

THE AGRICULTURAL CHARGES ACT, 1967

No. 2



of 1967

AN ACT FOR PROVIDING ADDITIONAL SECURITY FOR MONEYS OWING BY FARMERS TO THE NATIONAL DEVELOPMENT BANK

Date of Assent: 21.4.67.

Date of Commencement: 21.4.67.

ENACTED by the Parliament of Botswana.

PART I

PRELIMINARY

Short Title.

1. This Act may be cited as the Agricultural Charges Act, 1967.

Interpretation.

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

“agreement”, except in section 3, means an agreement to which this Act applies in accordance with the provisions of that section;

“agricultural produce” means crops or horticultural produce whether future, growing, or severed from the land, and after severance whether subjected to any treatment or manufacture or not; livestock and the produce and progeny thereof; and other agricultural or horticultural produce whether subjected to any treatment or process of manufacture or not;

“agriculture” shall have the meaning assigned to it in section 2 (1) of the National Development Bank Law, 1963;

“bank” means the National Development Bank as established by the National Development Bank Law, 1963.

“buyer” means a person to whom or through whom agricultural produce is required to be sold in accordance with the provisions of section 7;

“certificate of indebtedness” means the certificate referred to in section 4;

“farmer” means a person who is engaged in agriculture;

“livestock” shall include —

(a) any bovine animal, horse, sheep, goat, or pig;

(b) any fowl, goose, duck, or turkey kept for commercial purposes;

“loan” shall include the contract known in Tswana as “*go fisa*”, and any similar contract;

“moveable assets” shall —

(a) include all agricultural produce;

(b) exclude property not liable to attachment in satisfaction of a judgment debt in the High Court.

PART II

AGREEMENTS

Application of the Act to an Agreement.

3. Any written agreement between a farmer and a bank under which moneys are payable, or may become payable, to the bank may provide that this Act shall apply to the agreement; and if it does so provide then this Act shall apply.

Certificate of Indebtedness.

4. (1) Whenever an agreement is concluded, the farmer and an agent or servant of the bank authorized thereto shall certify as correct a certificate of indebtedness which shall contain the following —

(a) the full names, residential and postal addresses of the farmer;

(b) the place of signature of the certificate;

(c) a statement that the bank has through its servant or agent, explained to the farmer the effect of making an agreement subject to the provisions of the Act and that the farmer understands the explanation;

- (d) the amount of moneys owing, or which may become owing, to the bank, the interest chargeable thereon, and the time when such moneys and any interest thereon will become due for payment;
- (e) such details as are required in accordance with the provisions of subsection (2);
- (f) such details as are required in accordance with the provisions of section 7 (2);
- (g) any note in terms of section 14 (3);
- (h) such other matters as may be prescribed.

(2) Where the bank wishes to acquire rights in respect of the movable assets of a farmer in accordance with the provisions of section 11, this shall be stated on the certificate of indebtedness.

(3) In the event of there being any conflict between the terms of an agreement and the certificate of indebtedness the terms of the certificate shall prevail.

(4) Nothing in this Act shall prevent an agreement from containing any lawful terms or conditions whatsoever, not being terms or conditions in conflict with the certificate of indebtedness.

Registration of Certificates of Indebtedness.

5. (1) A copy of the certificate of indebtedness shall be lodged by the bank with the Registrar of Deeds within thirty days of the signature and shall be registered by him in the manner of a notarial bond.

(2) Where a certificate of indebtedness is not lodged for registration in the manner described and within the time mentioned in subsection (1) the provisions of this Act shall cease to apply to the agreement.

(3) The registration of a certificate of indebtedness shall not cure any defect therein or confer on it any effect or validity which it would not otherwise have had, except in so far as is provided by this Act.

Cancellation of Certificates of Indebtedness.

6. (1) Where a farmer pays in full the moneys owing to a bank under an agreement or where an agreement ceases to be of any force and effect by reason of cancellation, novation, or otherwise, the bank shall, within thirty days of the payment or lapse notify the Registrar of Deeds and every buyer to that effect in the prescribed form.

(2) On receipt of a notification in terms of subsection (1), the Registrar of Deeds shall cancel the certificate of indebtedness which, thereupon, shall cease to be of any force or effect.

PART III

SALE OF PRODUCE TO A BUYER

Sale of Agricultural Produce to or through a Buyer.

7. (1) An agreement may provide that any agricultural produce of the farmer of a class stipulated in the agreement shall not be sold except to or through a person nominated in the agreement.

(2) The class of the agricultural produce concerned and the names and addresses of any buyer shall be noted on the certificate of indebtedness.

