

**THE AGRICULTURAL CREDITS
BILL, 2010**

MEMORANDUM

The objects of this Bill are to—

- (a) establish the Warehouse Licensing Authority and provide for its functions and powers;
- (b) facilitate the borrowing of money on the security of charges created on farming stock and other agricultural assets;
- (c) provide for the registration of charges;
- (d) provide for the certification of warehouses;
- (e) provide for the issuance and negotiation of warehouse receipts and the rights conferred by warehouse receipts;
- (f) provide for the rights and obligations of warehouse operators;
- (g) repeal and replace the Agricultural Credits Act, 1995; and
- (h) provide for matters connected with, or incidental to, the foregoing.

A. J. SHONGA,
Attorney-General

THE AGRICULTURAL CREDITS BILL, 2010

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INPUTS AND OTHER ITEMS

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SCHEDULE

A BILL

ENTITLED

An Act to establish the Warehouse Licensing Authority and provide for its functions and powers; facilitate the borrowing of money on the security of charges created on farming stock and other agricultural assets; provide for the registration of charges; provide for the certification of warehouses; provide for the issuance and negotiation of warehouse receipts and the rights conferred by warehouse receipts; provide for the rights and obligations of warehouse operators; repeal and replace the Agricultural Credits Act, 1995; and provide for matters connected with, or incidental to, the foregoing.

ENACTED by the Parliament of Zambia.

Enactment

PART I

PRELIMINARY

1. This Act may be cited as the Agricultural Credits Act, 2010,
5 and shall come into operation on such date as the Minister may, by statutory instrument, appoint.

Short title
and
commencement

2. (1) In this Act, unless the context
otherwise requires—

Interpretation

10 “additional assets ” means any tangible assets, excluding land
and warehouse receipts, whether negotiable or non-
negotiable, that belong to a farmer, trader or related business,
relating directly or indirectly to agricultural production,
processing or trade, all accounts receivable, chattel paper
and promissory notes, and includes savings accounts on
15 deposit with any bank, credit union, savings institution or
other similar organisation;

“agricultural charge ” means a charge, lien or assignment
created under section *eleven*;

20 “agricultural commodity ” means anything derived directly
or indirectly from cultivation;

“approved agency “ means any credit reference agency
approved by the Board to supply information on the credit

- risk profile of any person for the purposes of this Act, and includes the authorised agency or any other agency approved under any written law to provide such information;
- “ authorised agency ” means any person or institution designated by the Minister to carry out the functions of the Authority; 5
- “ Authority ” means the Warehouse Licensing Authority established under section *three*;
- “ Abailor ” means the owner of the agricultural commodities who directly or through their nominee delivers goods to a warehouse operator for the purpose of storage in their name or the nominee's name; 10
- “ Board ” means the Board of the Authority established under section *seven*; 15
- “ Chairperson ” means the person appointed as Chairperson of the Board under section *seven*;
- “ commingle ” means the binning and storage of agricultural commodities by class, under circumstances other than identity preserved; 20
- “ conditioning ” means the drying or cleaning of agricultural commodities;
- “ cultivation ” means crop production, animal husbandry, game ranching, aquaculture, horticulture or forestry;
- “ delivery ” means the voluntary physical transfer of agricultural commodities from one person to another; 25
- “ depositor ” means a person who deposits agricultural commodities in a warehouse for storage, handling, shipment or processing, or who is the owner or holder of a warehouse receipt, or is otherwise entitled to possession of the agricultural commodities; 30
- “ document ” of title includes a negotiable and non-negotiable warehouse receipt or any other document which is issued in the regular course of a warehouse operators business, and which proves that the possessor is entitled to receive, hold and dispose of the agricultural commodities that it covers; 35
- “ electronic warehouse receipt ” means a warehouse receipt stored in electronic form;
- “ farmer ” means any person who, as owner or tenant of land, uses such land for cultivation, whether for profit or subsistence; 40

- “farming stock” means all agricultural commodities, excluding agricultural commodities which are the subject of a negotiable or non-negotiable warehouse receipt, whether future growing or severed from the land, and after severance whether subjected to any treatment or manufacture, and includes
- 5
- (a) livestock, poultry and bees, and the produce and progeny thereof;
 - (b) wild animals in captivity;
 - 10 (c) fish stock;
 - (d) timber, both standing or cut;
 - (e) seed and manure;
 - (f) fertiliser, insecticide, oil and fuel;
 - (g) agricultural vehicles, trucks and truck spares, machinery and other plant; and
 - 15 (h) any agricultural fixture that a tenant, or any person legally occupying land may, by law, be authorised to remove;
- “fungible agricultural commodities” means agricultural commodities of which any unit is, from its nature or by mercantile custom, treated as equivalent of any other unit;
- 20
- “holder” means a person in whose favour an agricultural charge is created, and includes an executor or administrator and an assignee of that person;
- 25
- “identity preserved” means the handling of an agricultural commodity in such a manner that guarantees the return of the actual quantity and quality of the agricultural commodity to the depositor;
- “inspector” means a person appointed as such under section
- 30 *ten*;
- “insolvent” means —
- (a) an excess of liabilities over assets; or
 - (b) the inability of a warehouse operator to meet the warehouse operators financial obligations as they
 - 35 are due, and “insolvency” shall be construed accordingly;
- “negotiable receipt” means a warehouse receipt which states that the agricultural commodities received will be delivered to the bearer or to the order of a named person;
- 40
- “non-negotiable receipt” means a warehouse receipt issued to the bearer or to the order of a specified person;

- “ other agricultural assets” means any right of a tenant, including any right to compensation for improvements;
- “ producer ” means an owner, tenant or operator of land who has an interest in and receives all, or any part of, the proceeds from the sale of agricultural commodities or farming stock produced on the land;
- “ register” means—
- (a) in relation to Part III, the register of agricultural charges; and
 - (b) in relation to Part V, the register of registered warehouses;
- “ Registrar ” means the person appointed as Registrar under the Lands and Deeds Registry Act;
- “ related business ” means an individual, a company, a cooperative, a partnership, an association and any group of persons acting in concert, whether or not incorporated, who or which, as the case may be, gives loans to farmers for the purchase of inputs or other items required for cultivation;
- “ trader” means any person who, as a broker, dealer or otherwise, acquires any agricultural commodity from a farmer or any other person, through purchase or otherwise, for the purpose of re-sale or processing;
- “ Vice-Chairperson” means the person appointed as Vice-Chairperson of the Board under section *seven*;
- “ warehouse” means any building, structure or enclosure in which agricultural commodities are or may be stored and through which agricultural commodities are or may be handled or shipped, and includes all facilities used in connection with the operation of the warehouse;
- “ warehouse operator” means any person who owns, controls, operates or manages a warehouse; and
- “ warehouse receipt ” means a receipt relating to agricultural commodities, whether negotiable or non-negotiable, issued under this Act.
- (2) In this Act, a person shall be taken to give value for any right if the person acquires it —
- (a) in return for a binding commitment to extend credit for the extension of immediately available credit, whether or not drawn;

- (b) as security for, or in total or partial satisfaction of, a pre-existing claim;
- (c) by accepting delivery under a pre-existing contract for purchase; or
- 5 (d) generally, in return for any consideration sufficient to support a simple contract.

PART II

THE WAREHOUSE LICENSING AUTHORITY

10 **3.** (1) There is hereby established the Warehouse Licensing Authority which shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name, and with power, subject to the provisions of this Act, to do all such things as a body corporate may, by law, do or perform. Establishment of Authority

15 (2) The provisions of the State Proceedings Act shall apply to civil proceedings by, or against, the Authority as if, for a reference to the State there were substituted a reference to the Authority. Cap. 71

(3) The provisions of the Schedule apply to the Authority.

20 **4.** (1) The seal of the Authority shall be such device as may be determined by the Board and shall be kept by the Director. Seal of Authority

(2) The affixing of the seal shall be authenticated by the Director or any other person authorised in that behalf by a resolution of the Board.

25 (3) Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed without seal on behalf of the Authority by the Director or any other person generally or specifically authorised in that behalf by the Authority.

30 (4) Any document purporting to be under the seal of the Authority or issued on behalf of the Authority shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.

35 **5.** (1) The functions of the Authority are to— Functions of Authority

- (a) certify warehouses;
- (b) approve negotiable warehouse receipt books; and
- (c) perform any other function incidental or conducive to the carrying out of its functions under this Act or any other law.

(2) The Authority may, for the purpose of carrying out its functions under this Act—

- (a) investigate the storage, warehousing, classification, weighing and certification of agricultural commodities;
- (b) inspect any warehouse or cause it to be inspected for purposes of this Act; 5
- (c) determine whether warehouses for which certificates are applied for, or have been issued under this Act are suitable for the proper storage of any agricultural commodities; 10
- (d) classify warehouses according to their ownership, location, surroundings, capacity, conditions and other qualities and according to the type of certificate issued or to be issued under this Act;
- (e) determine the duties of the warehouse operators with respect to their care of, and responsibility for, the agricultural commodities stored; 15
- (f) formulate guidelines and standards for the proper storage of the agricultural commodities;
- (g) suspend or revoke any certificate for any contravention of, or failure to comply with, any provision of this Act or condition of the certificate; 20
- (h) charge, assess and collect fees for the examination or inspection of a warehouse and for the issue of certificates; 25
- (i) examine the books, records, documents and accounts relating to warehouses;
- (j) close a warehouse which is operated without a valid certificate or contrary to the provisions of this Act; and
- (k) carry out any other function incidental or conducive to the carrying out of its functions under this Act. 30

Authorised
agencies

6. (1) The Minister may, by statutory instrument, appoint an authorised agency to perform such functions of the Authority as the Minister may specify.

