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THE AGRICULTURAL FINANCE CORPORATION ACT

CHAPTER 323

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CHAPTER 323

AGRICULTURAL FINANCE CORPORATION ACT

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CHAPTER 323

AGRICULTURAL FINANCE CORPORATION ACT

[Date of assent: 18th March, 1969.]

[Date of commencement: 21st March, 1969.]

An Act of Parliament to establish an Agricultural Finance Corporation and to prescribe its powers and duties

[Act No. 1 of 1969, Act No. 13 of 1972, Legal Notice 23 of 1977, Act No. 12 of 1985, Act No. 5 of 1996, Legal Notice 146 of 1997, Act No. 8 of 2008, Act No. 13 of 2017, Legal Notice 77 of 2017.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Agricultural Finance Corporation Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"this Act" includes any rules or regulations made under this Act;

"agricultural industry" means any industry connected with agriculture or with the processing of agricultural produce;

"agricultural produce" includes anything (whether live or dead) produced in the course of agriculture;

"agriculture" means agriculture as defined in section 2 of the Agriculture and food Authority Act (Cap. 317), and also forestry and the establishment, maintenance and exploitation of fisheries in private ownership;

"appraiser" means a person appointed as an appraiser under section 38 of this Act;

"the Board" means the Board of Directors of the Corporation established by section 4 of this Act;

"the Central Agricultural Board" means the Central Agricultural Board established by section 35 of the Agriculture Act (Cap. 318);

"co-operative society" means a co-operative society registered under the Co-operative Societies Act (Cap. 490);

"the Corporation" means the Agricultural Finance Corporation established by section 3 of this Act;

"Director" means a person who is a member of the Board by virtue of section 4 or of an appointment made thereunder;

"farmer" means a person who engages in agriculture in Kenya;

"fishery" means a privately-conducted establishment directed to fish culture in farm ponds and fish farming;

"the General Manager" means the General Manager of the Corporation appointed under section 9 of this Act;

"land" includes anything attached to the land;

"the land registrar" means the person charged with the registration of documents of title to land under the written law under which the land is registered;

"loan" means a loan made under this Act;

"mortgage" includes a charge, lien security right or other security or encumbrance;

"mortgagor" means a person who has mortgaged any land to the Corporation or to whom a loan has been made under this Act, or his personal representative;

"net profit" means the excess of income over expenditure after making adequate provision for depreciation, amortization, and bad and doubtful debts;

"staff" means the officers and servants of the Corporation appointed under section 10 of this Act.

[Act No. 13 of 2017, Sch.]

PART II – THE AGRICULTURAL FINANCE CORPORATION

3. Establishment of Corporation

(1) There is hereby established a Corporation, to be known as the Agricultural Finance Corporation.

(2) The functions of the Corporation shall be to assist in the development of agriculture and agricultural industries by making loans to farmers, co-operative societies, incorporated group representatives, private companies, public bodies, local authorities and other persons engaging in agriculture or agricultural industries.

(3) The Corporation shall be a body corporate with perpetual succession and a common seal, and shall have power to acquire, own, possess and dispose of property, and to contract, and to sue and be sued in its own name.

(4) The Corporation is not subject to the Companies Act (Cap. 486) or the Banking Act (Cap. 488).

4. Board of directors

(1) There shall be a Board of Directors of the Corporation, which shall, subject to this Act, be responsible for determining the policy of the Corporation and for controlling its operations.

(2) The Board shall consist of—

- (a) not less than four and not more than six persons appointed by the Cabinet Secretary of whom at least two shall be appointed by reason of their knowledge of banking or financial matters;
- (b) the Principal Secretary of the Ministry, or a person deputed by him in writing to take his place as a director of the Board; and
- (c) the Principal Secretary of the Ministry for the time being responsible for finance, or a person deputed by him in writing to take his place as a Director of the Board.

(3) A Chairperson and a deputy Chairperson shall be appointed by the Cabinet Secretary, after consultation with the Cabinet Secretary for the time being responsible for finance, from among the Directors, and the deputy Chairperson may, in the absence of the Chairperson, exercise all the powers and discharge all the duties which are conferred and imposed by this Act upon the Chairperson.

(4) A director appointed under paragraph (a) of subsection (2) of this section shall hold office for such period not exceeding three years from the date of his appointment as may be specified in the instrument appointing him and shall then retire but shall be eligible for reappointment, and in default of any other person having been appointed by the Cabinet Secretary to succeed him within one month of the date of his retirement shall be deemed to have been reappointed.

(5) In the exercise of its powers and in the performance of its functions under this Act, the Board shall act in accordance with any general or special directions that the Cabinet Secretary may give it:

Provided that, if the Cabinet Secretary gives the Board directions which in the Board's opinion will involve the Corporation in financial loss, the Board is not required to act in accordance with those directions unless the Government has undertaken to reimburse the Corporation the amount of any losses incurred in so acting.

