

CHAPTER 224

THE AGRICULTURAL CREDITS ACT

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title
2. Interpretation

PART II

AGRICULTURAL CHARGES

3. Agricultural charges on farming stock and assets
4. Effect of fixed charge
5. Effect of floating charge
6. Notice of agricultural charge
7. Supplemental provisions as to agricultural charges
8. Registration of agricultural charges
9. Restriction on publication of agricultural charges
10. Frauds

PART III

VALIDITY OF CONTRACTS FOR ADVANCES ON INPUTS AND OTHER ITEMS

11. Validity of contracts
12. Failing to make full disclosure of cost of inputs or other items and interest, etc.

PART IV

GENERAL

13. Arbitration
14. Regulations
15. Repeal of Cap. 349 of the 1971 edition

CHAPTER 224

AGRICULTURAL CREDITS

Act No.
23 of 1995

An act to facilitate the borrowing of money on the security of charges created upon farming stock, additional assets or other agricultural assets; to provide for the registration of such charges; and to provide for matters incidental to or connected with the foregoing.

[13th September, 1995]

PART I

PRELIMINARY

1. This Act may be cited as the Agricultural Credits Act.

Short title

2. In this Act, unless the context otherwise requires-

Interpretation

"additional assets" means any tangible assets, excluding land, that belong to a farmer, trader or related business, pertaining directly or indirectly to agricultural production, processing or trade, all accounts receivable, chattel paper, warehouse receipts, both negotiable and non-negotiable, promissory notes and includes savings accounts on deposit with any bank, credit union, savings institution or other similar organisation;

"agricultural charge" means a charge, lien or assignment created under section *three*;

"agricultural commodity" means anything derived directly or indirectly from cultivation;

"cultivation" means crop production, animal husbandry, game ranching, aquaculture, horticulture or forestry;

"farmer" means any person who, as owner or tenant of land uses such land for cultivation, whether for profit or subsistence;

"farming stock" means all agricultural commodities, whether future growing or severed from the land, and after severance whether subjected to any treatment or manufacture and includes-

- (a) livestock, poultry and bees, and the produce and progeny thereof;
- (b) wild animals in captivity;
- (c) fish stocks;
- (d) timber both standing or cut;
- (e) seeds and manures;
- (f) fertilisers, insecticides, oils, and fuels;
- (g) agricultural vehicles, trucks and truck spares, machinery, and other plant; or
- (h) any agricultural fixture that a tenant, or any person legally occupying land, may by law be authorised to remove;

"holder" means a person in whose favour an agricultural charge is created, and includes the executors, administrators and assignees of that person;

"other agricultural assets" means any right of a tenant, including any right to compensation for improvements;

"Registrar" means the Registrar of Agricultural Charges or any person appointed to perform the functions of Registrar;

"related business" means an individual, a company, a cooperative, a partnership, an association and any group of persons acting in concert, whether or not incorporated, who or which, as the case may be, gives

loans to farmers for the purchase of inputs or other items required for cultivation;

"trader" means any person who, as a broker, dealer, or otherwise, acquires from a farmer or any other person, through purchase or otherwise, for the purpose of resale, or processing, any agricultural commodity.

PART II

AGRICULTURAL CHARGES

3. (1) An agricultural charge may be fixed or floating, or both.

Agricultural
charges on farming
stock and assets

(2) An agricultural charge may be in form and made upon such conditions as the parties to the charge may agree; and any surety may be made a party to the charge.

(3) A farmer, may, individually or in association, create in favour of any person a charge on any farming stock, additional asset or other agricultural asset security for-

(a) inputs or other items required for cultivation;

(b) sums advanced or to be advanced to the farmer; or

(c) sums paid or to be paid on the farmer's behalf under any guarantee;

and such security may also cover interest, commission and charges thereon.

(4) Notwithstanding any other provision of this Act, a related business or a trader may create in favour of any person an agricultural charge on all or any portion of the agricultural commodities the related business or trader purchases or intends to purchase from a farmer; and such security may also charge interest, commission and charges thereon.

(5) The property affected by a fixed charge shall be such property forming part of the farming stock, additional assets, or other agricultural assets, and belonging to the farmer, trader or related business at the date of the charge and as may be specified in the charge.

(6) The principal sum secured by an agricultural charge may be-

(a) a specific amount advanced in one sum or in instalments; or

(b) a fluctuating amount advanced on a current account not exceeding at any one time such amount, if any, as may be specified in the charge:

Provided that any charge for securing a current account or any further advances shall continue to be effective against the farmer, trader or related business and against the holder of any subsequent interest in the agricultural commodities charged, notwithstanding the fluctuation or temporary extinction of the indebtedness and notwithstanding that the lender may have had notice of the subsequent interest.