(2) The Minister may, where an authorised agency fails to comply with the terms and conditions of its appointment, suspend or revoke the appointment of that authorised agency, after giving that authorised agency fourteen days notice to that effect and an opportunity to be heard. 35

(3) The suspension or revocation of the appointment of an authorised agency may be in addition to any other penalty to which the authorised agency may be liable under this Act.

5 7. (1) There is hereby constituted a Board of the Authority which shall consist of the following part-time members appointed by the Minister:

Board of
Authority

- 10 (a) a representative of the Ministry responsible for agriculture;
(b) a representative of the Ministry responsible for trade;
(c) a representative of the Ministry responsible for livestock;
(d) a representative of the Attorney
General;
(e) one representative of the clearing and forwarding agencies;
(f) one representative of the Bankers Association of Zambia;
(g) one representative of a farmers
15 organisation;
(h) one representative of the insurance industry;
(i) one representative of the Zambia Association of Chambers
of Commerce and Industry; and
(j) two other persons appointed by the Minister.

20 (2) The Chairperson and the Vice Chairperson of the Board shall be appointed by the Minister from amongst the members of the Board.

(3) A person shall not be appointed as a member of the Board if that person—

- 25 (a) is not a citizen of Zambia;
(b) is a declared insolvent or bankrupt;
(c) is declared to be of unsound mind; or
(d) is convicted of an offence under this Act or any written
law and been sentenced therefor to imprisonment for a
30 period exceeding six months without the option of a
fine.

(4) A member shall hold office for a period of three years and may be appointed for one further period of three years.

35 (5) A member may resign upon giving one month's notice in writing to the Minister.

(6) The office of a member shall become vacant

- (a) if the member is absent, without reasonable excuse from three consecutive meetings of the Board of which the member has had notice;
- (b) if the member is adjudged bankrupt;
- (c) if the member is convicted of an offence under this Act or any other written law and sentenced therefore to imprisonment for a period exceeding six months without the option of a fine; 5
- (d) if the member is declared to be of unsound mind; or
- (e) upon the members death. 10
- (7) The provisions of the Schedule apply to the Board.
- Functions of Board **8.** Subject to the provisions of this Act, the functions of the Board are to—
- (a) carry out the functions of the Authority;
- (b) cause the operations of warehouse operators to be examined, including auditing the agricultural commodities, books, documents and records relating to the warehouse so as to determine whether the interests of the producers, shippers and receivers of agricultural commodities and the holders of warehouse receipts are adequately protected and safeguarded; 15 20
- (c) formulate standards for agricultural commodities stored in warehouses certified under this Act;
- (d) determine the rules relating to the certification, weighing, classification and grading of agricultural commodities stored in warehouses certified under this Act; 25
- (e) take such action, or issue such orders, as are necessary to prevent any fraud by, or discrimination against, depositors of agricultural commodities in warehouses; and 30
- (f) perform such other functions as may be conferred or imposed on the Board under this Act or any other law.
- Director and other staff **9.** (1) The Board shall appoint a Director on such terms and conditions as the Board may determine. 35
- (2) The Director shall be the chief executive officer of the Authority and shall be responsible, under the direction of the Board, for the day to day administration of the Authority.
- (3) The Director shall be an *ex-officio* member of the Board.

(4) The Board may appoint, on such terms and conditions as it may determine, such other staff as it considers necessary for the performance of the Authority's functions under this Act.

5 **10.** (1) The Board may appoint any suitable person to be an inspector for the purposes of ensuring compliance with this Act, on such terms and conditions as the Board may determine. Inspectors

(2) The Board shall provide an inspector with an identity card, in the prescribed form, which shall be *prima facie* evidence of the inspector's appointment as such.

10 (3) An inspector shall, in performing any function under this Act.

(a) be in possession of the identity card referred to under subsection (2); and

15 (b) show the identity card to any person who requests to see it or is subject to an investigation under this Act.

(4) An inspector may, with a warrant, at any reasonable time

20 (a) enter and search any warehouse or any other premises, including a private dwelling, where information or documents which are relevant to an investigation may be kept;

(b) search any person in a warehouse or premises if there are reasonable grounds to believe that the person has possession of any document, warehouse receipt or article that has a bearing on an investigation:

25 Provided that a person shall only be searched by a person of the same sex;

(c) examine any document, warehouse receipt or article found in any warehouse or other premises that has a bearing on an investigation;

30 (d) require information to be given about any document, warehouse receipt, article, warehouse or any other premises by—

- 35 (i) the owner of the warehouse or premises;
- (ii) the person in control of the warehouse or premises;
- (iii) any person who has control of the document, warehouse receipt or article; or
- (iv) any other person who may have the information;

- (e) take extracts from, or make copies of, any book, warehouse receipt or document found in the warehouse or premises that has a bearing on an investigation;
- (f) use any computer system in any warehouse or premises, or require the assistance of any person in the warehouse or premises to use that computer system, to— 5
- (i) search any data contained in, or available to the computer system;
- (ii) reproduce any record from the data; or
- (iii) seize any output from the computer for examination and copying; and 10
- (g) attach and, if necessary, remove from the warehouse or premises for examination and safeguarding any document or article that has a bearing on an investigation.
- (5) An inspector who removes any warehouse receipt, document or article from any warehouse or premises under paragraph (g) of subsection (4) shall— 15
- (a) issue a receipt for the document, warehouse receipt or article to the owner of, or person in control of, the warehouse or premises; and 20
- (b) return the document, warehouse receipt or article as soon as practicable after achieving the purpose for which it was removed.
- (6) A person who—
- (a) delays or obstructs an inspector in the performance of the inspectors functions; 25
- (b) refuses to give an inspector such reasonable assistance as the inspector may require for the purpose of exercising the inspectors powers;
- (c) gives an inspector false or misleading information in answer to an inquiry made by the inspector; or 30
- (d) impersonates or falsely represents oneself to be an inspector;
- commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both. 35
- (7) An inspector shall furnish the Authority with a written report and any other information relating to an inspection, as the Authority may require.

(8) Nothing in this section requires a person to disclose or produce information, a warehouse receipt or a document, if the person would in an action in a court be entitled to refuse to disclose or produce the information, warehouse receipt or document.

5

PART III

AGRICULTURAL CHARGES

11. (1) An agricultural charge may be fixed or floating, or both.

Agricultural
charge on
farming
stock and
assets

(2) An agricultural charge may be in any form and made upon such conditions as the parties to the charge may agree, and any surety may be made a party to the charge.

(3) A farmer may, individually or in association, create in favour of any person a charge on any farming stock, additional asset or other agricultural asset, security for—

(a) inputs or other items required for cultivation;

(b) sum advanced or to be advanced to the farmer; or

(c) sums paid or to be paid on the farmer's behalf under any guarantee; and such security may cover any interest, commission or charge thereon.

(4) Notwithstanding any other provision of this Act, a related business or a trader may create in favour of any person, an agricultural charge on all or any portion of the agricultural commodities that the related business or trader purchases or intends to purchase from a farmer and such security may cover any interest, commission or charge thereon.

(5) Any property affected by a fixed charge may include farming stock, additional assets or other agricultural assets belonging to the farmer, trader or related business at the date of the charge and as may be specified in the charge.

(6) The principal sum secured by an agricultural charge may be—

(a) a specific amount advanced in one sum or in instalments; or

(b) a fluctuating amount advanced on a current account not exceeding at any one time such amount, if any, as may be specified in the charge:

Provided that any charge for securing a current account or any further advances shall continue to be effective against the farmer, trader or related business and against the holder of any subsequent interest in the agricultural commodities charged, notwithstanding the fluctuation or temporary extinction of the indebtedness and notwithstanding that the lender may have had notice of the subsequent interest.

40

Effect of
fixed charge

12. (1) A fixed charge shall confer on the holder the following rights:

(a) a right, upon the happening of any event specified in the charge as being an event authorising the seizure of property subject to the charge to take possession of the property; and 5

(b) where possession of any property has been taken, a right, after an interval of fourteen days or such shorter period as may be specified by the charge, to sell the property.

(2) A holder shall, where the holder exercises the power of sale under paragraph (b) of subsection (1), apply the proceeds of the sale in or towards the discharge of the moneys and liabilities secured by the fixed charge and the costs of seizure and sale, and to pay the surplus, if any, of the proceeds to the farmer. 10

(3) A fixed charge shall impose on the farmer, trader or related business, the following obligations: 15

(a) an obligation where the farmer, trader or related business sells any of the property, or receives any money in respect of any asset, comprised in the charge, forthwith to pay to the holder the amount of the proceeds of the sale or the money so received, except to such extent as the charge otherwise provides or the holder otherwise allows, and any sum so paid shall be applied, except so far as otherwise agreed by the holder, in or towards the discharge of moneys and liabilities secured by the charge: 20 25

Provided that if the holder is a related business, the farmer or trader shall not sell, except as provided under this section, the commodity for which the farmer received loans or advances of inputs or other items required for cultivation but shall deliver to the holder the agricultural commodity in the amount agreed in the charge; and 30

(b) an obligation, in the event of the farmer, trader or related business receiving any money under any policy of insurance on any of the property comprised in the charge, forthwith to pay the amount of the sum so received to the holder, except to such extent as the charge otherwise provides or the holder otherwise allows, and any sum so paid shall be applied, except so far as is otherwise agreed by the holder, in or towards the discharge of moneys and liabilities secured by the charge. 35 40

(4) An insurer may, where any money is due to a farmer, trader or related business, as the case may be, under any policy of insurance on any of the property comprised in a fixed charge, notwithstanding anything contained in the insurance policy, pay such
5 money to the holder of the charge to the extent of the charge, and any such payment shall be a valid discharge of the liability of the insurer to the farmer, trader or related business, as the case may be, to the extent of the amount so paid, and the provisions of paragraph (b) of subsection (2) shall apply to the amount so paid as
10 if it had been paid to the holder by the farmer, trader or related business, as the case may be.

