose which, in the opinion of the Board, is likely to be of assistance or benefit to members of the farming community or any industry connected with agriculture;
- (iv) subject to subsection (2), to any person for the purchase of urban residential property, the construction of a single dwelling-house and additionally, or alternatively, outbuildings on urban

residential property, the improvement of urban residential property or the discharge of liabilities on urban residential property;

- (b) in accordance with any Scheme, to render assistance to persons engaged in or about to engage in agriculture;
- (b1) subject to the Banking Act [*Chapter 24:20*], to carry on the business of a commercial bank;
[Subsection inserted by Act 14 of 1999]
- (c) generally, to perform any other function which the Corporation is authorised to perform by its memorandum of association or by any other enactment.
[Subsection substituted by Act 14 of 1999]

(2) The Corporation shall not make an advance for a purpose specified in subparagraph (iv) of paragraph (a) of subsection (1) unless—

- (a) the person to whom the advance is to be made is already a borrower in respect of urban residential property; or
- (b) the advance relates to urban residential property in respect of which a debt is owed to the Corporation.

(3) An advance in terms of subsection (1) shall not be regarded as an investment for the purposes of paragraph (b) of section 40 of the Audit and Exchequer Act [*Chapter 22:03*].

(4) The Corporation shall exercise the functions referred to in paragraph (a) or (b) of subsection (1) under the name “Agribank” or such other name as the Minister may approve.

[Subsection inserted by Act 14 of 1999]

21 Restrictions on advances

(1) The Minister, after consultation with the Minister responsible for finance, may, by notice in writing to the Board, fix the maximum amount which may be advanced in terms of paragraph (a) of subsection (1) of section *twenty* to any person or class of persons specified in that paragraph.

(2) No—

- (a) advance shall be made in terms of section *twenty* to any person of an amount in excess of the maximum amount fixed in terms of subsection (1) unless the Minister, after consultation with the Minister responsible for finance, has authorized such advance; or
- (b) advance shall be made or assistance rendered—
 - (i) to any member of the Board or of a committee of the Board who is not an employee of the Corporation without the consent in writing of the Minister; or
 - (ii) to any employee of the Corporation otherwise than in terms of the powers conferred by the First Schedule in relation to employees of the Corporation.

22 Application of provisions of Cap. 24:20 to Corporation

For the avoidance of doubt it is declared that, except as otherwise provided in this Act, the Corporation shall comply with the Banking Act [*Chapter 24:20*] to the extent that it conducts banking business as defined in subsection (1) of section 2 of that Act.

[Section substituted by Act 14 of 1999]

23 Corporation empowered to administer special funds

(1) Notwithstanding anything to the contrary in this Act or in any other law, the Corporation may, if authorized thereto by the Minister, act as agent for the State or any statutory body or authority established by or in terms of any enactment for the administration of any fund and, in particular, as agent may administer any moneys and make advances therefrom to any person on such terms and conditions and upon such security, if any, as the Minister or statutory body or authority may direct.

(2) The administration fees which may be raised by the Corporation in administering loans as agent for the State shall be met from moneys appropriated for the purpose by Parliament.

(3) Notwithstanding anything, in any law, the securities directed to be taken in terms of subsection (1) or which are provided for in this Act may be taken by the Corporation in its own name for advances made under this section and the Corporation shall be entitled in its own name to sue and exercise the powers of recovery granted under this Act for the recovery of an advance made under this section.

(4) The Corporation may cede to the State or to any statutory body or authority for which the Corporation has acted as agent in terms of this section any securities, including notes and designated articles taken for an advance made in terms of this section, but such cessionary shall not acquire the powers conferred upon the Corporation by subsections (2), (3) and (4) of section *thirty-eight*, as read with the Second Schedule.

24 Corporation exempt from certain duties, fees and charges

(1) No duty or fee in relation to any instrument, service or other matter shall be payable to the State in respect of—

- (a) any transfer to the Corporation of property other than property acquired by the Corporation for its own use or for the use of its employees; or

- (b) any mortgage, hypothecation or pledge of property or cession thereof in favour of the Corporation, whether in accordance with a Scheme or otherwise; or
- (c) any document of security, pledge, act of suretyship, indemnity or guarantee by or in favour of the Corporation.

(2) The Corporation shall not be liable for the payment of any search or inspection fee in the Master's office or in any Deeds Registry or companies registration office or other registration office of the State.

[Section substituted by Act 14 of 1999]

25 Corporation may authorize employee of Corporation to make advances or render assistance

The Board may authorize any employee of the Corporation, subject to such terms and conditions as it may determine, to make advances or render assistance in terms of this Act on behalf of the Corporation and the employee so authorized shall report to the Board the advances made or assistance rendered in terms of such authorization within three months of the date of such advance or assistance, as the case may be.

[Section amended by Act 14 of 1999]

26 Corporation to submit reports and furnish information

(1) In addition to the annual report which the Corporation may be required in terms of section 43 of the Audit and Exchequer Act [*Chapter 22:03*] to submit to the Minister, the Corporation—

- (a) shall submit to the Minister such other reports as the Minister may require; and
- (b) may submit to the Minister such other reports as the Board may deem advisable;

in regard to the operations, undertakings and property of the Corporation.

(2) The Corporation shall give to the Minister all such information relating to the undertakings of the Corporation as the Minister may at any time require.

(3) The Minister may lay before Parliament a report submitted to him by the Corporation in terms of paragraph (a) or (b) of subsection (1).

PART IV

FINANCIAL PROVISIONS RELATING TO CORPORATION

27 Object of financial operations

It shall be the object of the Corporation—

- (a) so to exercise its functions and conduct its business, other than functions and business relating to the administration and implementation of a Scheme, as to ensure that its income from such functions and business, taking one year with another, is not less than sufficient to enable the Corporation to meet the outgoings and any other provisions properly chargeable to the income and expenditure account; and
- (b) to administer and implement any Scheme.

28 Funds of Corporation

(1) The funds of the Corporation shall consist of—

- (a) such sums as may be payable to the Corporation in terms of this Act;
- (b) such moneys as may be payable to the Corporation from moneys appropriated for the purpose by Parliament;
- (c) any fund which—
 - (i) is established in terms of the Audit and Exchequer Act [*Chapter 22:03*]; or
 - (ii) is administered by the Corporation in terms of section *twenty-three* on behalf of the State; and which the Minister responsible for finance specifies by statutory instrument for the purposes of this paragraph;
- (d) such other moneys or assets as may vest in or accrue to the Corporation, whether in the course of its functions, the exercise of its powers or the performance of its duties or otherwise, including moneys borrowed by the Corporation.

(2) Where the Minister responsible for finance specifies any fund in terms of paragraph (c) of subsection (1) the moneys standing to the credit of the fund specified in the notice and the other assets and liabilities of that fund shall be transferred to the Corporation with effect from the date specified in the notice and with effect from that date—

- (a) any moneys loaned from that fund shall be repayable to the Corporation as if they had been loaned by the Corporation; and
- (b) that fund shall cease to be a fund for the purposes of the Audit and Exchequer Act [*Chapter 22:03*].

29 Creation of reserve fund of Corporation

(1) The Corporation shall maintain a general reserve fund to which, subject to this Part, may be appropriated from a surplus of income over expenditure at the end of any financial year such sums as the Board considers necessary or desirable.

[Subsection substituted by Act 14 of 1999]

(2) After making good any losses or deficiencies which may occur in the operations of the Corporation, otherwise than in the administration and implementation of a Scheme, the balance of the general reserve fund may be used for any of the purposes for which funds of the Corporation may under this Act be used.

30 Accounts of Corporation

(1) In addition to any accounts and records the Corporation is required to keep in terms of the Companies Act [*Chapter 24:03*] and the Banking Act [*Chapter 24:20*], the Corporation shall—

- (a) keep such particular accounts and records as the Minister may direct; and
- (b) keep separate accounts and records in relation to each Scheme.

[Subsection substituted by Act 14 of 1999]

(2) The Corporation shall prepare and submit to the Minister a statement of accounts in respect of each financial year of the Corporation or such other period as the Minister may direct.

31 Audit of Corporation's accounts by Comptroller and Auditor-General

Notwithstanding anything to the contrary in the Companies Act [*Chapter 24:03*] or the Banking Act [*Chapter 24:20*], if the Minister so directs the Corporation's accounts shall be audited by the Comptroller and Auditor-General, who for the purpose shall have all the functions conferred on him by sections 8 and 9 of the Audit and Exchequer Act [*Chapter 22:03*] as though the assets of the Corporation were public moneys and the members of the Board and employees and agents of the Corporation were officers as defined in that Act.

[Subsection substituted by Act 14 of 1999]

32

[Subsection substituted by Act 14 of 1999]

33 Investigation into affairs of Corporation

(1) The Minister may at any time cause an investigation to be made into the affairs of the Corporation by one or more persons authorized thereto by him in writing.

(2) Any person appointed in terms of subsection (1) shall have the same powers as are conferred upon a commissioner by the Commissions of Inquiry Act [*Chapter 10:07*], other than the power to order a person to be detained in custody, and sections 9 to 13 and 15 to 19 of that Act shall apply, *mutatis mutandis*, in relation to an investigation made in terms of subsection (1) and to any person summoned to give or giving evidence at that investigation.

34 Sums borrowed and interest thereon payable out of income and assets

All moneys borrowed by the Corporation in terms of this Act and all interest and other charges payable thereon or in connection therewith shall be charged on and, subject to this Act, be repaid or paid, as the case may be, out of the general income and assets of the Corporation.

PART V

PROVISIONS RELATING TO ADVANCES AND SECURITIES AND REMEDIES THEREFOR

35 Notes of hand

(1) An advance may be made on the security of a note of hand if the advance is for a period not in excess of five years.