4. (1) A fixed charge shall confer on the holder the following rights: Effect of fixed charge

(a) a right, upon the happening of any event specified in the charge as being an event authorising the seizure of property subject to the charge to take possession of any property so subject; and

(b) where possession of any property has been taken, a right, after an interval of fourteen days or such shorter period as may be specified by the charge, to sell the property.

(2) Where a holder exercises the power of sale under paragraph (b) of subsection (1), the holder shall apply the proceeds of sale in or towards the discharge of the moneys and liabilities secured by the fixed charge, and the costs of seizure and sale, and to pay the surplus, if any, of the proceeds to the farmer.

(3) A fixed charge shall impose on the farmer, trader or related business, the following obligations:

(a) an obligation whenever the farmer, trader or related business sells any of the property, or receives any money in respect of any asset, comprised in the charge, forthwith to pay to the holder the amount of the proceeds of the sale or the money so received, except to such extent as the charge otherwise provides or the holder otherwise allows, and any sum so paid shall be applied, except so far as otherwise agreed by the holder, in or towards the discharge of moneys and liabilities secured by the charge:

Provided that if the holder is a related business, the farmer or trader shall not sell, except as provided under this section, the commodity for which he received loans or advances of inputs or other items required for cultivation but shall deliver to the holder the agricultural commodity in the amount agreed in the charge;

(b) an obligation, in the event of the farmer, trader or related business receiving any money under any policy of insurance on any of the property comprised in the charge, forthwith to pay the amount of the sum so received to the holder, except to such extent as the charge otherwise provides or the holder otherwise allows, and any sum so paid shall be applied, except so far as is otherwise agreed by the holder, in or towards the discharge of moneys and liabilities secured by the charge.

(4) Where any money is due to a farmer, trader or related business, as the case may be, under any policy of insurance on any of the property comprised in a fixed charge, the insurer may, notwithstanding anything contained in the insurance policy, pay such money to the holder of the charge to the extent of the said charge, and any such payment shall be a valid discharge of the liability of the insurer to the farmer, trader or related business, as the case may be, to the extent of the amount so paid, and the provisions of paragraph (b) of subsection (2) shall apply to the amount so paid as if it had been paid to the holder by the farmer, trader or related business, as the case may be.

(5) Subject to compliance with the obligations imposed by subsection (3) a fixed charge shall not prevent the farmer, related business or trader selling any of the property subject to the charge.

(6) Where the proceeds of a sale made under subsection (2), are paid to any person other than a person contemplated by or under that subsection, the holder shall have a right to recover the proceeds from

such person if the holder proves that such person knew that the proceeds were paid to him in breach of the farmer's, related business's or trader's obligations.

5. An agricultural charge creating a floating charge shall have the like effect as if the charge had been created by a registered debenture issued by a company:

Effect of floating charge

Provided that-

(a) the charge shall become a fixed charge on the property upon-

(i) a receiving order in bankruptcy being made against the farmer, trader or related business;

(ii) the death of the farmer or trader;

(iii) the dissolution of partnership in the case where the property charged is partnership property; or

(iv) notice in writing to that effect being given by the holder on the happening of any event which, by virtue of the charge, confers upon the holder the right to give such notice; and

(b) the farmer, trader or related business, while the agricultural charge remains a floating charge, shall be subject to the like obligation as in the case of a fixed charge to pay over to the holder the amount received by him by way of proceeds of sale, in respect of other agricultural assets or additional assets under policies of insurance, or by way of compensation:

Provided that it shall not be necessary for farmer, trader or related business to comply with such obligations if and so far as the amount so received is expended in the purchase of farming stock which, on purchase, becomes subject to the charge.

6. (1) Notwithstanding sections *three, four* and *five*, any farmer, trader or related business shall, when selling or causing to be sold, any farming stock or additional asset which is subject to an agricultural charge, give to the person buying, or the person effecting the sale of, the farming stock or additional asset, before payment of the purchase price, a written notice which shall be acknowledged by the purchasers or the person effecting the sale signing the original and a copy of the notice,

Notice of agricultural charge

containing the following information:

- (a) the name and address of all persons holding an agricultural charge over the farming stock or additional assets to be sold;
- (b) the priority of the agricultural charges; and
- (c) the amount secured by each agricultural charge.

(2) When a farmer, trader or related business gives written notice to any person under subsection (1), the written notice shall constitute written notice, in respect of any subsequent sale of any agricultural commodity which is the subject of the charge, given to that person within a period of twelve months from the date of the written notice:

Provided that the farmer, trader or related business, before making, or causing to be made, any subsequent sale, shall notify that person of any agricultural charge, which affects the agricultural commodity, created by the farmer, trader or related business after the date of the written notice; and such notice shall state the name and address of the holder of the charge, the priority of the charge and the amount secured by the charge.

