

THE FARM LOANS ACT

ARRANGEMENT OF SECTIONS

Preliminary

1. Short title.
2. Interpretation.

Guarantee

3. Payment of bank losses.
4. Limitation of liability.
5. Guarantee charged upon Consolidated Fund.
6. Effect of payment of bank losses.

Security

7. Guaranteed farm loan.
8. Memoranda of charges.
9. Release of charges.
10. [*Repealed by Act 38 of 2013, Sch.*].
11. Additional security.

Miscellaneous

12. Regulations.
13. Offences.
14. Penalty.
15. Discharge of Government from liability.
16. Variation of terms of repayment of guaranteed farm loans.
17. Exemption from stamp duty and other fees.

SCHEDULES

THE FARM LOANS ACT

[15th November, 1965.]

Acts
21 of 1965,
47 of 1968,
51 of 1974,
38 of 2013,
Sch.

Preliminary

1. This Act may be cited as the Farm Loans Act.

Short title.

2.—(1) In this Act—

Inter-
pretation.

“bank” means a company licensed under the Banking Act, to carry on banking business;

“borrower” means a person to whom a farm loan has been made;

“crop” means any crop other than a crop for the time being excluded by the Minister by order having effect prior to the date of the loan; 51/1974
S. 2(a).

“establishment”, in relation to any crop, includes the clearing, breaking or reclaiming of land for the production of such crop;

“farm” means land used or intended to be used for the purpose of farming by the person in possession thereof;

“farm electric system” includes all machinery, apparatus and appliances for the generation or distribution of electricity on a farm;

“farm equipment” means implements, apparatus, appliances or machinery of any kind usually affixed to real property, for the purpose of farming, but does not include a farm electric system or any works for the drainage or supply of water;

“farm implements” means tools, implements, apparatus, appliances or machines for the purpose of farming and, without prejudice to the generality of the foregoing, includes vehicles for transporting supplies for farming or products from a farm, but does not include farm equipment or any part of a farm electric system or any works for the drainage or supply of water;

First
Schedule.

“farm loan” means a loan made by a bank to a farmer for the purpose of financing any project specified in the First Schedule and related to the farm of which the borrower is in possession;

“farmer” means a person who is in possession of a farm;

“farming” means any activities involved in producing crops, or in dairy or poultry farming, or in breeding, rearing or keeping beef cattle or pigs;

Second
Schedule.

“guaranteed farm loan” means a farm loan made in conformity with the provisions of the Second Schedule and not excluded under subsection (2) of section 12;

“livestock” means dairy or beef cattle, pigs or poultry;

“loan period” means a period of three years the commencement of which is fixed as provided by subsection (2) of section 4;

“maintenance”, in relation to crops, includes the cultivation and harvesting thereof;

“Minister” means the Minister responsible for finance;

“principal amount”, in relation to any farm loan, includes any amount advanced to the borrower by the bank for the insurance of property which is subject to any security given for the loan.

51/1974
S. 2(c).

(2) The Minister may from time to time by order amend the First Schedule.

Guarantee

3. Subject to the provisions of subsection (1) of section 4 and section 15, the Government shall be liable to pay to a bank the amount of loss sustained by it as a result of a guaranteed farm loan if the manager of the bank or any branch thereof has, in the prescribed manner, certified that he complied with the requirements of sub-paragraph (b) of paragraph 2 of the Second Schedule in relation to that loan.

Payment of
bank losses.

Second
Schedule.

4.—(1) The Government shall not be liable under this Act to pay to any bank, in respect of losses sustained by such bank as a result of guaranteed farm loans made by it during any loan period, an amount in excess of twenty *per centum* of the aggregate principal amount of all guaranteed farm loans made by the bank during such loan period.

Limitation
of liability.

51/1974
S. 3.

(2) The first loan period shall commence upon the 15th November, 1965, and, upon the expiration of each loan period, another loan period shall commence.

(3) The aggregate principal amount of all farm loans made pursuant to this Act shall not exceed the sum of ten million dollars:

Provided that the House of Representatives may from time to time, by resolution, increase the sum which the said amount is not to exceed.

