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**CONSULTANCY REPORT ON  
THE REVIEW AND REVISION OF THE  
AGRICULTURAL CREDIT ACT of 1962**

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**Prepared for  
The Ministry of Agriculture, Food and Fisheries, Republic of Zambia  
and  
The United States Agency for International Development**

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Twenty-one pages of draft amendments to the Agricultural Credits Act previously submitted to USAID/Zambia on December 17, 1992.

**LIST OF ACRONYMS**

<b>BOZ</b>	-	<b>Bank of Zambia</b>
<b>BIS</b>	-	<b>Bank for International Settlements</b>
<b>COBK</b>	-	<b>Cooperative Bank of Zambia</b>
<b>CUSAZ</b>	-	<b>Credit Union and Savings Association of Zambia</b>
<b>DBZ</b>	-	<b>Development Bank of Zambia</b>
<b>GOU</b>	-	<b>Government of Uganda</b>
<b>GOZ</b>	-	<b>Government of Zambia</b>
<b>IBRD</b>	-	<b>International Bank for Reconstruction &amp; Development</b>
<b>IMF</b>	-	<b>International Monetary Fund</b>
<b>LINTCO</b>	-	<b>Lintco Company of Zambia</b>
<b>MAFF</b>	-	<b>Ministry of Agriculture Food and Fisheries</b>
<b>MCI</b>	-	<b>Ministry of Commerce and Industry</b>
<b>MMD</b>	-	<b>Movement for Multiparty Democracy</b>
<b>MOF</b>	-	<b>Ministry of Finance</b>
<b>NATCO</b>	-	<b>National Tobacco Company</b>
<b>NCSB</b>	-	<b>National Credit and Savings Bank</b>
<b>NCZ</b>	-	<b>Nitrogen Chemicals of Zambia Ltd.</b>
<b>PFP</b>	-	<b>Policy Framework Papers</b>
<b>POSB</b>	-	<b>Post Office Savings Bank</b>
<b>PCA</b>	-	<b>Production Credit Associations</b>
<b>TAZ</b>	-	<b>Tobacco Association of Zambia</b>
<b>ZCF</b>	-	<b>Zambia Cooperative Federation</b>
<b>ZCF/FS</b>	-	<b>Zambia Cooperative Federation-Financial Services</b>

## **EXECUTIVE SUMMARY**

The Government of Zambia (GOZ) has embarked on a program, with the blessing of the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (IBRD), which will revitalize the private sector. The key to the program is the withdrawal by government of intervention, price supports and subsidies. Agriculture, a long neglected sector of the economy, needs substantial financial support in the form of inputs of seed and fertilizers. As government moves away from providing this support and it is replaced by the private sector it is apparent that there also needs to be an overhaul of the credit delivery system.

The banking system needs incentives in the form of GOZ agricultural loan guarantee programs. The Cooperative Unions and Societies, Traders, and Commodity Dealers need the availability of these guarantee programs and a return to alternative forms of bank loans such as trade finance or Acceptance financing, as most of the real property-secured financing capability is already utilized. The financial sector liquidity is limited and the Ministry of Finance (MOF) and Bank of Zambia (BOZ) will need to establish more liquidity by setting up Bill for Acceptance Discount programs etc.

In order to provide the banking system and the entrepreneurs with the umbrella of collateral security so that this liberalized free market economy may function, it was decided to reform the Agricultural Credit Act of 1962. The purpose of this consultancy was to review the existing Act, a colonial holdover, and to revise it in order that it may become more compatible with contemporary needs and the political mandate of the new administration.

The revisions to this act, which may be entitled the *Agricultural and Related Businesses Security Agreement Act of 1993*, now incorporate a great number of changes to facilitate the borrowing of money and the receipt of inputs to farmers. This finance will come from banks and related businesses such as cooperative unions, societies, commodity brokers and traders. These will consist of marketing individuals, partnerships, and corporate entities. This financing will be based on the security of charges, liens and assignments (Security Agreements) created upon farming stock, other agricultural assets, and other holdings. The revised Act meets all of the demands set by the Minister of Agriculture and provides a sure means to establish in the Republic of Zambia a program of credit delivery to farmers that will meet the needs of farmers in the years ahead.

However, it is the opinion of this consultant that in tandem with the revised Agricultural Act there needs to be land reform, a government guaranteed loan program for agricultural borrowers, and the establishment of a nationwide cooperative production credit institution at the district level.

## **SCOPE OF WORK**

Prepare a revised Agricultural Act in draft form for the USAID Mission in Zambia and the Ministry of Agriculture, Fisheries and Cooperatives of the Republic of Zambia. The revised Act needs to respond to the need for economic growth and development under a more liberalized Zambian economy.

The legislation in draft form (in laymen's terms for the most part) shall be supported by reports and work papers that demonstrate:

- (a) Comparative review of agricultural credit laws and institutions in Zambia and other Anglophone countries such as Zimbabwe, Malawi, and Kenya, and the Farm Credit Act of the U.S. to determine the common elements of an effective agricultural credit delivery system in a liberalized economy.
- (b) Discussion of agricultural reform with the appropriate officials of major commercial lending institutions, smallholder credit schemes, Zambian National Farmers Union, Zambian Cooperative Federation, Tobacco Association of Zambia, buying agents for agricultural inputs, a representative group of members of the few commercially viable farm cooperatives, and other stakeholders as determined by the consultant and USAID/ZAMBIA to be important to the legislation.
- (c) The consultant's draft legislation is based on successful agricultural credit systems and institutions of more liberalized agricultural markets, recommendations of representative stakeholders, and the institutional and financial environment in Zambia at the present.
- (d) The consultant's draft legislation was subject to a professional, objective review.

## **METHODOLOGY USED**

The consultant reviewed numerous documents on agricultural credit systems and agricultural legislation from countries including Zambia, Malawi, Uganda, Zimbabwe, Kenya, and the United States - detailed below by country. In addition, discussions were held with various key stakeholders in the Zambian agricultural credit sector.

### **I. Zambia**

- Review of the existing Legislation in Respect of Institutional Agricultural Credit in Zambia by Crop Development Institutions Planning Process, February 1992.
- The Transition to the Private Sector Financing of Maize by Edgar J. Gordon, Consultant on ZATPID November 1992.
- Cooperatives in Zambia, A Background Information and Policy Document, January 1992, (Revised September 1992) by Zambia Cooperative Federation Ltd.
- Proposals for Crop marketing Arrangements 1992/1993 and Beyond, N.P. Magende, Chairman Marketing Committee to Minister of Agriculture, Food and Fisheries.
- Editorial on Food Security in the journal of the Zambia National Farmers Union, December 1992.
- Survey of Agricultural Loans 1980/1985.
- CUSAZ Annual Report.
- Draft A Framework for Agricultural Policies to the Year 2000 and Beyond.
- An Evaluation of the Agricultural Credit System in Zambia October 1991.
- An Evaluation of the Agricultural Credit System for Small Scale Farmers, June 1991.
- Review of Loan Documentation at Lima Bank and Barclays Bank.
- Review of Zambia State Insurance Corporation Ltd Multi Peril; Maize Lima Crop Insurance Program and the various Farmpak, Cattle and Dairy Insurance Programs
- All Banks Sectoral Classification of Loans and Overdrafts 1989 through September 1992.
- ZCF Finance Services Ltd. Company Operations Profile.

### **II. Malawi**

- Malawi/USAID Rural Enterprises & Agribusiness Development Institutions (READI) Project.
- Strategies for Small & Medium Enterprises in Malawi.
- Reviewed The Small Holders Credit Administration Procedures and Loan Documentation.

### **III. Uganda**

- Multi Year Operational Plan for Uganda.
- Financial Assistance & Technical Assistance to Coop. Bank, December 1991.
- Executive Summary IBRD study on Specialized Agricultural Financial Institution.

- Coopers & Lybrand Diagnostic Study of Coop Bank for the Government of Uganda.
- Financial Sector Adjustment Credit Pre-appraisal Mission Report of Coop Bank of Uganda and Agricultural Credit 1992.
- Cooperative Societies Act.
- Companies Act, Banking Act, as amended 1969 and Bank of Uganda 1966.