(2) Where an advance on the security of a note of hand is to be secured against any land or registered real right, the Corporation shall send a notice to the Registrar of Deeds setting forth—

- (a) the amount advanced or to be advanced; and
- (b) a description of the land or right in question and the number and date of the title deed or other document evidencing title to such a right; and
- (c) the name of the owner of the land or right; together with the title deed or other document held by the person to whom the advance is or is to be made or, if it is not possible to send such title deed or other document, a certificate to that effect from the Corporation.

(3) On receipt of a notice in terms of subsection (2), the Registrar of Deeds shall make an appropriate entry in respect of the land or right in question and such entry shall—

- (a) constitute an hypothecation of the land or right, as the case may be; and
- (b) rank from the date the entry is made by the Registrar of Deeds and for the amount stated therein, together with interest at the rate fixed by the Corporation current from time to time which is payable in relation to such advance.

(4) If the whole or any part of an advance made on the security of a note of hand is repaid and the note is not cancelled, the Corporation may make further advances against that note subject to the following conditions—

- (a) the total amount of any such further advances, together with any part of such previous advance which has not been repaid, shall not exceed the amount specified in the note; and
- (b) any such further advance, together with interest thereon, shall be secured by the note as if it had formed part of the original advance.

(5) This section shall not be construed as precluding an advance being secured against any land or registered real right by means of a mortgage bond.

36 Security for advance where borrower holds land in terms of agreement with State

(1) Where an advance is made to any person who is holding land which is vested in the President in accordance with an agreement with the State or an agreement in terms of a land settlement scheme under any Act, an endorsement to such effect shall be made against the relevant agreement and, unless the Corporation agrees thereto, title to such land shall not be issued to that person until such endorsement has been cancelled with the consent of the Corporation.

(2) Where an advance is made to any person who is holding land in accordance with an agreement in terms of a land settlement scheme not referred to in subsection (1), an endorsement to such effect shall be made against the relevant agreement and, unless the Corporation agrees thereto, title to such land shall not be transferred to such person or to any other person until such endorsement has been cancelled with the consent of the Corporation.

(3) If an agreement referred to in subsection (1) or (2), is cancelled or the borrower fails to repay the debt, the Minister shall pay to the Corporation from moneys appropriated for the purpose by Parliament so much of the debt as the Corporation certifies that it has been unable to recover from the borrower and the amount so paid shall become a debt due by the borrower to the State:

Provided that, if loans by the State to the Corporation are written down by an amount equal to the amount so certified by the Corporation, the Minister shall not make such payment.

(4) If the whole or any part of an advance referred to in subsection (1) or (2), is repaid and the endorsement made in terms of that subsection is not cancelled, the Corporation may make further advances on the security of the same endorsement, subject to the following conditions—

- (a) the total amount of any such further advances, together with any part of such previous advance which has not been repaid, shall not exceed the amount specified in the endorsement; and
- (b) any such further advance, together with interest thereon, shall be secured by the endorsement as if it had formed part of the original advance.

37 Cession of securities

The Corporation may cede to any person any cause of action or security taken by the Corporation for an advance made in terms of this Act, excluding any note or designated article, but such cessionary shall not acquire any advantage which he could not have enjoyed but for the provisions of this Act.

38 Remedies of Corporation against defaulting debtor

(1) If—

- (a) at any time any sum of money, whether principal or interest, due in respect of an advance is unpaid; or
- (b) in the opinion of the Corporation an advance or any part thereof—
 - (i) has not been used within a reasonable period for the purposes for which it was made; or
 - (ii) was used for a purpose other than that for which it was made; or
 - (iii) has not been carefully and economically expended;

or

- (c) the security for an advance is declared executable by order of a competent court or is attached in pursuance of a judgment of a competent court; or
- (d) it comes to the notice of the Corporation that a movable asset secured to the Corporation under a notarial bond has been or is about to be—
 - (i) attached in pursuance of a judgment of a competent court; or
 - (ii) removed from the place where it is ordinarily kept; or
 - (iii) disposed of in any way without the consent, in writing, of the Corporation;

or

- (e) the debtor vacates, abandons, relinquishes possession of or is dispossessed of the security for the advance; or
- (f) there is a breach of any other condition of the advance;

the advance concerned or to which the security relates, together with any interest thereon, shall immediately become repayable to the Corporation and the Corporation may sue for and recover the whole or any part of the debt and, whether or not it sues for the debt, it may refuse to pay any part of the advance which has been approved but not yet paid.

(2) The Corporation may, in the case of an advance in respect of which security is given, including any security by way of a notarial bond or note of hand, stipulate that it shall be a condition of the advance that if any advance in respect of which security has been given becomes repayable in terms of subsection (1) the Corporation, in addition to the powers conferred by subsection (1), shall be entitled, subject to subsection (3), after a period of ten days have elapsed since the posting of a registered letter of demand addressed to the borrower at his last known address or at the address given by him in his application for the advance, to enter upon and take pos-

session of the whole or any part of the security concerned and to dispose of such security in accordance with the Second Schedule.

(3) The Corporation shall be entitled to exercise the powers conferred upon it in accordance with any condition referred to in subsection (2) as soon as it has posted a registered letter of demand to the borrower in terms of that subsection where any event referred to in paragraph (c), (d) or (e) of subsection (1) occurs:

Provided that the Corporation shall not dispose of any security so seized until the period of ten days has elapsed since the posting of the registered letter of demand.

(4) Where any security for an advance has been declared executable or attached as mentioned in paragraph (c) of subsection (1), any demand in terms of subsection (2) shall have the effect of suspending the execution or attachment of the property and if the Sheriff or messenger of the court is in possession of the property he shall forthwith deliver it to the Corporation:

Provided that this subsection shall not apply where the security has been so declared executable or attached at the instance of a person who held the property as pledgee or had a right of retention or other such security in respect of the property concerned.

(5) Notwithstanding this section, the Corporation shall not, in the exercise of the powers conferred by this section—

(a) enter any premises—

- (i) of the person to whom the advance and the demand in terms of subsection (2) have been made without the consent of that person, unless such entry is necessary for the purpose of protecting or seizing any security referred to in subsection (2); or
- (ii) of a person other than the person referred to in subparagraph (i), without the consent of that person;

[Paragraph amended by Act 14 of 1999]

(b) take possession of or dispose of any security referred to in subsection (2) which consists of—

- (i) immovable property over which a duly registered mortgage bond in favour of some person other than the Corporation exists, without the written consent of the holder of such bond; or
- (ii) movable property which some person other than the Corporation holds as pledgee or in respect of which he has a right of retention or other such security, without the written consent of such other person.

39 Cession of rights by co-operative agricultural company or co-operative society

(1) A co-operative agricultural company or co-operative society may, notwithstanding anything to the contrary in its memorandum, if any, and articles of association, regulations or by-laws, as security for any advance, cede to the Corporation all the company's or society's right and title to—

- (a) the amount of subscribed but unpaid capital; and
- (b) the amount of any debts owing to the company or society.

(2) A cession in terms of subsection (1) shall be in such form as the Board may determine and, in the case of a cession referred to in paragraph (a) of subsection (1), shall be accompanied by a list, certified under the hand of the chairman and secretary of the co-operative agricultural company or co-operative society or by persons purporting to act in those capacities, showing as at the date of cession—

- (a) the names and addresses of all persons holding shares in the co-operative agricultural company or co-operative society; and
- (b) the number of shares registered in the name of each such person and the amount paid up in respect thereof; and
- (c) the nominal value of such shares:

Provided that where a co-operative agricultural company or co-operative society has previously furnished the Bank or the Corporation with a list mentioned in this subsection, it shall not be necessary, at the option of the Board, on subsequent applications for advances for the company or society to furnish such list if it furnishes a list of any changes to the list previously furnished.

(3) A list furnished in terms of subsection (2) as read with any changes thereto furnished to the Bank or the Corporation, shall be *prima facie* evidence that the persons mentioned therein are liable to pay the amount stated therein.

(4) The signing of a cession in terms of subsection (1) by the chairman and secretary of the co-operative agricultural company or co-operative society or by any persons purporting to act in those capacities shall, notwithstanding anything to the contrary in any law or in the memorandum, if any, and articles of association, regulations or by-laws of the co-operative agricultural company or co-operative society, bind the company or society and, to the extent of any amount unpaid on their shares, its members also, and shall empower the Corporation—

- (a) to prohibit by written notice addressed to the secretary of the company or society at the address as recorded in the books of the Corporation the transfer of any shares on which calls are still due; and
- (b) to call up and collect unpaid capital; and

(c) to collect any amount due and owing by any person to the company or society, to give valid receipts for the payment and to institute action to enforce payment thereof.

(5) If the Corporation has, in terms of paragraph (a) of subsection (4), prohibited the transfer of shares in a co-operative agricultural company or a co-operative society, any purported transfer without the written consent of the Board of a share in that company or society while that company or society owes the Corporation any money in respect of an advance made to it shall be null and void.

40 Special remedies in respect of co-operative agricultural companies and co-operative societies

(1) If a co-operative agricultural company or co-operative society which is indebted to the Corporation—

(a) is dissolved for any reason whatsoever; or

(b) is removed from the register of companies or societies kept by the registrar of such companies or societies; or

(c) so changes its character as no longer to be a co-operative agricultural company or co-operative society; or

(d) fails to observe the terms and conditions of the advance to which the debt relates; or

(e) fails to pay any amount which becomes due and payable to the Corporation;

the advance concerned shall immediately become repayable to the Corporation and the Corporation may—

(i) sue for and recover the whole or any part of the debt;

(ii) whether or not it sues for the debt, refuse to pay any part of the advance which has been approved but not yet paid;

(iii) where a cession has been made in terms of section *thirty-nine*, after giving seven days' notice by registered letter addressed to the secretary of the company or society at the address recorded in the books of the Corporation, exercise in such order as it may determine any one or more of the powers conferred by subsection (4) of section *thirty-nine*.