5. Disqualification of Director

(1) No person shall be appointed a Director if—

- (a) he is insolvent or has conveyed or assigned his property for the benefit of his creditors generally or has made a composition or arrangement with his creditors; or
- (b) he is of unsound mind or has been convicted within the preceding five years of an offence and sentenced to imprisonment without the option of a fine.

(2) If the Cabinet Secretary is satisfied that the Chairperson, the deputy Chairperson or any other Director appointed under paragraph (a) of subsection (2) of section 4 of this Act—

- (a) is incapacitated by physical or mental illness; or
- (b) has become subject to any of the disqualifications specified in subsection (1) of this section; or
- (c) has been absent from two consecutive meetings of the Board without the leave of the Board; or
- (d) is otherwise unable or unfit to discharge the functions of his office,

the Cabinet Secretary may declare his office as Chairperson, deputy Chairperson or Director, as the case may be, to be vacant, and shall notify the fact in such manner as the Cabinet Secretary thinks fit; and thereupon the office shall become vacant.

(3) If the Chairperson, the deputy Chairperson and any other Director to whom subsection (2) of this section applies—

- (a) at any time, by notice in writing under his hand addressed to the Cabinet Secretary, resigns his office as such;
- (b) dies; or
- (c) is declared under that subsection to have vacated his office,

the Cabinet Secretary shall appoint a new Director to discharge the functions of that office:

Provided that where the vacancy to be filled is in the office of Chairperson or deputy Chairperson the Cabinet Secretary shall consult the Cabinet Secretary for the time being responsible for finance before exercising such power of appointment.

6. Meetings of Board

(1) Meetings of the Board shall be convened by the Chairperson, or in his absence by the deputy Chairperson, at such times and places as he determines but not less than four times a year.

(2) The Chairperson, or in his absence the deputy Chairperson, may at any time, and shall at the request in writing of at least three Directors, convene a special meeting of the Board.

(3) A notice convening a special meeting of the Board shall state the purposes for which the special meeting is convened.

7. Procedure of Board

(1) If the Chairperson is absent from a meeting of the Board, the deputy Chairperson shall act as Chairperson at that meeting.

(2) Three Directors who include the Chairperson or the deputy Chairperson shall constitute a quorum at any meeting of the Board, and all acts, matters or things authorized or required to be done by the Board shall be effected by resolution passed by a majority of the Directors present and voting at a meeting at which a quorum is present.

(3) At every meeting of the Board, the Chairperson, or in his absence the deputy Chairperson, shall have a casting vote in addition to his deliberative vote as a Director.

(4) All orders, directions and decisions of the Board shall be made, given and notified under the hand of the Chairperson or deputy Chairperson, or of the General Manager if he is so authorized by the Board.

(5) Minutes of the proceedings of every meeting of the Board shall be regularly entered in a minute book, and the book shall be kept so as to show proper tabulated details of the business conducted or transacted at each meeting.

(6) The minutes of the proceedings of each meeting shall be placed before the next ensuing meeting and, if then passed as correct, shall be confirmed by the signature of the person who presided at that meeting, and when so confirmed shall be *prima facie* evidence in all proceedings of the matter recorded in the minutes.

(7) Subject to this Act and to any general or specific directions of the Cabinet Secretary, the Board shall regulate the procedure at its meetings as it considers proper.

8. Matters on which Director may not vote

(1) A Director shall not at a meeting of the Board take part in the discussion of nor vote upon an application made by a person who is—

- (a) related to that Director within the third degree of affinity or consanguinity; or
- (b) a debtor, creditor, partner or employee of that Director; or
- (c) a debtor under a mortgage of a body of persons, whether incorporated or not, of which that Director is a Director or under which he holds any office or position other than that of auditor.

(2) A Director who is in any way whether directly or indirectly, interested in a proposed loan or in a loan then subsisting shall declare the nature of his interest at the first meeting at which he is present when the question of that loan is taken into consideration, if his interest then exists, or, in any other case, at the first

meeting at which he is present after he becomes so interested, and shall take all reasonable steps to ensure that such declaration shall be recorded in the minutes of the meeting:

Provided that a general notice given by a Director to the effect that he is a member of a specified body of persons, company or firm and is to be regarded as interested in all transactions connected therewith shall be a sufficient declaration under this subsection.

(3) Subject to subsection (1) a Director who shall have declared his interest in accordance with subsection (2) may attend and be counted in the quorum of, but shall not vote in relation to that matter, at any meeting which may consider or pass any application or other resolution in respect of such a loan.

(4) Any person who contravenes subsection (1) or subsection (2) shall be guilty of an offence and liable to imprisonment for a term not exceeding three years or to a fine not exceeding five thousand shillings or to both.

