

VOLUME: V

AGRICULTURAL MANAGEMENT ASSOCIATIONS

Part ID: II Agricultural Management Associations (ss 3-27)

CHAPTER: 35:08

### 3. Commissioner

There shall be a Commissioner of Agricultural Management Associations.

### 4. Register of agricultural management associations

The Commissioner shall keep a register of agricultural management associations registered under this Act and shall enter therein the particulars required by this Act to be so entered.

### 5. Association of five or more persons

(1) Where five or more individuals, all of whom shall be citizens of Botswana, wish to be associated for the purpose of undertaking a collective agricultural venture, they may form an agricultural management association for that purpose and apply to the Commissioner for registration under this Act.

(2) An application for registration under this Act shall contain such particulars as may be prescribed and shall have attached thereto a copy of the constitution of the proposed association.

(3) Where the collective agricultural venture involves the use and exploitation of tribal land, the Commissioner shall forthwith transmit a copy of the application to the tribal land board concerned.

### 6. Consideration of application by Commissioner

(1) The Commissioner shall cause notice of every application made to him under section 5 to be published in the Gazette and in one newspaper circulating in the area in which the collective agricultural venture is to be carried out, calling on any person objecting to the registration of the association to submit such objection to him, with copies to the applicant and, where appropriate, the land board concerned, within such period, being not less than 30 days after the date of publication, as may be specified in the notice.

(2) The Commissioner shall, after the expiry of the period specified for objections under subsection (1), and after consideration of objections, if any, received within that period, decide whether or not to register the association.

(3) Where the Commissioner decides not to register an association, he shall thereupon record his decision and the reasons therefor in writing and cause a copy of the same to be served forthwith on the applicant.

(4) Any person objecting to the decision of the Commissioner under subsection (2) may appeal to the Minister whose decision shall be final and shall not be questioned in any court.

(5) The Commissioner may register an association subject to such conditions and limitations as he may deem necessary.

### 7. Constitution of association

(1) Every association shall have a written constitution which shall make provision for-

- (a) the qualifications for membership of the association;
- (b) the liability of members for the debts of the association;
- (c) the voting rights of members;
- (d) the election of a committee;
- (e) the procedure for withdrawal from membership;
- (f) the circumstances under which a member may be expelled from membership;
- (g) rights of succession on the death of a member;
- (h) the distribution of assets on the dissolution of the association;
- (i) the procedure to be adopted in changing the constitution;
- (j) the quorum for meetings of the association; and
- (k) such other matters as may be prescribed.

(2) No change in the constitution of an association shall be effective until such change has been approved by the Commissioner and full particulars thereof entered on the register.

### 8. Incorporation of association

On registration under section 5 an association shall be a body corporate by the name specified on the register with

perpetual succession.

#### 9. Certificate of registration

(1) In registering an association under section 5 the Commissioner shall issue a certificate of registration.

(2) Where an association is registered subject to conditions or limitations, such conditions or limitations shall be endorsed on the certificate issued under subsection (1).

#### 10. Powers of association

Subject to this Act and to any conditions or limitations endorsed on its certificate of registration, an association may-

- (a) institute and defend suits and other legal proceedings;
- (b) acquire, hold, charge and dispose of property of any kind;
- (c) enter into contracts;
- (d) borrow money with or without giving security; and
- (e) lend money with or without taking security.

#### 11. Officers of association

(1) The officers of an association shall consist of a chairman, vice-chairman, secretary, treasurer and such other officers as the constitution may require.

(2) The officers of an association shall be elected annually in accordance with the association's constitution.

(3) Notice of the election of officers and of any change therein shall be sent to the Commissioner within 30 days of such election or change.

(4) The Commissioner shall note the election of or change in officers in the register.

#### 12. Register of members

Every association shall keep and maintain a register of the association's members in such form as may be prescribed.

(2) A register of members kept under this section shall contain, in respect of each member-

- (a) his name, place of residence and occupation;
- (b) the date on which he became a member of the association;
- (c) the amount of capital, whether in cash or kind, contributed or pledged by him to the association; and
- (d) the date on which he ceased to be a member of the association.

(3) A copy of the entries required by subsection (2) in respect of each member and notice in writing of any alteration of or addition to those entries shall be sent to the Commissioner within 30 days of such entry, alteration or addition.

(4) Where a copy or notice is sent to the Commissioner under subsection (3), he shall accordingly enter in his register the particulars contained in the copy or alter or add to the entries therein contained.

#### 13. Limitation on liability of members

No member, past member or the estate of an insolvent or deceased member of an association shall be liable for the debts or other liabilities of the registered association except as otherwise provided by this Act or by the association's constitution.

#### 14. No individual claim on capital

No member, past member or the estate of an insolvent or deceased member of an association, shall, by virtue of membership of the association be entitled to or have any claim on any individual part or share of or interest in the capital of the association except as otherwise provided by this Act or by the association's constitution.