(2) Subsections (2), (3) and (4) of section *thirty-eight* and the Second Schedule shall apply, *mutatis mutandis*, in relation to an advance made or to be made to a co-operative agricultural company or co-operative society.

(3) If any person whose liability to pay any subscribed but unpaid capital has accrued in terms of the memorandum, if any, and articles of association, regulations or by-laws of the co-operative agricultural company or co-operative society fails upon written demand being made by the Corporation to pay such amount within fourteen days after the date of the demand, the Corporation may apply to the court for an order for the seizure and realization of so much of the immovable and movable property of that person as may appear to be necessary to make good such amount, together with the costs incurred by such seizure and realization:

Provided that—

(i) the method of realizing the property of any person under the powers conferred by this subsection shall follow as nearly as possible the method prescribed for the realization of security in terms of section *thirty-eight* as read with the Second Schedule;

(ii) the Corporation, in having recourse to the remedies provided by this subsection, shall in every case realize all the movable property available before realizing immovable property.

(4) The persons liable to pay any subscribed but unpaid capital shall be the persons whose names appear on the list of shareholders furnished by the company or society at the time of signing the cession mentioned in subsection (3) of section *thirty-nine*, as read with any changes thereto furnished to the Bank or the Corporation, and any such person shall be liable to the extent stated in that list unless he satisfies the Board that his name should not have appeared on the list or that the amount specified on the list in relation to himself is incorrect:

Provided that if any shares have, after the signing of such cession, been transferred with the Board's written consent, then the transferee and not the person mentioned in the list shall be liable unless the transferee satisfies the Board that he should not be so liable.

(5) All amounts collected by the Corporation in terms of this section shall be employed to liquidate or reduce the debt of the co-operative agricultural company or co-operative society to the Corporation, and upon liquidation thereof the cession shall be cancelled and returned, together with any surplus moneys, to the company or society or its legal representative.

PART VI

SPECIAL PROVISIONS RELATING TO DESIGNATED LIVESTOCK AND IMPLEMENTS AS SECURITY FOR CERTAIN LOANS

41 Designated property purchased by borrower may become Corporation property

(1) Where the Corporation lends money to a borrower to assist him to purchase livestock or implements or to pay for livestock or implements already purchased by the borrower, whether such payment is made direct to the supplier or by way of reimbursement to the borrower, and the Corporation on lending the money so stipulates, such livestock or implements shall be the property of the Corporation and not of the borrower.

(2) Any livestock or implements which, in terms of subsection (1), have become the property of the Corporation shall remain the property of the Corporation until the Corporation has issued a certificate that—

- (a) the whole amount of the debt owing to the Corporation in relation to such livestock or implements has been paid; or
- (b) the Corporation has ceased to be the owner thereof for any reason.

(3) On the issue of a certificate in terms of subsection (2), all the livestock or implements and the progeny of such livestock relating to the debt referred to in the certificate shall become the property of the borrower.

(4) Any progeny of female livestock referred to in subsection (2) which is the property of the Corporation shall itself become the property of the Corporation.

42 Borrower may not dispose of designated article

(1) A borrower who is in possession of designated articles shall not, except with the written consent of the Corporation, sell, hire, pledge, exchange, lend, donate or otherwise encumber, dispose of or willingly allow out of his possession those designated articles.

(2) The Corporation may consent to the sale of a designated article and may stipulate that the whole or a part of the price to be paid for such designated article shall be paid to the Corporation in reduction of the debt relating to such designated article, and in the event of such stipulation the ownership of such designated article shall not pass to any person until the amount so stipulated has been paid to the Corporation.

(3) The Corporation may consent to the sale or exchange of designated articles subject to the condition that such articles shall be replaced by such livestock or implements as may be stipulated by the Corporation.

(4) Any livestock or implements acquired by the borrower as replacements in terms of subsection (3) or the progeny of such livestock shall become designated articles.

43 Borrower deemed to be owner of designated articles for certain purposes

(1) Where any livestock which is property such as is referred to in paragraph (a) or (b) of the definition of “designated articles” in section *two*, trespasses or causes injury or damage to any person or property, the Corporation shall not be liable therefor.

(2) In regard to—

- (a) any claim for damages or otherwise in respect of trespass, injury or damage caused by any livestock referred to in subsection (1); or
- (b) any criminal liability or obligation in terms of any law, or any liability to pay licence, levy, tax or other charges based upon ownership of a designated article;

the borrower who is in possession of the designated article and not the Corporation shall be deemed to be the owner of such designated article.

44 Loss of designated article not to affect liability of borrowers

The loss or depreciation in value of any designated article shall not in any way affect the liability of the borrower for the repayment to the Corporation of the full amount of his debt to the Corporation.

45 Marking, care and inspection of designated articles and return by borrowers

A borrower who is in possession of a designated article shall—

- (a) brand or mark the designated article in any manner which the Corporation may direct;
- (b) take proper care of the designated article and comply with any directions of the Corporation in regard to the care and treatment of the designated article;
- (c) whenever called upon to do so by the Corporation, produce for inspection by an employee of the Corporation or any person nominated by the Corporation at such time and place as directed by the Corporation any designated article;

[Paragraph amended by Act 14 of 1999]

- (d) whenever called upon to do so by the Corporation, submit to the Corporation a return showing the information required by the Corporation in relation to the designated article;
- (e) notify the Corporation immediately any designated article—
 - (i) is damaged, lost, stolen or destroyed; or
 - (ii) which consists of any livestock, is injured, dies or becomes infected with disease; or
 - (iii) is, notwithstanding section *forty-seven*, seized in execution or otherwise removed from his possession.

46

[Section repealed by Act 14 of 1999]

47 Designated articles not liable to attachment

(1) A designated article shall not be—

- (a) liable to attachment in execution of a judgment of a court of law; or
- (b) subject to the landlord’s lien or any pledge.

(2) Any purported sale of a designated article, whether by way of sale in execution or otherwise, or purported pledge thereof without the consent, in writing, of the Corporation shall be null and void.

48 Seizure and sale of designated articles

- (1) If a borrower who is in possession of a designated article—
- (a) fails to observe any condition imposed by the Corporation in terms of this Part; or
 - (b) contravenes this Part; or
 - (c) gives false information in any return required to be made in terms of this Part;

the Corporation may, after notice by registered letter addressed to the borrower at his last known address within Zimbabwe or to the address given by him in his application for the loan, enter upon the land where the designated article concerned may be and take possession of the designated article:

Provided that no premises may be entered unless such entry is necessary to protect the rights of the Corporation in the designated article.

[Proviso amended by Act 14 of 1999]

(2) The Corporation may sell by public auction or private treaty the whole or any part of a designated article it has taken possession of in terms of subsection (1).

(3) The Corporation shall apply the proceeds of a sale in terms of subsection (2), after deducting any costs incurred in the recovery and sale of the designated article concerned—

- (a) firstly in liquidating the debt relating to that designated article;
- (b) thereafter in paying the surplus, if any, to the borrower or his legal representative.

(4) If, after a sale in terms of subsection (2), the proceeds are insufficient to liquidate the debt relating to the designated article concerned, the Corporation may take such steps for the recovery of any unsatisfied balance of that debt as it may think fit.

49 Insolvency of borrower

(1) If the estate of a borrower who is in possession of a designated article is surrendered, sequestrated or assigned or if a borrower being a company is placed in liquidation, the trustee, assignee or liquidator, as the case may be, shall have no claim against the Corporation in respect of any part of the debt repaid by the borrower which relates to designated articles, nor, save as is provided by subsection (4), shall the designated article constitute assets in the borrower's estate.

(2) Except in the case where a certificate is issued by the Corporation in terms of subsection (4), the trustee, assignee or liquidator, as the case may be, of a borrower referred to in subsection (1) shall deliver to the Corporation within thirty days of the date of the surrender, sequestration, assignment or liquidation, as the case may be, all designated articles which were in the possession or under the control of the borrower and the Corporation shall, at the earliest favourable opportunity, cause such designated articles to be sold and the proceeds of the sale applied in the manner specified in subsection (3) of section *forty-eight*:

Provided that any surplus from the proceeds of the sale, after satisfaction of the debt relating to the designated article, shall be paid to the Master, trustee, assignee or liquidator, as the circumstances may require.

(3) If the proceeds of the sale of a designated article in terms of subsection (2) are insufficient to satisfy the debt relating to that designated article, the Corporation may prove a claim against the borrower in respect of the unsatisfied balance of that debt.

- (4) If—
- (a) the trustee, assignee or liquidator, as the case may be, makes an arrangement to the satisfaction of the Corporation for the payment of the balance of the debt relating to a designated article; or
 - (b) the Corporation elects not to deal with such designated article in terms of subsection (2); the Corporation shall issue a certificate to that effect, whereupon the designated article shall vest in the estate of the borrower:

Provided that such article shall be deemed to have been pledged to the Corporation as security for the due fulfilment by the borrower of his obligations under the loan in the same manner as if it had been delivered to the Corporation as a pledge.

PART VII

SCHEMES

50 Establishment of Schemes

(1) Subject to this Part, the Minister, with the approval of the Minister responsible for finance and after consultation with the Board, may, by statutory instrument, establish any scheme for the provision of assistance to persons engaged or about to engage in agriculture.

