

CHAPTER 46:05 - HYPOTHECATION: SUBSIDIARY LEGISLATION
INDEX TO SUBSIDIARY LEGISLATION

Hypothecation (Authorized Creditors) Regulations
Hypothecation Regulations

HYPOTHECATION REGULATIONS

(under section 14)

(12th May, 1978)

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Fees
3. Prescribed forms

Schedule - Forms

S.I. 55, 1978,
S.I. 12, 1979,
S.I. 24, 1979.

1. Citation

These Regulations may be cited as the Hypothecation Regulations.

2. Fees

No fee shall be payable in respect of the registration by the Registrar of Deeds-

- (a) of a document evidencing hypothecation, in accordance with section 3(2)(b) of the Act;
or
- (b) of a document evidencing the discharge of a hypothecation.

3. Prescribed forms

For the purposes of the Act-

- (a) a notice to a buyer in accordance with the provisions of section 6(3) of the Act shall be in Form 1 set out in the Schedule;
- (b) a notice to a buyer in accordance with the provisions of section 6(5) of the Act shall be in Form 2 set out in the Schedule;
- (c) a notice to a buyer in accordance with the provisions of section 7(1) of the Act shall be in Form 3 set out in the Schedule; and
- (d) the form of a deed of hypothecation and certificate of indebtedness required by sections 3 and 12 of the Act shall be in Form 4 set out in the Schedule.

SCHEDULE

FORMS

(r. 3)

Form 1

NOTICE OF NOMINATION AS BUYER IN TERMS OF SECTION 6(3)

HYPOTHECATION ACT

(Cap. 46:05)

To:

(hereinafter referred to as "the Buyer") *Take Notice that Whereas*

.....
(hereinafter referred to as "the Hypothecator") has entered into an agreement with

.....
(hereinafter referred to as "the Authorized Creditor") in terms of which agreement the Hypothecator is indebted to the Authorized Creditor in certain sums of money; *and whereas* the Hypothecator has hypothecated

.....
to the Authorized Creditor in accordance with the Hypothecation Act; *and whereas* the Authorized Creditor has registered the said agreement in terms of the said Act against the name of the Hypothecator in the office of the Registrar of Deeds; *and whereas* in terms of the agreement the Hypothecator is restricted to selling produce or goods of the following classes, namely

.....
to or through certain nominated buyers;
and whereas you, the said, 20,
are nominated in the said agreement as a buyer;

now therefore take notice that you are a buyer to or through whom the Hypothecator is obliged to sell the produce or goods of the stipulated classes/and that you are required, in terms of the said agreement, to remit the proceeds of sale of such produce or goods, less any commission or expenses reasonably incurred in the marketing of such produce and goods and due either to you, the Buyer, or some other person, to the Authorized Creditor ^{i*}.

Dated at this day of, 20
Authorized Creditor

Form 2

NOTICE OF NOMINATION AS BUYER IN TERMS OF SECTION 6(5)

HYPOTHECATION ACT

(Cap. 46:05)

To:

(hereinafter referred to as "the Buyer") *Take Notice that Whereas*

.....
(hereinafter referred to as "the Hypothecator") has entered into an agreement with

.....
(hereinafter referred to as "the Authorized Creditor") in terms of which agreement the Hypothecator is indebted to the Authorized Creditor in certain sums of money;

AND WHEREAS the Hypothecator has hypothecated

to the Authorized Creditor in accordance with the Hypothecation Act; *and whereas* the Authorized Creditor has registered the said agreement in terms of the said Act against the name of the Hypothecator in the office of the Registrar of Deeds; *and whereas* in terms of the agreement the Hypothecator is restricted to selling produce or goods of the following classes, namely

.....
to or through certain nominated buyers;
and whereas the Hypothecator has applied to the Authorized Creditor for authority to sell such produce or goods to or through you, the Buyer;

and whereas the Authorized Creditor has agreed thereto;
now therefore take notice that the Authorized Creditor determines in terms of section 7(5) of the Act that you are a buyer to whom or through whom the Hypothecator is authorized to sell his produce or goods aforementioned/and that you are required, in terms of the said agreement, to remit the proceeds of sale of such produce or goods, less any commission or expenses reasonably incurred in the marketing of such produce or goods and due either to you, the Buyer, or some other person, to the Authorized Creditor ^{ii*}.