(3) Where a buyer is nominated in an agreement a copy of the certificate of indebtedness shall be served by the bank on the buyer within one month of the signature of the certificate.

(4) A bank may, on the application of a farmer, authorize the farmer to sell any or all of his agricultural produce of the class stipulated in the agreement to or through a person other than a buyer nominated in the agreement.

(5) Where the bank determines that the person to whom the farmer is authorised to sell agricultural produce under subsection (4) shall be a buyer it shall serve notice on that person and on the Registrar of Deeds in the prescribed form stating that that person shall, henceforth, be a buyer and, upon the serving of such notice upon him, that person shall be a buyer.

(6) Any farmer who sells agricultural produce of a class stipulated in the agreement to a person other than the buyer to whom or through whom he has undertaken to sell such produce save under an authority given under subsection (4) shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding R200.

Payment by a Buyer to a Bank.

8. (1) Where any money owing by a farmer under any agreement containing a provision of the nature described in section 7 (1) becomes due and payable and is not paid by the farmer within such time as is stipulated in the agreement, the bank may, by notice in the prescribed form served on the buyer, notify him that moneys are owing to the bank and that it invokes the provisions of this section.

(2) On receiving notice in terms of subsection (1), the buyer shall pay to the bank any moneys which may then be owing, or which may, from time to time thereafter be owing, by him to the farmer by reason of the sale of agricultural produce of the class stipulated in the agreement :

Provided that where a buyer acts as an agent for the farmer or for the purchaser of agricultural produce he shall be entitled to retain any expenses reasonably incurred in marketing the produce as well as such reasonable commission as is payable to him by the farmer for service rendered.

(3) The buyer shall make payment to the bank in accordance with the provisions of subsection (2) until the bank shall notify him that the debt owing to it by the farmer is satisfied or that it no longer wishes to enforce its rights under this section :

Provided that the bank may at any time require a buyer liable to make payment to the bank in terms of this section to pay part only of the proceeds of any agricultural produce to the bank or to make payment of a stated sum only.

(4) The bank shall refund to the farmer any overpayment it may receive in respect of moneys owing to it.

(5) The buyer shall pay to the bank any moneys due to it under the provisions of this section within thirty days —

- (a) of the sale where the buyer is himself the purchaser of the produce ;
- (b) of receiving the purchase price of the produce where the buyer acts as an agent.

(6) The bank may recover from the buyer any moneys which should have been paid to it in accordance with the provisions of this section if such moneys are not paid within the time prescribed in subsection (5) and it shall be no defence in any action brought by the bank against a buyer that the buyer has made payment, in contravention of the provisions of this section, to the farmer or to any other person :

Provided, however, that the buyer shall have an action against the farmer or such other person for the recovery of the amount paid where it has made payment to the bank.

Income Tax.

9. Where a buyer has been appointed agent of a farmer in accordance with the provisions of section 49 of the Income Tax (Consolidation) Proclamation, 1959, the buyer shall pay any sum owing as tax before making payment under this Act.

Special Provision where the Buyer is a Co-operative.

10. (1) Notwithstanding anything to the contrary, whether contained in any law or otherwise of legal force or effect, a co-operative society registered in terms of section 7 of the Co-operative Societies Law, 1962, may be nominated as a buyer and shall possess the rights, and be subject to the obligations, of a buyer under section 8.

(2) Notwithstanding the provisions of section 8 (2) a co-operative society may retain moneys owing to the farmer which it may lawfully appropriate in settlement of a debt owed to it by the farmer and which arose prior to the giving of notice by the bank to the co-operative in accordance with the provisions of section 8 (1).

PART IV

HYPOTHECATION AND SALE OF THE MOVABLE ASSETS OF A FARMER

Hypothecation of Movable Assets.

11. (1) Where an agreement provides that this section shall apply thereto, the movable assets of a farmer, or any stipulated item or class of such assets shall, on the signature of the certificate of indebtedness, and subject to the provisions of section 5 (2), be hypothecated to the bank as fully and effectively as if they had been hypothecated in terms of a notarial bond and, on insolvency, the claim of the bank in respect of the proceeds of such movable property shall be a preferent claim which shall be preferent to the claim of the holder of any notarial bond, general or special, executed at any time subsequent to the signature of the certificate of indebtedness.

(2) Where any movable assets hypothecated to the bank in accordance with the provisions of subsection (1) are attached and sold in execution of the order of any court in respect both of a debt for which the property is a security under this Act and of any other debt the bank shall be entitled to be paid in full out of the proceeds of the property before any unsecured creditor of the farmer receives payment.