- (2) Every Scheme shall—
- (a) specify the name of the Scheme; and
 - (b) provide for—

- (i) the classes of persons who shall be eligible for assistance under the Scheme; and
- (ii) the terms and conditions subject to which assistance may be granted in terms of the Scheme.

(3) A copy of every Scheme which is published in terms of subsection (1) shall be laid before Parliament on one of the fourteen days on which Parliament sits next after such publication.

51 Amendment, suspension or revocation of Scheme

(1) The Minister, with the approval of the Minister responsible for finance and after consultation with the Board, may at any time, by statutory instrument, amend the provisions of any Scheme established in terms of section *fifty* or suspend or terminate the granting of assistance under any Scheme.

(2) Subsection (3) of section *fifty* shall apply, *mutatis mutandis*, in relation to a notice made in terms of subsection (1).

52 Moneys required for implementation of Scheme

(1) Moneys required by the Corporation for the implementation of a Scheme, including the cost of administration thereof, shall be derived from—

- (a) moneys appropriated for the purpose by Parliament; or
- (b) loans raised for the purpose directly by the Corporation.

(2) Where any Scheme is terminated, the moneys which are held by the Corporation for the purposes of that Scheme or which are subsequently repaid to the Corporation, having been loaned under that Scheme, shall remain the property of the Corporation:

Provided that where the Scheme was funded—

- (a) wholly or partly from moneys appropriated by Parliament in terms of paragraph (a) of subsection (1), and the Minister, after consultation with the Minister responsible for finance, directs the Corporation to refund all or part of such moneys to the State, the Corporation shall, subject to paragraph (c) of this proviso, comply with such direction; or
- (b) wholly or partly from moneys obtained from a loan raised by the Corporation in terms of paragraph (b) of subsection (1), and the terms of the loan agreement provide for the disposal of all or part of such moneys, the Corporation shall comply with such terms; or
- (c) partly from moneys appropriated by Parliament in terms of paragraph (a) of subsection (1) and partly from moneys obtained from a loan raised by the Corporation in terms of paragraph (b) of subsection (1), the Corporation shall not comply with any direction given in terms of paragraph (a) of this proviso until it has, in terms of paragraph (b) of this proviso, complied with any terms of the loan agreement providing for the disposal of moneys loaned.

53 Guarantees in connection with Scheme

(1) If any loss is incurred by the Corporation in the implementation or administration of a Scheme, whether in respect of advances made, assistance given or debts due to the Corporation, and including interest payable in respect thereof, the amount of such loss shall be paid by the Minister to the Corporation from moneys appropriated for the purpose by Parliament and in such event the Corporation may, subject to the approval in writing of the Minister responsible for finance, waive its rights of recovery against the borrower concerned:

Provided that, if loans by the State to the Corporation are written down by an amount equal to the amount of such loss, the Minister shall not make such payment.

(2) In calculating any loss referred to in subsection (1), interest which is payable to the Corporation and the costs of administration of the Corporation in connection with such loss shall be included.

PART VIII

GENERAL

54 Corporation to pay certain debts to State

(1)

[Subsection repealed by section 142 of Act 13 of 2002]

(2)

[Subsection repealed by section 142 of Act 13 of 2002]

(3) Where the Corporation has given notice to the Registrar of Deeds in terms of paragraph (b) of subsection (2) and a note of hand has, in terms of section *thirty-five*, been registered, the debt notified in terms of subsection (1) and any interest due thereon shall become due to the Corporation and, notwithstanding subsection (1) of section *thirty-five*, shall be redeemed in such instalments, over such period and on such terms and conditions as the Corporation shall determine.

(4) The Corporation may pay to the Minister the amount outstanding in respect of an advance made from funds administered on behalf of the State in terms of section *twenty-three* and thereafter—

- (a) such amount, together with interest thereon at the rate fixed in accordance with the terms and conditions of the advance, shall become a debt due by the borrower to the Corporation and shall be payable to and recoverable by the Corporation;
- (b) any security held by the State in respect of that advance shall be ceded to the Corporation.

55 Corporation to pay for and administer loans made by African Loan and Development Trust

Notwithstanding anything to the contrary in this Act, the Corporation shall—

- (a) pay to the African Loan and Development Trust such amount in respect of any such loan made by the African Loan and Development Trust to a farmer;
- (b) assume responsibility for and administer any such loan made to a farmer by the African Loan and Development Trust;

as the Minister may specify and thereupon such loan shall be deemed, for the purposes of this Act, to be an advance which has been made in terms of the Small Farm Credit Scheme established in terms of section *fifty*.

56 Indemnity to Corporation

(1) If—

- (a) by the operation of section *fifty-four*; or
- (b) in respect of a fund referred to in paragraph (c) of subsection (1) of section *twenty-eight*;

any loss is incurred by the Corporation, the amount of such loss shall be paid by the Minister to the Corporation from moneys appropriated for the purpose by Parliament:

Provided that, if loans by the State to the Corporation are written down by an amount equal to the amount of such loss, the Minister shall not make such payment.

(2) In calculating any loss referred to in subsection (1), interest which is payable to the Corporation and the costs of administration of the Corporation in connection with such loss shall be included.

57 Minister may guarantee repayment of advances

(1) The Minister, with the approval of the Minister responsible for finance, may guarantee the repayment of the whole or part of an advance made or to be made by the Corporation in terms of this Act, together with interest thereon, on such terms and conditions as he may determine.

(2) Any sums required for the fulfilment of a guarantee given by the Minister in terms of subsection (1) shall be paid by the Minister to the Corporation from moneys appropriated for the purpose by Parliament.

58 Officials as agents of Corporation

(1) Where the Corporation, with the approval of the appropriate Minister, requests a person employed by the State to—

- (a) report on; or
- (b) act as agent of the Corporation in;

a particular case submitted to him, that person shall comply with that request.

(2) No person referred to in subsection (1) shall be entitled to remuneration for any service rendered in terms of that subsection.

59 Valuation roll of local authority

(1) The Corporation shall have access to the valuation roll of any local authority.

(2) The officers of a local authority shall supply the Corporation, upon application, with particulars as to any valuation of rateable property in respect of which that local authority has power to levy rates.

(3) In this section—

“local authority” means—

- (a) a city or municipal council; or
- (b) a town council; or
- (c) a rural district council.

60 Accounts of co-operative agricultural companies or co-operative societies

(1) The Corporation shall at all times have full access to all accounts, documents, papers and books of any co-operative agricultural company or co-operative society to which an advance has been made.

(2) The Corporation may cause all accounts, documents, papers and books referred to in subsection (1) to be examined by an employee of the Corporation or by any other person appointed by the Corporation for the purpose.

61 Holding of land by Corporation

(1) Subject to this section, the Corporation shall not hold land other than land which—

- (a) is required for its business premises or for the accommodation of any employee of the Corporation; or
- (b) has been mortgaged to and bought in by the Corporation or has been otherwise acquired by the Corporation on account of debt; or
- (c) has been acquired by the Corporation in terms of or for the purposes of any Scheme.

(2) Land held by the Corporation which is referred to in paragraph (a) of subsection (1) and which is no longer required for the purposes specified in that paragraph shall be sold upon such terms and conditions as may be approved by the Board or otherwise disposed of by the Corporation unless the Board considers that the interests of the Corporation would be better served by leasing the land, in which case the land may be leased for such period and on such terms and conditions as may be approved by the Board.

(3) Land held by the Corporation which is referred to in paragraph (b) of subsection (1) shall be sold as soon as the Board considers the opportunity to be favourable upon such terms and conditions as may be approved by the Board, which may allow the purchase price or any part thereof to be secured by a note or a bond over the land in favour of the Corporation, and until such time as it is sold the Corporation may lease the land to any person on such terms and conditions as may be approved by the Board:

Provided that where so authorized by the Minister the Corporation may deal with any land referred to in this subsection in such manner as the Board considers desirable for the purposes of assisting any person in terms of a Scheme.

(4) Land held by the Corporation which is referred to in paragraph (c) of subsection (1) may be dealt with by the Corporation in such manner as the Board considers desirable for the purposes of implementation of the Scheme in terms of or for the purposes of which such land was acquired.

(5) A member of the Board or of any committee of the Board or employee of the Corporation shall not buy or lease, directly or indirectly, any land which is sold or leased by the Corporation in terms of subsection (3).

62 Exemption of Corporation from liability

No liability shall attach to the Corporation or to any member of the Board or any committee of the Board for any loss or damage sustained by any person as a result of the *bona fide* exercise or performance by the Corporation or the Board or a committee thereof or by any employee or agent of the Corporation of any power or duty conferred or imposed upon the Corporation or the Board by or in terms of this Act:

Provided that this section shall not be construed so as to prevent any person from recovering by action in a competent court compensation for any loss or damage sustained by him which was caused by negligence or breach of contract.