#### **IV. Zimbabwe**

- Agricultural Enterprise Development Fund, Agricultural Services Project, Zimbabwe, 1992.

#### **IV. Kenya**

- Evaluation of the Performance of Training and Visit Extension System, IBRD in Kenya.

#### **V. United States**

- Reviewed The U.S. Farm Credit Act of 1971 as amended, and as applicable.
- Guide for Secured Loan Transactions, Production Credit Associations of the U.S.A.
- Division 9 Secured Transactions, State of California Uniform Commercial Code.
- Brief review of Farmers Home Loans Administration Guaranteed Loan Program for Short Term Production Loans handled by Commercial Banks.

#### **VI. Other Documents**

- Basle Committee on Banking Regulations and Supervisory International Convergence of Capital Measurement and Capital Standards.

#### **VII. Discussions on agricultural credit reform were held with:**

- Mr. Ali Mhd. Hamar, The Attorney-General
- Mr. Henry Tungakwo, Commissioner of Law Revision
- Ms. Eva C. Duan, Law Drafter
- Ms. C. Jones, M.D., Interafrica Corporate Services Ltd. Outgrower Inputs
- Mr. Khan, Deputy to Mr. Musene Lands Department
- Mr. Graham Younger, Broker and Dealer Supplier of Tobacco Inputs
- Mr. Sipalo and Mr. Michael Munalula, Lima Bank
- Dr. Guy Scott, Minister of Agriculture, Food and Fisheries
- Mr. A.K. Banda, Deputy Director, MAFF
- Mr. Rodney Kalumba, Zambia State Insurance Corporation
- Mr. John Hill, Representative International Monetary Fund
- Mr. Neville Grant, Director, Banking Supervision, Bank of Zambia
- Mr. Halouboba, M.D., CUSAZ

- Mr. Henry Mafalo, M.D., Cooperative Bank, Nsunka K.R. Sambo, Legal Counsel, Lennart Lindkvist, Senior Advisor, Swedish Cooperative Society
- Mr. Ng'andu P. Magande, M.D., Zambia National Commercial Bank Ltd.
- Mr. R.D. Phire, M.D., ZCF Finance Services Ltd
- Mr. Michael McKnie, Executive Director, Barclays Bank of Zambia Ltd.
- Mr. Chris Lombe, Chief Advances Officer, and Mr. Terry M. Mweemba, Agricultural Manager, Barclays Bank of Zambia, Ltd.
- Mr. Ian F. Peterkin, M.D., ANZ Grindlays Bank, and Mr. Ben Shoko, General Manager.
- Mr. Isaac Moresi, World Bank Mission in Zambia
- Mr. Ernest Mtamboh, Commonwealth Development Fund
- Mr. John Hudson, Zambia National Farmers Union
- Mr. Charles Chabala, General Manager, ZCF Development Services Division
- Mr. Chibola, Bank of Zambia, Statistics Division

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## **FINDINGS**

### **1. Background**

Thirty years ago the Agricultural Act of 1962 was enacted. The basis for the Act has regrettably been lost in the making of history and the several Republics that have governed Zambia since Independence. However, if the intent was similar to other Anglophone countries in East and Central Africa then the current implementation, primary users, and perceived benefits of the Act differ greatly.

The Movement for Multiparty Democracy (MMD) after its overwhelming majority in October 1991 elections, embarked on a plan in early 1992 to encourage private enterprise and to create a liberalized, open market economy. At the same time the Government of Zambia (GOZ) agreed to sweeping and dramatic Policy Framework Papers (PFP) with the IMF and the IBRD. The PFP committed the GOZ to macroeconomic stabilization and programs for structural adjustment to establish an environment necessary for a vibrant private sector. Under these programs the GOZ aims to create an environment in which government will not pre-empt nor inhibit private business initiative, activity, and opportunities. Reforming the credit markets is a key element of the GOZ's strategy.

### **2. The Credit Delivery System**

While credit is available in the rural areas it is apparently restricted to lines of credit against the security of leasehold land and real property. The banking system does not appear to utilize the other forms of security such as warehouse receipts, charges over inventories, and stock in trade. In fact, the Chattels Mortgage and Letters of Hypothecation commonly used in other parts of Africa are not recognized in Zambia even though, for instance, Hypothecs are referred to in the Zambian Cooperative Societies Act. It is probable that government involvement in agriculture, marketing, and distribution created an environment in which normal trade finance did not flourish.

There is by all accounts little credit culture in Zambia. Credit between the consumer and traders is not widespread. There is not a developed "informal lending" structure such as moneylenders and traders. The statistics of the country as a whole are not current and the work and conclusions of the consultancy have not benefitted from access to this kind of information. In particular, an important review of certain Acts of the legislature were not undertaken because they were out of print and unavailable, even in photocopy form, prior to the author's departure from Zambia. Of these, The Companies Act, The Bankruptcy Act, The Banking Act, The Bank of Zambia Act, the various Farmers Debt Consolidation Acts, and the Bills of Sale Acts of 1878 and 1882 are the most important. It may well be that some of the recommendations made in the redrafting of the Agricultural Act, later in this report, may be pre-empted by existing provisions in these Acts.

The credit delivery system appears to be working quite well for the large commercial farmers who, for the most part, are incorporated companies. The instrument used to secure these lines of credit, in addition to mortgages, is in the form of a registered debenture which creates a floating charge over all the assets of the company. A right is empowered in the granting and issuing of the debenture to the appointment of a Receiver and Manager under certain circumstances. It was the use of the debenture which prompted the old colonial authorities to create the Agricultural Acts in the 1960s to provide for the farmers, both the "white" and the peasant that were not incorporated companies, the ability to create a charge over their non-real property such as farm equipment, vehicles, livestock, and crops, both existing and future. Individual farmers before enactment never had the legal apparatus to pledge those assets as they were not covered by the Chattels Mortgage Act in existence at that time.

### **3. The Agricultural Charge**

In a very small way the banks, namely Lima Bank and Barclays Bank, are utilizing the system of registering charges provided by the Agricultural Credits Act of 1962. This legislation was intended to facilitate the borrowing of money by farmers on the security of charges created upon farming stock and other agricultural assets. After some searching and questioning at the Lands Department it was established that up to December 1, 1992 there were only 2,042 such charges recorded for the whole year. By all accounts there are thousands created each year at Lima Bank alone.

The true intent of the registration of charges under the Act is not properly understood by the lending institutions. Those responsible for the recording and discharging of the instruments of charge, in turn, are not fulfilling their role. In fact, the practice of filing charges under the Agricultural Credits Act has fallen into disuse because it is considered morally unenforceable (serious penal penalties such as three years imprisonment for minor misdemeanors). And, as a result of the bureaucracy failing to do its job, charges are often unregistered and therefore unenforceable against third parties. There have even been cases where the borrowers have been successful in court actions against them because the charges were not registered, even though the Act provided for this eventuality by not requiring registration for the charge to be valid against the farmer. Many years ago it was apparently interpreted that only a bank could take a charge over a farmer's assets other than real property. The Act does include some specific sections that apply only to banks but the only exclusion to its use by any person is the section that stipulates that only a bank can effect a floating charge over a farmer's assets.

### **4. Crop Insurance Program**

One bright note is the existence of crop insurance programs provided by the Zambia State Insurance Corporation Ltd. They are extensive and cover anyone from the small farmer to the largest commercial farmer. A package for the smallholder (i.e. 1 ha. to 11 ha.) covers the value of inputs and seed. Programs for commercial farmers cover seed, fertilizers, labor costs, transport and value added - against the perils of drought, hail, storm and flood.

Because of the logistics involved and the need to inspect each individual farm, the company provides the insurance coverage to groups of farmers. The only real problem is the cost which, because of the drought experience of 1992, has been raised to a level that the peasant farmer is unable to afford. It is more a fact that the size of the farm operation is too small to generate the returns sufficient to meet the premium cost. The coverage could be extended to traders and brokers interested in providing input loans to the smallholders. The breweries and LINTCO already obtain this coverage for their input loans to growers.