(5) Subject to compliance with the obligations imposed under subsection (3), a fixed charge shall not prevent a farmer, related business or trader from selling any of the property subject to the
15 charge.

(6) A holder shall, where the proceeds of a sale made under subsection (2) are paid to any person other than a person referred to under that subsection, have a right to recover the proceeds from such person if the holder proves that the person knew that the
20 proceeds were paid to the holder in breach of the farmers, related business or traders obligations.

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

Effect of floating charge

25 Provided that—

(a) the charge shall become a fixed charge on the property upon—

30 (i) a receiving order in bankruptcy being made against the farmer, trader or related business;

(ii) the death of the farmer or trader;

(iii) the dissolution of the partnership in the case where the property charged is partnership property; or

35 (iv) notice in writing to that effect being given by the holder on the happening of any event which, by virtue of the charge, confers upon the holder the right to give the notice; and

40 (b) the farmer, trader or related business, while the agricultural charge remains a floating charge, shall be subject to the like obligation as in the case of a fixed charge to pay over to the holder the amount

received by the holder by way of proceeds of sale, in respect of other agricultural assets or additional assets under policies of insurance, or by way of compensation:

Provided that it shall not be necessary for the farmer, trader or related business to comply with the obligations if and so far as the amount so received is expended in the purchase of farming stock which, on purchase, becomes subject to the charge. 5

Notice of
agricultural
charge

14. (1) Notwithstanding sections *eleven, twelve* and *thirteen*, a farmer, trader or related business shall, when selling or causing to be sold, any farming stock or additional asset which is subject to an agricultural charge, give to the person buying, or the person effecting the sale of, the farming stock or additional asset, before payment of the purchase price, a written notice which shall be acknowledged by the purchaser or the person effecting the sale signing the original and a copy of the notice, containing the following information: 15

(a) the name and address of all persons holding an agricultural charge over the farming stock or additional assets to be sold; 20

(b) the priority of the agricultural charges; and

(c) the amount secured by each agricultural charge.

(2) Where a farmer, trader or related business gives written notice to any person under subsection (1), the written notice shall constitute written notice, in respect of any subsequent sale of any agricultural commodity which is the subject of the charge, given to that person within a period of twelve months from the date of the written notice: 25

Provided that the farmer, trader or related business, before making, or causing to be made, any subsequent sale, shall notify that person of any agricultural charge which affects the agricultural commodity created by the farmer, trader or related business after the date of the written notice and such notice shall state the name and address of the holder, the priority of the charge and the amount secured by the charge. 30 35

(3) A notice given under the proviso to subsection (2) shall, for the purposes of this section, be treated as forming part of the written notice given under subsection (1) by the farmer, trader or related business to the buyer or person effecting a sale on behalf of the farmer, trader or related business, as the case may be. 40

(4) A person who receives a written notice under subsection (1) shall pay the proceeds of the sale to the holder in accordance with the written notice, having regard to the priority and amounts stated in the written notice and shall pay the surplus, if any, remaining after making the payments, to the farmer, trader or related business.

(5) A person who contravenes subsection

(4) commits an offence and is liable, upon conviction, to the full value of the agricultural charge as specified in the notice.

(6) Any moneys paid out in accordance with subsection (4) shall reduce the liability of the farmer, trader or related business under the agricultural charges created by the farmer, trader or related business, in order of their priority, and the amount of each agricultural charge shall be reduced by the amount so paid.

(7) Any payment made in accordance with subsection (4) shall discharge the buyer or person effecting the sale on behalf of the farmer, trader or related business, as the case may be, from any claim, howsoever arising, in respect of the proceeds of the sale.

(8) A farmer, trader or related business who fails to give written notice in accordance with this section commits an offence and is liable, upon conviction, to a fine not exceeding ten percent of the outstanding loan.

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

Supplementary provisions in respect of agricultural charges

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

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

(3) Where an agricultural charge creating a floating charge has been created, an agricultural charge purporting to create a fixed charge on any of the property comprised in the floating charge shall, as respects the property subject to the floating charge, have no effect so long as the floating charge remains in force.

(4) Farming stock which is subject to an agricultural charge shall not, for the purpose of the Bankruptcy Act, be considered as goods in the possession, order or disposition of a farmer, trader or related business in the farmer's or trader's trade or business, by

the consent and permission of the true owner thereof, under such circumstances that the owner is the reputed owner thereof.

(5) An agricultural charge shall not protect property which, but for such charge, would have been liable to distress for rent or rates. 5

Registration of
agricultural
charge

16. (1) An agricultural charge shall be registered within thirty days after its execution and if not so registered, shall be void as against any person other than the farmer:

Provided that the Registrar may, in proving that omission to register within the specified time was accidental or due to inadvertence, extend the time for registration on such terms as the Registrar thinks fit. 10

(2) An agricultural charge shall be effected by sending by post or delivering to the Registrars office located in the district, or, where no such office exists, to such other office as the Minister shall, by notice in the *Gazette*, specify, a memorandum of the instrument creating the charge and the particulars of the charge as may be prescribed, together with the prescribed fee and upon receipt thereof, the Registrar shall enter the particulars in the register and file the memorandum. 15 20

(3) The register kept and the memoranda filed under this section shall, at all reasonable times, be open to inspection by any person on payment of the prescribed fee, and any person inspecting the register or any memorandum may, on payment of the prescribed fee, make copies or extracts therefrom. 25

(4) A person may, on payment of the prescribed fee, require to be furnished with a copy of any entry in the register or memorandum certified to be a true copy by the Registrar.

(5) Registration of an agricultural charge may be proved by the production of a certified copy of the entry in the register relating to the charge, and a copy of any such entry purporting to be certified as a true copy by the Registrar shall, in all legal proceedings, be evidence of the matters stated therein without proof of the signature or authority of the person signing it unless the contrary is proved. 30 35

(6) The Registrar shall not 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 purported exercise of the powers conferred on the Registrar under this Act.

(7) A person aggrieved with a decision of the Registrar may appeal to the High Court within thirty days of the decision. 40

(8) Registration of an agricultural charge under this section shall, from the date of registration, be deemed to constitute actual notice of the charge and of the fact of the registration to all persons and for all purposes connected with the property comprised in the charge:

Provided that—

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

(b) registration shall not be deemed to constitute actual notice to a purchaser for the purposes of section *fourteen*.

17. (1) Except as otherwise provided under this Act, a person shall not print for publication or publish any list of agricultural charges or of the name of any farmer, trader or related business who have created agricultural charges.

Restriction
on
publication
of
agricultural
charges

(2) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding three hundred thousand penalty units.

(3) A prosecution for an offence under this section shall not be commenced without the consent of the Director of Public Prosecutions.

(4) Where a farmer, trader or related business mortgages interest in land, and the farmer, trader or related business creates an agricultural charge which includes growing crops, the rights of the holder under such charge shall have priority over those of the mortgagee, whether in possession or not, and irrespective of the dates of the mortgage and the charge.

18. (1) A farmer, trader or related business who creates an agricultural charge and who, with intent to defraud

Fraud

(a) fails to comply with the obligations imposed by this Act as to the payment to the holder of any sums received by the farmer, trader or related business by way of proceeds of sale, or in respect of other agricultural assets, or under a policy of insurance or by way of compensation; or

(b) removes or permits to be removed any property subject to the charge; commits an offence and is liable, upon conviction, to imprisonment for a period not exceeding seven years.

(2) Where any related business, with intent to defraud, 5 misrepresents its rights and obligations under this Act or in any way deprives a farmer of the farmers rights under this Act, the directors and managers of the business committing such violation shall be liable, upon conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a period not exceeding 10 three years, or to both, unless they show that the offence was committed without their knowledge or consent.

PART IV

CONTRACTS FOR ADVANCES ON INPUTS AND OTHER ITEMS

19. (1) A contract for the advancement to a farmer of inputs or other items required for cultivation shall state—

Validity of contracts

- 5 (a) the value of the inputs or other items at the time the inputs or items are advanced to the farmer;
- (b) the interest rate to be charged, expressed at an annual percentage rate; and
- 10 (c) any charges, fees or penalties that the farmer will be required to pay if the farmer does not pay or deliver the produce at the price agreed on, as stipulated in the contract, unless subsection (1) of section *fourteen* applies.

15 (2) A trader or related business advancing any inputs or other items required for cultivation shall furnish the farmer, at the time each input or item is advanced, a written statement showing the value and cost to the farmer of the input or item, the interest rate and any charges, fees or penalties, as provided under this section.

20 (3) Direct or indirect compounding of interest shall not be allowed as part of the contract specified under subsection (1).

(4) Notwithstanding any other law, a person who advances inputs or other items required for cultivation to a farmer and fails to fully disclose to the farmer the cost of the input or item, the interest to be paid by the farmer and any charges, fees or penalties as required under this section shall be ineligible to register, under this Act, a charge created by the farmer on the basis of an agreement or contract, and such charge shall be void.

