



FALKLAND ISLANDS

Agricultural Loans Ordinance 1981

(ORDINANCE No. 7 OF 1981)

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FALKLAND ISLANDS

Agricultural Loans Ordinance 1981

AN ORDINANCE To facilitate the borrowing of money on the security of farming stock and other agricultural assets, and for purposes connected therewith.

*[DATE OF COMMENCEMENT: 22ND JUNE 1981]
(Unless otherwise indicated)*

1 Short title

This Ordinance may be cited as the Agricultural Loans Ordinance 1981.

2 Interpretation

In this Ordinance, unless the context otherwise requires-

"agriculture" and **"cultivation"** shall be deemed to include horticulture, and the use of land for any purpose of husbandry, inclusive of the keeping or breeding of livestock, poultry or bees, and the growth of fruit, vegetables, and the like;

"authorized lender" means the Government of the Falkland Islands, the Falkland Islands Development Corporation, or any firm, incorporated company, or society approved by the Governor;

[S. 2/Ord. 2/2002/w.e.f. 14/6/1984.]

"farmer" means any person (not being an incorporated company or society) who, as tenant or owner of an agricultural holding, cultivates the holding for profit;

"farming stock" means crops or horticultural produce, whether growing or severed from the land, and after severance whether subjected to any treatment or process of manufacture or not; livestock, including poultry and bees, and the produce and progeny thereof; any other agricultural or horticultural produce whether subjected to any treatment or process of manufacture or not; seeds and manures; agricultural vehicles, machinery, and other plant; agricultural tenant's fixtures and other agricultural fixtures which a tenant is by law authorized to remove;

"other agricultural assets" means any right of a tenant to compensation under any enactment for improvements, damage by game, disturbance or otherwise, and any other tenant right.

3 Agricultural charges on farming stock and assets

(1) It shall be lawful for a farmer as defined by this Ordinance by instrument in writing to create in favour of an authorized lender as so defined a charge (hereinafter referred to as an agricultural charge) on all or any of the farming stock and other agricultural assets belonging to him as security for sums advanced or to be advanced to him or paid or to be paid on his behalf by the authorized lender and interest, commission and charges thereon.

(2) An agricultural charge may be either a fixed charge, or a floating charge, or both a fixed and a floating charge.

(3) The property affected by a fixed charge shall be such property forming part of the farming stock and other agricultural assets belonging to the farmer at the date of the charge as may be specified in the charge, but may include-

- (a) in the case of livestock, any progeny thereof which may be born after the date of the charge; and
- (b) in the case of agricultural plant, any plant which may whilst the charge is in force be substituted for the plant specified in the charge.

(4) The property affected by a floating charge shall be the farming stock and other agricultural assets from time to time belonging to the farmer, or such part thereof as is mentioned in the charge.

(5) The principal sum secured by an agricultural charge may be either a specified amount, or a fluctuating amount not exceeding at any one time such amount (if any) as may be specified in the charge.

(6) An agricultural charge may be in such form and made upon such conditions as the parties thereto may agree, and sureties may be made parties thereto.

4 Effect of fixed charge

(1) A fixed charge shall, so long as the charge continues in force, confer on the authorized lender the following rights and impose upon the authorized lender the following obligations:

- (a) a right, upon the happening of any event specified in the charge as being an event authorizing the seizure of property subject to the charge, to take possession of any property so subject;
- (b) where possession of any property has been so taken, a right, after an interval of thirty clear days or such less time as may be allowed by the charge, to sell the property either by an auction or, if the charge 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 or towards the discharge of the moneys and liabilities secured by the charge, and the cost of seizure and sale, and to pay the surplus (if any) of the proceeds to the farmer.

(2) A fixed charge may, by express provision to that effect in the instrument creating such charge, and shall in the case of a floating charge that has become a fixed charge by virtue of section 5, impose on the farmer during the existence of the charge the following obligations:

- (a) an obligation whenever he sells any of the property, or receives any money in respect of other agricultural assets comprised in the charge, forthwith to pay to the authorized lender the amount of the proceeds of the sale or the money so received, except to such extent as the charge otherwise provides or the authorized lender otherwise allows; the sums so paid to be applied, except so far as otherwise agreed, by the authorized lender in or towards the discharge of moneys and liabilities secured by the charge;
- (b) an obligation in the event of the farmer receiving any money under any policy of insurance on any of the property comprised in the charge, or any money paid by way of compensation under any enactment in respect of the destruction of any livestock comprised in the charge, or by way of compensation under any enactment in respect of the destruction of any crops comprised in the charge, forthwith to pay the amount of the sums so received to the authorized lender, except to such extent as the charge otherwise provides or the authorized lender otherwise allows; the sums so paid to be applied, except so far as otherwise agreed by the authorized lender, in or towards the discharge of the moneys and liabilities secured by the charge.

(3) Subject to compliance with the obligations so imposed a fixed charge shall not prevent the farmer selling any of the property subject to the charge, and neither the purchaser, nor in the case of a sale by auction, the auctioneer, shall be concerned to see that such obligations are complied with notwithstanding that he may be aware of the existence of the charge.

(4) Where any proceeds of sale which in pursuance of such obligation as aforesaid ought to be paid to the authorized lender are paid to some other person, nothing in this Ordinance shall confer on the authorized lender a right to recover such proceeds from that other person unless the authorized lender proves that such other person knew that the proceeds were paid to him in breach of such obligation as aforesaid, but such other person shall not be deemed to have such knowledge by reason only that he has notice of the charge.