The banks receive an introductory commission of 10.0% of the premiums for each borrower insured. Premiums for a maize farmer were said to be 25.0% of the input value for 1992/93 season. Some interested parties felt that the company had priced itself out of business for the new crop year. Tobacco growers, which are the majority, pay a premium of only 1.5%. However, this program is still in its' infancy, with only 868 policies in the 1991/92 crop year.

Nevertheless, it is encouraging that a crop protection insurance exists and with new programs on the way to expand cultivation and to diversify crops the economies of scale and the broader coverage will make for lower premiums. If the necessity to buy crop insurance became a mandatory requirement for lenders and providers of inputs, an open market economy with no price ceilings on maize, for instance, would open up the way for the market price to include the overhead cost of crop insurance.

## **CONCLUSIONS**

### **1. Reforming the Credit Markets**

With the move to an open market economy and the GOZ, CUSA, LINTCO, TAZ, and ZCF becoming independent of each other, the need to re-establish or reform the credit markets is both evident and pressing. The government seeks to withdraw from the provision of inputs to smallholders under 1.5 ha. and emerging farmers. Much of the distribution of inputs was achieved through government financial support of the cooperative unions and their societies. Many of these institutions are in a state of disarray and need to reorganize if they are to be effective distributors of inputs and traders in commodities in an open market economy.

It is very unlikely that the commercial banks will expand their level of input financing. The size of the transactions, the subsistence level of the proposed borrowers, and the logistics are just totally unattractive. The unfavorable record and financial condition of Lima Bank and its predecessors surely confirms that this group of prospective customers is not a desirable market niche to pursue. The large commercial farmers, the few traders currently providing inputs, and the millers could effectively perform the distribution of inputs to the farmers. They could expand their operations and more could be encouraged to enter the business, if a mechanism exists to drastically reduce the risk of non-delivery of the commodity. But for them the incentive has to be an adequate return for the risk of distribution and holding the crops until they are taken up. Unavoidably the cost of maize meal in particular will reflect the costs and the profit margins. Gordon's paper on the *Transition to the Private Sector Financing of Maize* dated November 1992, clearly and explicitly sets out the problem and the recommendations for a cure. The author will build on some of his recommendations for specific action to be taken by the banking community and the cooperative movement.

### **2. Revise and expand the Agricultural Credit Act of 1962**

The current Act has almost fallen into disuse because there is a perception both by government, the banks, and a few institutions authorized to loan to farmers, that enforcement has immoral undertones because of the heavy penal punishment for misdemeanors committed by farmers. The system of registration has collapsed and the records to determine prior charges are virtually non-existent. Add to this the mechanical changes or interpretations that have occurred over the past three decades and you have an instrument that does not function. In addition it does not provide adequate protection against unscrupulous third parties. An interesting fact which may have escaped the users, is that the legal description of farmers, whilst inclusive of land owners and tenants, did not specifically refer to the peasant farmers who neither own land nor are tenants. No reference was made to the those who receive entitlements to farm communal land under the Traditional Lands Ordinance. In the Recommendation section of this report the author will cover the changes and improvements needed to give the lenders and input providers an instrument they can rely upon. Government on its part must make a strong commitment to supporting the principle of enforcement of contractual law.

Another area of concern is the availability of the money supply in the banking system to provide the finance to the private sector. The demands on the commercial banks and the DBZ as a result of the privatization program will be enormous. The MOF and the BOZ will need to create a Bill for Acceptance Discount market scheme to provide the necessary liquidity for the new trade financing instruments that will be available. First the banks must be willing to finance the traders, brokers, and commodity intermediaries and, where necessary, to liberalize their credit practices.

## **RECOMMENDATIONS**

### **1. The New Act**

An important part of the information gathering process was the number of suggestions and ideas that were freely offered by those interviewed. For instance, whilst the concept of farmers clubs was encouraged it was thought that they should be purposely kept small and consist of only relatives or close clan members. Often a good organizer of a farmer's club turns out to be a poor farmer and skips with the funds. However, it was generally thought that the club concept should be refined and field-tested in the future. It was considered that time should be spent on providing the farmers with more extension support and information on the proposed new credit act. It was disappointing that the promised submission of written ideas did not materialize before the author's departure from Zambia. This information should be reviewed before the final draft of the new law is written.

The rewriting of the Agricultural Credit Act is a small but very important part of the changes that need to occur if the government is to achieve its' aims to create a free market economy. The new credit act, which may be entitled the Agricultural and Related Businesses Security Agreement Act of 1993, will provide an impetus to the traders and commodity intermediaries as they will have an enforceable security agreement to cover their input advances to smallholders and emerging farmers. It will improve the comfort level of the commercial bankers and provide a means to secure loans to farmers, farmer's clubs, traders and intermediaries. It will provide the proper legal process for the pursuit of ensuring performance of contractual obligations under the civil code, without interference of penal law except where fraud is concerned.

### **2. Farmers Loan Guarantee Program**

The introduction of a guaranteed loan program available to small scale farmers, farmer's clubs, and emerging farmers - administered by the commercial banks for themselves and the outgrower financiers; and monitored by the BOZ to provide for up to 85.0% of any shortfall after all recovery attempts - may be the stimulus needed. Even in the United States, where farm operations are well established, 15.0% of total farm debt is guaranteed by the government.

### **3. Land Reform**

A great number of those interviewed believe there is a pressing need for land reform. This should take the form of land title in fee simple. The ownership of land creates improved cultivation habits with less soil erosion and higher yields without increasing the mineral or acid content. It reduces the deprivation of slash and burn cultivation and over reliance on fertilizers. Combine ownership with good cultivation practices and immediately the good farmers become more efficient and a bankable proposition to lenders and input financiers.

#### **4. Farm Credit Delivery System**

Government should consider helping to establish a nationwide cooperative system of Production Credit Associations (PCA), modeled after the systems in Europe, Japan and the United States. It took approximately 50 years for the American farmers to pay back the U.S. Government for their cooperative seed capital, but by 1968 the Farm Credit System was totally farmer-owned and managed. The reason for setting up the PCA's in the United States was identical to the current lack of interest on the part of commercial banks in Zambia to finance the small farmers. There may be a nucleus in some of the existing cooperatives, but they must be run as viable and sustainable cooperative lending institutions - managed and staffed by lenders with good credit skills. There may be donor capital available to make the initial loan funds available. Cooperatives can provide the means to self-capitalize each institution.

#### **5. Recommended changes and explanations for the changes in the Agricultural Act**

**A. Title:** The Act, which may be called **The Agricultural and Related Businesses Security Agreement Act**, was expanded to cover all of the additional factors. It is thought important that the description of the act clearly demonstrate the wider coverage, in order to include those entities so vital to achieve the government's objectives.

The title is :

"An Act to facilitate the borrowing of money and the receipt of inputs to farmers from banks and related businesses such as Cooperative Unions, Societies, Commodity Brokers, Traders and other Marketing Individuals, Partnerships, and Corporate Entities on the security of charges, liens, and assignments (Security Agreements) created upon farming stock, other agricultural assets, and other assets; to provide for the registration of such charges, liens, and assignments; and to provide for matters incidental to or connected with the foregoing, as a means to establish in the Republic of Zambia a program of credit delivery to farmers, knowingly acceptable as enforceable against the parties under the contract laws of the civil code of the Republic."

**B. Interpretation:** Section changes were made to incorporate the concepts of lien and assignments, banks were added, the description of farmer was enlarged to cover the existing use of traditional lands, and the new concept of the related business and its purpose to provide inputs and input loans was included. The description of farming stock was expanded to include a greater number of farm products, the idea of value-added, and the reference to farmers utilizing the Traditional Lands. An additional category of "other assets" describes those instruments that arise out of business transactions related to agriculture and other businesses after the value added occurs.

**C. Section 3 (1), (2), (3).** Agricultural charges, liens, and assignments. A more detailed explanation of the legal significance of the terms "fixed and floating charges" is needed in the Act to ensure that incorrect interpretations do not occur over time as they did in the previous Act. Provision is to be made for a charge, either floating or fixed, to be made in favor of *any person* and to cover all types of assets described in the Act.

