



## **CHAPTER 7.02**

# **AGRICULTURAL CREDIT ACT**

**Revised Edition**  
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This edition contains a consolidation of the following laws—

### **AGRICULTURAL CREDIT ACT**

Act 19 of 2001 .. in force 30 August 2001 (S.I.114/2002)



## CHAPTER 7.02

# AGRICULTURAL CREDIT ACT

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## CHAPTER 7.02

# AGRICULTURAL CREDIT ACT

(Act 19 of 2001)

AN ACT to provide for the facilitation of credit for farmers and for related matters.

Commencement [30 August 2001]

### PART 1 PRELIMINARY

#### 1. SHORT TITLE

This Act may be cited as the Agricultural Credit Act.

#### 2. INTERPRETATION

In this Act—

“**additional asset**” means any tangible asset, excluding land, that belongs 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 3;

“**agricultural commodity**” means anything derived directly or indirectly from agricultural production;

“**agricultural production**” means crop production, animal husbandry, game ranching, aquaculture, mariculture, horticulture or forestry;

“**farmer**” includes any person who, as owner or tenant of land uses such land for agricultural production whether for profit or subsistence, and a fisherman;

“**farming stock**” includes—

- (a) all agricultural commodities, whether future growing or severed from the land or water bodies, and after severance whether subjected to any treatment or manufacture;
- (b) livestock and bees, and the produce and progeny of them;
- (c) wild animals in captivity;
- (d) fish stocks;
- (e) timber both standing or cut;
- (f) seeds and manures;
- (g) fertilizers, pesticides, oils, and fuels;
- (h) agricultural vehicles, trucks, spare parts, machinery, equipment and other plant;
- (i) any agricultural fixture that a tenant, or any person legally occupying land, may by law be authorised to remove; or
- (j) food and fibre.

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

“**Minister**” means Minister responsible for agriculture;

“**other agricultural assets**” mean any right of a tenant, including any right to compensation for improvements;

“**person**” includes a body corporate or an unincorporated body;

“**prescribed**” means prescribed in regulations made under this Act;

“**Registrar**” means the Registrar of Agricultural Charges appointed under section 8;

“**Register**” means the Register of Agricultural Charges maintained under section 8;

“**related business**” means an individual, a company, a co-operative, 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 agricultural production;

“**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, processing or manufacturing any agricultural commodity.

## **PART 2**

### **AGRICULTURAL CHARGES**

#### **3. AGRICULTURAL CHARGES ON FARMING STOCK AND ASSETS**

- (1) An agricultural charge may be fixed or floating, or both.
- (2) An agricultural charge may be in the 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 an agricultural charge on any farming stock, additional asset or other agricultural asset as security for—
  - (a) inputs or other items required for agricultural production;
  - (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 and commission charges on it.

- (4) Despite any provision of this Act, a related business or a trader may create in favour of a farmer, any agricultural charge on all or any portion of the agricultural commodities that the related business or trader purchases or intends to purchase from a farmer as security for the purchase value and the security may include interest and commission 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 or revolving amount advanced on a current account not exceeding at any one time such amount, if any, as may be specified in the charge.
- (7) Despite subsection (6), 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, despite the fluctuation or temporary extension of the indebtedness and although the lender may have had notice of the subsequent interest.

#### **4. EFFECT OF FIXED CHARGE**

- (1) A fixed charge shall confer on the holder the following rights—
  - (a) a right, upon the happening of any event secured in the charge as being an event authorising the seizure of property subject to the charge, to take possession of any property so subject;
  - (b) where possession of any property has been taken, a right, after an interval of 30 days or such shorter period as may be specified by the charge, to sell the property in the prescribed manner.
- (2) Where a holder exercises the power of sale under subsection (1) (b), 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, trader or related business.
- (3) Where the proceeds of sale under subsection (1), discharges only part of the money and liabilities secured by the fixed charge and the cost of seizure and sale, the farmer, trader or related business remains liable for the remainder.

- (4) 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, immediately 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.
  - (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, immediately 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 sums 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.
- (5) 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, despite 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 subsection (4)(b) 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.
- (6) Subject to compliance with the obligations imposed by subsection (4), a fixed charge shall not prevent the farmer, related business or trader from selling any of the property subject to the charge.
- (7) 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.

