Legal Implications of the Agricultural Credit Act

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What does the Act Provide For?

- establish the Warehousing Licensing Authority and provide for its functions and powers;
- facilitate the borrowing of money on the security of charges created on farming stock and other agricultural assets; provide for registration of charges; provide for the certification of warehouses; provide for issuance and negotiation of warehouse receipts and the rights conferred by warehouse receipts; provide for the rights and obligations of warehouse operators...."
Part 2: Establish the Warehousing Licensing Authority

- Functions of the Authority
- Investigate storage & certification of Agric Commodities
- Inspect warehouses and determine appropriateness for storage
- Classification of warehouses; i.e., location, ownership, capacity
- Determine the duties of warehouse operators
- Formulate guidelines and standards for storage
- Suspend or revoke licences
Functions of the Authority

- Charge and collect fees for examination and inspection of warehouses
- Examine books of Accounts, records and documents of warehouses
- Closure of warehouses without valid licenses
Appointment of Authorised Agencies

- under Section 6, The Minister responsible for Agriculture and Cooperatives can appoint any Authorised Agent to perform the functions of the warehousing authority.
- Provide for a system of registration and regulation of agricultural warehousing.
- Set minimum quality standards for registration and certification of agricultural warehousing.
Effects of Fixed Charges

- Holder has following rights
  - take possession of property upon failure by farmer
  - abide by the terms of the charge
  - Upon possession of the property the holder has rights to dispose of property
  - Sale and apply proceeds to discharge liability secured by fixed charge including costs and surplus if any goes to the farmer
Part 3: Agricultural Charges

- The Act provides under Section 11 (1) for an Agricultural charge which may be fixed or floating or both.

- **Fixed charges** may only relate to farming stock, additional assets belonging to farmer or trader or related business that at the date of the charge are specified in the charge as collateral for the loan. *The farmer can then use his stored grain as collateral. The loan allows him to operate until market prices are favorable and he then can choose to sell his grain.*
Effects of Fixed Charges (cont’d)

- Obligations of the Farmer/Trader
  - Where farmer sells property subject of a fixed charge. The farmer is obliged to pay the holder the proceeds related to the charge unless otherwise agreed by the parties

  - Proviso (if the holder is a related business, the farmer shall not sale but deliver the commodity to the holder)

  - If farmer receives compensation from insurance farmer is obliged to pay such money to the holder /
    the insurance is obliged to pay direct to the holder
Effects of Fixed Charges (cont’d)

- Proviso (fixed charge does not prevent farmer/Trader from selling property subject to a fixed charge) S.12(6)
Floating Charges

A Floating Charge has similar effects as if the charge has been created by a registered debenture issued by a company, however, the charge shall become a fixed charge on the property upon:

- receiving an order of bankruptcy being made against the farmer or related business
- death of the farmer or trader
- dissolution of a partnership where property charged is in a partnership
- any happening that gives effect to proceed with liquidation of the debt
Prioritising Charges

- In relation to one another, agricultural charges have priority in accordance with the time at which they are respectively registered. However, charges created solely for insurance of farming stock shall have priority over any other charge not created for such purpose.

- Where a farmer or trader or related business mortgages interest in Land and then an agricultural charge which includes growing crops is created, the rights of the holder of such a charge shall have priority over those of the Mortgagee.
Registration of Charges

- Agricultural charges will be registered by the Registrar of Lands and Deeds or his nominee at district level. And where such do not exist then to such other office as the Minister may specify or by publication in the Government gazette.
Part 4: Validity of Contracts

- All contracts relating to the advancement of inputs for cultivation shall only be valid if there is full disclosure of all costs related and incidental to the transaction. In case of interest chargeable only simple interest is permitted by the Act and a charge so created with such non disclosures shall be void.
Part 5: Registration of warehouses

- The authority or authorized agent shall disclose application procedures which should include the following.
- Payment of a prescribed fee
- Execution of a bond sufficient to secure performance by the applicant of the obligations as warehouse operator
- Certificate of insurance issued by a licensed insurance company insuring all agricultural commodities that may be stored by the warehouse operator against all insurable risks.
Registration of Warehouses Cont’d