**D. Section 3 (4).** Needs material changes to omit reference to the crops not affected by a floating charge and eligibility to hold a floating charge extended to all persons.

**E. Section 3 (5).** Needs to be very careful to continue to provide the banks with a continuing interest, where they provide advances on current account during the period the facility is provided or until it is repaid and the credit line canceled. The suggested wording should suffice.

**F. Section 4 (2).** Effect of a Fixed Charge. In this section, a new clause has been added that makes it an obligation on the part of the farmer, if he has received inputs from a trader, to deliver the excess crop over his family requirements to the trader.

**H. Section 4 (4).** Effect of a Fixed Charge. This is a complete departure from the previous law and represents a very conservative approach, contrary to the current practice in the U.K. and the U.S. It puts the onus on the buyer and the auctioneer to be aware of the recorded Security Agreement. There is no requirement to make a search. It is not unreasonable and it will certainly inhibit most traders from buying, in those instances where the farmer has an input loan from a trader. It is hoped to include some language in the new Marketing Act to require buyers to make a preliminary search before purchasing commodities.

**I. Section 4 (5).** As in (4) this is a departure from the previous law. However, if the legal people will accept the concept in (4) above, then it follows that (5) should be worded in a similar form.

**J. Section 6.** An addition to describe the effect of a Lien.

**K. Section 7.** An addition to describe the effect of an Assignment.

**L. Section 8 (1).** Rights and Obligations of Related Businesses. A section should be included here that clearly sets out that Related Businesses, if they are acting as an intermediary in the provision of inputs to farmers, may be entitled to benefit under any GOZ guarantee loan programs for designated small-scale and emerging farmers, in as much as their input loans be treated in the same manner as loans provided by banks. It is important to include this fact in the Act although the same effect can be achieved if it is incorporated in any GOZ ordinance covering the guarantee loan program to farmers.

**M. Section 8 (2).** Rights of Related Businesses. Under Obligations, a section should be included that provides for the trader/broker to pay, at the time the commodity is delivered by the farmer, a price per bag or kilo (refer to the new Marketing Act to determine how to price the commodity and whether to describe each commodity individually or collectively) not less than "x" per cent below the going market price. If the trader is unwilling to purchase at a price no less than "x" per cent below market price, than the Act expressly precludes the enforcement of the contract between the trader/broker and the farmer; and provides, at the time the farmer makes delivery to another trader, that the value of the inputs plus the agreed upon interest, plus 10.0% of the input amount, be remitted to the Related Business in settlement of the outgrower agreement between them. If the contract or security agreement stipulates a price at delivery, the farmer would be required to accept payment for the weight delivered at that price.

**N. Section 9.** Rights of a Farmer. A section should be included that provides for the corollary of the above section. The major intent is to ensure that if the farmer is paid a fair market price for the value of the commodity, he is required to deliver the commodity to the Related Business. It is difficult, with the present high inflation, for either side to agree upon a fair sale price at the beginning of the season. In view of the fact that we anticipate a GOZ guaranteed loan program that will cover up to 85 % of the input loan, the trader will not be at great risk and should not therefore be in a position to offer a vastly lower conversion price for the commodity delivered. However, should both parties agree on a forward price, say a price per bag tied to the increase in the Zambia Kwacha to the dollar, it would be enforceable notwithstanding these two sections.

**O. Section 10 (7) & (8).** Effect of charges, liens and assignments. The old Act had very severe criminal penalties in the event of a farmer failing to provide properly written notice and notification. Changes have been written into the Act to make these civil infractions, not penal. If subsection (7) stands as a civil offense, it may be unfair to incorporate subsection (8) as a penal infraction. However, if persons are made aware or are required under the Marketing Act to make a search to determine that a Security Agreement is recorded, then any act on their part which is in contravention of the law needs to be prosecuted. If section 10 (8) can stand as it is now written, it will prove to be a strong deterrent to those unscrupulous traders who are bringing pressure to bear on the farmers to deliver maize to them as opposed to delivery of the commodity to the provider of the inputs.

**P. Section 11.** Supplemental Provisions. The whole of this section is rewritten to reflect the concept of a security agreement taking the place of the old charges under the 1962 Act and incorporating the liens and assignments that will enable traders to obtain loans based upon the security of the farmers contracts and loans. In turn, any additional security that the traders may originate, such as storage or warehouse receipts, will increase the lender's comfort level. The rights to these documents can be assigned to the banks.

If the banks are to participate in providing trade finance in the form of loans against warehouse receipts, then the available warehouse space has to be organized to provide a secure and above reproach warehousing service. Whether this is handled as a private sector business or as a government facility is a separate subject. But, needless to say, if the integrity of the warehouse system is in doubt, banks cannot be expected to cooperate.

The managing director of one of the largest banks informed the author that his bank was in the process of forming a company to lease warehouse storage space and provide a warehouse service. Thirty years ago in other parts of East and Central Africa, banks operated both open and bonded warehouses in the port cities and upcountry.

Prior to the author's departure from Zambia, it was not possible to review copies of the following Acts, which were out of print, although the Legal Affairs Department is making copies: Bank Act, Companies Act, Bankruptcy Act, Bills of Sale Acts, and Bank of Zambia Act. Obviously, there may be conflicts with existing law that need to be resolved.

**Q. Section 12.** Appointment of a Registrar. It is recommended that the registration not be handled by the Lands Department, as it is necessary to have a registration location in the field and preferably at the District Headquarters. Several government departments are represented at the District Headquarters. The choice in preferential order is as follows: 1) Magistrate's Office, 2) Post Savings Bank office, 3) District Agricultural Office (Camp Officer), and 4) Tax Collector's office.

Where appropriate, reference is made to the District Office and Assistant Registrars at the District Office level. Section (3) is amended to reflect only a period of ten business days instead of 30 days to ensure registration of the charge in a timely manner.

**R. Section 15.** A new section should be included to cover the category of fraud by the Related Businesses. It should include, among other possible fraudulent acts, the misrepresentation of the rights of the provider of inputs and fraudulent treatment of the farmer by taking advantage of his limited knowledge of business and English.

**S. Section 16.** Rights of Tenants was expanded to include the entitlements of farmers under the Traditional Lands Ordinance.

**T. Section 18.** Protected Farmers, Section 17, was amended to permit a farmer to create a security agreement in favor of all lenders even though he may be a protected farmer under the Farmers' Debt Consolidation Act. Unfortunately, a copy of the Act was unavailable so it may be necessary to review this section in the light of the Act.

**U. Section 19.** Priority of existing charges. It would be beneficial if the added benefits of the new Act can be passed on to the holders of existing charges. On the farmer side,

they would benefit from less severe penalties other than for fraud.

***V. The Subsidiary Legislation - Registration Rules:*** The references to charges have been changed to reflect Security Agreements. The description in the registers has been updated to reflect the new ideas, including the notion of farmers clubs, and the several responsibilities of the joint and individual farmer.

***W. A New Register:*** A new register to record time and date of receipt of documents in chronological order should also be included.

