CHAPTER 341
WINDWARD ISLANDS BANANA INSURANCE ACT

• Act • Subsidiary Legislation •

ACT

Act No. 32 of 2000

Amended by

Act No. 17 of 2002

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CHAPTER 341
WINDWARD ISLANDS BANANA INSURANCE ACT

An Act to provide for the insurance of banana, and for matters connected therewith.

[Act No. 32 of 2000 amended by Act No. 17 of 2002.]

[29*th September*, 2002.]

1. Short title

This Act may be cited as the Windward Islands Banana Insurance Act.

2. Interpretation

In this Act—

"affected" means damaged by storm;

"arbitrator" means the Chief Technical Officer in the Ministry responsible for Agriculture or his or her nominee;

"area" means any area defined by WINCROP under section 10;

"assured" means a grower who—

(*a*) is statutorily insured under section 5; or

(*b*) has entered into a contract of insurance with WINCROP under section 20;

"bananas" means bananas of such varieties as may be determined by the local authority;

"cess" means the cess imposed under section 16;

"delivery record" means the recorded poundage of bananas delivered by the grower to the local authority in the insurance period;

"excess percentage" means, in relation to any affected holding, the percentage of loss of ratoon mats suffered by that holding in excess of the minimum statutory percentage;

"grower" means the person for the time being in possession or control of a holding;

"holding" means any parcel of land on which bananas are grown for export and which is registered as a holding under section 3;

"income" means the funds of WINCROP derived from the sources mentioned in section 14;

"indemnity basis" means the average poundage of bananas delivered as derived from the delivery record of the grower;

"insurance period" means the number of weeks immediately preceding the last recorded delivery of export bananas to the local authority as determined by the Minister acting on the recommendation of WINCROP by notice published in the *Gazette*;

"local authority" means the Grenada Banana Co-operative Society, established by section 3 of the Banana Act;

"loss" means, in relation to any mat, such damage to that mat occasioned by storm and which has rendered any plant in that mat incapable of producing at maturity, fruit of merchantable quality;

"mat" means one or more banana plants complete with rhizome and pseudostem with have developed from the planting of one rhizome in a hole;

"member association" means the Dominica Banana Marketing Corporation, the Grenada Banana Co-operative Society, the Saint Lucia Banana Growers Association and the Saint Vincent Banana Growers Association;

"minimum statutory percentage" means such per cent of ratoon mats in a holding as may, from time to time, be prescribed by the Minister acting on the recommendation of WINCROP;

"Minister" means the Minister responsible for Agriculture;

"plant mat" means a mat from which no bunch or banana has yet been harvested;

"qualified person" means a person who is qualified under section 6 to receive statutory benefit;

"ratoon mat" means a mat from which at least one bunch of bananas has been harvested;

"reserves" means that portion of the income set aside for the purpose of meeting payments arising from approved claims and other future obligation;

"storm" means any hurricane, tornado, cyclone, whirlwind, gale, rainstorm or atmospheric disturbance, whether similar to the forgoing or not which WINCROP is satisfied is likely to have caused loss to any holding;

"WINCROP" means the Windward Islands Crop Insurance (1988) Limited, a company incorporated in Dominica.

3. Registration of holdings

(1) Every person for the time being in possession or control of a parcel of land on which bananas are grown for export shall register with WINCROP the parcel of land as a holding, in the manner prescribed by the regulations made under this Act.

(2) For the purpose of registration under subsection (1), no parcel of land shall be subdivided except by way of *bona fide* sale, lease or gift.

(3) Subject to subsection (4), where a grower has two or more parcels of lands on which bananas are grown for export, whether these parcels of land are contiguous or not, he or she may apply to have each parcel of land registered as an independent holding so as to facilitate separate assessment for damage.

(4) Where a grower has two or more parcels of land which are contiguous, WINCROP in considering an application from the grower for the registration of each parcel and in considering an application from the grower for the registration of each parcel and independent holdings will determine a minimum size for each holding as well as the minimum size of each subdivision.

4. Records

Where a grower increases or decreases the size of his or her holding or the number of mats grown thereon he or she shall submit the relevant details of the changes to WINCROP so that the relevant records may be amended.

5. Statutory insurance

Every grower shall be statutorily insured as provided by this Act against loss of his or her ratoon mats and any plant mats replacing existing ratoon mats.

