

NATIONAL ASSEMBLY
QUESTION FOR WRITTEN REPLY
QUESTION NUMBER: 45 [NW49E]
DATE OF PUBLICATION: 12 FEBRUARY 2020

45. Mr N P Masipa to ask the Minister of Finance:

(a) Whether the Land Bank has any policies and plans in place that mitigate against the risk of land indebted to the Land Bank that becomes subject to expropriation without compensation in accordance with section 25(1) of the Constitution of the Republic of South Africa, 1996, and (b) what processes does the Land Bank have in place to recoup the outstanding debt on such land or will the Land Bank need a bail-out under these circumstances?

NW49E

REPLY:

(a)(i) – Currently, Land Bank does not have any policies in place that would mitigate the risk of expropriation, without compensation, of land over which Land Bank holds mortgage bonds as security. This is so because the Draft Expropriation Bill, 2019 (“**Expropriation Bill**”) is yet to become law and some, if not most, of its provisions may (subject to the public comments received and incorporated therein) still be modified prior to it being signed into law by the President.

Even though the submission for public comments has now closed, the Legislature will still embark on a process of deliberating on the Expropriation Bill. Accordingly, it would be premature for Land Bank to put in place any measures for mitigating the land expropriation risk while the Expropriation Bill remains in draft form. However, Land Bank is mindful of the provisions of the Expropriation Bill that may impact on its rights and other lenders in the agricultural sector in general.

In this regard, the Honourable Member’s attention is drawn to the provisions of section 18(1) of the Expropriation Bill provides that *“If property expropriated in terms of this Act was, immediately prior to the date of expropriation, encumbered by a registered mortgage or subject to a deed of sale, the expropriating authority may not pay out any portion of the compensation money except to such person and on such terms as may have been agreed upon between the expropriated owner or expropriated holder and the mortgagee or buyer concerned, as the case may be, after the claimant has notified the expropriating authority of the agreement.”* (Our emphasis).

The phrase “*expropriated holder*” means the holder of a mortgage bond over the land that is being or has been appropriated (i.e., also known as the mortgagee). In light of the provisions of section 18(1) referred to above, it is clear that the Legislature intended to protect the interests of lenders whose loan facilities are secured by mortgage bonds over the property which is the subject of expropriation. Accordingly, Land Bank’s rights under

the mortgages registered over such land would remain intact despite the expropriation and Land Bank would be entitled to receive the compensation payable for the expropriation of the land over which Land Bank holds mortgage bonds.

(b) What processes does the Land Bank have in place to recoup the outstanding debt on such land or will the Land Bank need a bail-out under these circumstances?

REPLY: (b)(i) – As Chairperson of the Land Bank indicated in the 2018 Integrated Report, “If expropriation without Compensation were therefore to materialise without protection of the Bank’s rights as a creditor, we would be required to repay R9 billion immediately. A Cross Default clause would be triggered should we fail to pay when these debts fall due because of inadequate liquidity or lack of alternative sources of funding. This would make our entire R41 billion funding portfolio due and payable immediately, which we would not be able to settle. Consequently, government intervention would be required to settle our lenders.”

However, in light of the provisions of section 18(1) of the Expropriation Bill, Land Bank’s normal recovery processes seem to suffice unless the provisions of section 18(1) of the Expropriation Bill are drastically altered to disentitle expropriated holders to the compensation payable by the expropriating authority. Consequently, Land Bank has not updated any of its current recovery processes to cater for the expropriation of land over which Land Bank holds mortgage bonds.

(b)(ii) – As part of risk mitigation of facility exposures, Land Bank generally does not restrict itself to only the mortgage bonds for security. Land Bank would ordinarily also require its clients to provide other forms of security such as general notarial bonds, special notarial bond, cessions (shares, receivables, bank accounts and insurance policies) together with suretyships and guarantees. Even in circumstances where Land Bank had only financed the acquisition of the land, nothing in law prevents Land Bank from taking the aforesaid security.

(b)(iii) – Again, with reference to section 18(1) of the Expropriation Bill, it appears that the expropriation of land would not on its own render Land Bank to be in a worse-off position than it would have been had the land over which it holds mortgages not been expropriated. It is, therefore, unlikely that Land Bank would be asking for Government bail-outs merely because of the expropriation of the land over which Land Bank holds a mortgage as security for the loans it advances in the ordinary course of its business.