**APPENDIX**

**DRAFT OF THE  
AGRICULTURAL AND RELATED BUSINESSES SECURITY  
AGREEMENT ACT**

**Dated December 16, 1992**

**The Agricultural and Related Businesses Security Agreement Act  
Arrangement of Sections**

*Section*

1. Short title
2. Interpretation
3. Security Agreement (Charges, Liens, and Assignments) on farming stock, other agricultural assets, and other assets
4. Effect of a fixed charge
5. Effect of a floating charge
6. Effect of a lien
7. Effect of an assignment
8. Rights and Obligations of Related Businesses
9. Rights in which a Farmer, being the recipient of input loans from Related Businesses, is not required to deliver the contracted commodity
10. Effect of Security Agreement in respect of certain farming stock
11. Supplemental provisions as to Security Agreement (charges, liens, and assignments)
12. Appointment of the Registrar of Charges, the locations of offices of record and the registration of charges, liens, and assignments
13. Restriction on publication of a list of Security Agreements
14. Fraud by Farmers
15. Fraud by Related Businesses and parties to the charges, liens, and assignments
16. Rights of tenants
17. Rules of conduct
18. Charges, liens and assignments to be created by a protected farmer and related business only to be in favor of a Bank
19. Existing charges under the Agricultural Act 1962

**Agricultural and Related Businesses Security Agreement Act.**

An Act to facilitate the borrowing of money and the receipt of inputs to farmers from banks and related businesses such as Cooperative Unions , Societies, Commodity Brokers and Traders and other Marketing Individuals, Partnerships and Corporate Entities on the security of charges, liens and assignments (Security Agreements) created upon farming stock ,other agricultural assets and other assets; to provide for the registration of such charges, liens and assignments; and to provide for matters incidental to or connected with the foregoing as a means to establish in the Republic of Zambia a program of credit delivery to farmers, knowingly acceptable as enforceable against the parties under the contract laws of the civil code of the Republic.

(sic in legal language that conveys the last sentence)

*Short Title*

1. This Act may be cited as the Agricultural and Related Businesses Security Agreement Act.

*Interpretation*

2. In this Act, unless the context otherwise requires \_\_\_\_\_
  - "charge, lien and assignment" means a charge, lien or assignment created under the provisions of section *three*; a Security Agreement.
  - "Bank" means any commercial bank, development bank or cooperative bank:
 

Provided that the Minister of Agriculture ? may, by statutory notice, extend this definition so that it shall comprise any other financial institution; but, at the same time by so doing, does not preclude the Agricultural Related Businesses mentioned in the Act from being participants and to enjoy the entitlements afforded by the Act.;
  - "cultivation" shall be deemed to include horticulture and the use of the land for any purpose of husbandry inclusive of the keeping or breeding of livestock, poultry, or bees, and the growing of fruit, vegetables and the like; and "cultivates" shall be construed accordingly;
  - "farmer" means any person (not being an incorporated company) who, as the tenant, entitled person under the Traditional Lands Ordinance ??? or owner of agricultural land, cultivates such land for profit;

*(I am not sure of the legal authority that permits Chiefs to allocate to persons land for cultivation)*

- "Related Businesses" means any business either an incorporated company, cooperative,

partnership, or sole proprietorship that engages in the business of providing inputs or loans to farmers. The primary business undertakings of these "Related Businesses" may be as traders or dealers in commodities such as maize, small grains, tobacco and ground nuts and the consideration for providing inputs and loans to farmers is to ensure delivery of the relative commodity to the business.

- a "Related Business" for the purposes of this Act shall be synonymous with "Farmer" and all "Related Businesses", other than Incorporated Companies, shall have the rights and obligations of a farmer, even though they will not be cultivating land for profit, except for the specific obligations of Related Businesses to Farmers Section 8 (2), as provided in this Act."
- "farming stock" means all farm products now owned or hereafter acquired, including but not limited to all crops growing or to be grown and if after severance from the ground, whether subject to any treatment or manufacture or not; livestock, including poultry and bees, and the produce and progeny thereof; and other agricultural or horticultural produce whether subjected to any treatment or process of manufacture or not; timber both standing or cut, seeds and manures; fertilizers, insecticides, oils and fuels; agricultural vehicles, machinery, and other plant; and agricultural tenant's fixtures and other agricultural fixtures which a tenant is by law authorized to remove; on land either owned, rented or to which the farmer has rights to cultivate under the Traditional Lands Ordinance?

*The description has been expanded to include some omissions from the previous Act and to indicate the various classes of land being cultivated.*

- "holder" means a person in whose favor a charge, lien or assignment (Security Agreement) has been created, and includes the executors, administrators, and assigns of such person;
- "other agricultural assets" means any tenant-right, including any right to compensation for improvements,
- "other assets " means all accounts receivables, chattel paper, warehouse receipts both negotiable and non-negotiable and general intangibles now owned or hereafter acquired, including but not limited to promissory notes, either secured or unsecured, pledged as collateral for the inputs or loans; deposit and savings accounts and like accounts deposited with banks and savings institutions, credit unions and like organizations.

*(The lawyers and legal drafters will have to determine, which of the above, may not under Zambian law be assigned or pledged, etc. This is an entirely new category of assets to bring the Act up to date and to provide some of the mechanics that we are building into it. In addition, a legal definition of he/him that is also applicable to her/hers is needed.)*

*Agricultural charges, liens and assignments on farming stock and assets.*

3. (1) A Security Agreement may either be a fixed charge or a floating charge, or both a fixed and a floating charge.

*The local legal people will have to determine the legal significance of fixed as opposed to floating. It was determined during conversations with the Attorney-General and various officials of the local banks, that there was a dichotomy of opinion as to the intent and the implementation of this facet. As I understand the concept of fixed, it relates to a permanent charge over farming stock and other agricultural assets, and other assets that exist at the time of pledging. The floating concept refers to those same assets as it relates to the future growth, of say seed, that will be acquired in the future, and the resulting crops. The progeny of livestock and other animals is usually covered by a fixed charge as they in fact often replace the original and do not leave the farm except as a crop or disposal sale.*

(2) It shall be lawful for a farmer, either as an individual or as a member of a Farmers' Club, notwithstanding any other provision of law by instrument in writing to create in favor of any person a charge, fixed and/or floating, lien or assignment (hereafter described as a Security Agreement) on all or any of the farming stock, other agricultural assets and other assets belonging to him/her or to be by acquired by him/her; as security for delivery of inputs to him/her, sums advanced or to be advanced to him/her or to be paid on his/her behalf under any guarantee by such person and interest, commission and charges including premia for all types of crop insurance.

*A major change would be the omission of the paragraph in article 3 (2) that allows only a bank to take a floating charge. If this is continued it would exclude, I think under my understanding, the opportunity for the traders and intermediaries to secure themselves for the inputs to their outgrowers.*

(3) The property affected by a fixed charge shall be such property forming part of the farming stock, other agricultural assets and other assets belonging to the farmer at the date of the charge, lien or assignment (Security Agreement) as may be specified in those documents, but may include \_\_\_\_\_

(a) in the case of livestock, any progeny thereof which may be born after the date of the security document; and

(b) in the case of agricultural vehicles, machinery and plant, any of these which may, whilst the security agreement is in force, be substituted for that specified in the Security Agreement.

(4) The property affected by a floating charge shall be the property forming part of the farming stock, other agricultural assets and other assets from time to time belonging to

the farmer, or such part thereof as is mentioned in the Security Agreement.

*Once again, there is a material change from the Agricultural Credit Act of 1962, in as much as we need to omit the reference to the crops which are not affected by a floating charge, and the reference to any existing floating charge over those same crops being null and void. Currently only banks may create a floating charge.*

(5) The principal sum secured by a Security Agreement may be either a specific amount advanced in one sum or in more than one sum from time to time, or in the case of a bank a fluctuating amount advanced on current account not exceeding at any one time such amount, if any, as may be specified in the Security Agreement, and any Security Agreement for securing a current account or any further advances shall continue to be effective against the farmer and against the holder of any subsequent interest in the agricultural interests charged, notwithstanding the fluctuation or temporary extinction of the indebtedness and notwithstanding that the lender may have had notice of the subsequent interest.

*In other words, let any other provider of inputs or funds be aware that a bank has a continuing interest until such time as the loan facility is repaid in full or canceled. Where it is possible in the Act, I would like to see the term Security Agreement used rather than the individual components such as the charge or assignment.*

(6) A Security Agreement notwithstanding any other provision of law may be in such form and made upon such conditions as the parties thereto may agree, and sureties may be made parties thereto.

#### *Effect of a fixed charge*

4. (1) A fixed charge shall, so long as the charge continues in force, confer on the holder the following rights and impose on the holder the following obligations, that is to say:
- (a) a right, upon the happening of any event specified in the Security Agreement as being an event authorizing the seizure of property subject to the Security Agreement, to take possession of any property so subject;
  - (b) where possession of any property has been so taken, a right, after an interval of five business days or such less time as may be allowed by the Security Agreement, to sell the property either by auction or, if the Security Agreement so provides, by private treaty, and either for a lump sum payment or payment by installments;
  - (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 Security Agreement, and the costs of seizure and sale, to pay the surplus, if any, of the proceeds to the farmer.