6. Qualifications for statutory benefit

A grower shall be qualified to receive statutory benefit in respect of the loss of ratoon mats which were growing upon his or her holding immediately before the storm which occasioned that loss, but shall not be so qualified unless—

(*a*) his or her holding has suffered loss of ratoon mats to an extent no less than the minimum statutory percentage, or is in an area which has suffered loss of ratoon mats to an extent not less than the minimum statutory percentage;

(*b*) he or she proves that he or she or some other person from whom he or she derived title to the affected holding has received payment from or is entitled to payment by the local authority for bananas grown upon such holding and accepted by the local authority for export;

(*c*) he or she makes a return in accordance with the provisions of section 8;

(*d*) he or she gives to WINCROP or to any person authorised in writing in that behalf by WINCROP, information relating to and an opportunity to inspect his or her holdings, whether affected or not, and any books or records kept by him or her in relation to his or her holding, as may be required by WINCROP; and

(*e*) his or her holding has suffered more than the minimum percentage of damage as determined by the local authority.

7. Amount of statutory benefit

(1) Subject to subsections (2) and (3), the amount of statutory benefit payable under this Act to every qualified person in respect of the loss of ratoon mats suffered by his or her holding shall be a sum payable in the manner which may be prescribed by the regulations.

(2) Whenever the poundage of bananas represented to have been delivered from an affected holding according to the delivery record, was in fact produced from that holding and another holding or other holding jointly in the possession and control of the same grower, WINCROP may assess the poundage of bananas which shall be deemed to have been delivered from the affected holding during the insurance period.

(3) Where the ratoon mats of any holding have been affected by two or more storms in any calendar year, the aggregate amount of statutory benefit payable in respect of the loss of these mats occasioned by such storms shall not exceed the amount which would have been payable had those mats been totally affected by the first storm.

8. Return claiming benefit

(1) Every grower whose holding has suffered loss of ratoon mats shall, within the prescribed time after the occurrence of the storm which occasioned the loss or within such further period as WINCROP may in any special case permit, make a return to WINCROP in the form which may be prescribed claiming benefit in respect of that loss.

(2) Every return under subsection (1) shall contain in relation to the affected holding the particulars which may be prescribed and shall include an estimate in the prescribed manner of the percentage of loss of ratoon mats suffered by the holding.

9. Assessment of loss

(1) As soon as possible after the occurrence of any storm in respect of which WINCROP receives any return under section 8 or considers that it is likely to receive any such return, WINCROP shall for the purpose of complying with section 10 cause an inspection to be made of the affected holding in respect of which any such return has been made or of any holdings in the region or locally within which it considers any affected holdings are likely to be situated.

(2) As soon as possible after the completion of any inspection under subsection (1) every assessor shall, subject to the direction of WINCROP, make a report to WINCROP either—

(*a*) estimating the percentage of loss of ratoon mats suffered by any affected holding in respect of which a return under section 8 has been received by WINCROP;

(*b*) containing a fair estimate of the incidence of loss of ratoon mats in the region or locality to which the report relates; or

(*c*) specifying the various areas within the region or locality which in the opinion of the assessor have suffered an approximately similar percentage of loss or ratoon mats and the boundaries of these areas; and

(*d*) estimating the approximate average percentage of loss of ratoon mats suffered by holdings situated in that area.

(3) To make the estimate referred to in subsection (2)(*a*) or (*d*) regard shall be had only the number of ratoon mats which, immediately before the storm in respect of which the inspection is made, were growing upon an affected holding which is inspected and have suffered loss by reason of that storm.

10. WINCROP to define areas and declare average percentage of loss

As soon as possible after receipt of any report under section 9 WINCROP shall consider the report and shall consider any return under section 8 and either—

(*a*) assess the percentage of loss of ratoon mats suffered by each affected holding in respect of which a return under section 8 has been made; or

(*b*) (i) define the areas within which are comprised affected holdings which have suffered an approximately similar percentage of loss, and

(ii) assess the average percentage of loss of ratoon mats suffered by holdings within each such area consequent upon the storm in respect of which the assessment is made.