9. Appointment and duties of General Manager

(1) The Board, with the approval of the Cabinet Secretary given after consultation with the Cabinet Secretary for the time being responsible for finance, shall appoint a General Manager of the Corporation, who shall as far as possible be present at all meetings of the Board and shall at such meetings be entitled to speak but not to vote.

(2) It shall be the duty of the General Manager to undertake executive responsibility for the functions of the Corporation and to perform the other functions conferred upon him by this Act.

(3) The General Manager shall act in accordance with any special or general directions which the Board may give him.

(4) The General Manager is hereby empowered to administer oaths and take statutory declarations in matters where statements upon oath and statutory declarations are required by this Act.

(5) In the event of the General Manager being unable to exercise his functions as such through illness, leave, absence from Kenya or other cause, a person shall be appointed in the manner specified in subsection (1) of this section to act as General Manager, and the person so appointed may exercise all the powers and discharge all the duties which are conferred and imposed by this Act upon the General Manager until such time as the Board considers that the General Manager is again able to exercise his functions as such.

10. Appointment of staff

(1) The Board may appoint, upon such terms and conditions as it thinks proper, such other officers and servants as it considers necessary or desirable for the efficient conduct and operation of the Corporation.

(2) Every member of the staff shall, subject to this Act, exercise the powers and functions and perform the duties assigned to him from time to time by the General Manager.

11. Remuneration

The Directors (other than public officers in receipt of salary), the General Manager and the staff shall be paid out of the funds of the Corporation such salaries and allowances as the Corporation, with the approval of the National Treasury, may

from time to time determine, and such travelling and other expenses as they may incur in the performance of their duties as such.

12. Pension and provident funds

(1) The Board may, subject to the approval of the Cabinet Secretary and the National Treasury, establish, control, manage, maintain and contribute to pension or provident funds for the benefit of the General Manager and the staff, and may grant pensions and gratuities from any such fund to them on their retirement from the service of the Corporation and to their dependants on their death.

(2) If neither a pension nor a provident fund is established under subsection (1) of this section, or if a fund is established but in the opinion of the Board it provides insufficient benefits, the Board may, with the approval of the Cabinet Secretary and the National Treasury, grant from the funds of the Corporation pensions and gratuities, or additional pensions and gratuities, as the case may be, to the General Manager and the staff on their retirement from the service of the Corporation and to their dependants on their death.

13. Execution of documents

(1) The common seal of the Corporation shall be authenticated by the signature of the Chairperson or deputy Chairperson of the Board and by the signature of the General Manager or some other person so authorized by the Board.

(2) All documents, other than those required by law to be under seal, made by, and all decisions of, the Corporation may be signified under the hand of the Chairperson or deputy Chairperson of the Board, or of the General Manager if he is so authorized by the Board.

(3) Where the General Manager has been authorized under subsection (2) of this section to signify documents he may, with the approval of the Board, authorize any other officer of the Corporation to sign any document approving a loan not exceeding ten thousand shillings.

[Act No. 13 of 1972, Sch., L.N. 23/1977.]

14. Powers of Corporation

(1) The Corporation shall, subject to this Act, have powers of power to do all such things and to enter into all such transactions as it considers necessary for, or conducive or incidental to, the proper discharge of the functions described in section 3(2) of this Act, including, without prejudice to the generality of the foregoing, power—

- (a) to make loans of money in accordance with Part III of this Act and accept repayments thereof;
- (b) with the concurrence of, and subject to such limitations as may be imposed by, National Treasury, to borrow money or obtain credit either in Kenya or abroad;
- (c) to furnish managerial, technical and administrative advice, or to assist in obtaining such advice, for agricultural industries;
- (d) after consultation with the National Treasury, to invest money which is not for the time being needed for discharging the functions of the Corporation in investments for the time being authorized by law for the investment of trust moneys, or to place any such money on deposit at interest with any public body;

- (e) to create, make, draw, accept, endorse, execute, issue, discount, buy, sell, negotiate and deal in bills, notes, warrants, coupons, stock, debentures and other negotiable or transferable instruments;
- (f) subject to this Act, to mortgage the property of the Corporation to secure the repayment of money borrowed by the Corporation.

(2) Notwithstanding subsection (1) of this section, the Corporation shall not borrow any money where the result would be that the total indebtedness (whether present or contingent) of the Corporation would exceed the sum of fifteen million pounds, or such larger amount as the National Treasury may, by notice in the *Gazette*, determine.

(3) The Corporation may delegate to the General Manager its power to grant loans under this Act.

(4) No loan shall be made out of the funds of the Corporation to any director or to any member of the staff unless—

- (a) it is for the purchase of housing accommodation or a motor vehicle; or
- (b) it is for agricultural purposes, and the interest of the applicant has been disclosed and recorded in the minutes of the meeting recommending approval of the application and the consent of the Cabinet Secretary to the proposal has been obtained.