5. Where the Minister is satisfied that the Government is liable under this Act to pay any amount to a bank, such amount shall be a charge on the Consolidated Fund and,

Guarantee
charged
upon
Consoli-
dated Fund.

at the direction of the Minister, shall be paid from that Fund upon a claim being made by the bank.

Effect of
payment of
bank losses.

6.—(1) Where any payment is made under section 5 to a bank in respect of loss sustained by it as a result of a guaranteed farm loan, the bank shall execute a receipt in favour of the Minister in the prescribed form and the Crown shall thereupon be subrogated in and to all the rights of the bank in respect of the loan, and (without limiting the generality of the foregoing) all the rights and powers of the bank in respect of any unrealized security for the loan and the right to take, institute or continue any legal proceedings for the enforcement of any such rights as aforesaid shall vest in the Crown; and all documents for exercising, transferring, realizing, or otherwise disposing of any of the said rights on behalf of Her Majesty may, unless otherwise provided by law, be executed by the Minister or any public officer authorized by him in that behalf.

(2) Reference in subsection (1) to any rights or powers does not include reference to any rights or powers in respect of any security other than security taken in pursuance of section 7.

(3) Where any payment has been made as aforesaid, it shall be lawful for the bank acting on behalf of the Crown to take such steps as the Minister may request for the collection of any amount owed by the borrower in respect of the loan, and any actual expenses of compliance with this subsection shall be borne by the Government.

(4) Any document purporting to be a receipt in the prescribed form and purporting to be signed on behalf of the bank shall be *prima facie* evidence that payment was made as aforesaid with reference to the loan mentioned in such document and that the same was duly executed on behalf of the bank.

7. A farm loan shall not be a guaranteed farm loan unless it is granted upon—

Guaranteed
farm loan.
38/2013
Sch.

- (a) the security of a charge land in which an estate in fee simple is owned by the borrower; or
- (b) the creation of a security interest in personal property in accordance with the Security Interests in Personal Property Act;

8.—(1) As soon as practicable after a charge is created in accordance with the provisions of section 7(a), a memorandum of the charge shall be prepared in the prescribed form and transmitted by the bank to the Deputy Keeper of the Records.

Memoranda
of charges.
38/2013
Sch.

(2) The Deputy Keeper of the Records shall keep a record of every memorandum received by him under this section, and such record shall be sufficient notice to all the world of the existence of the charge to which the memorandum refers and may be inspected by any person without payment of a fee.

(3) Where any such charge as aforesaid affects land, which is under the operation of the Registration of Titles Act, the bank shall, at the time of the transmission of the memorandum of such charge to the Deputy Keeper of the

38/2013
Sch.

Records, transmit a copy of such memorandum to the Registrar of Titles who shall, upon receipt thereof, cause a caveat to be entered against the title to the land described in the memorandum.

(4) Every charge of which a memorandum is recorded under the provisions of this section shall have the same force and effect as if the charge had been fully recorded.

38/2013
Sch.

(5) Every person interested in any real property affected by any such charge shall be entitled to have access to the instrument creating the charge for all proper purposes and at all reasonable times.

Release of
charges.
38/2013
Sch.

9.—(1) A release of real property from any charge thereon taken in accordance with section 7 shall be prepared by the bank in the prescribed form upon payment by the borrower of all moneys secured by the charge.

38/2013
Sch.

(2) Every release prepared under subsection (1) shall be transmitted to the Deputy Keeper of the Records who shall upon receipt thereof, make the appropriate entry in his records to show that the real property described in the memorandum of the charge to which the release relates has been released from the charge.

(3) Where a copy of the memorandum of a charge to which any release relates was transmitted to the Registrar of Titles under subsection (3) of section 8, a copy of such release shall be transmitted to the Registrar of Titles, who shall, upon receipt thereof, remove the caveat entered under that subsection against the title to the land described in the memorandum.

(4) Notwithstanding anything to the contrary contained in any law, every release transmitted to the Deputy Keeper of the Records in accordance with the provisions of subsection (2) shall operate as a full and effectual release of the charge in respect of which it was made.

10. [*Repealed by Act 38 of 2013, Sch.*]

38/2013
Sch.

