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Land Bank update: Rolling into another fiscal year
Author: Olga Constantatos, Head of Credit @ Futuregrowth
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This note provides an update on previous matters and recent developments in the Land Bank default.

1. EQUITY APPROPRIATION OF R5 BILLION ROLLED INTO THE NEXT FISCAL YEAR

The resolution of Land Bank's event of default has been under way for almost two years now. Much of 2021 was occupied with what became known as "version 3" of the liability solution, which envisaged splitting Land Bank's assets. We previously expressed meaningful concerns about this proposal, as it materially degrades creditors' rights.

In September 2021 Land Bank agreed to appoint a third party to conduct an independent review[1] of version 3, including an assessment of Land Bank's lending book and the cashflow assumptions underpinning the solution.

Following the release of the independent review report in November 2021, Futuregrowth, together with a group of funders, engaged with Land Bank and its advisors with a view to crafting a better and fairer solution. We are still engaged in this process.

As part of these ongoing discussions, a need was expressed for the R5 billion equity injection for Land Bank, which was appropriated in last year's Budget and was due to be spent in the FY21/22 financial year (which ends on 31 March 2022), to be extended to the next fiscal year (which will end on 31 March 2023). This is to accommodate the current unresolved status of the proposed new solution, and which remains under discussion.

We are grateful to the Minister of Finance and his National Treasury colleagues for their flexibility in extending this date and also to the new Land Bank Board for their engagement and willingness to consider alternative solutions.

We continue to work on a suitable, and timely, resolution of this matter.

2. THE AUDITED ANNUAL FINANCIAL STATEMENTS (AFS) RELEASED ON 3 JANUARY 2022

After a long wait, Land Bank's audited financial statements for the year ended 31 March 2021 were finally released on 3 January 2022.

Income Statement: Land Bank's loss for the year reduced to R747 million from a loss of R905 million in the prior year. This minor improvement was largely because of accounting fair value gains on investment income, which saw a gain of R207 million in the current year compared to a loss of R142 million in the prior year. This gain was attributable to an improved financial market performance as at 31 March 2021, compared to the COVID stress situation in the markets at 31 March 2020. Net credit impairments increased to R324 million from R67 million in the prior year due to increased provisioning, as gross non-performing loans (NPL) increased to R12 billion from R10.9 billion, with the NPL ratio increasing to 32.5% from 23%. Net interest income declined to R167 million from R387 million in the prior year, given the lack of disbursements and strain on interest expense due to the default situation.

[1] https://pmg.org.za/committee-meeting/33422/

Balance Sheet: Net loans and advances declined to R31 billion from R39.47 billion due to reduced disbursement brought on by Land Bank's current liquidity constraints. Funding liabilities declined to R36 billion from R41 billion, whilst equity increased to R2.58 billion from R297 million due to the R3 billion capital injection received from government during FY2021. Due to the equity injection, the Bank's capital adequacy increased to 30.1% from 5.9%.

Land Bank remains a solvent entity but is still under financial stain. In order to return to profitability and financial sustainability, an improvement to net interest income and impairments, and a reduction of operating expenses are required.

Notably, the audit report issued by the Auditor-General (AG) for FYE March 2021, is qualified and also identifies a number of "key audit matters". The qualification relates to an inability of the AG to "obtain appropriate audit evidence that management had properly accounted for disbursements and repayments for loans and advances that are managed by a Service Level Partner (SLA)…." The AG report further states that the AG was unable to confirm these transactions by alternative means and "consequently, the AG was unable to determine whether any adjustments were necessary to loans and advances stated at R31 billion in note 11 to the consolidated and separate financial statements.[2]"

3. CAPITAL REPAYMENTS

Since the event of default in April 2020, Land Bank has made three capital repayments to lenders. The most recent payment was made in October 2021 and means that about 27% of capital outstanding at the date of default has been repaid. While this seems comforting, we need to recognise that such capital repayments represent a shrinking of the loan book and its continued degradation (i.e., the easy, high-quality loans are being collected, leaving the lesser quality loans).

Land Bank also continues to service interest (albeit at the pre-default interest rates) to all funders.

4. BONDS HAVE BEEN DELISTED FROM THE JSE

Land Bank's JSE-listed notes (suspended in the weeks following the event of default) were delisted in 2021 following the appropriate notice, voting and approval processes. There are no longer any instruments issued by Land Bank listed on the JSE.

5. LAND BANK'S BOARD CHANGES

The terms of the six non-executive directors of Land Bank expired on 30 November 2021, and replacement appointments were announced on 10 December 2021. The new Board has its work cut out, starting as they are in the middle of a complex and drawn out debt restructure.

6. PROPOSAL TO AMEND THE LAND AND AGRICULTURAL DEVELOPMENT BANK ACT (THE LAND BANK ACT)

There is a process under way to amend the Land Bank Act, so as to replace the current provision for judicial management with business rescue in terms of the Companies Act, 2008. (Judicial management is a feature of our old Companies Act and is no longer applicable.)

[2] Report of the Auditor-General to Parliament on the Land and Agricultural Development Bank of South Africa, 22 December 2021, p1

While we are supportive of the principle to update the Land Bank Act - and recognise that one of the current shortcomings of the Act is the absence of a suitable regime to resolve a distress situation - we have a concern with the amendment as proposed.

The Companies Act sets forth a carefully crafted legislative regime to deal with distressed companies. In this regard, it recognises that a multitude of parties have substantial interests in the business and economic health of any corporate entity. Consistent with this, it empowers all interested and affected persons to apply to court to place a company in business rescue. "Affected persons" include any shareholder or creditor of the company, or any registered trade union or ununionised employee (section 128(1)(a)). This is necessarily broad so as to ensure that every interested party has a reasonable opportunity to state its case to court to deal with the company's distress.

The proposed amendment to the Land Bank Act seeks to limit the ability to apply to the court for business rescue to only Land Bank and the Minister of Finance (as opposed to allowing for "all interested and affected parties" to apply, in line with the Companies Act). We believe that this serves to restrict creditors' legitimate interests and places Land Bank and the Minister in a better bargaining position vis-à-vis the creditors and that there is no justification for this limitation on affected parties' interests (which includes creditors).

The public comment for this proposed amendment ends on 15 March 2022. While we have already communicated our view to Land Bank and its advisors, we will also be participating in the public comment process. **Our request is that the proposed change to the Land Bank Act is done in line with the current provisions of the Companies Act that allows "all interested and affected parties" the right to apply to court to place a company in business rescue.**

7. CONCLUSION AND WAY FORWARD

We remain deeply engaged in the process to reach a solution that – we hope - will deliver a fairer outcome for the South African institutions and banks that have been significant funders to Land Bank, while also resulting in a more sustainable Land Bank that will be able to deliver on its mandate in the agricultural sector.

We will continue to keep you updated as and when the situation evolves.

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