(2) A fixed charge shall, so long as the charge continues in force, impose on the farmer the following obligations:

(a) an obligation whenever he sells any of his property or receives any money in respect of other agricultural assets and other assets, comprised in the Security Agreement, forthwith to pay to the holder the amount of the proceeds of sale or the money so received, except to such extent as the Security Agreement 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 to the Security Agreement; except, that insofar as the obligation owed is to a Related Business, then in that instance he should not sell the crop for which he received inputs or the cash equivalent but should at the first opportunity deliver the crop in the quantity agreed in the Security Agreement to the holder.

*As one can see, the last obligation of the farmer may perhaps give some measure of protection to the trader financing the outgrower as it is included in the Act. Obviously, the same content needs to be incorporated in the Security Agreement.*

(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 Security Agreement, forthwith to pay the amount of the sum so received to the holder, except to such extent as the Security Agreement 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 Security Agreement.

(3) Where any money is due to a farmer under a policy of insurance on any of the property comprised in a fixed charge, the insurer may, notwithstanding anything contained in the policy of insurance, pay such money to the holder of the Security Agreement 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 to the extent of the amount so paid, and the provisions of paragraph (b) of subsection (2) shall apply to the amount so paid as if it had been paid to the holder by the farmer.

(4) Subject to compliance with the obligations imposed by subsection (2) and by section six, 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, except in that instance that he may be aware of the existence of the charge; except, that insofar as the obligation owed is to a Related Business, then in that instance he should not sell the crop nor should the purchaser purchase the crop for which the farmer received inputs or the cash equivalent but he should at the first opportunity deliver the crop in the quantity agreed upon in the Security Agreement to the holder.

*\* This is a complete departure from the previous law and represents a very conservative approach contrary to the current practice in the U.K. and the United States. It puts the onus on the buyer and the auctioneer to be aware of the recorded Security Agreement. There is no requirement to make a search. I don't think it is unreasonable and it will certainly inhibit most traders from buying. We hope to include some language in the new Marketing Act, to require buyers to make a preliminary search before purchasing commodities.*

(5) Where any proceeds of sale which, in pursuance of the obligations imposed by subsection (2), ought to be paid to the holder are paid to some other person, nothing in this Act shall confer on the holder a right to recover such proceeds from that other person unless the holder proves that such other person knew that such proceeds were paid to him in breach of such obligation, and that such other person shall be deemed to have such knowledge by reason that he had notice of the Security Agreement.

*\* As in (4) this is a departure from the previous law. However, if the legal people will accept the concept in (4) above then it follows that (5) should be worded in a similar form.*

#### *Effect of floating charge*

5. 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 therein as existing at the date of its becoming a fixed charge\_\_\_
  - (i) upon a receiving order in bankruptcy being made against the farmer; or
  - (ii) upon the death of the farmer; or
  - (iii) upon the dissolution of partnership in the case where the property charged is partnership property; or
  - (iv) upon notice in writing to that effect being given by holder on the happening of any event which, by virtue of the charge, confers upon the holder the right to give such notice; and
- (b) the farmer, whilst the charge remains a floating charge, shall be subject to the like obligation as in the case of fixed charge to pay over to the holder the amount received by him by way of proceeds of sale, in respect of other agricultural assets and other assets under policies of insurance, or by way of compensation, and section *four* shall apply accordingly:

Provided that it shall not be necessary for a farmer to comply with such obligations 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 Security Agreement.

*Effect of a lien*

6. A lien may be in such form and made upon such conditions as the parties thereto may agree, and sureties made be made parties thereto. A lien shall -----  
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*This section may be superfluous, under Zambian law, as the effect of the charge is to create a lien on the property. If the current Act can be structured to support the Related Businesses to provide the inputs to outgrowers, secured by a charge under the new Act, then it may be possible for these traders and brokers to obtain a line of credit from the banks; secured in turn by the assignment of the lien or charge previously created by the farmer. In which case, there should be a section describing the effect of the lien, if used as detailed here. This particular security - tied to the subsequent delivery of the commodity, assignment of the relevant warehouse receipts, and the accounts receivable arising from the ultimate sale of the commodity - will provide the bankers with a much higher comfort level.*

*Effect of an assignment*

7. An assignment may be in such form and made upon such conditions as the parties thereto may agree, and sureties may be made parties thereto. A farmer and Related Business may assign or transfer his interest in any collateral covered by this Act, and a statement to this effect must be recorded in the same register as the original charge is recorded and preferably at the time the charge is first created.

*This section may be superfluous as, under Zambian law, the right to assign a security interest in a property is clearly understood. If the current Act can be structured to provide for the Related Businesses to provide the inputs to outgrowers, secured by a charge under the new Act, then it may be possible for these traders and brokers to obtain a line of credit from the banks; secured in turn by the assignment of the lien or charge previously created by the farmer. In which case, I think a section describing the effect of the assignment, may clarify the intent of the Act. The assignment of the outgrowers charge under the Act, the subsequent delivery of the commodity, and the assignment of the relevant warehouse receipts, and the assignment of the accounts receivable arising from the ultimate sale of the commodity will provide the bankers with a much higher comfort level. I think it follows that the assignment should be recorded.*

***Rights and Obligations of Related Businesses***

8. (1) Under Rights we wish to include here a section that clearly sets out that Related Businesses if they are acting as an intermediary in the provision of inputs to farmers may be entitled to benefit under any GOZ guarantee loan programs for designated small-scale and emerging farmers in as much as their input loans be treated in the same manner as loans provided by Banks. It is important to include this fact in the Act although the same effect can be achieved if it is incorporated in any GOZ ordinance covering the guarantee loan program to farmers.

(2) Under Obligations we wish to include a section that provides for the trader/broker to pay, at the time the commodity is delivered by the farmer, a price per bag or kilo (refer to the new Marketing Act to determine how to price the commodity and whether to describe each commodity or collectively) not less than "x" per cent below the going market price. If the trader is unwilling to purchase at a price no less than "x" per cent below market price, than the Act expressly precludes the enforcement of the contract between the trader/broker and the farmer; and provides at the time the farmer makes delivery to another trader, that the value of the inputs, plus the agreed upon interest, plus 10.0 per cent of the input amount, be remitted to the Related Business in settlement of the outgrower agreement between them. If the contract or security agreement stipulates a price at delivery, the farmer would be required to accept payment for the weight delivered at that price. This section should refer to a section under the obligations of the farmer (9) below.

***Rights in which a Farmer, being the recipient of input loans from Related Businesses, is not required to deliver the contracted commodity***

9. We wish to include a section that provides for the corollary of section (8) above. The major intent is to ensure that the farmer is paid a fair market price for the value of the commodity that he is required to deliver to the Related Business. It is difficult, with the present high inflation, for either side to agree on a price at the beginning of the season. In view of the fact that we anticipate a GOZ guaranteed loan program that will cover up to 85% of the input loan, the trader will not be at great risk and should not therefore be in a position to offer a vastly lower conversion price for the commodity delivered. However, should both parties agree on a forward price, say a price per bag tied to the increase in the Zambia Kwacha to the dollar, it would be enforceable notwithstanding these two sections.

***Effect of charges, liens and assignments in respect of certain farming stock***

10. (1) Notwithstanding the provisions of sections four or five \_\_\_\_\_
- (a) a farmer shall, when he sells any of his farming stock, including but not limited to the following, cattle, tobacco, milk, maize, agricultural vehicles,

machinery or other plant, which is subject to a Security Agreement, give to the purchaser, before payment of the purchase price, a written notice containing the information referred to in paragraph (c);

(b) a farmer shall, when he delivers to any person to effect a sale on his behalf any farming stock referred to in paragraph (a) which is subject to a Security Agreement, give to such person, before payment of the purchase price to him by such person, a written notice containing the information referred to in paragraph (c);

(c) a written notice given under paragraph (a) or (b) shall state the name and address of all persons holding a Security Agreement over the farming stock sold or delivered for sale, as the case may be, the priority of such Security Agreement and the amount secured by each such Security Agreement.