11. Frivolous returns

(1) Any grower who has submitted a return claiming benefit (whether accompanied by a deposit or not) in respect of loss which he or she has represented to have been equal to or greater than the minimum statutory percentage and which, after assessment by WINCROP, was found to be less than one-half of the minimum statutory percentage may be required by WINCROP during a period of three years thereafter to deposit with any further return claiming benefit made by him or her, as a condition for the consideration of that return by WINCROP, a sum to be determined by WINCROP.

(2) Any such deposit shall be forfeited to WINCROP in every case where the extent of loss claimed in the return amounts to fifty per cent or less of the minimum statutory percentage.

12. Review of assessment

(1) Where in the case of an assessment under section 10(*a*) which has been approved by the local authority any grower is dissatisfied with the assessment, he or she may within the prescribed time apply to WINCROP in the prescribed manner for a review of the assessment and WINCROP shall within the prescribed time determine the matter.

(2) Where in the case of an assessment under section 10(*b*) which has been approved by the local authority any number of growers who together control not less than thirty per cent of the number of holdings of all the affected holdings situated within any area are dissatisfied with the assessment, they may within the prescribed time apply to WINCROP in the prescribed manner for a review of the assessment and WINCROP shall within the prescribed period determine the matter.

(3) Every application under subsection (1) or (2) for the review of any assessment shall be accompanied by the deposit as prescribed in the regulations.

(4) Where a grower is a member of the Grenada Banana Co-operative Society, the Society may with his or her approval apply under this section on his or her behalf.

13. Arbitration

(1) In this section, "assessment" means any assessment made by WINCROP under section 10.

(2) Where any grower is dissatisfied with the determination of WINCROP referred to in section 12 he or she may within the prescribed time apply to WINCROP for arbitration to his or her claim with the period which may be prescribed in the regulations and WINCROP shall refer the application to the arbitrator together with all

the information, reports, returns or records which WINCROP considered in making the assessment.

(3) Within the period which may be prescribed in the regulations, on receipt of an application for arbitration, the arbitrator shall consider the application together with the documents relating to the assessment and shall take steps, whether by inspecting or causing to be inspected the affected holding or holdings situated in the area to which the application relates or otherwise, as the arbitrator in his or her absolute discretion thinks necessary to determine the accuracy or otherwise of the assessment, and shall make a report to WINCROP.

(4) Where the arbitrator reports to WINCROP under subsection (3) that in the opinion of the arbitrator the percentage or average percentage of loss suffered by a holding or holdings respectively to which the application relates has been inaccurately stated in the assessment under review, the assessment shall be amended by the subsection for the percentage or average percentage specified therein, the percentage or average specified in the arbitrator's report if—

(*a*) the report and the assessment are at variance on the question whether or not that percentage or average percentage is less than the minimum statutory percentage; or

(*b*) the percentage or average percentage specified in the report exceeds or is exceeded by the percentage or average percentage specified in the assessment by more than five per cent.

(5) Subject to subsection (4), every assessment shall be final and conclusive.

(6) The deposit paid under section 12(3) shall be refunded if the percentage or average percentage specified in the report is—

(*a*) greater than the percentage or average percentage specified in the assessment to which the report relates; and

(*b*) not less than the minimum statutory percentage.

14. Composition of the funds of WINCROP

The funds of WINCROP shall consist of—

(*a*) the proceeds of the cess received by WINCROP under section 16;

(*b*) any monies borrowed by WINCROP under section 18;

(*c*) any sums received by WINCROP by way of reinsurance under section 19;

(*d*) any premiums received by WINCROP from a grower under a contract of insurance entered into under section 20;

(*e*) any sums received by WINCROP from investments made under section 15; and

(*f*) any other sums received by WINCROP from any source.

15. Investments

The funds of WINCROP shall be placed in such bank accounts as directed by WINCROP and those funds which relates to its reserve will be invested in accordance with procedures laid down by WINCROP.

16. Imposition of cess

(1) There shall be raised, levied and collected for the purposes of this Act, a cess on the poundage of bananas received and paid for by the local authority.

(2) The amount of the cess will be as prescribed and shall be deemed to have become due and payable from such date as may be prescribed by order made by the Minister.

(3) No cess prescribed for the purposes of this section shall exceed seven cents per pound.

17. Payment and calculation of cess

(1) The cess shall be deductible by the local authority from the price paid by the local authority for bananas delivered to the local authority and shall be paid over by the local authority to WINCROP in such manner as may be prescribed.