- A certificate of registration shall within 30 days of receipt of an application be issued where an applicant is successful.
- If an application is rejected the applicant shall be furnished with reasons within 7 days of making the decision.
- Appeal procedures are contained in the Act
- Certificates shall not be transferred to third parties without approval of the authority
Cancellation/ Suspension of Certificate

- The Board may suspend or cancel a certificate if the holder does any of the following;
  - (a) Fraudulent submissions
  - (b) cancels insurance without approval of the authority
  - (c) Failing to provide additional insurance cover when requested
- Before cancellation of certificate, a 30 day notice is given to holder to cause. (remedial measures within 30 days)
Effect of cancellation of Certificate

- Where certificate is cancelled, the holder ceases to be entitled to such rights from the date of cancellation and should return the certificate and unused warehouse receipts.
- Any person aggrieved by this decision may appeal to the Minister within 30 days – appeal to the high court
Closure of warehouses

- The authority may order the closure of a warehouse for the following reasons:
  - (a) operator violates conditions of the certificate
  - (b) warehouse ceases to be suitable for warehousing of agric commodities
  - (c) operator is convicted for more than 6 months
  - (d) warehouse not certified
  - (e) operator insolvent

Where the board receives such report of breach it shall give written notice to correct the breaches if applicable
Part 6: Warehouse Receipts

- A warehouse receipt shall be issued by a warehouse operator that is authorized to do so under the provisions of this Act.
- Warehouse receipts are documents of title (holders have proprietary rights on deposited commodities).
- Receipts only issued to commodities delivered for storage not processing or cleaning.
- Warehouse receipts can be sold to a third party for value.
Types of Warehouse Receipts

- Negotiable and non-negotiable
- A warehouse receipt in which it is stated that the agricultural commodities received will be delivered to the person named in the warehouse receipt or to that person's order shall be known as a negotiable warehouse receipt.
- A receipt is marked non-negotiable where there is an agricultural charge on the commodities.
Part 7: Rights & Obligations of Warehouse Operators

- Warehouse operators shall comply with all delivery notices of agricultural commodities to the holders of the receipts or their designee in accordance with the demands of the holders of the warehouse receipts as long as the warehouse operator is satisfied as to the lawfulness of such entitlement to the agricultural commodities stored.

- A warehouse may have liens on agricultural commodities deposited in the warehouse as regards (a) lawful charges for storage & preservation.

- (b) lawful claims for monies advanced, interest, transportation e.t.c.
Part 8: Negotiation and Transfer of Warehouse Receipts

- The Act provides for transfer of a negotiable warehouse receipt by either outright sale or placing charges on it.
- The Act also provides for the rights and obligations of the transferee and the transferor of negotiable warehouse receipts.
Part 9: Offences & Penalties

- This section deals with various offences and penalties for persons that contravene this Act
Part 10: General Provisions

- Act provides for the application of the Arbitration Act of 2000 in the settlement of any disputes arising out of the interpretation or application of the provisions of the Act.

- Note: Under Section 34: when an aggrieved person who has not been granted a certificate by the Board such a person may appeal to the Minister and subsequently to the high court – Contradicts with section 90 (arbitration)
Conclusion

- Issuance of warehouse receipts is an important mechanism that can be used to create access to credit and thereby create liquidity in the market. This is achieved through improving incomes of farmers.
- Farmers are able to break the cycle of forced selling when prices are at their lowest. This is done by issuing a warehouse receipt to a farmer when he stores his surplus grain in a registered and secure warehouse facility.
- The farmer can then use his stored grain as collateral for a loan. The loan allows him to operate until market prices are favorable and he then can choose to sell his grain.
Conclusion Cont’d

• The Act under section 6 provides for the appointment of authorised agent to perform the functions of the warehouse licensing authority.

• This section gives a challenge to the market players who have technical know how and expertise to lobby Government so that they are appointed as agents.

• However, the many references in the Act to the Board which is created under section 7 creates a major conflict with regards to corporate governance issues when the Minister has appointed an authorized agent from the private sector to perform functions of the Authority.
Conclusion Cont’d: Legal Issues Affecting Warehouse Receipts

1) Whether laws recognise a security interest in stored commodities.

2) Whether recognition of security interest in warehouse receipts provide lenders protection with respect to third parties.

3) Whether laws recognise a warehouse receipt as a document of title.

4) Whether laws recognise a warehouse receipt as a transferable and negotiable instrument.
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