[Act No. 8 of 2008, s. 42.]

15. Funds of Corporation

(1) The funds of the Corporation shall consist of—

- (a) all moneys, funds and securities vested in the Corporation by section 48 of this Act;
- (b) any money provided by Parliament;
- (c) any money borrowed under section 14(1)(b) of this Act;
- (d) any money received by way of interest on, or in repayment of, or otherwise in connexion with, loans made by or vested in the Corporation; and
- (e) such moneys as the Cabinet Secretary may from time to time approve as funds of the Corporation.

(2) The Corporation shall pay to the Government interest, at such rate as the National Treasury, after consultation with the Cabinet Secretary and with the Board, may from time to time determine upon any money provided by Parliament and upon any money which, by virtue of subsection (1)(a) of this section, forms part of its funds and was provided by Parliament; and any interest payable under this subsection shall be paid upon such dates as the Principal Secretary to the National Treasury may direct.

16. Reserve fund

(1) The Board shall create a reserve fund which shall be credited from time to time with any net profit earned by the Corporation.

(2) The reserve fund shall be applied by the Board in making good any loss or deficiency which may occur in any of the transactions of the Corporation.

(3) Whenever any balance remains in the reserve fund after providing for any loss or deficiency as aforesaid, it may be devoted to any of the purposes to which any other fund of the Corporation may by this Act be devoted.

(4) The reserve fund created in accordance with subsection (1) of this section shall be credited with any net profit earned by the Corporation until such time as the balance remaining after providing for any loss or deficiency as aforesaid shall exceed ten per centum of the funds of the Corporation as defined in section 15 of this Act, and shall thereafter not be reduced below that level.

(5) Subject to subsection (4) of this section as soon as the reserve fund and other funds of the Corporation total such amount as in the Board's opinion is adequate to enable the Corporation fully to carry out its objects, there shall as soon as possible after the accounts have been duly audited and certified in accordance with section 40(1) be paid to the Principal Secretary to the National Treasury such amount as the Board shall direct out of—

- (a) the profits of the Corporation; and
- (b) the reserve funds of the Corporation.

(6) All amounts paid to the Principal Secretary to the National Treasury under subsection (5) of this section shall be applied towards the redemption of any loans made by the Government to the Corporation, and interest upon the amount repaid shall cease to be payable as from the date of repayment.

17. Moneys borrowed by Corporation charged on assets

Any moneys borrowed by the Corporation under section 14(1)(b) are by this section charged upon the assets of the Corporation, and shall be repayable primarily out of the revenues of the Corporation.

PART III – LOANS

18. Interpretation of Part

In this Part, "farmer" includes the duly authorized attorney of a farmer, the personal representative of a deceased farmer, a trustee of a farmer appointed by deed or will and a receiver appointed by an order of the court or by a mortgagee even though that person may not have been specifically authorized to mortgage land.

19. Loans to farmers

(1) The Corporation may, in accordance with rules made under this Act and subject to subsection (3) of section 14 of this Act but otherwise upon such terms and conditions as to interest, repayment, security or otherwise and in such manner as the Board may think fit, make a loan to a farmer to enable him to engage more effectively in agriculture—

- (a) upon his applying for a loan in writing in such form as the Board from time to time approves; and
- (b) upon the authority of a resolution of a meeting of the Board at which the application is properly considered and approved.

(2) A loan, under this section may be made for the purpose of reducing or discharging an existing first mortgage if in the opinion of the Board the terms of the mortgage are onerous:

Provided that a loan shall not be made for the purpose of reducing an existing mortgage unless the mortgagee executes a waiver of priority in favour of the Corporation under section 28 of this Act.

(3) A loan under this section shall be made for such period, not exceeding thirty years, and on such terms, as the Board may determine.

19A. Repayment of Loans

The repayment of any loan made under subsections 14(1) and 19(1) shall be made to the Corporation or to any branch thereof in accordance with rules made under this Act.

[Act No. 8 of 2008, s. 43.]

20. Charge on the land

(1) Where the Board so directs a farmer who is the registered owner of land which is not encumbered with any mortgage (other than one in respect of which the mortgagee has executed a waiver of priority in favour of the Corporation under section 28 of this Act shall execute a first mortgage of the land in favour of the Corporation.