11. Nothing in this Act shall be construed to preclude a guaranteed farm loan, which is secured in any one or more of the ways sanctioned by section 7, from being secured in such additional manner as the bank considers advisable.

Additional
security.

38/2013
Sch.

Miscellaneous

12.—(1) The Minister may make regulations generally for giving effect to the provisions of this Act and without prejudice to such general power may make regulations—

Regulations.

- (a) prescribing anything which may be prescribed under any provisions of this Act;
- (b) requiring reports to be made to the Minister by a bank in respect of guaranteed farm loans made by it;
- (c) prescribing measures or procedure which may be adopted by a bank in the case of any default in repayment of a guaranteed farm loan, or payment of any interest thereon, or observance or performance of any conditions or other terms thereof to the benefit of which the bank is entitled;

- (d) prohibiting the submission to the Minister of a claim under this Act by a bank while it is practicable for the bank to mitigate or recover its loss by recourse to any measures or procedure prescribed as aforesaid; and for determining whether or not it is practicable for the bank so to do;
- (e) for determining the amount of loss sustained by a bank in respect of a guaranteed farm loan;
- (f) prescribing the time and procedure for the submission of a claim to the Minister by a bank in respect of loss sustained by it as a result of a guaranteed farm loan.

(2) Where the Minister is satisfied that a bank has contravened any regulation made under paragraph (b) of subsection (1), he may, by notice published in the *Gazette*, exclude from the guarantee provided by this Act all farm loans made by that bank after such publication.

(3) Subject to the provisions of subsection (1) of section 16 with respect to regulations made pursuant to the Second Schedule, nothing contained in any regulations made pursuant to any provisions of this Act, other than paragraph (b) of subsection (1) of this section, shall apply in relation to any guaranteed farm loan in respect of which application under paragraph 1 of the Second Schedule was made, and agreement between the bank and the borrower was entered into as a result of such application, prior to the coming into operation of such regulations.

(4) Regulations made under this section shall be subject to negative resolution of the House of Representatives.

Second
Schedule.

Second
Schedule.

51/1974
S. 5.

13.—(1) Every person who—

Offences.

- (a) in an application for a guaranteed farm loan makes a statement which he knows to be false in any material particular; or
- (b) for the purposes of any of the provisions of this Act or any regulations made thereunder, signs a certificate in the form prescribed for such purposes, being a certificate which he knows to be false in any material respect; or
- (c) wilfully uses any proceeds of a guaranteed farm loan for a purpose for which they were not advanced; or
- (d) becomes indebted to an amount exceeding one hundred thousand dollars, such amount being the aggregate of the outstanding principal amounts of loans made on any applications by him for guaranteed farm loans,

51/1974
S. 6.

shall be guilty of an offence against this Act.

(2) No prosecution for any offence under this Act shall be begun without the sanction of the Director of Public Prosecutions.

(3) The commission of any such offence by a borrower shall not discharge the Government's liability under this Act in respect of the loan.

14. Every person guilty of an offence against this Act shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding two hundred dollars or in default of payment thereof to imprisonment with or without hard labour for a term not exceeding three months.

Penalty.

Discharge
of Govern-
ment from
liability.
Second
Schedule.

15. Where a bank waives any breach of a condition to which a guaranteed farm loan is made subject as required by paragraph 8 of the Second Schedule, the Government shall not be liable to make any payment in respect of any loss sustained by the bank as a result of the loan unless the Minister is satisfied that—

(a) such breach was not substantial; or

(b) the payment required by such condition to be evidenced has been made.

Variation
of terms of
repayment
of guaran-
teed farm
loans.
38/2013
Sch.

16.—(1) Where a borrower defaults, or advises the bank that he is about to default, in the repayment of any amount loaned upon the security of a charge taken in accordance with section 7(a), the terms of repayment of such amount may, by agreement in writing between the bank and the borrower, be varied in any manner not inconsistent with the provisions of the Second Schedule and any regulations pursuant thereto for the time being in force without the Government's liability under this Act in respect of such loan being discharged by reason of any such variation.

Second
Schedule.

(2) Where variation of any terms of repayment is agreed under this section, any such terms embodied in the charge shall be deemed to be duly amended as so agreed and the charge shall have effect and be enforceable accordingly.