Dated at this day of, 20
Authorized Creditor.

Form 3

NOTICE OF MONEYS DUE AND PAYABLE BUT UNPAID, IN TERMS OF SECTION 7(1)

HYPOTHECATION ACT

(Cap. 46:05)

To:

(hereinafter referred to as "the Buyer")

TAKE NOTICE THAT WHEREAS

(hereinafter referred to as "the Hypothecator") has entered into an agreement with

(hereinafter referred to as "the Authorized Creditor") in terms of which agreement the Hypothecator is indebted to the Authorized Creditor in certain sums of money;

AND WHEREAS the Hypothecator has hypothecated to the Authorized Creditor in accordance with the Hypothecation Act;

AND WHEREAS the Authorized Creditor has registered the said agreement in terms of the said Act against the name of the Hypothecator in the office of the Registrar of Deeds;

AND WHEREAS you, the Buyer, have been specified as a buyer in terms of the said Act to whom or through whom the Hypothecator may sell his produce or goods of the following classes, namely

AND WHEREAS the Hypothecator is still indebted to the Authorized Creditor which debt has not been paid in terms of the said agreement;

NOW THEREFORE notice is hereby served on you, the Buyer, notifying you that moneys are owing to the Authorized Creditor by the Hypothecator and that the Authorized Creditor invokes section 7(2), you are hereby required, subject to the provisions of that section, to pay to the Authorized Creditor any moneys owing by you to the Hypothecator by reason of the sale of the produce or goods of the classes aforementioned which may from time to time hereafter be owing by you to the Hypothecator up to an amount of P until the Authorized Creditor notifies you, in accordance with section 7(3) of the Act, that the debt owing by the Hypothecator is satisfied or that he no longer wishes to enforce his rights under the Act

iii.*

Dated at this day of, 20

Authorized Creditor

Form 4

DEED OF HYPOTHECATION AND CERTIFICATE OF INDEBTNESS

(s. 12)

HYPOTHECATION ACT

(Cap. 46:05)

HYPOTHECATION REGULATIONS

KNOW ALL MEN WHOM IT MAY CONCERN

THAT WHEREAS on the day of

20

(hereinafter referred to as "the Authorized Creditor") and

(hereinafter referred to as "the Hypothecator") residing at

and whose date of birth is

or, if this is not known, the approximate age is years,

concluded an agreement in terms of which the Hypothecator is indebted to the Authorized Creditor in certain sums of money, in terms of which agreement it was agreed that the

Hypothecation Act would apply to the said agreement;

NOW THEREFORE the Authorized Creditor, acting through his duly authorized servant or agent, and the Hypothecator do hereby certify as correct a document as referred to in sections

3(2) and 12 of the Act, as follows-

1. The full names, place of residence, postal address and date of birth or approximate age of the said Hypothecator are set out above.

2. The place of signature of the above document is

3. It is hereby acknowledged that the Authorized Creditor has, through his duly authorized servant or agent

explained fully to the Hypothecator the legal effect of making this Deed of Hypothecation, subject to the provisions of the said Act, and the Hypothecator hereby acknowledges himself to

have fully understood the explanation and the legal effect of the said agreement, subject to the provisions of the said Act.

4. Where appropriate, the forms prescribed by the Hypothecation Regulations have been completed and signed, and the effect of each form is fully understood by the Hypothecator.

5. Under this clause the Authorized Creditor shall specify below the method of repayment which, by signature of this document, the Hypothecator agrees to observe-

.....
.....
.....

Provided that, if the Hypothecator fails to observe or carry out any of the terms of the agreement, and, in particular, the method of repayment specified above, the Authorized Creditor may take action in accordance with section 9 of the Act.

^{iv}* 6. It is further certified and acknowledged that, in terms of the said agreement, the terms of section 3 of the Act apply and the following assets of the Hypothecator are subject to hypothecation to the Authorized Creditor in terms of the said section-

.....
.....

^v* 7. That in terms of the said agreement the following-

.....
.....

may only be sold by the Hypothecator to any of the following buyers-

Name

Address

.....
and, in the case of livestock or other property described below, it should bear the brand or stamp required by the Authorized Creditor-

.....
.....

8. Signed and certified as correct in accordance with the Hypothecation Act-

.....
.....