(2) Where the conditions of the loan are such that the Board is satisfied that the execution of a formal first mortgage is not necessary, or where the Board otherwise directs, the borrower shall not be required to execute such a document, and instead the General Manager shall—

- (a) deliver a written notification of the loan in the prescribed form to the land registrar, who shall register it against the title to the borrower's land and, where appropriate, endorse a memorandum of the loan on the grant or certificate of title, and thereupon the land shall stand charged with the repayment of the loan and the interest thereon subject to any prior registered charge; and
- (b) upon repayment of the loan and all interest due on it, give written notice of the repayment to the land registrar, who shall register it against the title to the borrower's land and cancel any memorandum of the loan which is endorsed on the grant or certificate of title, and thereupon the charge created in respect of the loan shall be extinguished,

and a written notification delivered under this subsection shall for all the purposes of this Act be deemed to be a mortgage of the land comprised therein executed by the borrower to secure the loan.

(3) In addition to the action prescribed by subsection (2), the General Manager

- (a) may register a notice under the Movable Property Security Rights Act (Cap. 499A) to make a security right in movable property effective against third parties; and
- (b) shall, upon repayment of the loan and all interest due on it, register a cancellation notice in accordance with the Movable Property Security Rights Act (Cap. 499A).

[Act No. 13 of 2017, Sch.]

21. Extension of time

The Board may in its discretion postpone the repayment or extend the time for the repayment of a loan or for the payment of any interest payable thereon, but so that the maximum period for repayment in respect of any loan shall not exceed thirty years.

22. Consent by trustee to short-term loan

If a trustee consents to his security being postponed to enable a loan to be made, his consent shall not itself be deemed improper or a breach of trust so as to render the trustee liable in respect of any loss resulting from the loan having been made.

23. Loan to co-operative society

(1) The Corporation may make a loan to any cooperative society primarily engaged in agriculture to enable the society to erect buildings, install equipment or buy land or otherwise to promote any one or more of the objects of the society—

- (a) upon the society applying for a loan in writing in such form as the Board from time to time approves signed by the Chairperson and the secretary of the society; and
- (b) upon the Board being satisfied that the Chairperson and secretary of the society have been authorized, by a resolution of a meeting of the society passed by a majority of two-thirds of the members of the society and which does not offend any by-laws of the society, to apply for a loan; and
- (c) upon the society lodging with its application a list of the persons who were members of the society at the time of the resolution; and
- (d) upon the Board being satisfied that the accounts, books, papers, and documents of the society are in order; and
- (e) upon such security (if any) as the Board may require; and
- (f) upon the authority of a resolution of a meeting of the Board at which the application is properly considered and approved.

(2) The Commissioner for Co-operative Development shall, at the request of the Board, furnish such lists and other information as the Board may require regarding any co-operative society.

24. Examination of books of co-operative society

The Board shall at all times have full access to all accounts, books, papers and documents of any co-operative society to which a loan has been made or from which an application for a loan has been received, and may cause all such accounts, documents, papers or books to be examined by a member of the staff or by such other person as the Board may appoint.

25. Liability of members of co-operative society

(1) Where a loan is made to a co-operative society, all persons who were members of the society at the time of the application for the loan and are named in the list referred to in section 23(1)(c) shall be jointly and severally liable to repay the loan and to pay the interest payable on the loan.

(2) If a person who was a member of a co-operative society at the time of the application for a loan and is named in the list referred to in section 23(1)(c) ceases to be a member of that society, he shall nevertheless remain liable under subsection (1) of this section in respect of any part of a loan and any interest which was outstanding at the time he ceased to be a member, and on ceasing to be a member he shall provide security to the satisfaction of the Board for the due discharge of that liability.

(3) Where a co-operative society is a company registered under the Companies Act (Cap. 486), the liability of the shareholders of the company is limited to the amount (if any) of the share capital not called up, and subsection (2) of this section shall not apply to a person who has ceased to be a shareholder in the company.

PART IV – GENERAL PROVISIONS AS TO LOANS

26. Rate of interest, and form of security

(1) A loan shall bear such rate of interest as the Board with the approval of the Cabinet Secretary for the time being responsible for finance given after consultation with the Cabinet Secretary, may prescribe, either generally or for any particular class of loan.

(2) A mortgage given under this Act shall be in such form as is prescribed under any written law relating to that mortgage or, where no such form is prescribed, in such form as the Board may determine.

27. Appraisal of land offered as security

The Board, if it considers it desirable, shall cause land offered as security for a loan to be appraised by an appraiser, and in such case the appraiser shall render to the Corporation an appraisal of the land in a form approved by the Board.

28. Waiver of priority

Any mortgagee may, by waiver endorsed upon or incorporated in the mortgage, agree that a mortgage in favour of the Corporation shall have priority, either for the purposes of this Part or for any of the other purposes of this Act, over his mortgage, and such agreement when registered in the same manner as the mortgage held by him shall for all purposes be binding upon him and as from the date of registration upon his successors in title.