63

[Section repealed by Act 14 of 1999]

64 Regulations

The Minister may by regulation prescribe all matters which by this Act are required or are permitted to be prescribed or which, in his opinion, are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

65 Offences and penalties

(1) Any person who—

- (a) being a member of the Board or of a committee of the Board or an employee, agent or adviser of the Corporation, receives, directly or indirectly, any fee or reward, other than is authorized under this Act, from any person in respect of or in connection with an advance or assistance or an application therefor in terms of this Act; or
- (b) in respect of or in connection with any advance or assistance or an application therefor in terms of this Act, gives or offers any fee or reward to any member of the Board or of a committee of the Board or an employee, agent or adviser of the Corporation for the purpose of corruptly influencing or inducing him to act in conflict with his duty under this Act; or
- (c) acts as a valuator in connection with any land offered as security for an advance or other assistance under this Act, if such person, or to his knowledge any other person related to him in the third or a closer degree of affinity or consanguinity, has any pecuniary or other interest in such matter, whether as a partner, creditor, debtor or otherwise; or
- (d) in any application for an advance or assistance under this Act alleges any fact which is substantially incorrect knowing it to be incorrect or, with intent to defraud, fails to disclose any of his assets or liabilities;

shall be guilty of an offence and liable to a fine not exceeding level nine or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(2) Any person who—

- (a) is or has been a member of the Board or of a committee of the Board or an employee of the Corporation or who has attended any meeting of the Board or that committee and who discloses any information regarding the transactions or affairs of an applicant otherwise than in the course of his official duties or functions; or
- (b) being a member of the Board or of a committee of the Board or an employee, agent or adviser of the Corporation, is present at or takes part in any discussion of or any vote upon any matter before the Board or that committee or endeavours to influence the opinion or vote of any other such member, em-

ployee, agent or adviser in respect of such matter, if such person is aware that he has or to his knowledge any other person related to him in the third or a closer degree of affinity or consanguinity has any pecuniary or other interest in such matter, whether as a partner, creditor, debtor or otherwise, and such person does not disclose such interest at the time of the discussion or vote; or

- (c) whilst his estate is vested in the Corporation in terms of the Scheme set out in the Third Schedule, at any time, either alone or jointly with another person, obtains credit to the extent of twenty dollars or more from any person without informing that person that his estate has so vested in the Corporation; or
- (d) without the consent in writing of the Corporation, disposes of, destroys or consumes any property, the ownership of which is vested in the Corporation in terms of the Scheme set out in the Third Schedule or allows any other person to do so; or
- (e) hinders or obstructs any seizure, gathering or sale by the Corporation of any property which has vested in the Corporation in terms of the Scheme set out in the Third Schedule; or
- (f) fails or refuses to grant access to any land or building to a person authorized under section *sixty-three* or hinders or obstructs him when inspecting any thing or performing any other function; or
- (g) being a borrower, in relation to a designated article—
 - (i) contravenes any of the provisions of Part VI; or
 - (ii) gives false information in any return required to be made in terms of Part VI; or
 - (iii) without lawful excuse, fails or refuses to comply with an order given in terms of paragraph (c) of subsection (1) of section *sixty-three* by a person referred to in that subsection;

or

- (h) hinders or obstructs the seizure or sale of any designated article in terms of Part VI; or
- (i) contravenes any provision of section *fourteen*; or
- (j) contravenes any provision of this Act for which no penalty is expressly provided;

shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Section amended by section 4 of Act 22 of 2001]

FIRST SCHEDULE

[Schedule repealed by Act 14 of 1999]

SECOND SCHEDULE (Sections 23, 38 and 40)

SALE OF PROPERTY OF DEFAULTING DEBTOR

1. (1) Where any security or part thereof has been seized by the Corporation in terms of subsection (2) of section *thirty-eight* or delivered to the Corporation in terms of subsection (3) of that section and such security or part thereof is not subsequently released, the Board shall, within twelve months of such seizure, cause to be published in the *Gazette* and in a newspaper circulating in the area a notice describing the security and stating the date, hour, place and terms and conditions of the proposed sale of such security.
(2) On the date stated in the notice published in terms of subparagraph (1) the Corporation shall put up for sale the security described in that notice.
(3) A sale in terms of subparagraph (2) shall be by public auction and on the terms and conditions stated in the notice in terms of subparagraph (1):
Provided that, where the security seized is of an incorporeal or documentary nature, the sale thereof shall be in such manner as the Corporation considers just and reasonable in the circumstances.
(4) Where the Corporation sells any security referred to in subparagraph (1), it may—
 - (a) bid for and purchase the whole or any part of the security offered for sale; or
 - (b) make an advance in terms of section *twenty* on such conditions as the Board considers fit to the purchaser of such security for the purpose of defraying the whole or part of the purchase price notwithstanding that such advance may exceed any limit fixed in relation thereto in terms of subsection (1) of section *twenty-one*.
2. Where a security has been seized by the Corporation in terms of subsection (2) of section *thirty-eight*, such seizure shall, subject to the provisions of this Schedule, have the same effect as an attachment made by the Sheriff or his deputy under a writ of execution issued by the High Court.
3. (1) When a security which consists of immovable property has been sold in terms of paragraph 1, the proceeds of the sale shall be applied in the following manner—
 - (a) firstly to the holders of any mortgage bonds, notes, statutory hypothecations and charges duly registered against such property in the Deeds Registry in accordance with the preference conferred upon such holders by such registrations upon production by such holders of evidence as to the amounts owing thereunder:

Provided that no payment in terms of this subparagraph shall be made until at least seven days' notice thereof has been given to the borrower and to any other person having a *prima facie* claim to such proceeds by registered letter posted to the last known place of address of the borrower and such other persons;

- (b) if, after satisfying the claims of all persons referred to in subparagraph (a), there remains a surplus and the property so sold has prior to the sale been declared executable or attached under the process of a competent court, such surplus shall be paid to the Sheriff or messenger of the court, as the case may be, who shall distribute such surplus in accordance with the appropriate rules of court;
 - (c) if, after satisfying the claims of all persons referred to in subparagraphs (a) and (b), if any, there remains a surplus, such surplus shall be paid to the debtor or his legal representative.
- (2) If the borrower or any other person who has a claim against the borrower objects to the proposed distribution of moneys from a sale in terms of this Schedule, the Corporation shall transmit to the Master of the High Court an account showing how the Corporation intends to dispose of the proceeds and such account shall lie open for inspection by any person claiming an interest in the proceeds at the office of the Master of the High Court for a period of not less than three weeks.
- (3) The Corporation shall give due notice that an account referred to in subparagraph (2) is open for inspection by advertisement in the *Gazette* and in a newspaper circulating in the area where the borrower carries on his principal business and shall state in that notice the period during which and the place at which the account shall lie open for inspection.
- (4) Any person interested in the proceeds of a sale held in terms of this Schedule may, at any time during the period that the account relating thereto is open for inspection, lodge with the Master of the High Court two copies, in writing, of any objections to the proposed distribution giving his reasons, and the Master shall forward one of those copies to the Corporation.
- (5) After the expiration of the period during which the account has lain open for inspection—
- (a) the Master of the High Court shall consider the proposed distribution together with any objections duly lodged and any comments thereon by the Corporation and shall give such directions relating to the distribution as he considers equitable in the circumstances; and
 - (b) the Corporation shall, after the expiration of the period referred to in subparagraph (6), dispose of the moneys in accordance with such directions:
- Provided that if during that period an application to the High Court has been made in terms of subparagraph (6), the Corporation shall not dispose of the moneys until the application has been determined by the High Court or has been abandoned.
- (6) Any person who is aggrieved by a direction of the Master of the High Court may, within thirty days after the Master has given the direction and after giving notice to the Corporation and to any person affected by the direction, apply by motion to the High Court for an order to set aside the direction and the High Court may make such order as it thinks fit.
- (7) Where the Master of the High Court directs in terms of subparagraph (5) that any moneys should be distributed in a manner different from that specified in the account and the interests of a person who has not lodged an objection to the account are affected, the account as amended on the direction of the Master of the High Court shall lie open for inspection for a period of not less than three weeks and the Corporation shall give due notice thereof in accordance with the provisions of subparagraph (2) unless the person concerned consents, in writing, to the moneys being distributed without the necessity for the account lying open for inspection.
4. When a security which consists of movable property is sold in terms of paragraph 1, the proceeds of the sale shall be applied in the following manner—
- (a) firstly in satisfying the debt due to the Corporation by the borrower;
 - (b) if, after satisfying the debt due to the Corporation by the borrower, there remains a surplus and the property has been declared executable or attached under the process of a competent court, the surplus shall be paid to the Sheriff or the messenger of the court, as the case may be, who shall distribute such surplus in accordance with the appropriate rules of court;
 - (c) if, after satisfying the debt due to the Corporation by the borrower, there remains a surplus and the property has not been declared executable or attached, the surplus shall be paid to the debtor or his legal representative:

Provided that, if the property had been declared executable or attached, any costs incurred by a *bona fide* creditor in respect of the application for the execution or attachment of the property shall be paid before any moneys are appropriated towards satisfying the debt due to the Corporation by the borrower.

THIRD SCHEDULE (Sections 2 and 65)

AGRICULTURAL ASSISTANCE SCHEME

Title of Scheme

1. This scheme shall be known as the Agricultural Assistance Scheme.

Interpretation

2. In this Scheme—

“applicant” means a person who has applied to the Corporation for an advance or other assistance and is eligible in terms of paragraph 3 for assistance in terms of this Scheme;

“deed of assistance” means a deed of assistance executed in terms of paragraph 11;

“farmer” means a person who, in the opinion of the Board, normally derives his sole or principal means of livelihood or income from farming carried on by him in Zimbabwe;

“farmer’s stop-order” means a stop-order registered under the Stop-order Act or a stop-order which is a special stop-order in terms of that Act;

“Insolvency Act” means the Insolvency Act [Chapter 6:04];

“local newspaper” means a newspaper circulating in the district in which the applicant carries on his farming operations;

“notice of assistance” means a notice published in the *Gazette* in terms of paragraph 5;

“secured creditor”, in relation to an applicant, means a creditor who in respect of the debt owed to him by the applicant holds a special mortgage, pledge, right of retention or other such security, excluding a farmer’s stop order;

“Stop-order Act” means the Farmers Stop-order Act [Chapter 18:11].