Dated and executed by the Authorized Creditor at
this day of, 20

.....
Authorized Creditor

Witnesses:

1.
2.

Dated and executed by the Hypothecator at
this day of, 20

.....
Hypothecator

Witnesses:

1.
2.

Official Stamp

.....
Registrar

HYPOTHECATION (AUTHORIZED CREDITORS) REGULATIONS

(section 14)

(29th May, 1987)

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Appointment of authorized creditors

Schedule

S.I. 65, 1987,
S.I. 107, 1990,
S.I. 1, 1991,
S.I. 12, 1991,
S.I. 98, 1991,
S.I. 117, 1991,
S.I. 134, 1991,
S.I. 25, 1992,
S.I. 75, 1993,
S.I. 100, 1993,
S.I. 104, 1993,
S.I. 32, 1994,
S.I. 54, 1995,
S.I. 55, 1996,
S.I. 10, 1997,
S.I. 86, 1997,
S.I. 101, 1997,
S.I. 8, 1998,
S.I. 10, 1999,
S.I. 40, 1999,
S.I. 101, 1999,
S.I. 114, 1999,
S.I. 26, 2000,
S.I. 37, 2000,
S.I. 14, 2001,
S.I. 18, 2001,
S.I. 76, 2001,
S.I. 29, 2002,
S.I. 32, 2003,
S.I. 68, 2003,
S.I. 67, 2004,
S.I. 68, 2004,
S.I. 39, 2005,
S.I. 19, 2007,
S.I. 39, 2007,
S.I. 64, 2007,
S.I. 7, 2008,
S.I. 32, 2008,
S.I. 61, 2008,
S.I. 75, 2008,
S.I. 77, 2008.

1. Citation

These Regulations may be cited as the Hypothecation (Authorized Creditors) Regulations.

2. Appointment of authorized creditors

Each of the persons specified in the Schedule hereto is hereby authorized to be a person empowered to take security by way of hypothec under the provisions of the Act.

**SCHEDULE
AUTHORIZED CREDITORS**

(para 2)

Barclays Bank PLC;
Financial Services Company of Botswana (Pty) Ltd;
International Finance Corporation;
Zimbank Botswana Limited;
Commonwealth Development Corporation;
Africa Growth Fund;
Overseas Private Investment Corporation;
ulc (Pty) Ltd;
Swedfund International AB;
First National Bank of Botswana Limited;
Norwegian Agency for Development Corporation;
Botswana Meat Commission;
Kgalagadi Breweries (Pty) Limited;
Bolux Milling (Pty) Limited;
Stanbic Bank Botswana Limited;
Lazare Kaplan Botswana (Proprietary) Limited;
AMBIV (Proprietary) Limited;
Metro Sefalana Cash and Carry Limited (METSEF);
Phakalane Estates (Proprietary) Limited;
ABN AMRO Holdings N.V.;
Baleen (Proprietary) Limited;
Portugal Telecommunications International SGPS, S.A.;
Hyundai Corporation;
Hyundai Corporation U.K. Limited;
Investec Bank (Botswana) Limited;
Telefonaktiebolaget L.M. Ericsson;
Trans Africa (Proprietary) Limited;
Botswana Agricultural Marketing Board;
Sefalana SA Botswana Limited;
Dafin Sales and Distribution (Proprietary) Limited;
First Rand Bank Limited;
Bank of Baroda (Botswana) Limited;
Citizen Entrepreneurial Development Agency (CEDA);
Gilat Satellite Network Limited;
Export Credit Insurance and Guarantee Company (Botswana);
Investec Bank Limited (South Africa).
Ceda Venture Capital Fund
Kingdom Bank Africa Limited
Kingdom Finance (Proprietary) Limited
PPC Botswana (Proprietary) Limited
MTN International (Mauritius) Limited (MTNI)
AFGRI Operations Limited
Micawber (Pty) Ltd
BIFM Capital Investment Fund One (Proprietary) Limited
Bank Gaborone (Proprietary) Limited
Ned bank Limited
Bell Equipment Limited
Capital Bank Limited

ⁱDelete if not applicable.

ⁱⁱDelete if inapplicable.

ⁱⁱⁱDelete if inapplicable

^{iv}Delete if inapplicable.

^vDelete if inapplicable.