(2) When a farmer gives a written notice to any person under the provisions of subsection (1), in respect of any sale or delivery for sale of commodities or milk, such written notice shall constitute written notice in respect of any subsequent sales or deliveries of commodities or milk, as the case may be, made to that person within a period of eighteen months from the date of the said written notice:

Provided that the farmer, before he makes any subsequent sale or delivery for sale, shall notify such person of any Security Agreement created by him after the date of the said written notice which affect commodities or milk, as the case may be, and such notification shall state the name and address of the holder of any such Security Agreement, the priority of such Security Agreement and the amount secured by such Security Agreement.

*I have tried to determine, from talking to the A/G Department and the banks, the reason for subsection (2) above. It seems the intent is to dispense with regular notices when a farmer is delivering to the same buyer over a period of months. It seems to me that the same intent could be conveyed by making that reference in the body of the relevant subsections, i.e. "if more than one sale or delivery is anticipated over a period of eighteen months the initial notice will suffice."*

(3) a notification given under the proviso to subsection (2) shall, for the purposes of this section, be treated as forming part of the written notice given by the farmer to the purchaser or person effecting sale on his behalf, as the case may be, under the provisions of subsection (1).

(4) A purchaser from or person effecting a sale on behalf of, a farmer, as the case may be, on receipt of the written notice referred to in paragraph (a) or (b) of subsection (1) shall pay the proceeds of sale to the holders of the Security Agreement in accordance

with the said written notice and having regard to the priority and amounts stated in the said written notice and shall pay the surplus, if any, remaining after he has made such payments to the farmer.

*Obviously, the lenders, other than traders or brokers, need to ensure that the registration of the Security Amount be inclusive of interest. Hence, the reason in some countries for the banks to charge a flat interest rate and not on a per annum basis.*

(5) When a farmer gives a written notice in accordance with the provisions of paragraph (a) or (b) of subsection (1) and, where appropriate, a written notification of a subsequent Security Agreement in accordance with the proviso to subsection (2), and the purchaser or person effecting the sale, as the case may be, retains the moneys from the farmer under the provisions of this section, such moneys shall be deemed to have been applied in reduction of the liability of the farmer under the Security Agreement created by him, in order of their priority, and the amount of each Security Agreement to which money is deemed to have been so applied shall be reduced by the amount so applied.

(6) Payment by the purchaser from, or person effecting a sale on behalf of, the farmer, as the case may be, of the proceeds of sale in accordance with the provisions of subsection (4) shall operate to discharge such purchaser or person from any claim, howsoever arising, in respect of such proceeds of sale.

(7) Any farmer who fails \_\_\_\_\_

(a) to give written notice in accordance with the provisions of paragraph (a) or (b) of subsection (1);

(b) to give notification in accordance with the proviso to subsection (2);

shall be in breach of contract and in certain circumstances liable to charge of fraud.

(8) Any purchaser from or person effecting a sale on behalf of a farmer, who fails to comply with the provisions of subsection (4) shall be guilty of an offense and liable, on conviction, to a fine of ?? Kwacha or to imprisonment for a period not exceeding three years, or to both such fine and imprisonment.

*If subsection (7) stands as a civil offense, it may be unfair to incorporate subsection (8) as a penal offense. However, if persons are made aware or are required under the Marketing Act to make a search to determine that a Security Agreement is recorded, then any act on their part is in contravention of the law and perhaps the proposed punishment is justified.*

*Supplemental provisions as to Security Agreements*

11. (1) A Security Agreement shall have the effect notwithstanding anything in the Bills of Sale Acts, 1878 and 1882, of the United Kingdom, and a Security Agreement shall not be deemed to be bill of sale within the meaning of those Acts.

(2) Security Agreements shall, in relation to one another, have priority in accordance with the times at which they are respectively registered under this Act:

Provided that any Security Agreement created solely to secure the payment of insurance premiums upon farming stock shall have priority over any other Security Agreement not created for such purpose.

(3) When a Security Agreement creating a floating charge has been created, a Security Agreement 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 such floating charge, be void so long as the floating charge remains in force.

(4) Where after the commencement of this Act a farmer has mortgaged his interest in land then, if growing crops are included in a Security Agreement created by such farmer, the rights of the holder under such a Security Agreement shall have priority to those of the mortgagee, whether in possession or not, and irrespective of the dates of the mortgage and Security Agreement.

(5) Farming stock subject to a Security Agreement shall not, for the purposes of section *forty-one* of the Bankruptcy Act, 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.

*At the time of writing this document, I had not been able to review copies of the following Acts since they are out of print (the Legal Affairs Department is making copies): Bank Act, Companies Act, Bankruptcy Act, Bills of Sale Acts, Bank of Zambia Act. Obviously, the drafters will need copies of these Acts before commencing the write-up.*

(6) A Security Agreement shall be no protection in respect of property included in the Security Agreement which, but for such Security Agreement would have been liable to distress for rent or rates.

(7) An instrument creating a Security Agreement shall be exempt from stamp duty.

*Appointment of a Registrar and registration of Security Agreements*

12. (1) The Minister shall appoint a Registrar and may appoint one or more Assistant Registrars for the purposes of this Act.

(2) The Registrar shall keep or cause to be kept a register of Security Agreements in such form and containing such particulars as may be prescribed.

*I am recommending that the registration not be handled by the Lands Department, as it is necessary to have a registration location in the field and preferably at the District Headquarters. Several government departments are represented at the District Headquarters. The choice, in preferential order, is as follows: 1) Magistrates Office, 2) Post Savings Bank Office, 3) District Agricultural Office (Camp Officer), and 4) Tax Collectors Office.*

(3) Every Security Agreement shall be registered under this Act within ten business days after the execution thereof, and, if not so registered, shall be void against any person other than the farmer:

Provided that the Registrar, 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 he thinks fit.

(4) Registration of a Security Agreement shall be effected by sending by post or delivering to the Registrar's office located at the District Headquarters, a memorandum of the instrument creating the Security Agreement and such particulars of the Security Agreement as may be prescribed, together with the prescribed fee, and upon receipt thereof, the Registrar or his appointed agent shall enter the particulars in the register and shall 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 such filed memorandum may, on payment of the prescribed fee, make copies or extracts therefrom.

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

(7) Registration of a Security Agreement may be proved by the production of a certified copy of the entry in the register relating to the Security Agreement, and a copy of any such entry purporting to be certified as a true copy by the Registrar or his agent shall in all legal proceedings be evidence of the matters stated therein without proof of the signature or authority of the person signing it.

(8) The Registrar shall not, nor shall any person acting under the authority of the Registrar, be 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 supposed exercise of the powers conferred on the Registrar by this Act.

(9) Any person aggrieved by any decision of the Registrar or any person acting under his authority may appeal to the High Court within thirty days of such decision.

(10) Registration of a Security Agreement under this section shall be deemed to constitute actual notice of the Security Agreement, and of the fact of such registration, to all persons and for all purposes comprised in the Security Agreement, as from the date of registration and so long as the registration continues in force:

Provided that \_\_\_\_\_

(i) where a Security Agreement is expressly made for securing a current account or other further advances, the holder, in relation to making further advances under the charge, shall not be deemed to have notice of another Security Agreement by reason only that it is so registered if it was not so registered at the time when the first-mentioned was created or when the last search, if any, by or on behalf of the holder was made, whichever last happened;

(ii) registration shall not be deemed to constitute actual notice to a purchaser for the purpose of section six.

(11) The government and such other person as the Minister may, by statutory notice, specify shall be exempt from the payment of any fee under the provisions of this section.

(12) For the purposes of this section, "Registrar" shall include any number of Assistant Registrars at the District Headquarters centered in the Provinces of the Republic, who may be appointed under subsection (1).