20. A person who advances inputs or other items required for cultivation to a farmer and fails to fully disclose to the farmer the cost of any input or item, the interest to be paid by the farmer and any charges, fees or penalties as required under section *nineteen*, commits an offence and is liable, upon conviction, to a fine not exceeding three hundred thousand penalty units.

Failure to make full disclosure of cost of inputs, items, etc.

PART V

REGISTRATION OF AWAREHOUSES

35 21. (1) A person who intends to operate a warehouse business shall apply for a certificate under this Part.

Application for registration of warehouse

40 (2) An application for a certificate shall be made to the Board in the prescribed manner and form upon payment of the prescribed fee.

- Bond** **22.** (1) An applicant shall execute and file with the Board a bond sufficient to secure the performance by the applicant of the obligations as a warehouse operator under this Act.
- (2) Where the Board determines that a previously approved bond is or has become insufficient, it may require an applicant to give such additional bond as the Board may specify for purposes of this Act. 5
- (3) The Board may, where an applicant fails to give the additional bond within the period specified by the Board under subsection (2), reject the application for a certificate or suspend or revoke the certificate of registration. 10
- Designation as certified and bonded warehouse** **23.** The Board may, where an applicant executes a bond as required under section *twenty-two*, designate the warehouse in respect of which a bond is executed as both certified and bonded.
- Insurance** **24.** (1) An applicant for a certificate to operate a warehouse shall file with the Board a certificate of insurance evidencing an effective policy of insurance issued by an insurance company licenced under the Insurance Act, 2005, in the name of the applicant insuring all the agricultural commodities which are or may be in the warehouse for their full market value for loss by fire, explosion, theft, lightning or such other risk as may be prescribed. 15
- Act No. 26 of 2005** (2) A warehouse operator shall, where a fire, explosion, lightning or any other risk destroys or damages any agricultural commodities in a warehouse, upon demand by the depositor, and upon being presented with the receipt or other evidence of ownership and after deducting the warehouse operators charges and advances at the market value of the agricultural commodities, make settlement with the insurance company. 20
- (3) A warehouse operator shall make complete settlement to all the depositors whose agricultural commodities are stored in the warehouse which are damaged or destroyed, within ten days of the settlement with the insurance company. 30
- (4) The Board shall, where it determines that a previously approved insurance in relation to a warehouse is insufficient, require the warehouse operator to give additional insurance. 35
- (5) The Board shall, where a warehouse operator fails to comply with subsection (3) or (4), suspend or revoke the warehouse certificate.
- Issue of certificate** **25.** (1) The Board shall, before granting a certificate, inspect the warehouse in respect of which an application is made to determine whether the warehouse is suitable for the storage of the 40

agricultural commodities for which the certificate is required.

(2) The Board shall, within thirty days of receipt of an application for a certificate, register a warehouse and issue a certificate, where —

- 5 (a) the applicant is in possession of the warehouse, whether as a tenant or owner;
- (b) upon inspection, the warehouse is suitable for warehousing of agricultural commodities in accordance with the provisions of this Act;
- 10 (c) the director or manager of the warehouse or warehouse operator has not been convicted of an offence under any law involving fraud or dishonesty;
- (d) the warehouse and the agricultural commodities which are or may be kept in the warehouse are fully insured in respect of fire, theft, lightening or any other risk; and
- 15 (e) the applicant is financially capable of conducting the business of warehousing.

(3) Two or more warehouses which constitute a single operating unit may be certified under a single certificate if —

- 20 (a) the same warehouse operator operates each warehouse in conjunction with the other; or
- (b) all the warehouses function under the same name and with the same personnel, office, books and records.

(4) The warehouses certified under a single certificate shall be treated as a single warehouse for purposes of this Act except for the issuance of warehouse receipts and the delivery of agricultural commodities.

(5) The Board shall reject an application which does not meet the requirements of this Act and inform the applicant accordingly and give the reasons therefor.

(6) The Board shall communicate its decision in respect of an application for a certificate to the applicant, in writing, within seven days of such decision.

26. A certificate issued under section *twenty-five* shall—

- 35 (a) contain the terms and conditions of the certificate; and
- (b) be valid for such period as may be specified in the certificate.

Validity of certificate

27. A holder of a certificate shall display the certificate in a conspicuous place in the office room of the warehouse.

40 Variation of certificate

Display of certificate

28. (1) The holder of a certificate may, at any time during the validity of the certificate, apply to the Board for the variation of the terms and conditions of the certificate or any matter relating to the certificate.

(2) The Board shall consider an application made under subsection (1) and may grant or reject the application, and shall, where it rejects the application, give the applicant the reasons for the rejection. 5

(3) The Board may amend a certificate where—

(a) some other person succeeds to the interest in the business 10
enterprise belonging to the holder of the certificate, by substituting for the name of the holder, the name of the successor; or

(b) the name of the business has changed, by substituting 15
the name so changed.

Surrender of
certificate

29. (1) Where the holder of a certificate decides not to continue with the warehousing business, the holder shall notify the Board, in writing, and shall agree with the Board on the terms and conditions of the surrender of the certificate with particular reference to anything done or any benefit obtained under the certificate. 20

(2) Where a certificate is surrendered under subsection (1), the certificate shall lapse and be cancelled and the holder of the certificate shall cease to be entitled to any benefits obtainable under the certificate.

Transfer of
certificate

30. (1) A certificate shall not be transferred to a third party 25
without the prior approval of the Board.

(2) An application for approval to transfer a certificate shall be made to the Board and the Board may, within thirty days of receipt of the application, approve or reject the application in accordance with this Act. 30

(3) The Board shall, where it rejects an application under subsection (2), inform the applicant accordingly and give the reasons therefor.

Renewal of
certificate

31. A person may, upon the expiry of a certificate, apply to the Board for renewal of the certificate in the prescribed manner and form upon payment of the prescribed fee. 35

Suspension
or
cancellation
of certificate

32. (1) Subject to the other provisions of this Act, the Board may suspend or cancel a certificate if the holder—

(a) obtained the certificate by fraud or deliberate or negligent 40
submission of any false information or statement;

(b) cancels the insurance approved by the Board without the approval of the Board;

(c) upon being requested by the Board to provide additional insurance, fails to do so within the specified period; or

5 (d) contravenes this Act or any terms and conditions of the certificate.

(2) The Board shall, before suspending or cancelling a certificate in accordance with subsection (1), give written notice to the holder thereof of its intention to suspend or cancel the certificate and shall
10 give the reasons for the intended suspension or cancellation and require the holder to show cause, within a period of not more than thirty days, why the certificate should not be suspended or cancelled.

(3) The Board shall not suspend or cancel a certificate under this section if the holder takes remedial measures to the satisfaction
15 of the Board within the period of thirty days referred to in subsection (2).

(4) Where a holder of a certificate who is notified under subsection (2) fails to show cause to the satisfaction of the Board, or does not take any remedial measures within the time specified
20 in that subsection, the Board shall suspend or cancel the certificate.

(5) Where a certificate is suspended, the holder of the certificate shall cease to be entitled to the rights and benefits conferred under this Act for the period of the suspension.

(6) Where a certificate is cancelled, the holder of the certificate
25 shall cease to be entitled to the rights and benefits conferred under this Act with effect from the date of such cancellation and shall return the certificate and the unused warehouse receipts to the Director.

30 **33.** A warehouse operator may, where the registration of the warehouse is cancelled or suspended, apply for re registration in accordance with the provisions of this Act. Re-registration

34. (1) A person who is aggrieved with any decision of the Board under this Act may appeal to the Minister within thirty days of such decision. Appeals

35 (2) A person who is aggrieved with the decision of the Minister under subsection (1) may appeal to the High Court within thirty days of the Ministers decision.

35. (1) The Director shall keep and maintain a register of all the warehouses registered under this Act, in which the Director
40 shall enter the names and other details relating to the warehouses Register

(2) The register referred to in subsection (1) shall be kept at such places as the Board may determine, and shall be open for

inspection by the public at such times and on such conditions including the payment of fees for inspection, as may be determined by the Board.

Closure of
warehouse

36. (1) The Authority may order the closure of a warehouse where— 5

(a) the warehouse operator violates any requirements or conditions of a certificate issued under this Act;

(b) the warehouse ceases to be suitable for warehousing of agricultural commodities;

(c) the warehouse operator is convicted of an offence under this Act or any written law and is sentenced therefor to imprisonment for a period exceeding six months without the option of a fine; (d) the warehouse is not certified under this Act; 10

(e) the warehouse operator is insolvent; or 15

(f) the warehouse operator contravenes the provisions of this Act or any other law.

(2) The Board shall, where it receives an inspection report indicating that a warehouse operator has breached the requirements of the certificate, or is offering services in excess of those permitted under the certificate of the warehouse, give the warehouse operator written notice of the violation. 20

(3) The warehouse operator shall, where the warehouse operator receives a notice under subsection (2), within fourteen days of receipt of the notice, provide the Board with a written plan of correction of the violation, indicating a schedule of dates by which corrective actions shall be taken. 25

(4) A warehouse operator shall, where the plan of correction submitted under subsection (3) is accepted by the Board, meet the schedule contained in the plan. 30

(5) The Board shall, where it rejects the plan of correction under this section, revoke the certificate and order the closure of the warehouse.

PART VI

WAREHOUSE RECEIPTS

5 **37.** (1) A warehouse receipt shall be issued by a warehouse operator that is authorised to do so under the provisions of this Act. Issuance of warehouse receipt

(2) A warehouse operator shall not issue any warehouse receipt other than the warehouse receipt approved by the Board in accordance with, and for purposes of, this Act.

