

WINDWARD ISLANDS BANANA INSURANCE ACT

CHAPTER 78:50

Act  
3 of 1989

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**Note  
on  
Subsidiary Legislation**

This Chapter contains no Subsidiary Legislation.

**CHAPTER 78:50****WINDWARD ISLANDS BANANA INSURANCE ACT****ARRANGEMENT OF SECTIONS**

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**CHAPTER 78:50**

**WINDWARD ISLANDS BANANA INSURANCE ACT**

3 of 1989. **AN ACT to provide for the insurance of bananas and for related matters.**

Commencement.\* [1st August 1987]

Short title. **1. This Act may be cited as the –  
WINDWARD ISLANDS BANANA INSURANCE ACT.**

Interpretation. **2. In this Act –**

“affected” means damaged by storm;

“area” means any area defined by WINCROP under section 10;

“arbitrator” means the Chief Technical Officer in the Ministry responsible for Agriculture or his nominee;

“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 prescribed 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 fund of WINCROP derived from the sources mentioned in section 14;

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\* See section 4.

- “indemnity basis” means the average annual 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 Dominica Banana Marketing Corporation established by section 3 of the Dominica Banana Marketing Corporation Act; Ch. 58:02.
- “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 which 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 percent 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 of bananas 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 fund set aside for the purpose of meeting payments arising from approved claims and other future obligations;
- “storm” means any hurricane, tornado, cyclone, whirlwind, gale, rain-storm or atmospheric disturbance, whether similar to the foregoing or not, which WINCROP is satisfied is likely to have caused loss to any holding;

“WINCROP” means the Windward Islands Crop Insurance Company or its successor in title.

Registration of holding.

3. (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 as may be 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 *bonafide* sale, lease or gift.

(3) Subject to subsection (4), where a grower has two or more parcels of land on which bananas are grown for export, whether these parcels of land are contiguous or not, he 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 such parcel as an independent holding will determine a minimum size for each holding as well as the minimum size of each subdivision.

Records.

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

Statutory insurance.

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

Qualifications for statutory benefit.

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

(a) his holding has suffered loss of ratoon mats to an extent not 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 proves that he or some other person from whom he derived title in 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 makes a return in accordance with the provisions of section 8;
- (d) he affords to WINCROP or to any person authorised in writing in that behalf by WINCROP, information relating to and an opportunity to inspect his holdings, whether affected or not, and any books or records kept by him in relation to his holdings and any damage to the holdings, as may be required by WINCROP; and
- (e) his holding has suffered more than the minimum percentage of damage as determined by the local authority.

7. (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 holding shall be a sum payable in the manner which may be prescribed by the Regulations. Amount of statutory benefit.

(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. (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. Return claiming benefit.

(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 that holding.

Assessment of  
loss.

9. (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 locality 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;  
or
- (b) (i) containing a fair estimate of the incidence of loss of ratoon mats in the region or locality to which the report relates;  
(ii) specifying the various areas within the region or locality which in the opinion of the assessor have suffered an approximately similar percentage of loss of ratoon mats and the boundaries of these areas; and  
(iii) 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 (b) (iii) regard shall be had only to 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.

WINCROP to  
define areas and  
declare average  
percentage of  
loss.

10. 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. (1) Any grower who has submitted a return claiming benefit (whether accompanied by deposit or not) in respect of loss which he 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, as a condition for the consideration of that return by WINCROP, a sum to be determined by WINCROP. Frivolous returns.

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

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

(b) 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 percent 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.

(2) Every application under subsection (1) for the review of any assessment shall be accompanied by the deposit which may be prescribed in the Regulations.

(3) Where a grower is a member of the Dominica Banana Growers Association, the Association may with his approval apply under this section on his behalf.

Arbitration.

13. (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 may within the prescribed time apply to WINCROP for arbitration to his claim within 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 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 substitution for the percentage or average percentage specified therein, the percentage or average percentage 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 (2) 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. The fund of WINCROP shall consist of –

Composition of  
the fund of  
WINCROP.

- (a) the proceeds of the cess received by WINCROP under section 16;
- (b) any moneys 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 whatsoever for the purposes of this Act.

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

Investments.

16. (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.

Imposition.

(2) The amount of the cess will be as prescribed and shall be deemed to have become due and payable from the 31st July 1987 and on the commencement of this Act all arrears of cess shall be collected by the local authority and paid over to WINCROP.

17. (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 in such manner as may be prescribed.

Payment and  
calculation of  
cess.

(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.

Loans. **18.** 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 moneys borrowed for any such purpose.

Reinsurance. **19.** 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 consider reasonable.

Contractual insurance. **20.** (1) It shall be lawful for WINCROP to enter into a contract of insurance with any grower in the form and on the terms and conditions as may be prescribed to insure the grower against loss of his plant mats.

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

Application of income. **21.** 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 contractual insurance under section 20;
- (e) the payment of interest upon any moneys borrowed by WINCROP and the repayment of such moneys;
- (f) the creation of such reserves as WINCROP may consider adequate.

No-claim benefit. **22.** (1) WINCROP shall create some portion of income for the payment of no-claim benefits to growers whose no-claim reserves exceed the level fixed by WINCROP.

(2) Subject to section 22(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. (1) Any grower who –

Payment of  
benefit.

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

Power to insure.

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

Accounts and  
audit.

(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. 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.

Annual report.

27. (1) All materials, equipment stores, vehicles and other goods whatsoever, acquired by WINCROP for the purposes of this Act shall be exempt from customs duty and other duties and taxes.

Materials, etc.,  
exempt from  
duties.

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

28. WINCROP may 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.~~

Regulations.

29. (1) Any person who with intent to defraud –

Offences.

(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 and fifty dollars and to imprisonment for six months.

Winding up.

**30.** The distribution of assets on winding up of WINCROP will be on the basis of the average contribution of the members during the last three calendar years.

Commencement.

**31.** This Act shall be deemed to have come into force on the 1st day of August, 1987.

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**CHAPTERS 78:51 - 78:79**  
*(RESERVED)*