*This has been re-worded to incorporate the concept of assistant registrars at the district level. A similar clause in the 1962 Act was amended by Amendment #9 of 1963 and G.N. #321 of 1964. The drafters should look into whatever these amendments enacted, in case it is relevant to this new Act.*

#### ***Restriction on publication of Security Agreements***

13. (1) It shall not be lawful to print for publication or publish any list of Security Agreements or the names of farmers who have created Security Agreements.

(2) If any person contravenes the provisions of subsection (1), he shall be guilty of an offense and shall be liable to a fine not exceeding ?? Kwacha:

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 offense under this section shall be commenced without the consent of the Attorney-General.

(4) For the purposes 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 a Security Agreement is situated, of the creation of the Security Agreement shall not be deemed to be publication for the purposes of this section.

*Frauds by farmers*

14. If, with intent to defraud, a farmer who has created a Security Agreement \_\_\_
- (a) fails to comply with the obligations imposed by this Act as to payment over to the holder of any sums received by this farmer by way of proceeds of sale, or in respect of other agricultural assets, or other assets, or under a policy of insurance or by way of compensation; or
- (b) removes, or suffers to be removed, from his land any property subject to the Security Agreement;
- he shall be guilty of an offense and shall be liable to imprisonment for a period not exceeding three years.

*Frauds by Related Businesses*

15. *I would like to see a section under the category of Fraud by the Related Businesses. It seems only reasonable. Misrepresentation of the rights of the provider of inputs and fraudulent treatment of the farmer by taking advantage of his limited knowledge of business and English, might be reason for heavy treatment from the gendarmes. As was discussed, there are only civil remedies for the failure to perform under the contracts but we wanted to keep the farmers and the traders honest, so the reason for keeping the Fraud sections.*

*Rights of tenants*

16. Any farmer, being the tenant of agricultural land or entitled under the Traditional Lands Ordinance shall have the right to create a Security Agreement, notwithstanding any provision in his lease or contract of tenancy or entitlement to the contrary.

*We have added the entitlement under the Traditional Lands Ordinance.*

*Rules*

17. The Minister may, by statutory instrument, make rules prescribing anything which under this Act is to be prescribed, and generally as to the keeping of the register required to be kept under section *eight* and the filing of memoranda, the removal of entries from the register on proof of discharge, and the rectification of the register.

***Security Agreement to be created by a protected farmer only in favor of a Bank***

*I have been unable, at the point of writing, to review the Farmers' Debt Consolidation Act. As far as I can tell, there have been several debt consolidations but presumably if there are any charges still outstanding under the old Acts, this section will still need to be part of the new Act. With the incidence of drought, it is likely that there will be further debt consolidations although the proposed GOZ loan guarantee program will take care of the smallholders. As there will be lenders other than banks, it may be appropriate for the protected farmers to be permitted to create a Security Agreement in favor of all lenders and input providers.*

18. Notwithstanding any other provisions contained in this Act, a farmer who is a protected farmer, as defined in the Farmers Debt Consolidation Act, may create a Security Agreement in favor of person covered by this Act.

***Priority of existing charges under the Agricultural Act dated 1962, as amended.***

19. *I am uncertain of the legal ramifications, but it would be beneficial to the exercise if any of the changes to the Act of 1962 can flow through to the holders. I am referring primarily to the responsibilities of the farmer to the lenders. On the farmer side, the penal penalties, other than for fraud, do not exist in the new act.*

**SUBSIDIARY DRAFT LEGISLATION**

[SUBSIDIARY DRAFT]

**SECURITY AGREEMENTS****Sections 12 and 17 - The Agricultural and Related Businesses Security Agreement Act  
(Registration) Rules***Rules by the Minister**Title*

1. The rules may be cited as the Agricultural and Related Businesses Security Agreement Registration Rules.
2. In these rules, unless the context otherwise requires \_\_\_\_\_

*Interpretation*

- "the register" means the register directed to be kept under the Act
- "Registrar" means the person appointed as such under Section 12 of the Act.

*Form of and particulars in register*

3. (1) The register shall contain the following particulars:
  - (a) the date of the Security Agreement creating the charge;
  - (b) the last name, first name, and other names and the national registration number of the farmer whose farming stock, other agricultural assets, and other assets are affected by the charge;
  - (c) the amount secured by the charge;
  - (d) whether the charge is fixed or floating or both;
  - (e) in the case of a fixed charge, details of the nature of the property affected by such charge, as given in the memorandum (Security Agreement) accompanying an application for registration of a charge;
  - (f) the name and address of the holder of the charge;

(g) the number assigned to the aforesaid memorandum and the time and date of the reception of such memorandum.

(h) the name and/or location of the Farmers Club in those instances where the farmer is signing a Security Agreement as an individual or as a person with joint and several responsibility within the framework of a Farmers Club.

(2) the register shall be in the form set out in the First Schedule and the last names of farmers who have executed a Security Agreement shall appear therein in alphabetical order.

#### *Register of Security Agreements Received*

(3) In addition to the register of charges a separate register of the numbers assigned to the aforesaid memorandum or Security Agreement, and to applications for discharge of a Security Agreement, must be maintained in chronological order. The registration register shall be in the form set out in the First Schedule. Each instrument should be stamped with a time clock on receipt.

*This section is added to provide a check on receipt of Security Agreements and the time frame between receipt and actual recordation. In addition the register will speed up the search process if the charge register recording sheets are mislaid or incorrectly filed and establishes the fact that a charge was lodged at the Registrar's office.*

4. Any person who requires a certificate of the result of the official search of the register may obtain the same by sending by post or delivering to the Registrar or his designated agent at the District Office a requisition in the form set out in the First Schedule, and upon payment of the fees set out in the Second Schedule, furnish a certificate in the form set out in the First Schedule.

#### *Application for registration of charges*

5. Applications for registration of a charge, certified copies of or extracts from the register or such memoranda filed thereunder as are open to public inspection, shall be made on, and shall furnish the particulars set forth in, the several forms for these purposes given in the First Schedule.

#### *Duties of Registrar on receipt of application for registration*

6. (1) Upon receipt of an application for registration of a charge together with a memorandum or Security Agreement and the prescribed fee, the Registrar shall assign a number to the memorandum and note thereon the date and time of receipt of its reception.

*I would still like to retain the new Section 3. I think it is important to have the ability to check the actual date of receipt and when it is recorded in the official register.*

(2) Upon any application to register a charge, the applicant may furnish to the Registrar a true copy of the memorandum or Security Agreement, and the Registrar shall, upon registration of the memorandum or Security Agreement, note upon the said true copy the number of the memorandum or Security Agreement and the date and time of its reception.

*Application for noting discharges in register*

7. (1) Applications for noting of discharges in the register when a charge has been discharged shall be made on, and shall furnish the particulars set forth in, the form for that purpose given in the First Schedule.

(2) On receipt of an application under sub-rule (1), the Registrar may require the applicant to produce such evidence as he may consider necessary to prove that the charge has been discharged.

(3) When the Registrar is satisfied that a charge has been discharged, he shall note the fact of such discharge in the register and may destroy the memorandum or Security Agreement filed in respect of such charge after the lapse of a period of twelve months from the date of such discharge.

(4) Upon receipt of an application in the form set out in the First Schedule, the Registrar shall furnish a certificate that the discharge of a charge or Security Agreement has been noted in the register.

*Hours of business*

8. The office of the Registrar and his designated agents shall be open for the transaction of business during the hours from 9.00 a.m. until 12 noon on Mondays through Fridays, except on prescribed holidays.

*Prescribed fees*

9. For any registration or for any other matter or thing done pursuant to the Act or these Rules, the fees set out in the Second Schedule shall be payable.

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## First Schedule

*(Rules 3, 5, and 7)*

### Prescribed Forms

#### The Agricultural and Related Businesses Security Agreement Act

#### Register of numbers Assigned to Applications Received

Number Assigned	Name of Farmer	National Registration Number	Amount Secured	Name of Holder Received	Date & Time Security	Date & Time Agreement Recorded	Date & Time Discharge Recorded
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This is a new form of register. Attached to the Act are samples of forms and register which will require updating and changes by the legal drafters.