PART I

PURPOSES OF SCHEME

Persons eligible for assistance

3. (1) A person shall be eligible for assistance in terms of this Scheme if he satisfies the Corporation that he is a farmer and—
 - (a) his liabilities exceed the reasonable value of his assets; or
 - (b) one or more of his creditors have taken or threatened to take action against him which, in the opinion of the Corporation, has made or will make it impracticable for him to continue farming with a reasonable prospect of success; or
 - (c) by reason of the extent or nature of his obligations or owing to lack of livestock or of the means of properly working his land he is unable to continue farming operations with a reasonable prospect of success.(2) Where, in the opinion of the Corporation—
 - (a) a particular farming enterprise is in effect being conducted by two or more persons in association; and
 - (b) assistance cannot adequately be granted under this Scheme to one of those persons unless assistance is also granted to one or more of the other persons associated with him in that enterprise;the Corporation may treat each person associated in that enterprise as being eligible for assistance in terms of this Scheme.
 - (3) A person referred to in subparagraph (1) shall not be eligible for assistance in terms of this Scheme if—
 - (a) his estate has, in terms of the Insolvency Act, been placed under provisional sequestration which has not been set aside or under final sequestration; or
 - (b) he has assigned his estate in terms of the Insolvency Act; or
 - (c) it is a company which is being wound up in terms of the Companies Act [Chapter 24:03].

Manner of assistance under Scheme

4. (1) Subject to subparagraph (3), if the Corporation is satisfied that a person who is eligible in terms of paragraph 3 for assistance in terms of this Scheme is a person who should be assisted in order to enable him to carry on farming operations and that the granting of assistance in terms of this Scheme would be likely to enable him to carry on farming operations with a reasonable prospect of success, the Corporation may render assistance to such person by any one or more of the following methods—
 - (a) by lending money to him on such terms and conditions as the Corporation thinks fit;
 - (b) in accordance with Part II of this Scheme, by effecting a compromise with his creditors;
 - (c) subject to subparagraph (2), by guaranteeing loans made to him and by providing security in respect of such loans by the deposit of securities or otherwise;
 - (d) by acquiring the whole or any part of the movable or immovable property belonging to him, subject to the rights of any secured creditor;

- (e) subject to the rights of any secured creditor, by letting or selling to him on such terms and conditions as the Corporation thinks fit any property acquired by the Corporation;
 - (f) by letting or selling to him on such terms and conditions as the Corporation thinks fit any livestock or other farming requisites or rendering financial assistance to him for the purchase of livestock or other farming requisites or for the making of improvements for farming purposes if, in the opinion of the Corporation—
 - (i) such livestock or other farming requisites or improvements are necessary to enable the person to carry on farming operations; and
 - (ii) the person will be able to carry on farming operations successfully if he is furnished with or purchases such livestock or other farming requisites or such improvements are made, as the case may be;
 - (g) by acquiring all or any of his debts or other obligations on such terms and conditions as the Corporation thinks fit.
- (2) The Corporation may only guarantee loans in terms of subparagraph (c) of subparagraph (1) with the approval of the Minister and on such terms and conditions as may be fixed either generally or specially, by the Minister responsible for finance.
- (3) The Corporation shall not render assistance to an applicant in terms of this Scheme unless it is satisfied that his need for assistance is or has been primarily caused by climatic or other natural causes, including disease or pests which were beyond his control.
- (4) For the purposes of implementing this Scheme, the Corporation may—
- (a) acquire any movable or immovable property, including livestock or other farming requisites, whether belonging to an applicant or otherwise, for the purpose of letting or selling such property to an applicant or using it for an estate which has vested in the Corporation in terms of this Scheme;
 - (b) let, sell or otherwise dispose of on such terms and conditions as may be approved by the Corporation any movable or immovable property acquired by the Corporation in terms of this Scheme.

PART II

COMPROMISE WITH CREDITORS

Publication of notice of assistance

5. If it appears to the Corporation that—
- (a) in order to enable an applicant to carry on farming with a reasonable prospect of success it is desirable that a compromise with his creditors be effected providing for one or more of the following—
 - (i) that any of his assets be disposed of in a particular manner;
 - (ii) that he be released wholly or in part from any obligations towards his creditors;
 - (iii) that he be granted an extension of time for the fulfilment of his obligations towards his creditors;
 - (iv) that his creditors cede their rights to the Corporation;
 and
 - (b) the requirements of subparagraph (3) of paragraph 4 are satisfied; and
 - (c) if the applicant is assisted in terms of this Part it is likely that he will be able to carry on farming operations with a reasonable prospect of success; and
 - (d) *prima facie* there is a reasonable prospect that the Corporation will grant assistance to the applicant in terms of this Scheme;
- the Corporation, with the consent in writing of the applicant, shall cause a notice to be published in the *Gazette* and in a local newspaper stating that the applicant has applied for assistance in terms of this Scheme.

Effect of publication of notice of assistance

6. (1) The effect of the publication of a notice of assistance shall be, from the date of such notice in the *Gazette*—
- (a) to divest the applicant of his estate and to vest that estate in the Corporation, subject to the rights of secured creditors;
 - (b) subject to subparagraph (3), to stay all legal proceedings against the applicant in respect of any debt provable in insolvency the cause of which arose before the publication of the notice of assistance, including proceedings for the sequestration of his estate or the winding up of the company, as the case may be;
 - (c) subject to subparagraph (3), to restrain the taking of any legal proceedings against the applicant or, save with the consent of the Corporation, by the applicant in respect of any debt provable in insolvency the cause of which arose before the publication of the notice of assistance, including proceedings for the sequestration of his estate or the winding up of the company, as the case may be.

- (2) Subject to this Part, after the publication of a notice of assistance anyone charged with the execution of a judgment of any court against the applicant for the payment of any debt owing by him shall pay the proceeds of any sale in the execution of such judgment which were in his possession on the date of the publication of the notice of assistance or which came into his possession at any time thereafter to the Corporation and, subject to this Part, such proceeds shall vest in the Corporation subject to the rights of those creditors who were secured creditors in respect of the property sold in the execution of such judgment.
- (3) Notwithstanding subparagraph (1), the applicant—
- (a) shall be entitled in his own name to sue for and to receive for his own benefit any damages claimable by him by reason of any delict;
 - (b) may continue in his own name and for his own benefit any action which may have been commenced by him in respect of a claim referred to in subparagraph (a) prior to the publication of the notice of assistance;
 - (c) may be sued in his own name for any delict alleged to have been committed by him whether before or after the publication of the notice of assistance:
- Provided that the applicant shall not incur any costs in relation to a matter referred to in subparagraph (a), (b) or (c) unless the Corporation has agreed thereto.
- (4) For the purposes of this paragraph—
- (a) the estate of the applicant shall comprise all that property of the applicant which—
 - (i) in the event of his insolvency, would form part of his insolvent estate under the Insolvency Act; or
 - (ii) in the case of a company, would, in the event of its winding up, form part of its estate under the Companies Act [*Chapter 24:03*];
 as if the applicant were the insolvent or company being wound up, as the case may be, and the date of the publication of the notice of assistance in the *Gazette* were the date of sequestration or winding up, as the case may be:
 - Provided that section 35 of the Insolvency Act shall not apply;
 - (b) notwithstanding subparagraph (a), the estate of the applicant shall not include any property which is—
 - (i) held by him under an agreement as defined in section 2 of the Hire-Purchase Act [*Chapter 14:11*]; or
 - (ii) purchased with moneys received by him as a result of any claim or action referred to in subparagraph (3) and retained by him with the agreement of the Corporation.
 - (5) At any time after the publication of a notice of assistance any creditor of the applicant shall be entitled to inspect, at any reasonable time, at the offices of the Corporation or such other place as the Corporation may specify, the application for assistance in terms of this Scheme.

Cancellation of notice of assistance

7. (1) If, after a notice of assistance has been published, the Corporation refuses to assist the applicant by effecting a compromise with his creditors or agrees to assist the applicant otherwise than by effecting such a compromise, the Corporation shall cause to be published in the *Gazette* and in a local newspaper a notice cancelling the notice of assistance, and with effect from the date of publication in the *Gazette* of such notice of cancellation—
- (a) the Corporation shall be divested of the estate of the applicant which shall revert in the applicant; and
 - (b) this Part, other than this paragraph, shall cease to apply in relation to the applicant and any proceedings stayed or restrained in terms of this Part may continue as though the notice of assistance had not been published; and
 - (c) any proceeds paid to the Corporation in terms of subparagraph (2) of paragraph 6 shall be repaid to the person who paid them to the Corporation; and
 - (d) the vesting of the estate in the Corporation shall be deemed not to have interrupted any period of prescription but the period during which the estate vested in the Corporation shall not be regarded as part of the period of prescription.
- (2) Where a notice of cancellation is to be published in terms of subparagraph (1), the Corporation may, before it is divested of the estate concerned, effect such security, by note of hand or otherwise, as it considers necessary for the repayment by the applicant of any moneys owing by him to the Corporation, whether in respect of loans, operational costs or otherwise, and such security shall take effect from the date that the Corporation is divested of the estate.
- (3) For the purpose of effecting any security in terms of subparagraph (2), the Corporation may—
- (a) execute in terms of the Stop-order Act any stop-order in respect of any crop growing on the property of the estate;
 - (b) if the security is a note of hand, send a notice referred to in subsection (2) of section *thirty-five* to the Registrar of Deeds, in which case subsections (3) and (4) of that section shall apply, *mutatis mutandis*;

- (c) stipulate that all or any particular livestock or implements belonging to the estate shall, notwithstanding that the Corporation is to be divested of the estate, be the property of the Corporation, in which case Part V shall apply, *mutatis mutandis*, as if such livestock or implements were designated articles as defined in section *two*.