10 (3) A warehouse receipt issued under this Act may be in the form of an electronic warehouse receipt.

(4) A person who contravenes this section commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both.

15 **38.** (1) A warehouse receipt, whether negotiable or non-negotiable, is a document of title. Rights conferred by warehouse receipt

(2) Subject to the provisions of this Act, a warehouse receipt issued to a depositor by a warehouse operator in accordance with section *thirty-seven* shall be *prima facie* evidence of the depositor's proprietary rights in the agricultural commodities in respect of which the warehouse receipt is issued.

20 (3) A depositor acquires proprietary rights in the agricultural commodities in relation to a warehouse receipt, if the depositor is entitled to the ownership of the agricultural commodities in accordance with subsection (2) of section *two*.

(4) A warehouse operator's failure to comply with the provisions of section *thirty-seven* does not affect a depositor's right to the agricultural commodities stored in the warehouse by the depositor.

30 **39.** (1) A depositor shall fully and correctly disclose— Disclosure by depositor

(a) the full particulars of the depositor;

(b) the details of the origin or source of the agricultural commodities, including the details of the original owner, or chain of ownership, if known;

35 (c) any peculiarities in the nature of the agricultural commodities to be stored;

(d) where the agricultural commodities are subject to any agricultural charge, the details of the agricultural charge; and

(e) any other information that may be prescribed.

40 (2) A warehouse operator shall, before accepting any agricultural commodity intended for storage in the warehouse, verify through

an approved agency or the Registrar whether or not the agricultural commodity is subject to any agricultural charge.

(3) A warehouse operator shall, where the warehouse operator determines that any agricultural commodity deposited in the warehouse is subject to an agricultural charge, issue a non-negotiable warehouse receipt for the agricultural commodity. 5

(4) A person who contravenes this section commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both. 10

Deposit of
agricultural
commodities

40. A person who deposits agricultural commodities for storage in a warehouse shall be treated as having deposited the agricultural commodities subject to the terms of this Act.

Agricultural
commodities
deposited for
purposes
other than
storage

41. (1) Agricultural commodities delivered to a warehouse or seed processor for the purpose of processing, cleaning and holding the agricultural commodities and returning the cleaned or processed agricultural commodities to the original owner thereof or the owners designee to be used as seed shall not be deemed to be agricultural commodities for the purposes of this Act. 15

(2) Agricultural Commodities deemed not to be agricultural commodities pursuant to this section shall be maintained on an identity preserved basis at all times where in the possession of, or under the control of, the warehouse operator or seed processor. 20

Form of
warehouse
receipt

42. (1) A warehouse receipt shall contain the following information and terms: 25

- (a) the name of the warehouse operator;
- (b) the location of the warehouse;
- (c) the date of issue of the warehouse receipt;
- (d) the serial number of the warehouse receipt;
- (e) a statement whether the agricultural commodities received will be delivered to the bearer, to a specified person or that specified persons order; 30
- (f) a short description of the agricultural commodities or of the packages containing them;
- (g) the rate of the storage and handling charges; 35
- (h) the signature of the warehouse operator;
- (i) the net weight in metric scales together with the grading standards prescribed by the Minister;
- (j) the words “non-negotiable” or “negotiable according to

the nature of the receipt, clearly and conspicuously printed or stamped on the warehouse receipt;

(k) the nature and fact of ownership of the agricultural commodities, whether solely or jointly or commonly owned with others;

(l) whether or not the agricultural commodities are subject to any agricultural charge;

(m) the full particulars of the depositor;

(n) a statement as to the amount of advances made and of the liabilities incurred; and

(o) if the agricultural commodities are authorised by a bailor to be packed, processed, substituted or otherwise transformed while in the warehouse, a statement to that effect and a description of the type and quantity of the agricultural commodities to be produced upon the completion of the authorised transformational activities.

(2) A warehouse operator shall be liable for damages caused to any person by the omission of any term required to be included in the warehouse receipt under this Act.

43. (1) A warehouse receipt in which it is stated that the agricultural commodities received will be delivered to the person named in the warehouse receipt or to that person's order shall be known as a negotiable warehouse receipt.

Negotiable
warehouse
receipt

(2) A person shall not insert, or cause to be inserted, in a negotiable warehouse receipt, words that render the receipt non-negotiable.

(3) The Minister may, by statutory instrument, prescribe the procedure and limits of negotiation of the negotiable warehouse receipts.

44. A warehouse receipt in which it is stated that the agricultural commodities received will be delivered to the person named in the receipt or to that person's order and is marked "non-negotiable" on the face of it shall be treated as a non-negotiable receipt.

Non-
negotiable
warehouse
receipt

45. An alteration to a warehouse receipt shall be treated as

(a) immaterial, if the alteration does not affect any proprietary rights of the holder of the warehouse receipt;

(b) authorised, if the alteration is made with the permission of the warehouse operator; or

(c) unauthorised, if the alteration is made without the permission of the warehouse operator.

Altered
warehouse
receipts

Rights of purchaser of altered receipt against warehouse operator

46. (1) A purchaser of a warehouse receipt for value without notice of the alteration shall acquire the same proprietary rights against the warehouse operator which the purchaser would have acquired if the warehouse receipt had not been altered at the time of purchase. 5

(2) A purchaser of a warehouse receipt shall be considered to have had notice of an alteration, if prior to the purchase of the warehouse receipt, the purchaser or the purchaser's agent took part in, or influenced, the alteration of the warehouse receipt. 10

(3) A purchaser of an altered warehouse receipt who is found or who could be reasonably imputed with possession of notice of the alteration commits an offence and is liable, upon conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a period not exceeding three years, or to both. 15

Lost or
missing
warehouse
receipt book

47. A warehouse operator shall report any loss, theft or destruction of a warehouse receipt book to the Board.

Duplicate
warehouse
receipt

48. (1) A holder of a warehouse receipt may, where a warehouse receipt is lost, stolen or destroyed, request a warehouse operator to issue a duplicate warehouse receipt. 20

(2) A holder of a warehouse receipt who makes a request to a warehouse operator under subsection (1), shall submit to the warehouse operator—

(a) a police report of the loss, theft or destruction of the warehouse receipt; 25

(b) a copy of a bank guarantee covering the current market value of the agricultural commodities;

(c) an affidavit sworn before a commissioner for oaths; and

(d) a copy of a notice of the loss, theft or destruction published in a daily newspaper of general circulation in Zambia. 30

(3) A warehouse operator may reject an application to issue a duplicate warehouse receipt where a holder of the warehouse receipt fails to submit any information required under subsection (2).

(4) A person aggrieved by a decision of the warehouse operator under subsection (3) may, within fourteen days of the receipt of such decision, appeal to the Board

5 (5) A person who uses an original receipt after a duplicate receipt has been issued under this section commits an offence and is liable, upon conviction, to imprisonment for a period not exceeding seven years.

(6) A warehouse receipt upon the face of which the word “duplicate” is placed shall be a representation and warranty, by
10 the warehouse operator, that warehouse receipt —

(a) is an accurate copy of the original warehouse receipt;
and

15 (b) has the same rights as the original warehouse receipt properly issued and outstanding at the date of issue of the duplicate.

(7) A duplicate warehouse receipt issued under this section shall have the same standing as the original warehouse receipt and shall not impose any additional liability on the warehouse operator.

20 (8) A warehouse operator is liable for damages caused by the warehouse operators failure to identify a duplicate warehouse receipt as such by conspicuous notation on the face of the warehouse receipt.

PART VII

25 RIGHTS AND OBLIGATIONS OF THE WAREHOUSE OPERATIONS

30 **49.** A warehouse operator may sell or pledge a warehouse receipt issued in respect of any agricultural commodities which the warehouse operator owns solely, jointly or in common with others and the recital of ownership in the warehouse receipt shall constitute notice of the right to sell or pledge the warehouse receipt and of the title or specific lien of the transferee or pledgee upon the warehouse operators agricultural commodities represented by the warehouse receipt.

Right of warehouse operator to sell or pledge warehouse receipt

35 **50.** The obligations imposed by this Act on a warehouse operator apply to a warehouse receipt regardless of the fact that —

Obligations not affected by irregularities in warehouse receipt

(a) the warehouse receipt does not comply with the requirements of this Act or any other law regarding its issue, form or content;

40 (b) the warehouse operator has contravened this Act;

(c) the agricultural commodities in respect of which the warehouse receipt was issued were owned by the

warehouse operator at the time the warehouse receipt was issued; or

- (d) the person issuing the document is not a warehouse operator, officer, agent or servant of the warehouse operator if the document purports to be a warehouse receipt. 5

Obligation of warehouse operator to deliver agricultural commodities

51. Except as provided in this Act, a warehouse operator shall deliver the agricultural commodities stored in the warehouse upon demand made by the holder of a warehouse receipt relating to the agricultural commodities or the depositor, where the holder or depositor— 10

- (a) offers to effect payment for the warehouse operator's lien on the agricultural commodities; and

- (b) offers to sign the relevant documents proving the delivery of the agricultural commodities. 15

Obligation to deliver in accordance with demand of depositor

52. (1) Subject to section *fifty-one*, a warehouse operator shall deliver the agricultural commodities in accordance with the demand of the holder of a warehouse receipt or the depositor, as the case may be.