## 5. EFFECT OF FLOATING CHARGE

- (1) 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.
- (2) Despite subsection (1), the charge shall become a fixed charge on the property upon—
  - (a) a receiving order in bankruptcy being made against the farmer, trader or related business;
  - (b) the death of the farmer or trader;
  - (c) the dissolution of partnership in the case where the property charged is partnership property; or
  - (d) 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.
- (3) The farmer, trader or related business, while the agricultural charge remains a floating charge shall be subject to the like obligations as in the case of a fixed charge to pay over to the holder the amount received by him or her by way of proceeds of sale, in respect of other agricultural assets or additional assets under policies of insurance, or by way of compensation.
- (4) Despite subsection (3), it is not necessary for a 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. NOTICE OF AGRICULTURAL CHARGE

- (1) Despite sections 3, 4 and 5, 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, 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) A farmer, trader or related business, before making or causing to be made, any subsequent sale, shall notify that person of any agricultural charge, which affect 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) 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.
- (4) Any person who contravenes subsection (3) commits an offence and is liable, on conviction, to the full value of the agricultural charge as specified in the notice.
- (5) Any moneys paid out in accordance with subsection (3) 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.
- (6) Any payment made in accordance with subsection (3) 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.
- (7) Any farmer, trader or related business who fails to give written notice in accordance with this section commits an offence and is liable, on conviction, to a fine not exceeding the value of the outstanding loan.

## **7. SUPPLEMENTARY PROVISIONS TO AGRICULTURAL CHARGES**

- (1) An agricultural charge has effect despite anything contained in the Bills of Sale Act, and an agricultural charge is not a bill of sale within the meaning of that Act.
- (2) Subject to subsection (3), agricultural charges shall, in relation to one another, have priority in accordance with the times at which they are respectively registered under this Act and the registered charge has priority over a later registered charge.
- (3) Despite subsection (2), 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.
- (4) 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, in respects of the property which is subject to such floating charge, be of no effect so long as the floating charge remains in force.
- (5) 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 right 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.
- (6) Farming stock which is subject to an agricultural charge shall not, for the purposes of Title IX of the Commercial Code, be considered to be goods in the possession, order or disposition of the farmer, trader or related business in his or her trade or business, by the consent and permission of the true owner thereof, under such circumstances that he or she is the reputed owner thereof.
- (7) An agricultural charge shall not protect property which, but for such charge, would have been liable to distress for rent or rates.

## **8. REGISTRATION OF AGRICULTURAL CHARGES**

- (1) There shall be a Registrar of Agricultural Charge who shall be—

- (a) a public officer appointed by the Public Service Commission; and
  - (b) responsible for the maintenance and updating of a register.
- (2) An agricultural charge shall be registered by the holder within 28 days after its execution and if not so registered, shall be void as against any person other than the farmer, trader or related business as the case may be.
  - (3) Despite subsection (2), the Registrar may, on 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 or she thinks fit.
  - (4) An agricultural charge shall be effected by sending by post or delivering to the Registrar's office, 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.
  - (5) 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 from them.
  - (6) 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.
  - (7) 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 or 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.
  - (8) The Registrar is not 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.

- (9) Any person aggrieved by any decision of the Registrar may appeal to the High Court within 30 days of such decision.
- (10) Registration of an agricultural charge under this section shall, from the date of registration, be considered 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.
- (11) Despite subsection (10)—
  - (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 considered 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; and
  - (b) registration shall not be considered to constitute actual notice to a purchaser for the purposes of section 6.

## **9. RESTRICTION ON PUBLICATION OF AGRICULTURAL CHARGES**

- (1) Except as otherwise provided under this Act, a person shall not print for publication or publish any list of agricultural charges or the name of any farmer, trader or related business who has created agricultural charges.
- (2) A person who contravenes subsection (1), commits an offence and is liable, on conviction to a fine not exceeding \$1,000.

## **10. FRAUD**

- (1) Any farmer, trader or related business who has created an agricultural charge and who, with intent to defraud—
  - (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) disposes or causes to be disposed any property subject to the charge,
- commits an offence and is liable, on conviction, to a fine not exceeding \$5,000 or to imprisonment for a period not exceeding 3 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 or her rights under this Act, the directors and manager, of the business committing such violation, each commit an offence and are each liable, on conviction, to a fine not exceeding \$10,000 or imprisonment for a period not exceeding 5 years, or to both, unless they show that the offence was committed without their knowledge or consent.

### **PART 3**

## **VALIDITY OF CONTRACTS FOR ADVANCES ON INPUTS AND OTHER ITEMS**

### **11. VALIDITY OF CONTRACTS**

- (1) A contract for the advancement to a farmer of inputs or other items required for agricultural production shall state—
- (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 section 6(1) applies.
- (2) Any trader or related business advancing any inputs or other items required for agricultural production 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) Despite any other law, any person who advances inputs or other items required for agricultural production 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 is ineligible to register, under this Act, a charge created by the farmer on the basis of an agreement or contract, and such charge is void.

## **12. FAILING TO MAKE FULL DISCLOSURE OF COSTS OF INPUTS OR OTHER ITEMS AND INTEREST ETC**

Any person who advances inputs or other items required for agricultural production 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 11, commits an offence and is liable, on conviction, to a fine not exceeding \$5,000 or 3 years imprisonment, or both.

## **PART 4 GENERAL**

## **13. REGULATIONS**

The Minister may make regulations for carrying the provisions of this Act into effect and without prejudice to the generality of this section may make regulations—

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