

OVERVIEW OF THE AGRICULTURAL CREDIT ACT

Hargreaves Sikwibele
Chief Agricultural Economist
Ministry of Agriculture and Co-operatives

PRESENTATION OUTLINE

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Introduction/Background

- Stakeholders raised concerns to improve agricultural trade and finance in the sector
- After several consultations, many stakeholders recognised the importance of a WHR system in the sector
- It was therefore agreed, in principle, that for the WHR system to work in the country, it requires a legal framework

Introduction/Background

- Legal experts advised that the Agricultural Credit Act, Cap 224, 1995, of the Laws of Zambia was appropriate to incorporate the WHR system
- The Minister of Agriculture and Co-operatives then requested for the amendment of the Agricultural Credit Act, Cap 224 in order to take account the concerns of the WHR system.

Description of a WHR system

- A warehouse receipt is a legal document in the form of a receipt issued by a person engaged in the business of storing goods.
- The document has three key factors;
 - evidence of the legal relationship between the person depositing the goods and the person storing the goods
 - evidence of title to goods represented by the receipt
 - the person issuing the receipt should be a representative of a recognised/certified warehouse

Rationale of a WHR system

- Easy access to commodity finance, enabling crop marketing to be better managed and leading to reduced trade margins and seasonal price variability'
- Facilitate trading by making it possible for buyers to purchase without physical sampling of the commodities – i.e. allow “sight-unseen” trade,

Rationale of a WHR system

- Enable a thriving commodity exchange, with much greater direct involvement of smallholders, to develop,
- Contribute to the development of financing and risk management instruments that can improve commodity marketing ,and
- Enhance the involvement of the financial sector in agricultural marketing.

Rationale of a WHR system

- WHRS will provide for the following;
 - enable farmer groups to bulk their crop into economic lot sizes that can be sold further down the marketing chain to processors;
 - provide a means for assuring grain quality, thereby reducing the scope for cheating on quality;
 - assure the quality, quantity and location of their crop, make it possible for them to access the commercial grain market, including through engaging in “sight unseen” trade with millers and other large traders;
 - ensure that storage occurs in well-run warehouses, thus reducing post-harvest losses which can be quite high at the smallholder level (e.g. due to theft, disease on account of lack of proper storage etc.); and
 - make deferred sale possible through access to finance secured against warehouse receipts.

Instructions to the legal experts for amendments

- Introduction of a regulator of the warehouse receipt system,
- Recognition of warehouse receipts as negotiable documents of title,
- Recognition of the concept of fungibility;
- Recognition of warehouse receipts in relation to commodities deposited with a participating warehouse as a superior document of title conferring superior rights over and above all other interests in the underlying commodities if at the time of the deposit there are no pre-existing agricultural charges;

Instructions to the legal experts for amendments

- Introduction of special rules for the administration of the estate of an insolvent participating warehouse operator; and
- Modification of other statutory laws having impact on agricultural commodities deposited with a participating warehouse.

Current Agricultural Credit Act, 2010

- Establishes the Warehouse Licensing Authority and provide for its functions and powers,
- Facilitates the borrowing of money on the security of charges created on farming stocks and other agricultural assets,
- Provides for registration of charges,
- Provides for the certification of warehouses,

Current Agricultural Credit Act, 2010

- Provides for the issuance and negotiations of warehouse receipts and rights conferred by warehouse receipts,
- Provides for the rights and obligations of a warehouse operators,
- Repeal and replace the Agricultural Credits Act, 1995.

Warehouse Licensing Authority

- This will be a body corporate with perpetual succession and a common seal,
- It will be capable of suing and being sued in its corporate name,
- The Minister will appoint a Board of Authority, who will be part time with representatives from the Public and the Private sector,

Warehouse Licensing Authority

- The Board will mainly carry out the functions of the Authority,
- The Board shall appoint a Director, who will be an ex-officio member of the board,
- The Board shall also appoint such other staff as it considers necessary,
- The Board may appoint any suitable person to be an inspector for the purposes of ensuring compliance with this Act.

Functions of the Authority

- Certify warehouses
- Approve negotiable receipts books, and
- Perform any other function incidental or conducive to the carrying out of its functions under this Act or any other law

Functions of the Authority

- The Authority may, for the purposes of carrying out its functions,
 - Investigate the storage, warehousing, classification of agricultural commodities,
 - Inspect any warehousing
 - Determine whether such warehouses are suitable for storage of agricultural commodities,
 - Classify warehouses
 - Determine the duties of warehouse operators,

Functions of the Authority

- Formulate guidelines and standards for proper storage of agricultural commodities,
- Suspend or revoke any certificate,
- Charge and collect fees for the examination or inspection of a warehouse,
- Examine the books, records, documents and accounts relating to warehouses,
- Close a warehouse operating without a valid certificate.

Authorised Agencies

- The Minister may, by Statutory Instrument, appoint an authorised agency to perform the functions of the Authority,
- The Minister may, where the authorised agency fails to comply with the terms and conditions of its appointment, suspend or revoke the appointment of that authorised agency, after giving the agency twenty one days' notice,

Authorised Agencies

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

Registration of warehouses

- A person who intends to operate a warehouse business shall apply for a certificate under this Act,
- The Board shall before granting a certificate, inspect the warehouse in respect of which an application has been made to determine whether the warehouse is suitable for the storage of agricultural commodities

Warehouse Receipts

- A warehouse receipt shall be issued by a warehouse operator that is authorised to do so under this Act,
- A warehouse operator shall not issue any warehouse receipt without approval by the Board in accordance with, and for the purposes, of this Act.
- A warehouse receipt is a document of title.

Other provisions

- The Act specifies the rights and obligations of Warehouse operators
- It also states how a warehouse receipt may be negotiated or transferred
- It provides for offences and penalties
- What Arbitration procedure should apply in settling disputes

Conclusion

- The Agricultural Credit Act was assented to on 14th November, 2010.
- The Minister of Agriculture and Co-operatives issued a Statutory Instrument to operationalise the Act which was published in the Government Gazette in March, 2011
- The main purpose of this workshop is to agree on implementation modalities of this Act, given the prevailing environment in the country



THANK YOU