(2) Where a warehouse operator refuses to deliver the agricultural commodities as demanded by the holder of a warehouse receipt or the depositor, the burden to establish the existence of any lawful excuse for the refusal shall lie on the warehouse operator. 20

(3) Where a warehouse operator refuses to deliver the agricultural commodities as demanded by the holder of a warehouse receipt or the depositor because the warehouse receipt was altered, the holder of the warehouse receipt or the depositor who had notice of the alteration shall be estopped from demanding more or less proprietary rights in the warehouse receipt than those provided on the altered warehouse receipt. 25 30

Justification for delivery of agricultural commodities

53. Subject to sections *fifty-one* and *fifty-two*, a warehouse operator shall deliver any agricultural commodities stored in the warehouse after being satisfied that —

- (a) the person receiving the agricultural commodities is lawfully entitled to the possession of the agricultural commodities; and 35

- (b) by the terms indicated in the warehouse receipt issued in respect of the particular agricultural commodities, the holder thereof is entitled to delivery, either by oneself or on that persons written authorisation, to another person. 40

54. (1) A warehouse operator shall not deliver any agricultural commodities where, prior to the delivery, the warehouse operator receives information or otherwise becomes aware that a person to whom the delivery is about to be made is not legally entitled to the delivery.

Liability for mis-delivery

5 (2) A warehouse operator who—

(a) has information, or knows, that the person claiming delivery of the agricultural commodities, or to whom the agricultural commodities are to be delivered, is not in fact lawfully entitled to the possession thereof and proceeds to deliver the agricultural commodities to such person; or

10 (b) ignores any request not to make delivery of the agricultural commodities, made under paragraph (a); shall be liable for conversion to all the persons with any proprietary rights in, or possession of, the agricultural commodities.

55. A warehouse operator shall not be liable for failure to deliver any agricultural commodities to the owner of the agricultural commodities or the holder of a warehouse receipt issued in respect of the agricultural commodities even if the warehouse receipt is negotiable, where the agricultural commodities have been lawfully sold or disposed of

Exception to obligation to deliver

20 (a) because of their perishable or hazardous nature; or

(b) to satisfy the warehouse operators lien.

56. (1) Except as provided for under this Act, where a warehouse operator delivers any agricultural commodities for which the warehouse operator issued a negotiable warehouse receipt, the warehouse operator shall cancel the negotiable warehouse receipt.

Liability for failure to cancel warehouse receipt after full delivery

25 (2) A warehouse operator who delivers any agricultural commodities for which the warehouse operator issued a negotiable warehouse receipt, and fails to cancel the negotiable warehouse receipt, shall be liable for failure to deliver the agricultural commodities to the depositor or to any person who purchases such negotiable warehouse receipt for value and in good faith.

30 (3) Where a warehouse receipt is not cancelled as provided for under subsection (1), the fact that the purchaser acquired title to the negotiable warehouse receipt before, or after, the delivery of the agricultural commodities by a warehouse operator shall not exonerate the warehouse operator from liability.

Liability for
failure to
cancel or
mark
warehouse
receipt after
partial
delivery

57. (1) Except as provided under this Act, where a warehouse operator delivers part of the agricultural commodities for which the warehouse operator issued a negotiable warehouse receipt, the warehouse operator shall—

- (a) cancel the negotiable warehouse receipt and issue a new negotiable warehouse receipt for the remaining 5 agricultural commodities; or
- (b) place conspicuously upon the warehouse receipt, a statement of the agricultural commodities and packages that have been delivered.

(2) A warehouse operator who fails to comply with subsection 10 (1) shall be liable for failure to deliver the agricultural commodities specified in the negotiable warehouse receipt to any person who purchases such negotiable warehouse receipt for value and in good faith.

(3) Where a negotiable warehouse receipt is not cancelled as 15 provided for under subsection (1), the fact that the purchaser acquired title to the negotiable warehouse receipt before, or after, the delivery of any portion of the agricultural commodities by a warehouse operator shall not exonerate the warehouse operator from liability. 20

Liability
after loss,
theft or
destruction
of
warehouse
receipt

58. Subject to section *forty-seven*, a warehouse operator shall be liable for failure to deliver any agricultural commodities to a person to whom a lost, stolen or destroyed warehouse receipt has been negotiated for value in good faith and without notice of the fact that a duplicate warehouse receipt has been issued, or that the 25 agricultural commodities in respect of which the warehouse receipt was issued have already been delivered.

Delivery to
persons with
valid titles or
right

59. (1) A warehouse operator shall take any precautions that the warehouse operator considers necessary to ensure that the delivery of agricultural commodities is made to a person who has 30 lawfully obtained a warehouse receipt.

(2) A warehouse operator's title or right to the possession of any agricultural commodities shall only be derived directly or indirectly from—

- (a) a transfer made by a depositor at the time of, or 35 subsequent to, the deposit of the agricultural commodities; or
- (b) a lien.

(3) Unless the title or right to possession of any agricultural commodities by a warehouse operator is obtained in accordance 40 with subsection (2), the title or right to possession of the agricultural

commodities shall not exonerate the warehouse operator from liability for refusing to deliver the agricultural commodities according to the terms indicated on the warehouse receipt.

5 **60.** (1) Where more than one person is claiming title to, or possession of, any agricultural commodities, a warehouse operator shall, before making delivery of the agricultural commodities to any one of them, require the claimants to interplead.

Ascertaining valid titles to agricultural commodities

(2) An action under subsection (1) may be filed as an action against the warehouse operator for non delivery of the agricultural commodities, or as an original suit.

10 (3) A warehouse operator shall not be liable for the non delivery of any agricultural commodities where the warehouse operator has evidence that a person other than the depositor or claimant has a claim to the title or possession of the agricultural commodities and that because of that evidence, the warehouse operator is taking
15 reasonable steps to ascertain the validity of the adverse claim or to initiate legal proceedings to compel all the claimants to interplead.

(4) A court shall ascertain the right claimant of any agricultural commodities by interpleading or any other manner, within twenty four hours of the initial notice to the warehouse operator and
20 complete the procedure within seven days.

(5) Except as is allowed under this section, the fact that a third person has a right or title to any agricultural commodities shall not be a defence to an action brought by the holder of the warehouse receipt, or a person claiming from the holder of the warehouse
25 receipt, against the warehouse operator for failure to deliver the agricultural commodities according to the terms indicated on the warehouse receipt.

30 **61.** (1) Subject to subsection (2), a warehouse operator shall be liable to the holder of a warehouse receipt for any damages caused by the non existence of the agricultural commodities or by the failure of the delivered agricultural commodities to correspond with the description in the warehouse receipt at the time of deposit.

Liability for misdescribed agricultural commodities

(2) A warehouse operator shall not be liable for any agricultural commodities which are conditioned or processed where such conditioning or processing is noted on the warehouse receipt.

35 (3) A mere description in a warehouse receipt by a statement of marks or label, or upon any package, or by a depositors statement that the agricultural commodities do contain agricultural commodities

of a certain kind, or by words of like purport, though found to be true, shall not render a warehouse operator liable.

Warehouse operators duty of care

62. (1) A warehouse operator shall exercise such care with regard to any agricultural commodities kept by the warehouse operator as reasonably and as carefully as a reasonable and careful owner of similar agricultural commodities would exercise. 5

(2) A warehouse operator who contravenes subsection (1) shall be liable for breach of the duty of care:

Provided that, unless otherwise agreed, the warehouse operator shall not be liable for damages that could not have been avoided by the exercise of such care. 10

Duty to keep agricultural commodities separately

63. Except as provided in this Act, a warehouse operator shall keep the agricultural commodities of each depositor separate from the agricultural commodities of other depositors and from other agricultural commodities of the same depositor for which a separate warehouse receipt is issued so as to ensure the identification and delivery of the agricultural commodities deposited. 15

Commingling of fungibles

64. (1) A warehouse operator may, with the approval of the holder of a warehouse receipt or the depositor, commingle fungible agricultural commodities of the same kind and grade. 20

(2) Where a warehouse operator commingles any agricultural commodities in accordance with subsection (1), the depositors of the commingled agricultural commodities shall own the entire mass in common and each depositor shall be entitled to such portion thereof as the amount deposited by that depositor bears to the whole. 25

(3) A warehouse operator shall be severally liable to each depositor for the care and delivery of that depositor's share of the mass to the same extent and under the same circumstances as if the agricultural commodities had been kept separate.

Warehouse operators right to lien

65. (1) A warehouse operator's lien on any agricultural commodities deposited or the proceeds thereof shall derive from 30

(a) all lawful charges for the storage and preservation of the agricultural commodities;

(b) lawful claims for money advanced, interest, insurance, transportation, labour, weighing and other charges and expenses in relation to the agricultural commodities; 35

(c) all reasonable charges and expenses incurred for notice and advertisements of sale; and

(d) the sale of the agricultural commodities where default is made in satisfying the warehouse operators lien.

(2) For the purposes of this Part, “warehouse operators lien” means the right of a warehouse operator to re-coup the expenses necessarily incurred for services rendered or supplied by the warehouse operator in accordance with subsection (1) and the term “right of lien” shall be construed accordingly.

66. A warehouse operator’s lien may be enforced subject to the provisions of section *sixty-seven* — Enforcement of lien

(a) against all agricultural commodities, whenever deposited, belonging to the person who is liable, as debtor, for the claims with regard to which the lien is asserted; and

(b) against all agricultural commodities belonging to others, which have been deposited by the person who is liable, as a debtor, for the claims to which the lien is asserted if such person has been entrusted with the agricultural commodities at the time of deposit just as a person who takes the agricultural commodities in good faith and for value.

67. A warehouse operator shall lose the right of a lien on any agricultural commodities by Loss of lien

(a) surrendering possession thereof; or

(b) refusing to deliver the agricultural commodities where a demand is made and which the warehouse operator is bound to comply with under the provisions of this Act.