29. Loan to be taken up within three months

If a loan has been authorized by the Board and the applicant does not, within a period to be fixed by the Corporation (but not exceeding three months after the applicant has been notified of the authorization), execute such documents as the Board may consider necessary to complete the security and lodge them with the Corporation together with the title deeds of and other documents relative to the applicant's title to the property (if it is to be mortgaged), the Board may withdraw its authorization of the loan, and in that event the loan shall not be made and no part of the fees paid in connexion with the application shall be refunded.

30. Covenants and conditions to be implied in mortgages

(1) In every mortgage or other security document executed to secure a loan, there shall be implied on the part of the farmer and in favour of the Corporation the covenants and conditions set out in the Schedule to this Act.

(2) All such covenants and conditions shall extend to and bind the successor in title of the mortgagor.

31. Corporation may withhold loan where debtor in default

If a loan is made and—

- (a) at any time any sum of money, whether principal or interest, due in respect of the loan is unpaid; or

- (b) the Board considers that the loan has not been applied to the purposes for which it was made or has not been carefully and economically expended; or
- (c) the debtor becomes insolvent, or is sentenced to imprisonment without the option of a fine, or conveys or assigns his property for the benefit of his creditors generally, or makes a composition or arrangement with his creditors, or (the debtor having died) his estate is or is about to be administered in bankruptcy; or
- (d) there has been a breach of any other condition of the loan; or
- (e) the loan is not applied within such time as the Corporation may consider reasonable to the purpose for which it was made,

the Corporation may in addition to any other remedies refuse to pay any portion of the loan which has been approved but not yet paid.

32. Application of money repaid prematurely

(1) If a person to whom a loan has been made under this Act (in this section referred to as a borrower) at any time pays to the Corporation an amount in excess of the instalment then due under the mortgage, the Corporation may, if it thinks fit, on the date when the next instalment falls due, apply such amount in payment of the capital portion of one or more of the instalments which would otherwise thereafter fall due, and the instalments may then be recalculated on the basis of balance of capital owing by the borrower over the remainder of the period for which the loan was originally made.

(2) Such an excess payment, and its application by the Corporation as provided in subsection (1) of this section, shall not exempt the borrower from paying his next instalment when it is due, reduced or recalculated where appropriate.

(3) The Corporation may allow a borrower a rebate of interest, in respect of money paid prematurely, and the rebate shall be in the form of a reduction of the rate of interest charged on that money by one per cent per annum from the date of the payment up to the date when the next instalment falls due.

(4) If the total amount owing to the Corporation is paid off before the due date for payment, the Corporation may claim interest only up to the date of payment:

Provided that, in the case of repayment on a date before the due date for repayment, three months' notice of intention to repay shall be given to the Corporation, and if no such notice is given the Corporation may claim interest in respect of such amount for the period by which the notice actually given falls short of three months.

33. Procedure for recovery on default by occupation or sale of property

(1) In any of the circumstances or events mentioned in section 31 of this Act, the Corporation may, by notice served on the person to whom the loan has been made or his personal representative (in this section referred to as the debtor) personally or by post, demand repayment of the loan and, after due notice of such demand has been served in similar manner on all subsequent mortgagees of the land on the security of which the loan was made, the Corporation may, without recourse to any court, enter upon the land and either take possession of or sell by public auction through a licensed auctioneer the whole or (where subdivision is not prohibited) any part of the land upon such terms and conditions as the Board may in all the circumstances consider proper.

(2) At a public auction held in pursuance of subsection (1) of this section, the Corporation, by its agent duly authorized in writing, may bid for and purchase the whole or any part of the land offered for sale.

(3) The Corporation, as agent of the debtor, may transfer the land to itself or any other purchaser and give a good and unencumbered title to it, and may execute all such documents and do all such other acts as may be necessary to complete the transfer.

(4) A sale under subsection (1) shall not be held until—

- (a) a notice of the sale has been published in the *Gazette*, or in a newspaper circulating in the area in which the land is situated, stating the date, time and place of the sale, and the terms and conditions of the sale; and
- (b) twenty-one days have elapsed since the date of publication of the notice; and
- (c) all reasonable steps have been taken by the Corporation to notify in writing the persons having a registered interest (or any unregistered interest of which the Corporation knows) in the land of the intended sale.

(5) In subsection (1), the expression "licensed auctioneer" has the meaning assigned to it in section 2 of the Auctioneers Act (Cap. 526).

[Act No. 5 of 1996, s. 36.]

34. Inspection of land

For the purpose of ascertaining whether a loan has been or is being properly applied, any member of the staff, or any person deputed by the Corporation to inspect land under this Act, may enter upon any land in respect of which the loan was made and make such inspections thereon as he considers proper.