Proposal for compromise

8. (1) Where a notice of assistance has been published, the applicant shall, within twenty-one days of such publication or such further period as the Corporation may fix, lodge with the Corporation a proposal, in writing, for a compromise, subject to such terms and conditions as may be set out therein, for one or more of the following matters—
- (a) that any assets of the applicant shall be disposed of in a particular manner;
 - (b) that the applicant shall be released wholly or in part from any obligations towards his creditors;
 - (c) that the applicant shall be granted an extension of time for the fulfilment of his obligations towards his creditors;
 - (d) that the Corporation shall take cession from his creditors of his obligations.
- (2) If an applicant fails to lodge with the Corporation a proposal in accordance with subparagraph (1), the Corporation shall cause a notice to this effect to be published in the *Gazette* and in a local newspaper and with effect from the date of such notice in the *Gazette* subparagraphs (a), (b) and (c) of subparagraph (1) and subparagraphs (2) and (3) of paragraph 7 shall apply, *mutatis mutandis*.

Convening of meeting of creditors to consider proposal

9. (1) After receiving a proposal made in terms of paragraph 8 the Corporation shall, if it considers that the proposal is one which it would be likely to agree to in terms of paragraph 11, cause to be published in the *Gazette* and in a local newspaper a notice stating—
- (a) that a proposal for a compromise has been received and the name and address of the applicant who has made it; and
 - (b) that a meeting of creditors will be held for the proof of claims and to consider the proposal; and
 - (c) the place, time and date of such meeting, which date shall not be earlier than fifteen days after the last publication of such notice; and
 - (d) that all creditors of the applicant are entitled to attend and, subject to paragraph 10, to vote at such meeting in person or by proxy.
- (2) As soon as may be after the publication of the notice in terms of subparagraph (1) the Corporation shall cause to be delivered or sent by registered post to the address in question mentioned in the application—
- (a) to the applicant; and
 - (b) to every creditor disclosed in the application;
- a copy of the said notice, together with particulars of the proposal for the compromise, but a failure so to deliver or send any such copy or particulars shall not invalidate the proceedings under this Part.

Procedure at meeting of creditors

10. (1) At a meeting of the applicant and his creditors convened under paragraph 9 a person appointed by the Board shall preside and he may from time to time adjourn such meeting.
- (2) Any creditor of the applicant may at a meeting referred to in subparagraph (1) prove his claim against the applicant in the same manner as a creditor in an insolvent estate may prove his claim against the estate under the Insolvency Act and the provisions of the Insolvency Act relating to a person who has proved or intends to prove a claim against an insolvent estate under the Insolvency Act and to matters incidental to such claim shall apply, *mutatis mutandis*, and in so far as they can be applied, to a person who has proved or who intends to prove a claim against the applicant and to matters incidental to such claim:
- Provided that, if the proposal for a compromise which is to be proposed at such meeting aims at an extension of time for the fulfilment of all the obligations of the applicant towards his creditors, the claims against the applicant as specified in his application and those subsequently known to the Corporation shall be regarded as being correct and having been so proved unless the contrary is proved at such meeting.
- (3) At a meeting referred to in subparagraph (1) a person appointed by the Board for the purpose may submit for consideration the proposal for a compromise submitted by the applicant whereunder, on such terms and conditions as may be specified therein, one or more of the following shall apply—
- (a) any asset of the applicant is to be disposed of in a specified manner;
 - (b) the applicant is to be released, wholly or in part, from any of his obligations towards his creditors;
 - (c) the applicant is to be granted an extension of time for the fulfilment of his obligations towards his creditors;
 - (d) the creditors are to cede their rights to the Corporation.
- (4) A proposal for a compromise referred to in subparagraph (3) or any variation thereof shall be regarded as having been adopted by all the creditors of the applicant and shall, subject to the provisions of this Part, be binding upon them as well as the applicant, whether or not they proved a claim against the applicant, if the proposal is accepted—

- (a) by the majority in number of the creditors whose claims have been proved and which claims in the aggregate amount in value to more than three-quarters of the aggregate of all proved claims; and
 - (b) by every secured creditor who in terms of the said proposal—
 - (i) will not be paid in respect of his secured claim in full or up to an amount equal to the amount at which he valued such security when proving his claim; or
 - (ii) has to grant an extension of time for the fulfilment of obligations in respect of his secured claim.
- (5) Every creditor shall be entitled to vote at any meeting convened under paragraph 9 as soon as his claim has been proved or is regarded as being correct in terms of the proviso to subparagraph (2):
 Provided that the vote of a creditor shall in no case be reckoned in number unless his claim is of the value of at least sixty dollars.
- (6) Sections 67, 68 and 69 of the Insolvency Act or, in the case of a company, sections 267 and 268 of the Companies Act [*Chapter 24:03*] shall apply, *mutatis mutandis*, in relation to a meeting held in terms of this paragraph.

Deed of assistance

11. (1) If any proposal for a compromise has been adopted and is binding on the creditors in terms of subparagraph (4) of paragraph 10 and the Board agrees to such proposal, the applicant shall, within such reasonable time as the Board may fix, execute a deed of assistance in which shall be embodied the terms of such proposal.
- (2) The Board shall not agree to any proposal referred to in subparagraph (1) unless it is satisfied that in all the circumstances the proposal deals equitably with all the creditors known to the Corporation.
- (3) On the execution of the deed of assistance within the time fixed by the Board, the Corporation shall as soon as may be cause notice thereof to be published in the *Gazette* and in a local newspaper.
- (4) If—
- (a) agreement is not reached on the proposal or any variation thereof at a meeting referred to in paragraph 10 and the Board considers it unlikely that agreement will be reached within a reasonable period; or
 - (b) agreement has been reached at a meeting referred to in paragraph 10 and—
 - (i) the Board does not agree to the proposal; or
 - (ii) the applicant fails to execute a deed of assistance within the time fixed by the Board in terms of subparagraph (1);
- the Corporation shall cause to be published in the *Gazette* and in a local newspaper a notice stating that the assistance to the applicant shall not be proceeded with and with effect from the date of such notice in the *Gazette* subparagraphs (a), (b) and (c) of subparagraph (1) and subparagraphs (2) and (3) of paragraph 7 shall apply, *mutatis mutandis*:
- Provided that, where agreement has been reached at a meeting referred to in paragraph 10 and the Board does not agree to the proposal, the Board may call a further meeting of creditors in order to determine whether or not agreement can be reached on a proposal to which the Board will agree.
- (5) A notice published in the *Gazette* in terms of subparagraph (3) shall—
- (a) have the effect of making the terms of the deed of assistance binding on all creditors of the applicant in respect of every debt provable in insolvency which was due or the cause of which arose before the publication of the notice of assistance;
 - (b) relieve the applicant of all liabilities disclosed in his application, except where the deed of assistance otherwise provides:
 Provided that the liability of any person who is a surety for the applicant shall not be affected by that notice;
 - (c) be conclusive evidence that this Part has been complied with.
- (6) A creditor of the applicant—
- (a) whose claim is not disclosed in the application of the applicant; and
 - (b) who was not informed of the meeting in terms of paragraph 10 in sufficient time to enable him to prove his claim at such meeting;
- shall retain his right of action in respect of such claim against the applicant but he shall not be entitled to disturb the deed of assistance.
- (7) If a creditor of the applicant—
- (a) whose claim is disclosed in the application of the applicant; or
 - (b) who was, at the meeting held in terms of paragraph 10 or at any subsequent meeting of creditors, afforded an opportunity of proving his claim;
- has failed to prove his claim, it shall lapse, except in so far as it is secured or is to be paid in terms of the deed of assistance:
- Provided that the Corporation may accept a claim which is proved after it has lapsed in terms of this subparagraph and such claim shall be revived with effect from the date it is so accepted.

Corporation to administer estate and give effect to any deed of assistance

12. (1) With effect from the publication of the notice of assistance and so long as the estate of an applicant vests in the Corporation, the Corporation shall administer the estate in accordance with sound farming practices and may levy against the estate such fee as the Board may determine towards meeting the costs of such administration.
- (2) Unless otherwise permitted by the Board, the applicant shall continue to farm the estate after it is vested in the Corporation in accordance with such directions and instructions as may be given by the Board or any person or authority appointed by the Board to supervise the farming and management of the estate.
- (3) While an estate is vested in the Corporation in terms of this Part, the Corporation—
- (a) may expend in respect of the estate such sums as, in the opinion of the Corporation, are necessary or expedient for the purposes of the administration of the estate or safeguarding or utilizing any assets of the estate, any sums so expended being treated as a loan to the applicant;
- (b) may make loans to the applicant in terms of paragraph 4 and shall lend such moneys as appear to the Corporation to be necessary for the support of the applicant, his wife and any children who are dependent on him;
- (c) may, on behalf of the applicant, pay any instalments due by him under an agreement referred to in subparagraph (i) of subparagraph (b) of subparagraph (4) of paragraph 6;
- (d) shall, as soon as a deed of assistance has been executed, under such conditions as may be specified therein, administer and, if so specified, realize all or any part of the estate and distribute the proceeds thereof in accordance with the deed of assistance.
- (4) As soon as may be after the estate has vested in the Corporation, the Corporation shall cause an inventory of the assets thereof to be made.
- (5) The Corporation shall be entitled to any moneys or other assets or property received or to be received by the applicant after his estate is vested in the Corporation in terms of this Scheme, other than any moneys received by the applicant in terms of subparagraph (3) of paragraph 6, which, in the opinion of the Corporation, are not or will not be necessary for the support of the applicant and those dependent on him.
- (6) The Corporation may, at any time before the meeting held in terms of paragraph 10, compromise or settle any claim of a creditor of the applicant which is not in excess of one hundred dollars.