68. Where a negotiable warehouse receipt is issued for any agricultural commodities, a warehouse operator shall not have a lien thereon, except for the charges of storage of those agricultural commodities, subsequent to the date of the negotiable warehouse receipt, unless the negotiable warehouse receipt expressly enumerates other charges for which a lien is claimed, in which case there shall be a lien for the charges enumerated so far as they are within the terms of section *sixty-five*, although the amount of the charges so enumerated is not stated in the negotiable warehouse receipt. Statement of charges under lien

69. A warehouse operator having a valid lien against a person demanding any agricultural commodities may refuse to deliver the agricultural commodities to that person until the lien is satisfied. Refusal to deliver agricultural commodities

70. The fact that a warehouse operator has or does not have a lien upon any agricultural commodities, shall not affect any entitlement to any remedies available under any other law to a creditor against a debtor, for the collection, from the depositor, of Warehouse operators lien does not preclude other remedies

all the charges and advances which the depositor has expressly or impliedly contracted with the warehouse operator.

71. (1) A warehouse operators lien may be satisfied by—

Methods of enforcing lien

- (a) the sale of the agricultural commodities;
- (b) other remedies allowed by law for the enforcement of a lien against personal property; or
- (c) any other action for the recovery of the warehouse operators claim.

5

Perishable and hazardous agricultural commodities

72. (1) Where any agricultural commodities are of a perishable nature and likely to deteriorate greatly in value, or by their odour, leakage, inflammability or explosive nature, are likely to injure the property or endanger the life of persons likely to come into contact with the agricultural commodities, the warehouse operator may give such notice to the owner or to the person in whose name the agricultural commodities are stored, as is reasonable and possible under the circumstances, to satisfy the lien upon the agricultural commodities and to remove them from the warehouse.

10

15

(2) Where a person to whom notice is given under subsection (1) fails to satisfy the lien upon the agricultural commodities, and to remove them from the warehouse, within the time so specified, the warehouse operator may sell the agricultural commodities at any public or private sale, with or without advertising.

20

(3) A warehouse operator may, where the warehouse operator is unable to sell any agricultural commodities, dispose of them in any lawful manner, and shall incur no liability by reason thereof.

25

(4) The proceeds of any sale made under this section shall be disposed of in the same way as the proceeds of sales made under this Act.

Termination of storage at warehouse operators option

73. (1) A warehouse operator may, upon notifying the person on whose account the agricultural commodities are held and any other person known to claim an interest in the agricultural commodities, require payment of any charges and the removal of the agricultural commodities from the warehouse—

30

- (a) at the termination of the period of storage fixed by the warehouse receipt; or
- (b) if no period is fixed, within a stated period of not less than thirty days from the date of the notification.

35

(2) Where the agricultural commodities are not removed before the date specified in the notification, the warehouse operator may sell or dispose of them in accordance with this Act.

(3) A warehouse operator may satisfy the warehouse operators lien from the proceeds of any sell or disposition under this section
5 but shall hold the balance for delivery on the demand of any person to whom the warehouse operator would have been bound to deliver the agricultural commodities.

PART VIII

NEGOTIATION AND TRANSFER OF A WAREHOUSE RECEIPTS

10 **74.** A negotiable warehouse receipt to the order of a name of any person may be negotiated by endorsement and delivery Negotiating warehouse receipt

(a) after endorsement in blank or to the bearer; or—

(b) after endorsement to a specific person.

15 **75.** (1) Negotiation of a negotiable warehouse receipt after it is endorsed to a specified person shall require the endorsement of the endorsee as well as delivery. Negotiation by endorsement

(2) An endorsement made pursuant to subsection (1) shall be made to a specified person and may be negotiated to another specified person and subsequent negotiations shall be done in a like
20 manner.

(3) For the purposes of this section, a negotiable warehouse receipt shall be regarded as duly negotiated if it is negotiated in the manner stated under this section to a person who purchases it in good faith, without notice of any defect or claim to it on the part of
25 any person, and for value.

76. The endorsement of a non negotiable warehouse receipt shall not render it negotiable. Effect of endorsement to non-negotiable receipt

77. A negotiable warehouse receipt may be negotiated by any person in possession of the negotiable warehouse receipt irrespective
30 of the manner in which the negotiable warehouse receipt was acquired, if, by the terms of the negotiable warehouse receipt, the warehouse operator undertakes to deliver the agricultural commodities to the order of such person or if at the time of negotiation, the negotiable warehouse receipt is in such a form
35 that it may be negotiated by delivery. Persons capable of negotiating warehouse receipt

Rights
acquired
after
negotiation
of
warehouse
receipt

78. (1) Subject to the provisions of this section, a person to whom a warehouse receipt is negotiated shall acquire —

- (a) such title to the agricultural commodities as the person negotiating the warehouse receipt had ability to convey to a purchaser in good faith for value and such title to the agricultural commodities as the depositor or person to whose order the agricultural commodities were to be delivered by the terms of the warehouse receipt had or had ability to convey to a purchaser in good faith and for value; 5 10
- (b) the obligation of the warehouse operator to hold possession of the agricultural commodities for that person according to the terms of the warehouse receipt as fully as if the warehouse operator had contracted directly with that person; and 15
- (c) all rights accruing under the law of agency and estoppel, including the right to agricultural commodities delivered to the warehouse operator after the warehouse receipt was delivered.

(2) The negotiation of a warehouse receipt in good faith and the acquisition of title by a person to whom a warehouse receipt is negotiated, shall create a direct obligation to the warehouse operator to hold possession of the agricultural commodities for that person according to the terms of the warehouse receipt as fully as if the warehouse operator had contracted directly with that person. 20 25

Rights
acquired in
absence of
negotiation

79. (1) A warehouse receipt may be transferred without negotiation if it is transferred by—

- (a) the holder of the warehouse receipt to another person under a separate arrangement or agreement; or
- (b) order of the court. 30

Rights of
transferee of
warehouse
receipt

80. (1) A transferee of a warehouse receipt which is not negotiated shall acquire thereby, against the transferor, title to the agricultural commodities.

(2) The title acquired by the transferee shall be subject to the terms of the agreement with the transferor. 35

(3) A court may order a warehouse receipt to be transferred where it is proved that there was an agreement to that effect between the transferor and the transferee.

(4) Where a warehouse receipt that has been transferred becomes non negotiable, in order to acquire title to the agricultural commodities, the transferee shall notify the warehouse operator of the transfer to the transferee of such warehouse receipt.

(5) Where a warehouse receipt that has been transferred is not negotiated before the transferee notifies the warehouse operator of the transfer to the transferee, the transferee's claim of title to the agricultural commodities may be defeated by

(a) an attachment order or execution upon the goods by a creditor of the transferor to the extent of such order or execution; or

(b) a subsequent purchaser in good faith from the transferor or a subsequent sale of the agricultural commodities by the transferor.

81. (1) A transferee of a negotiable warehouse receipt for value and in good faith shall have the right to compel the transferor of such receipt to endorse the receipt in a case where endorsement is essential for negotiation.

(2) Where it is essential that a warehouse receipt be endorsed before it is transferred, the warehouse receipt shall not be regarded as negotiated until the transferor endorses it.

(3) The endorsement of a warehouse receipt in good faith shall not make the transferee liable for any default or fraudulent acts on the warehouse receipt occasioned by the warehouse operator or previous endorsers.

82. The negotiation or transfer by endorsement, delivery or assignment of a warehouse receipt for value shall be adequate proof or warranty that the person who negotiates, transfers or assigns the warehouse receipt does so because—

(a) that warehouse receipt is genuine;

(b) that person has a legal right to negotiate, transfer or assign it;

(c) that person knows no fact which would impair the validity or worth of the receipt; and

(d) that person has the right to transfer the title to the agricultural commodities.

(2) If the contract of the parties is in respect of the transfer of agricultural commodities to which a warehouse receipt is involved, the fact that the agricultural commodities are merchantable or fit for that particular purpose would have been implied.

(3) A warranty shall not be implied where a creditor of the transferor demands in good faith or receives payment of the debt for which the warehouse receipt is security.

Rights and obligations of transferor and transferees of negotiable warehouse receipts

Warranties on negotiation of warehouse receipt

PART IX

OFFENCES AND PENALTIES

Issue of
receipt for
agricultural
commodities
not received

83. A warehouse operator, officer, agent or employee of a warehouse operator, who issues or aids in issuing a warehouse receipt knowing that the agricultural commodities for which such warehouse receipt is issued have not been actually received by the warehouse operator or are not under the warehouse operators control at the time of issuing such warehouse receipt, commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both. 5 10

Issue of
warehouse
receipt
containing
false
statement

84. A warehouse operator, officer, agent or employee of a warehouse operator, who fraudulently issues or aids in fraudulently issuing a warehouse receipt for any agricultural commodities knowing that it contains any false statement, commits an offence is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both. 15

Issue of
unmarked
duplicate
receipts

85. (1) A warehouse operator, officer, agent or employee of a warehouse operator, who issues or aids in issuing a duplicate, or additional, negotiable warehouse receipt for the same agricultural commodities or any part of them which is outstanding and uncanceled, without plainly placing upon the face thereof the word "Duplicate" commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both. 20 25

(2) The provision of this section shall not apply where a duplicate warehouse receipt is issued in accordance with the provisions of section *forty-eight*.