(2) WINCROP shall have the right to recover from the local authority the amount of any cess due to be collected and paid over by the local authority.

18. Loans

WINCROP may borrow money for the carrying out of its purposes and may charge in any manner all or any of its property of every nature and kind whatsoever and all or any of its funds and all or any of its reserves present and future with the repayment of monies borrowed for any such purpose.

19. Reinsurance

WINCROP will effect reinsurance sufficient to meet potential liability, beyond that covered by the reserves, for the payment of benefit under this Act, at such rates and subject to such conditions as WINCROP may deem reasonable.

20. Contractual insurance

(1) WINCROP may enter into a contract of insurance with any grower in the form and on the terms and conditions prescribed to insure the grower against loss of his or her plant mats.

(2) Any premiums paid by a grower under such a contract of insurance shall be income to WINCROP.

21. Application of income

Without prejudice to the provisions of section 15 the income of WINCROP shall be applied towards—

(*a*) the payment of all expenses incurred by WINCROP in the execution of the provisions of this Act;

(*b*) the payment of any sums by way of premiums on the reinsurance of any potential liability incurred by WINCROP under this Act;

(*c*) the payment of benefit to any qualified person according to the provisions of this Act;

(*d*) the payment of benefit to any grower who has a contract of contractual insurance under section 20;

(*e*) the payment of interest upon any monies borrowed by WINCROP and the repayment of such monies;

(*f*) the creation of such reserves as WINCROP may consider adequate;

(*g*) any other object of WINCROP.

22. No-claim benefit

(1) WINCROP shall create some portion of income for the payment of no-claim benefits to growers where its reserves exceed the level fixed by WINCROP.

(2) Subject to subsection (1) no-claim benefits shall be paid annually to growers who have not been granted statutory or contractual benefits within the previous three calendar years.

23. Payment of benefit

(1) Any grower who—

(*a*) is qualified to receive any statutory benefit under the provisions of this Act; or

(*b*) is entitled to receive any benefit under any contract of insurance entered into under section 20 shall be paid that benefit in the manner and on the terms and conditions of payment as may be prescribed.

(2) At the discretion of WINCROP *ex-gratia* payments may be made to alleviate hardship cases.

24. Power to insure local authority

WINCROP shall have power to insure the local authority against loss of revenue and any consequential loss and for that purpose may charge the premium it considers fit and enter into insurance and reinsurance agreements as it considers necessary.

25. Accounts and audit

(1) WINCROP shall cause proper books of accounts and other books in relation thereto to be kept.

(2) The accounts of WINCROP shall be annually audited by an auditor to be appointed by WINCROP and the report of the auditor shall be submitted annually to the Minister.

26. Annual report

WINCROP shall prepare an annual report of its operations for each financial year and copies of the report shall be submitted to the Minister and laid before Parliament.

27. Exemption from duties

(1) All materials, equipment, stores, vehicles and other goods whatsoever, acquired by WINCROP shall be exempt from customs duty and other duties and taxes.

(2) The income of WINCROP shall be exempt from liability to income tax.

28. Regulations

WINCROP may, with the approval of the Minister, make regulations for prescribing anything which under the provisions of this Act is to be prescribed and generally for the better carrying out of the purposes of this Act.

29. Offences

(1) Any person who with intent to defraud—

(*a*) makes an application for the registration of any land as a holding;

(*b*) makes an application for the transfer of registration of a holding; or

(*c*) submits a return for insurance benefit,

knowing the same to be false in any material particular is liable on summary conviction to a fine of one thousand dollars and to imprisonment for one year and shall in addition to any penalty for that offence be liable to forfeit any claim for insurance benefit under this Act.

(2) Any person guilty of an offence under this Act for which no other penalty is provided is liable, on summary conviction, to a fine of two hundred dollars and to imprisonment for six months.

30. Winding-up

The distribution of assets on winding-up of WINCROP will be on the basis of the average contribution of the member associations during the last three calendar years.

31. Commencement

This Act comes into force on the 29th September, 2002.

CHAPTER 341
WINDWARD ISLANDS BANANA INSURANCE ACT

SUBSIDIARY LEGISLATION

No Subsidiary Legislation