Variation of deed of assistance

13. At any time while a deed of assistance is in force the Board may call a meeting of the creditors of the applicant to consider any proposal for a variation of the deed of assistance and the provisions of this Part relating to a deed of assistance or a meeting to consider such deed shall also apply to any variation of any such deed and to a meeting called to consider such variation.

Proposal for compromise not act of insolvency

14. Notwithstanding the Insolvency Act, an applicant who makes an application or proposal for or agrees to a compromise with his creditors under this Part shall not be deemed to have thereby committed an act of insolvency.

Completion of terms of deed of assistance

15. (1) When the terms of the deed of assistance have been carried out to the satisfaction of the Board, the Corporation shall cause a notice to that effect to be published in the *Gazette* and in a local newspaper.
- (2) With effect from the publication in the *Gazette* of a notice in terms of subparagraph (1), the estate shall cease to vest in the Corporation and shall revert in the applicant, subject to such security as the Corporation may require for the repayment by the applicant of any moneys owing by him to the Corporation, whether in respect of loans, operational costs or otherwise.
- (3) Subject to subparagraph (4), on the publication in the *Gazette* of a notice in terms of subparagraph (1) the applicant shall, subject to the terms of the deed of assistance, be relieved from every debt provable in insolvency which was due at, or the cause of which arose before, the date of the publication of the notice of assistance:

Provided that the liability of any person who is a surety for the applicant shall not be thereby affected.

- (4) Nothing in subparagraph (3) shall be deemed to relieve the applicant from any debt or liability—
- (a) secured by a mortgage bond, note, charge, lien or other security; or
- (b) in respect of any claim or action referred to in subparagraph (3) of paragraph 6; or
- (c) in respect of any claim referred to in subparagraph (6) of paragraph 11; or
- (d) under an agreement as defined in section 3 of the Hire-Purchase Act [*Chapter 14:11*]; or
- (e) in respect of moneys owed by the applicant to the Corporation.

Cancellation or termination of deed of assistance

16. (1) The Board may at any time cancel the deed of assistance if—
- (a) the Board is for any reason unable to give effect to the deed of assistance; or
- (b) the Board is of the opinion that the applicant has, with intent to defraud or prejudice his creditors or to prefer any creditor over any other creditor—

- (i) given false or incomplete information in his application or at any meeting or inquiry in terms of this Part; or
 - (ii) made a disposition of his property or dealt with his property in a manner referred to in section 40, 42, 43 or 44 of the Insolvency Act;
- or
- (c) the applicant has, whether before or after the execution of the deed of assistance, conducted himself in a manner, or anything has happened after the execution of the deed of assistance, which, in the opinion of the Board, makes it undesirable to give effect to the deed of assistance; or
 - (d) the applicant has failed to comply with subparagraph (2) of paragraph 12 or with any terms or conditions of the deed of assistance.
- (2) Where the Board is satisfied that owing to any cause, including—
- (a) the failure of the applicant to carry out his obligations under the deed of assistance to the satisfaction of the Board; or
 - (b) the death or incapacity of the applicant; the continued administration of the estate of the applicant which has vested in the Corporation is unlikely to benefit the creditors of the applicant or is unduly onerous to the Corporation, the Board may terminate the deed of assistance and—
 - (i) realize the whole or part of the estate; and
 - (ii) distribute the proceeds of such realization in satisfaction in whole or in part of any debts of the applicant, including his obligations to the Corporation, whether in respect of loans, operational costs or otherwise; and
 - (iii) transfer to the applicant any balance of the proceeds of such realization; and
 - (iv) re-vest in the applicant the residue, if any, of his estate.
- (3) Sections 99 to 117 of the Insolvency Act shall apply, *mutatis mutandis*, to the distribution of the proceeds of realization referred to in subparagraph (2), any reference to the date of the sequestration order being read and construed as a reference to the date of the termination of the deed of assistance:
- Provided that, notwithstanding the Insolvency Act, it shall be lawful for the Corporation to recover from such proceeds any amount owing to the Corporation by the applicant, whether in respect of a loan, operational costs or otherwise, immediately after the debts referred to in sections 99 to 107 and 110 of the Insolvency Act have been paid and the claims of all secured creditors have been met.
- (4) Notwithstanding subparagraph (1), the Corporation may, subject to such security as it may require for the payment by the applicant of any moneys owing by him to the Corporation, whether in respect of a loan, operational costs or otherwise, re-vest in the applicant all such assets of the estate as are vested in the Corporation:
- Provided that if a meeting of creditors has accepted a proposal for a deed of assistance, the Corporation shall not re-vest the assets of an estate in terms of this subparagraph unless at a meeting of the creditors of the applicant called by the Board for the purpose the proposal to do so has been agreed by the Board and by a majority in number representing not less than three-quarters in value of the creditors attending such meeting in person or by proxy.
- (5) The Board shall cause a notice of cancellation or termination of a deed of assistance under subparagraph (1) or (2) or the re-vesting of an estate in terms of subparagraph (4) to be published in the *Gazette* and in a local newspaper.
- (6) On the publication in the *Gazette* of a notice in terms of subparagraph (5) of the cancellation of a deed of assistance—
- (a) the deed of assistance shall cease to be of force and effect; and
 - (b) subparagraphs (a), (b) and (c) of subparagraph (1) and subparagraphs (2) and (3) of paragraph 7 shall apply, *mutatis mutandis*.

Hire-purchase agreements and farmers' stop-orders

17. (1) For the removal of doubt it is declared that the Hire-Purchase Act [*Chapter 14:11*] shall continue to apply in relation to any property referred to in subparagraph (i) of subparagraph (b) of subparagraph (4) of paragraph 6 which does not vest in the Corporation.
- (2) Any farmer's stop-order given by an applicant whose estate has vested in the Corporation in terms of this Part shall, notwithstanding that the estate has so vested, be of full force and effect as though the estate had not so vested.
- (3) Notwithstanding anything to the contrary in the Stop-order Act, an applicant whose estate has vested in the Corporation in terms of this Part shall not give any stop-order without the consent in writing of the Board, and the Registrar of Farmers' Stop-orders shall not register any such stop-order in terms of the Stop-order Act unless such written consent has been obtained.

PART III

GENERAL

Registration of rights

18. (1) Where, in terms of Part II of this Scheme, any land or real right in land or a right in a notarial bond—
- (a) vests in the Corporation; or
 - (b) ceases to vest in the Corporation and reverts in the applicant;
- the Corporation shall, by notice in writing, inform the Registrar of Deeds of such vesting or reversion.
- (2) A notice in terms of subparagraph (1) shall set forth—
- (a) a description of the land or right in question and the number and date of the title deed or other document evidencing title to such right; and
 - (b) the name of the owner of the land or right;
- and shall be accompanied by the title deed or other document held by the applicant or, if that is not possible, by a certificate from the Corporation stating that it is not possible to forward the title deed or other document.
- (3) On receipt of a notice in terms of subparagraph (1) the Registrar of Deeds shall, notwithstanding any other law, note such vesting or reversion on the title deed or other document evidencing the title to such right and in the appropriate register in the Deeds Registry.
- (4) Where, in terms of a condition imposed under this Scheme, immovable property is to be mortgaged in favour of the Corporation as a security or partial security for assistance rendered or any amount recoverable under this Scheme from any person, the Corporation may give notice to the Registrar of Deeds in terms of subsection (2) of section *thirty-five* and subsections (3), (4) and (5) of that section shall apply, *mutatis mutandis*.

Saving of registered real rights

19. Where, in terms of Part II of this Scheme, land vests in the Corporation, the Corporation may, with effect from the date the land so vests in the Corporation, enter or take possession of such land but such land shall remain subject to all registered real rights in favour of third parties with which it was burdened immediately prior to such vesting until such rights have been extinguished in accordance with law.

Securities not to be extinguished by merger

20. (1) Where, in terms of Part II of this Scheme, an estate has vested in the Corporation—
- (a) any real right in land forming part of that estate which was held by the Corporation immediately before the estate vested in the Corporation or which is subsequently acquired by the Corporation shall not be extinguished by merger but, unless cancelled by the Corporation, shall be suspended and shall remain provisionally registered in favour of the Corporation;
 - (b) any other right held by the Corporation in respect of property which forms part of that estate which was held by the Corporation immediately before that estate vested in the Corporation shall not be extinguished by merger but, unless cancelled by the Corporation, shall be suspended.
- (2) Where any land or other property referred to in subparagraph (1) ceases to vest in the Corporation and reverts in the applicant or is disposed of by the Corporation, any suspended right referred to in subparagraph (1) shall, unless previously cancelled by the Corporation, be revived and become of full force and effect as though the estate had never vested in the Corporation.
- (3) Notwithstanding anything to the contrary in this paragraph, subparagraph (2) shall not have the effect of conferring on any suspended right referred to in subparagraph (1) which is revived any priority over any rights of a secured creditor which that suspended right did not possess at the time the estate vested in the Corporation or the right was acquired by the Corporation, whichever is the later.

Waiver of rights

21. Where any assistance has been granted to any person under this Scheme whereby the Corporation has acquired any debts or other obligations of that person, the Board may at any time, if it thinks fit, waive the right of the Corporation to recover from that person the difference between the face value of the debts or other obligations so acquired and the consideration paid in connection with the acquisition of those debts or other obligations.

Assistance granted to persons holding land in terms of agreement with State

22. Where assistance is granted in terms of this Scheme to a person who is holding land in accordance with an agreement with the State or any statutory body or of an agreement in terms of a land settlement scheme under any Act, section *thirty-eight* shall apply, *mutatis mutandis*.