Exemption
from stamp
duty and
other fees.

17.—(1) Notwithstanding anything to the contrary contained in any law, any deed, instrument (other than a cheque), writing or receipt relating to any guaranteed farm loan shall be exempt from stamp duty, recording and registration fees.

(2) The operation of any deed, instrument, writing or receipt in respect of which exemption from stamp duty, recording or registration fees is made by this section shall not be prejudiced or affected by such exemption.

FIRST SCHEDULE

(Section 2)

Farm Loan Projects

1. The purchase of livestock.
2. The purchase of farm implements.
3. The establishment or maintenance of crops.
4. The purchase, installation, alteration or improvement of a farm electric system.
5. The construction, purchase, installation, excavation, alteration, repair or improvement of works for the drainage or supply of water for the purpose of farming.
6. The clearing, breaking, reclaiming or other development of land for livestock.
7. The purchase, or the purchase and installation, of farm equipment.
8. The construction, painting or repairing of, or the making of any structural alterations or additions to, any building on a farm, other than a building used or to be used mainly as a dwelling.
9. The clearing, breaking, reclaiming, or other preparation of land, being land not then or immediately previously under sugar cane cultivation, for the planting of sugar cane thereon.
10. The restructuring of the capital financing of any farming enterprise. L.N. 18/1975.
11. The purchase of land for farming, and the development of such land by the construction of farm roads on such land.
12. The purchase of seeds or other material for the planting of new crops or the replanting of old crops.

SECOND SCHEDULE

(Sections 2, 3, 12 (3), 15 and 16)

Conditions of Guarantee of Farm Loans

1. A farm loan shall not be guaranteed under this Act unless made on the borrower's application to the bank for a guaranteed farm loan and every such application shall—
 - (a) be in the form prescribed by regulations in force when the application is made;
 - (b) be signed by the applicant; and
 - (c) contain statements as to the purposes for which the proceeds of the loan are to be expended and as to the cost or estimated cost (as the prescribed form may require) of carrying out such purposes,

Application
for loan.

and any principal amount owing by the applicant in respect of guaranteed farm loans previously made to him shall be disclosed in the application.

Making of
loan upon
application.

2. The bank shall not make a loan on any such application—

- (a) if it would be inconsistent with subsection (3) of section 4 so to do;
- (b) unless the application has been checked and scrutinized by the manager of the bank or any branch thereof with the care required of him by the bank in the conduct of its ordinary business.

Principal
amount.
47/1968
S. 3.
51/1974
S. 7.

3. The principal amount loaned on any such application, together with any amount disclosed therein as required by paragraph 1, shall not be less than \$6,000 or more than \$100,000.

Prescribed
limitations.

4. The amount loaned to any borrower for a purpose stated in his application and belonging to any prescribed category of purposes—

- (a) shall not exceed such sum;
- (b) shall not exceed such percentage of the cost or estimated cost of carrying out that purpose;
- (c) shall, under the terms of the loan, be repayable in full within a period not exceeding such time,

as may be prescribed in relation to that category.

Interest.

5. The rate of interest charged by the bank on a guaranteed farm loan shall not exceed such rate as shall be prescribed.

No bank
charge other
than interest.

6. No fee or charge of any kind other than interest shall, by the terms of the loan, be payable to the bank in respect of the loan as long as the borrower is not in default.

Security.

7. The provisions of subsection (1) and (where applicable) subsection (3) of section 8 shall be complied with in respect of such security as shall, in accordance with section 7, be taken for the loan.

Evidence
of due
expenditure.

8. Where the cost or estimated cost of carrying out any purpose stated in any application as required by paragraph 1 includes the purchase price of any livestock, farm equipment, farm electric system, machinery or farm implements, any loan made for that purpose on such application shall be subject to a condition requiring the borrower to deliver to the bank receipts or paid cheques evidencing that such purchase price, exclusive of small amounts arising out of casual or miscellaneous purchases, has been paid by him.

Period of
repayment.

9. The principal amount of a guaranteed farm loan shall, under the terms thereof, be repayable within a period not exceeding ten years after the bank made the loan to the borrower.