5 Effect of floating charge

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

Provided that-

- (a) the charge shall become a fixed charge upon the property comprised in the charge as existing at the date of its becoming a fixed charge-
 - (i) upon a receiving order in bankruptcy being made against the farmer;
 - (ii) upon the death of the farmer;
 - (iii) upon the dissolution of partnership in the case where the property charged is partnership property;

- (iv) upon notice in writing to that effect being given by the authorized lender on the happening of any event which by virtue of the charge confers on the authorized lender the right to give such a notice;
- (b) the farmer, whilst the charge remains a floating charge, may by express provision to that effect in the instrument creating such charge be subject to an obligation to pay over to the authorized lender the amount received by him by way of proceeds of sale, in respect of other agricultural assets, under policies of insurance, or by way of compensation, and the last foregoing section shall apply accordingly:

Provided that if so provided by the instrument creating the charge it shall not be necessary for a farmer to comply with such obligation if and so far as the amount so received is expended by him in the purchase of farming stock which on purchase becomes subject to the charge.

6 Supplemental provisions as to agricultural charges

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

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

(3) Where an agricultural charge creating a floating charge has been made, an agricultural charge purporting to create a fixed charge on, or a bill of sale comprising any of the property comprised in the floating charge shall, as respects the property subject to the floating charge, be void so long as the floating charge remains in force.

(4) Farming stock subject to an agricultural charge shall not for the purposes of the Bankruptcy Act 1914, section 38 be deemed to be goods in the possession, order, or disposition of the farmer, 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.

(5) Where a farmer who is adjudged bankrupt has created in favour of a bank an agricultural charge on any of the farming stock or other agricultural assets belonging to him, and the charge was created within three months of the date of the presentation of the bankruptcy petition and operated to secure any sum owing to the authorized lender immediately prior to the giving of the charge, then, unless it is proved that the farmer immediately after the execution of the charge was solvent, the amount which but for this provision would have been secured by the charge shall be reduced by the amount of the sum so owing to the authorized lender immediately prior to the giving of the charge, but without prejudice to the authorized lender's right to enforce any other security for that sum or to claim payment thereof as an unsecured debt.

(6) Where after the passing of this Ordinance the farmer has mortgaged his interest in the land comprised in the holding, then, if growing crops are included in an agricultural charge, the rights of the authorized lender under the charge in respect of the crops shall have priority to those of the mortgagee, whether in possession or not, and irrespective of the dates of the mortgage and charge.

(7) An agricultural charge shall be no protection in respect of property included in the charge which but for the charge would have been liable to distress for rent, taxes, or rates.

7 Registration of agricultural charges

(1) Every agricultural charge shall be registered under this Ordinance within twenty-eight clear days after the execution thereof, and, if not so registered, shall be void as against any person other than the farmer:

Provided that the Supreme Court on proof that omission to register within such time as aforesaid was accidental or due to inadvertence may extend the time for registration on such terms as the court thinks fit.

(2) The Registrar General shall keep a register of agricultural charges in such form and containing such particulars as may be prescribed.

(3) Registration of an agricultural charge shall be effected by sending by post or delivering to the Registrar General a copy or memorandum of the instrument creating the charge and such particulars of the charge as may be prescribed, together with any prescribed fee; and the Registrar General shall enter the particulars in the register and shall file the copy or memorandum.

(4) The register kept and the copies or memoranda filed under this section shall at all reasonable times be open to inspection by any person on payment (except where the inspection is made by or on behalf of an authorized lender) of any prescribed fee, and any person inspecting the register or any such filed copy or memorandum on payment (except as aforesaid) of any prescribed fee may make copies or extracts therefrom.

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

(6) 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 entry purporting to be certified as a true copy by the Registrar General shall in all legal proceedings be evidence of the matters stated therein without proof of the signature or authority of the person signing it.

(7) Registration of an agricultural charge under this section shall 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, as from the date of registration or other prescribed date, and so long as the registration continues in force:

Provided that, where an agricultural charge created in favour of an authorized lender is expressly made for securing a current account or other further advances, the authorized lender, in relation to the making of 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 authorized lender was made, whichever last happened.

(8) The Governor in Council may make regulations prescribing anything which under this section is to be prescribed and generally as to the keeping of the register and the filing of memoranda, the removal of entries from the register on proof of discharge, and the rectification of the register.

[Date of commencement: 1st January 2001 (s. 4 Ord. 2/2001).]

8 Restriction on publication of agricultural charges

(1) It shall not be lawful to print for publication or publish any list of agricultural charges.

(2) Any person who acts in contravention of this section commits an offence and is liable on summary conviction to a fine not exceeding £200 in respect of each offence:

Provided that no person other than a proprietor, editor, master printer, or publisher shall be liable to be convicted under this section.

(3) No prosecution for an offence under this section shall be commenced without the consent of the Governor in Council.

(4) For the purpose of this section, "publication" means the issue of copies to the public, and "publish" has a corresponding meaning, and without prejudice to the generality of the foregoing definition the confidential notification by an association representative of a particular trade to its members trading or carrying on business in the district in which property subject to an agricultural charge is situate of the creation of the charge shall not be deemed to be publication for the purposes of this section.

9 Fraud by farmers

If, with intent to defraud, a farmer who has created an agricultural charge-

- (a) fails to comply with the obligations imposed by this Ordinance as to the payment over to the authorized lender of any sums received by him 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 from his holding any property subject to the charge,

he commits an offence and is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £500 or to both such imprisonment and fine.

10 Rights of tenants

Any farmer being the tenant of an agricultural holding shall have the right to create an agricultural charge notwithstanding any provision in his contract of tenancy to the contrary.