(3) A notice given under the proviso to subsection (2) shall, for the purposes of this section, be treated as forming part of the written notice given under subsection (1) by the farmer, trader or related business to the buyer or person effecting a sale on behalf of the farmer, trader or related business, as the case may be.

(4) Any person who receives a written notice under subsection (1) shall pay the proceeds of the sale to the holders of the agricultural charges in accordance with the written notice and having regard to the priority and amounts stated in the written notice and shall pay the surplus, if any, remaining after making the payments, to the farmer, trader or related business.

(5) Any person who contravenes subsection (4) shall be guilty of an offence and shall be liable, on conviction, to the full value of the agricultural charge as specified in the notice.

(6) Any moneys paid out in accordance with subsection (4) shall reduce the liability of the farmer, trader or related business under the agricultural charges created by the farmer, trader or related business, in order of their priority, and the amount of each agricultural charge shall be reduced by the amount so paid.

(7) Any payment made in accordance with subsection (4) shall discharge the buyer or person effecting the sale on behalf of the farmer, trader, or related business, as the case may be, from any claim, howsoever arising, in respect of the proceeds of the sale.

(8) Any farmer, trader or related business who fails to give written notice in accordance with this section shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding ten per cent of the outstanding loan.

7. (1) An agricultural charge shall have effect notwithstanding anything contained in the Bills of Sale Acts, 1878 and 1882, of the United Kingdom; and an agricultural charge shall not be deemed to be a bill of sale within the meaning of those Acts.

Supplementary provisions as to agricultural charges

(2) Agricultural charges shall, in relation to one another, have priority in accordance with the times at which they are respectively registered under this Act:

Provided that any agricultural charge created solely to secure the payment of insurance premiums upon farming stock shall have priority over any other agricultural charge not created for such purpose.

(3) When an agricultural charge creating a floating charge has been created, an agricultural charge purporting to create a fixed charge on any of the property comprised in the floating charge shall, as respects the property subject to such floating charge, be of no effect so long as the floating charge remains in force.

(4) After the commencement of this Act, where a farmer, trader or related business mortgages interest in land, and such farmer, trader or related business creates an agricultural charge which includes growing crops, the rights of the holder under such charge shall have priority over

those of the mortgagee, whether in possession or not, and irrespective of the dates of the mortgage and the charge.

(5) Farming stock which is subject to an agricultural charge shall not, for the purpose of the Bankruptcy Act, be considered as deemed to be goods in the possession, order or disposition of the farmer, trader or related business in his trade or business, by the consent and permission of the true owner thereof, under such circumstances that he is the reputed owner thereof.

Cap. 82

(6) An agricultural charge shall not protect property which, but for such charge, would have been liable to distress for rent or rates.

8. (1) Every agricultural charge shall be registered within thirty days after its execution and if not so registered, shall be void as against any person other than the farmer:

Registration of
agricultural
charges

Provided that the Registrar may, in proof that omission to register within such time as aforesaid was accidental or due to inadvertence, extend the time for registration on such terms as he thinks fit.

(2) An agricultural charge shall be effected by sending by post or delivering to the Registrar's office located in the district, or, where no such office exists, to such other office as the Minister shall, by statutory notice, specify, a memorandum of the instrument creating the charge and such particulars of the charge as may be prescribed, together with the prescribed fee; and upon receipt thereof the Registrar shall enter the particulars in the register and file the memorandum.

(3) The register kept and the memoranda filed under this section shall, at all reasonable times, be open to inspection by any person on payment of the prescribed fee, and any person inspecting the register or any memorandum may, on payment of the prescribed fee, make copies or extracts therefrom.

(4) Any person may, on payment of the prescribed fee, require to be furnished with a copy of any entry in the register or memorandum certified to be a true copy by the Registrar.

(5) Registration of an agricultural charge may be proved by the production of a certified copy of the entry in the register relating to the charge, and a copy of any such entry purporting to be certified as a true copy by the Registrar shall, in all legal proceedings, be evidence of the matters stated therein without proof of the signature or authority of the person signing it unless the contrary is proved.

(6) The Registrar shall not be liable to any action or proceeding for or in respect of any act or matter done or omitted to be done, in good faith, in the exercise or purported exercise of the powers conferred on the Registrar under this Act.

(7) Any person aggrieved by any decision of the Registrar may appeal to the High Court within thirty days of such decision.