Special Provision where Livestock Hypothecated.

12. (1) Where any flock or herd of any livestock forms part of the movable assets of a farmer which are hypothecated to a bank in accordance with the provisions of section 11 the farmer shall not slaughter, sell, donate, loan, hypothecate, encumber, or alienate such flock or herd or any portion thereof in such a manner as to effect materially the security of the bank without the permission of the bank being first had and obtained.

(2) Nothing in this section shall prevent the sale of livestock to a buyer or under an authority given under section 7 (4).

(3) A farmer who contravenes the provisions of this section shall be guilty of an offence and liable to a fine not exceeding R200.

Marking of Hypothecated Property.

13. (1) An agreement may provide that any movable assets which are hypothecated in accordance with the provisions of section 11 be marked by the farmer, if called upon to do so by the bank, in a manner prescribed in the agreement and that, where livestock are required to be so marked, their progeny shall be similarly marked.

(2) Any farmer who fails to mark his assets when called upon to do so in accordance with the provisions of subsection (1) and any person who tampers with or defaces a mark made in terms of this section shall be guilty of an offence and shall be liable to a fine not exceeding R200.

Sale of Hypothecated Property without an Order of Court.

14. (1) An agreement may provide that a bank shall have the following rights —

- (a) a right upon the happening of an event stipulated in the agreement as being an event authorizing the seizure of the movable assets of the farmer or of any item or class thereof, to take possession of such assets ;
- (b) where possession of any assets have been so taken a right, after an interval of five clear days, to sell the assets either by auction or, if the agreement so provides, by private treaty, and either for a lump sum payment or payment by instalments ;
- (c) an obligation, in the event of such power of sale being exercised, to apply the proceeds of sale in and towards the discharge of the debts owed to the bank by the farmer, and the costs of seizure and sale, and pay the surplus, if any, of the proceeds to the farmer.

(2) The bank shall endeavour to exercise its powers under this section as read with the agreement, in a manner least onerous to the farmer and, in particular, shall not seize any assets which the farmer requests the bank or its servant or agent not to seize if there are other and adequate movable assets belonging to the farmer which may be seized under the agreement in satisfaction of the debt owing to the bank.

(3) The existence of a provision in an agreement of the nature described in subsection (1) shall be noted on the certificate of indebtedness.

(4) Where movable assets liable to seizure under subsection (1) include crops or horticultural produce, the power to take possession of such crops or produce under that subsection shall include power to reap or gather the crops or produce.

(5) Any person who —

- (a) obstructs or hinders any servant or agent of a bank seeking to enforce the rights of the bank in terms of this section ;
- (b) conceals from such servant or agent property liable to seizure in terms of this section ;
- (c) seeks to mislead such servant or agent by giving false information in connexion with such property ;

shall be guilty of an offence and liable on conviction to a fine not exceeding R200.

PART V

SUPPLEMENTARY

Statement by a Farmer of his Assets and Liabilities.

15. (1) No farmer shall, in connexion with the negotiation of an agreement, make a statement of his assets or liabilities which is false or misleading in any material particular.

(2) A bank may, where any movable assets of a farmer are hypothecated to it under the provisions of section 11, at any time, and from time to time, serve notice upon a farmer calling upon him to make inventory of his hypothecated assets and of all his liabilities and to deliver to the bank the inventory within such reasonable time as may be specified in the notice.

(3) The farmer shall, in his inventory, declare any charges or encumbrances which may exist in relation to any of the assets listed and any rights which third parties may possess in relation to such assets whether under an agreement of loan or otherwise.

(4) Any farmer who contravenes the provisions of subsection (1), or who fails to make an inventory for the purposes of subsection (2) within the time specified, or who makes an inventory which is false or misleading in any material particular, shall be guilty of an offence and shall be liable to a fine not exceeding R200.

Security other than under the Act.

16. An Agreement may provide for security collateral, additional, or as an alternative to any security which may be afforded by this Act, for the payment of any moneys owing, or which may become owing, to a bank.

Regulations.

17. The Minister may make regulations —

- (a) prescribing anything which in this Act is required or permitted to be prescribed;
- (b) prescribing the form of any document referred to in this Act and, subject to the provisions of this Act, the particulars it shall contain;
- (c) prescribing the fees of office to be charged in respect of any act, matter, or thing required or permitted to be done by the Registrar of Deeds;
- (d) making provision for the issue of copies of documents referred to in this Act in the event of loss;
- (e) generally for the better carrying out of the provisions of this Act.

Passed by the National Assembly this day, the 20th March, 1967.

G.T. MATENGE,
Clerk of the National Assembly.