35. Protection against liability

Where a loan is made in good faith, and it is afterwards discovered that—

- (a) the land comprised in any mortgage or other security document in respect of the development of which a loan was granted was not used, or was not used, as the case may be, for agricultural purposes; or
- (b) the loan was not applied for the purpose for which it was made within the time specified by the Board, or the loan was applied for purposes other than that for which it was made,

no Director and no member of the staff shall be personally liable therefore, but—

- (i) the Board or the General Manager may refuse to pay any part of the loan which has not already been paid; and
- (ii) the Board may at once proceed to call in and recover the money already lent.

PART V – POWERS OF CORPORATION

36. Power of Corporation to inspect valuation rolls

The Corporation may inspect without fee or charge the valuation roll of any local authority which now exists or hereafter exists, and it shall be the duty of officers of a local authority, upon application, to supply to the Corporation without fee or

charge, particulars as to any valuation of rateable property in respect of which the local authority has the power to levy rates.

37. Power of Corporation to hold land

(1) The Corporation may hold land which is—

- (a) required for its business premises; or
- (b) required for the provision of housing accommodation for the staff; or
- (c) acquired as the result of foreclosure or otherwise on account of indebtedness to the Corporation,

but not otherwise.

(2) All developed land acquired in accordance with subsection (1)(c) of this section shall be sold at the earliest favourable opportunity upon such special terms and conditions as the Corporation may determine, but the Directors, the General Manager and members of the staff shall not buy directly or indirectly any land sold in pursuance of this subsection.

38. Power of Corporation to appoint appraisers

(1) The Corporation may appoint appraisers to inspect and appraise land for the purposes of this Act.

(2) Fees and travelling expenses of appraisers shall be paid in accordance with rates specified by the Corporation with the approval of the National Treasury, and shall be payable by the applicants.

(3) Every administrative officer, Government surveyor, police officer or other public officer shall, without additional emolument, when required by the Corporation to do so, report on any cases submitted to him and generally act as agent or inspector of the Corporation.

39. Power of Corporation to act as agent

The Corporation may be appointed and may act as agent of the Government in the making, administration and recovery on behalf of the Government of any loans to farmers or others:

Provided that no expenses of such agency shall fall to be paid from the funds of the Corporation, and the Corporation shall be indemnified by the Government against any losses, costs and expenses which may be sustained or incurred by the Corporation in the performance of such agency.

PART VI – ACCOUNTS OF CORPORATION

40. Publication of accounts

(1) The General Manager shall, within four months after the 31st March in each year, deliver to the Cabinet Secretary a statement of accounts duly audited and certified showing—

- (a) the assets and liabilities of the Corporation on that date; and
- (b) a profit and loss account of the Corporation for the year.

(2) Every such statement shall be signed as correct by the General Manager and at least two Directors.

(3) The Cabinet Secretary shall cause every statement delivered to him under subsection (1) of this section to be laid before the National Assembly.

(4) In addition, the General Manager shall render to the Cabinet Secretary promptly such other accounts, reports and statements as the Cabinet Secretary may from time to time require.

41. Inspection and audit of accounts

(1) The National Treasury shall have full access to all accounts, documents, papers and books of the Corporation, and the General Manager shall at all times furnish to the National Treasury all such information as it may require.

(2) The accounts of the Corporation shall be examined, audited and reported upon annually by the Auditor-General.

[Act No. 12 of 1985, Sch.]

PART VIII – MISCELLANEOUS PROVISIONS

42. False statements

Any applicant for a loan who wilfully fails to disclose any material information within his knowledge, or who wilfully makes any statement which he knows to be false or does not believe to be true, shall be guilty of an offence and liable to imprisonment for a term not exceeding three years or to a fine not exceeding five thousand shillings or to both such imprisonment and such fine and shall further be liable to have any loan made to him cancelled forthwith and to repay to the Corporation forthwith all sums lent to him together with interest thereon.

43. Corrupt acts

(1) If a Director, the General Manager or a member of the staff, or any appraiser, inspector or agent appointed by the Corporation, directly or indirectly receives any fee or reward (other than as authorized by or under this Act) from any person in respect of or in connexion with a loan or an application for a loan, he shall be guilty of an offence and liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten thousand shillings, or to both such imprisonment and such fine.

(2) If any person in respect of or in connexion with a loan or an application for a loan, bribes or corruptly influences a Director, the General Manager or a member of the staff, or any appraiser, inspector or agent appointed by the Corporation, he shall be guilty of an offence and liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten thousand shillings, or to both such imprisonment and such fine.

(3) Any person who—

- (a) having a pecuniary interest in any land offered as security for a loan; or
- (b) being a debtor, creditor, partner or employee of an applicant for a loan or being related to such an applicant within the third degree of affinity or consanguinity,

acts as appraiser in connexion with the land offered as security for such loan shall be guilty of an offence and liable to imprisonment for a term not exceeding three years or to a fine not exceeding five thousand shillings, or to both such imprisonment and such fine.