(8) Registration of an agricultural charge under this section shall, from the date of registration, be deemed to constitute actual notice of the charge and of the fact of such registration to all persons and for all purposes connected with the property comprised in the charge:

Provided that-

(a) where an agricultural charge is expressly made for securing a current account or further advances, the holder, in relation to making further advances under the charge, shall not be deemed to have notice of another agricultural charge by reason only that it is so registered if it was not so registered at the time when the first-mentioned charge was created or when the last search, if any, by or on behalf of the holder was made, whichever was the later;

(b) registration shall not be deemed to constitute actual notice to a purchaser for the purposes of section *six*.

(9) The Minister may, by statutory notice, exempt any person from the payment of any fee required under this section.

9. (1) Except as otherwise provided under this Act, a person shall not print for publication or publish any list of agricultural charges or of the name of any farmer, trader or related business who have created

Restriction on
publication of
agricultural

agricultural charges.

charges

(2) A person who contravenes the provisions of sub-section (1), shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding one thousand penalty units.

(3) A prosecution for an offence under this section shall not be commenced without the consent of the Director of Public Prosecutions.

10. (1) Any farmer, trader or related business who has created an agricultural charge and who, with intent to defraud-

Frauds

(a) fails to comply with the obligations imposed by this Act as to the payment to the holder of any sums received by the farmer, trader or related business by way of proceeds of sale, or in respect of other agricultural assets, or under a policy of insurance or by way of compensation; or

(b) removes or suffers to be removed any property subject to the charge;

shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding one thousand penalty units or to imprisonment for a period not exceeding three years, or to both.

(2) Where any related business, with intent to defraud, misrepresents its rights and obligations under this Act or in any way deprives a farmer of his rights under this Act, the directors and managers of the business committing such violation shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding one thousand penalty units or to imprisonment for a period not exceeding three years, or to both, unless they show that the offence was committed without their knowledge or consent.

PART III

VALIDITY OF CONTRACTS FOR ADVANCES ON INPUTS AND OTHER ITEMS

11. (1) A contract for the advancement to a farmer of inputs or other items required for cultivation shall state-

Validity of contracts

(a) the value of the inputs or other items at the time the inputs or items are advanced to the farmer;

(b) the interest rate to be charged, expressed at an annual percentage rate; and

(c) any charges, fees or penalties the farmer will be required to pay if the farmer does not pay or deliver the produce at the price agreed on, as stipulated in the contract, unless subsection (1) of section *six* applies.

(2) Any trader or related business advancing any inputs or other items required for cultivation shall furnish the farmer, at the time each input or item is advanced, a written statement showing the value and cost to the farmer of the input or item, the interest rate, and any charges, fees or penalties, as provided under this section.

(3) Direct or indirect compounding of interest shall not be allowed as part of the contract specified under subsection (1).

(4) Notwithstanding any other law, any person who advances inputs or other items required for cultivation to a farmer and fails to fully disclose to the farmer the cost of the input or item, the interest to be paid by the farmer, and any charges, fees or penalties, as required under this section shall be ineligible to register, under this Act, a charge created by the farmer on the basis of an agreement or contract, and such charge shall be void.

12. Any person who advances inputs or other items required for cultivation to a farmer and fails to fully disclose to the farmer the cost of any input or item, the interest to be paid by the farmer, and any charges, fees or penalties, as required under section *eleven*, shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding one thousand penalty units.

Failing to make full disclosure of cost of inputs or other items and interest; etc.

PART IV

GENERAL

13. The Arbitration Act shall apply to the settlement of any dispute arising as a result of the interpretation or application of the provisions of this Act.

Arbitration
Cap. 41

Arbitration

14. The Minister may, by statutory instrument, make regulations prescribing anything which under this Act is required or permitted to be prescribed, and, without prejudice to the generality of the foregoing may make regulations prescribing-

Regulations

- (a) the manner in which a register is to be kept;
- (b) for the filling of memoranda and agricultural charges;
- (c) for the removal of entries from the register on proof of discharge;
- (d) the rectification of the register; and
- (e) for the form of a written notice or agricultural charge to be issued under this Act.

15. (1) Subject to subsection (2), the Agriculture Credits Act, 1962, is hereby repealed.

Repeal of Cap. 349
of the 1971 edition

(2) Notwithstanding the repeal of the Agriculture Credits Act-

- (a) any agreement executed under that Act shall continue in force as if made under this Act;
- (b) any registration done, any other right or benefit accruing or any liabilities suffered under that Act shall, unless contrary to this Act, continue in accordance with this Act;
- (c) any regulations made or directions given under that Act shall, unless contrary to this Act, continue in force until revoked, as if made or given under this Act.