Issue of
receipt for
warehouse
operators
commodities

86. Where there are deposited with, or held by, a warehouse operator any agricultural commodities which the warehouse operator owns either solely, or jointly or in common with others, then such warehouse operator, an agent or employee of the warehouse operator who, knowing this ownership, issues or aids in issuing a negotiable warehouse receipt for such agricultural commodities and omits to state any fact with respect to the ownership, commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both. 30 35

Delivery of
goods
without
obtaining
negotiable
warehouse
receipt

87. A warehouse operator, officer, agent or employee of a warehouse operator who delivers goods out of the possession of such warehouse operator, knowing that a negotiable warehouse 40

receipt, the negotiation of which would transfer the right to the possession of such warehouse receipt, is outstanding and uncanceled, without obtaining possession of that warehouse receipt, at or before the time of such delivery, commits an offence and is
5 liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding one year, or to both.

88. A person who—

10 (a) deposits agricultural commodities to which that person has no title, or upon which there is a lien or mortgage; and

(b) takes, for the agricultural commodities referred to in paragraph (a), a negotiable warehouse receipt which that person afterwards negotiates for value;

15 with intent to deceive and without disclosing that persons lack of title or the existence of a lien or mortgage commits an offence and is liable, upon conviction, to imprisonment for a period not exceeding two years.

20 **89.** A person who contravenes a provision of this Act for which no specific penalty is provided is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units, or to imprisonment for a period not exceeding two years, or to both.

Negotiation of receipt for mortgaged agricultural commodities

General penalty

PART X

GENERAL PROVISIONS

25 **90.** The Arbitration Act, 2000, shall apply to the settlement of any dispute arising as a result of the interpretation or application of the provisions of this Act.

Arbitration Act No. 19 of 2000

30 **91.** Where an offence under this Act is committed by a body corporate or unincorporate body, every director or manager of the body corporate or unincorporate body shall be liable, upon conviction, as if the director or manager had personally committed the offence, unless the director or manager proves to the satisfaction of the court that the act constituting the offence was done without the knowledge, consent or connivance of the director or manager or
35 that the director or manager took reasonable steps to prevent the commission of the offence.

Offences by body corporate or unincorporate body

92. (1) The Minister may, by statutory instrument, make regulations for the better carrying out of the provisions of this Act.

Regulations

(2) Without prejudice to the generality of subsection (1), the

regulations made under that subsection may —

- (a) prescribe the manner in which a register is to be kept;
- (b) prescribe the filing of memoranda and agricultural charges;
- (c) prescribe the removal of entries from a register on proof of discharge; 5
- (d) prescribe the rectification of a register;
- (e) prescribe the form of a written notice or agricultural charge issued under this Act;
- (f) prescribe the procedures and limits of negotiation of a negotiable warehouse receipt; 10
- (g) prescribe the form of a warehouse receipt;
- (h) prescribe the records to be kept by warehouse operators;
- (i) determine the standards or requirements for allowing a warehouse operator to sell or dispose of agricultural commodities, which are perishable or hazardous; 15
- (j) determine the manner of keeping agricultural commodities in a warehouse;
- (k) prescribe the classification of warehouses;
- (l) determine agricultural commodities which may be commingled in the warehouse receipt; 20
- (m) provide for the recovery of the warehouse operator's lien by sale of agricultural commodities;
- (n) prescribe the requirements and procedure for the registration of warehouses;
- (o) prescribe the conditions to which warehouse certificates are subject; 25
- (p) prescribe the qualifications of the employees that may be employed by a warehouse operator;
- (q) prescribe the fees that may be paid for warehouse registration; and
- (r) prescribe anything which may be prescribed under this Act. 30

Repeal of Act
No. 23 of
1995

93. The Agricultural Credits Act, 1995, is hereby repealed.

Savings

94. Notwithstanding section *ninety-three* —

Act No. 23
of 1995

(a) any agreement executed under the repealed Act shall continue in force as if made under this Act; and 35

Act No. 23
of 1995 5

(b) any registration done, and any other right or benefit accruing or any liabilities suffered under the repealed Act shall, unless contrary to this Act, continue in accordance with this Act.

SCHEDULE

(Sections 3(3) and 7(7))

ADMINISTRATION OF AUTHORITY

PART I

THE BOARD

- 5
1. (1) Subject to the other provisions of this Act, the Board may regulate its own procedure. Proceedings of Board
- (2) The Board shall meet for the transaction of business at least once in every three months at such places and times as the Board may determine.
- 10 (3) A meeting of the Board may be called by the Chairperson upon giving notice of not less than fourteen days, and shall be called by the Chairperson if not less than one-third of the members so request in writing:
- 15 Provided that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon a shorter notice given by three members of the Board.
- (4) The Chairperson, or in the absence of the Chairperson, the Vice-Chairperson, with four other members shall constitute a quorum at any meeting of the Board.
- 20 (5) There shall preside at any meeting of the Board —
- (a) the Chairperson;
- (b) in the absence of the Chairperson, the Vice-Chairperson;
- 25 or
- (c) in the absence of both the Chairperson and the Vice-Chairperson, such other member as the members present may elect for the purpose of that meeting.
- (6) A decision of the Board on any question shall
- 30 be by a majority of the members present and voting at the meeting and in the event of an equality of votes, the person presiding at the meeting shall have a casting vote, in addition to that person's deliberative vote.
- (7) The Board may invite any person, whose presence is in its
- 35 opinion desirable, to attend and to participate in the deliberations of a meeting of the Board, but such person shall have no vote.
- (8) The validity of any proceedings, acts or decisions of the Board shall not be affected by any vacancy in the membership of the Board or by any defect in the appointment of any member or
- 40 by reason that any person not entitled to do so, took part in the proceedings.

Committees
of Board

2. (1) The Board may, for the purpose of performing its functions under this Act, constitute a committee and delegate to the committee such functions of the Board as it considers necessary.

(2) Subject to subparagraph (1), the Board may appoint as members of a committee constituted under subparagraph (1), persons who are, or are not, members of the Board, except that at least one member of a committee shall be a member of the Board. 5

(3) A person serving as a member of a committee shall hold office for such period as the Board may determine. 10

(4) Subject to any specific or general direction of the Board, a committee may regulate its own procedure.

Allowances
of member

3. There shall be paid to a member of the Board or a member of a committee such allowances as the Board may determine with the approval of the Minister. 15

Disclosure
of interest

4. (1) If any person is present at a meeting of the Board or a committee of the Board at which any matter is the subject of consideration, and in which matter that person or that person's spouse is directly or indirectly interested in a private capacity, that person shall, as soon as is practicable after the commencement of the meeting, disclose such interest and shall not, unless the Board or the committee otherwise directs, take part in any consideration or discussion of, or vote on, any question relating to that matter. 20

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made. 25

Prohibition
of,
publication
of or
disclosure of
information
to
unauthorised
persons

5. (1) A person shall not, without the consent in writing given by, or on behalf of, the Authority, publish or disclose to any unauthorised person, otherwise than in the course of duties of that person, the contents of any document, communication or information whatsoever, which relates to or which has come to the knowledge of that person in the course of that person's duties under this Act. 30

(2) A person who contravenes subparagraph (1) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both. 35

(3) A person who, having any information which to the knowledge of that person has been published or disclosed in contravention of subparagraph (1), unlawfully publishes or communicates the information to any other person, commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both. 40

6. An action or other proceeding shall not lie or be instituted against a member of the Board, a committee of the Board or a member of staff of the Authority, for or in respect of any act or thing done or omitted to be done in good faith in the exercise or performance, or purported exercise or performance, of any of the powers, functions or duties conferred under this Act. Immunity

PART II

FINANCIAL PROVISIONS

7. (1) The funds of the Authority shall consist of such monies as may— Funds of Authority
- (a) be appropriated to the Authority by Parliament for the purposes of the Authority;
 - (b) be paid to the Authority by way of fees, grants or donations; and
 - (c) otherwise vest in or accrue to the Authority.
- (2) The Authority may, subject to the approval of the Minister -
- (a) accept monies by way of grants or donations from any source within or outside Zambia;
 - (b) raise by way of loans or otherwise, such monies as it may require for the discharge of its functions; or
 - (c) in accordance with the regulations made under this Act, charge and collect fees for services provided by the Authority.
- (3) There shall be paid from the funds of the Authority —
- (a) the salaries, allowances, pensions and loans of the members of staff of the Authority;
 - (b) such reasonable travelling and other allowances for the members of the Board and the members of any committee of the Board when engaged in the business of the Authority, at such rates as the Board may, with the approval of the Minister, determine; and
 - (c) any other expenses incurred by the Authority in the performance of its functions under this Act.
- (4) The Authority may invest, in such manner as it considers appropriate, such funds of the Authority which it does not immediately require for the performance of its functions.
8. The financial year of the Authority shall be a period of twelve months ending on 31st December in each year. Financial year

- Accounts **9.** (1) The Authority shall cause to be kept proper books of account and other records relating to its accounts.
- (2) The accounts of the Authority shall be audited annually by the Auditor-General or an auditor appointed by the Auditor-General.
- (3) The Auditor-Generals fees shall be paid by the Authority. 5
- Annual report **10.** (1) As soon as practicable, but not later than ninety days after the end of the financial year, the Authority shall submit to the Minister a report concerning its activities during the financial year.
- (2) The report referred to in subparagraph (1) shall include information on the financial affairs of the Authority and there shall 10 be appended to the report—
- (a) an audited balance sheet;
- (b) an audited statement of income and expenditure; and
- (c) such other information as the Minister may require.
- (3) The Minister shall, not later than seven days after the first 15 sitting of the National Assembly next after receipt of the report referred to in subparagraph (1), lay the report before the National Assembly.
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