44. Secrecy

(1) Any person who is on official duty under, or is employed in the administration of, this Act shall treat all documents, information, returns and forms relating to an application for a loan or the making of a loan as secret.

(2) Any person who has possession of or control over any document, information, return or form relating to an application for a loan or the making of a loan, and who communicates any such information or anything contained in any such document, return or form to any person—

- (a) other than a person to whom he is authorized by proper authority to communicate it; or
- (b) otherwise than for the purposes of this Act,

shall be guilty of an offence and liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding three thousand shillings, or to both such imprisonment and such fine.

45. Rules

The Cabinet Secretary, on the advice of the Board, may make rules as to all or any of the following matters, namely—

- (a) the meeting and proceedings of the Board;
- (b) the procedure for applying for loans, and the conditions which may be imposed on the making of a loan;
- (c) the recovery of any costs resulting from examination of application for advances;
- (d) the appointment of agents and the establishment of agencies, and their respective powers;
- (e) the management of the Board and its agencies;
- (f) the cases in which property given as security shall be insured;
- (g) the forms to be used, and the books, accounts and records to be kept;
- (h) the rights and privileges and the duties of the staff and the manner of the performance of their duties;
- (i) generally for fully and effectually carrying out and giving effect to the provisions and purposes of this Act, and for guarding against violations of this Act.

46. Regulations

The Board, with the consent of the Cabinet Secretary, may make regulations prescribing the fees, costs and expenses to be charged and payable in respect of loans and applications for loans, and any such regulations may provide for—

- (a) scales of application fees and appraisal fees based on the amount of the loan for which application is made;
- (b) reduced scales of application fees and appraisal fees where the application is for a short-term loan;
- (c) the basis upon which travelling expenses incurred by appraisers on appraisals are to be calculated;
- (d) the refund or partial refund of the application fee where an application for a loan is refused;
- (e) the reduction of the application fee where an amount less than that applied for is lent;
- (f) a scale of conveyancing costs and fees for the preparation and completion of mortgages and other securities and discharges thereof;

- (g) charging the borrower with any expenses, including copying charges, actually incurred by the Corporation at any time during the continuance of the loan in connexion with such loan;
- (h) the time and mode of payment of fees, costs and expenses;
- (i) the remission of fees, costs and expenses by the Board.

47.

[Spent]

48.

[Spent]

SCHEDULE

[s. 30]

COVENANTS AND CONDITIONS IMPLIED IN EVERY MORTGAGE

1. That the mortgagor will from time to time, so long as money remains owing on this security, pay the rent after it becomes due under any agreement, lease or licence under which he holds the land, and will well and substantially repair and keep in good and substantial repair and condition all buildings and other improvements erected and made upon the land; and that the Corporation shall at all times be at liberty by itself, its agents or its servants to enter upon the land to view and inspect the said buildings and improvements.
2. That the mortgagor will not at any time alienate his interest in the said security, or any part thereof, by way of sale or gift or in any other manner whatsoever, without the prior consent in writing of the Corporation, which consent shall not be unreasonably withheld.
3. That if the mortgagor fails or neglects to pay the rent as aforesaid, to repair the said buildings and improvements or keep them in good and substantial repair and condition as aforesaid, it shall be lawful for, but not obligatory upon, the Corporation, at the cost and expense in all things of the mortgagor, to pay the rent, to repair the buildings and improvements or to keep them in good and substantial repair and condition, as the case may be.
4. That all moneys expended by the Corporation in paying rent as aforesaid, or in repairing or keeping in repair any of the buildings and improvements as aforesaid, or in the insurance thereof or in attempting to exercise any power, right or remedy herein contained or implied in favour of the Corporation, shall be a charge on the land together with interest at the rate of not more than the rate per centum charged in the mortgage computed from the date or dates of such moneys being expended.
5. That insurance shall be effected as may be prescribed or directed by the Board in the joint names of the applicant and the Corporation; and that every policy of insurance so effected and every renewal receipt shall be deposited with the Corporation.
6. That if the mortgagor makes default in the full and punctual payment of any instalment of interest or principal, or if the mortgagor makes default in the faithful observance and performance of any covenant or condition contained in or implied by the mortgage, the Corporation shall be at liberty to call up and compel payment of all principal, interest and other moneys for the time being owing under this

security, notwithstanding that the time or times appointed for their payment thereof respectively may not have arrived.

7. That the mortgagor will at all times cultivate and manage the land in a skilful and proper manner, either personally or by proxy, according to the rules of good husbandry, and particularly will fulfil all conditions of development and occupation to which in any grant from the Government such lands are subject (failure in the performance of this condition entailing the immediate recovery of the loan should the Corporation so desire), and that the conditions of any grant from the Government in respect of land used exclusively for stock farming shall in all respects be punctually fulfilled.