#### 15. Disposal of profits

The net profits of an association may be divided among and paid to the members of the association in such proportion as the association's constitution may prescribe:

Provided that no profits shall be distributed in respect of any year until the accounts of that year have been audited in accordance with section 20(1)(a).

#### 16. Annual meeting of association

(1) The annual general meeting of an association shall be held each year in accordance with the association's constitution.

(2) The Commissioner, or a person nominated by him in that behalf, may attend the annual general meeting of an association, shall have the right to speak thereat, but shall not have the right to vote.

#### 17. Commissioner may convene special general meeting

(1) The Commissioner may at any time convene a special general meeting of an association at such time and place as he may specify.

(2) The Commissioner shall use his best endeavours to give to all members of the association, in such manner as he thinks most appropriate, such notice of the time and place of the special general meeting as he considers reasonable in all the circumstances.

(3) The Commissioner may appoint a person to act as secretary of a special general meeting held under this section and may determine what matters shall be placed on the agenda of the meeting.

(4) The Commissioner, or a person nominated by him in that behalf, shall preside at a special general meeting held under this section and may direct that the meeting proceed notwithstanding the absence of a quorum as prescribed by the association's constitution.

(5) The Commissioner or a person nominated by him under subsection (4) shall have the right to speak at a special general meeting called under this section but shall not have the right to vote except where there is an equality of votes in which case he shall have a casting vote.

(6) A special general meeting called under this section shall have all the powers of a general meeting called and held under the association's constitution.

#### 18. Books of account

Every association shall keep one or more books of account to the satisfaction of the Commissioner, in which shall be entered of all moneys received and payments made by or on behalf of the association.

#### 19. Records to be available for inspection

(1) Every association shall make its books of account and all documents relating thereto or generally to the activities of the association, including its register of members, available for inspection-

(a) by any member of the association at such time and place as may be provided for in the association's constitution;

(b) by the Commissioner, or any person authorized by him in writing in that behalf, at the association's office at any time during normal business hours;

(c) by the Commissioner, or by any person acting under his directions, at the Commissioner's office at any reasonable time specified by the Commissioner, if he so requires by notice in writing served on the association; and

(d) by the Minister, or by any person authorized by him in writing in that behalf, at the association's office during normal business hours.

(2) Any person who wilfully obstructs any person carrying out an inspection under subsection (1) shall be guilty of an offence and liable to a fine not exceeding P500 or to imprisonment for a term not exceeding six months, or to both.

#### 20. Annual and extraordinary audits of accounts

(1) The Commissioner-

(a) shall audit or cause to be audited, the accounts of every association at least once in every year; and

(b) where he is of the opinion that it is in the public interest to do so may at any time audit, or cause to be audited, the accounts of an association.

(2) The annual audit under subsection (1)(a) shall include an examination of overdue debts, if any, and a valuation of the assets and liabilities of the association.

(3) The costs of an audit under subsection (1)(b) shall be borne by the association.

(4) The Commissioner, or any person conducting an audit on his behalf, may-

(a) summon at the time of audit any office-holder, agent, servant or member of the association who he has reasonable cause to believe is able to give material information with regard to any transaction of the association or the management of its affairs; and

(b) require the production of any book or document relating to the affairs of or any cash or securities belonging to the association.

(5) Any person who wilfully or without reasonable excuse fails to comply with a summons or requirement under subsection (4) shall be guilty of an offence and liable to a fine not exceeding P1000 or to imprisonment for a term not exceeding 12 months, or to both.

#### 21. Style or firm name to include registered number

The style or firm name of an association shall include the words "Agricultural Management Association No. ...." and the number allocated by the Commissioner on registration.

#### 22. Style or firm name to be made public

(1) Every association shall have its style or firm name, and registered number, printed in prominent legible Roman letters on all notices, advertisements, letterheads, invoices, accounts and receipts used in the association's business.

(2) Every association shall have its style or firm name, and registered number, printed in prominent legible Roman letters on all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods, purporting to

be signed for or on behalf of the association, and on all letters of credit of the association.

### 23. Office and postal address of association

(1) Every association shall have an office and a postal address and the Commissioner shall enter particulars of the same in the register.

(2) All communications and notices required or authorized to be sent under this Act to an association may be sent by post addressed to the postal address of the association.

(3) Notice of any change in the postal or office address shall be sent to the Commissioner within 30 days after the change, and the Commissioner shall accordingly alter the entries in the register in relation to such address.

### 24. Cancellation of registration

(1) The Commissioner may, as hereinafter provided, at any time cancel the registration of an association if he is satisfied that it is expedient to do so on the ground that-

- (a) the number of members has dropped below five;
- (b) the association is operating at a loss and is unable or unlikely to operate other than at a loss;
- (c) the association's debts and liabilities exceed its assets; or
- (d) the association is in default with its obligations under this Act.

(2) Where the Commissioner is of the opinion that the registration of an association should be cancelled, he shall notify his opinion in writing to the association and by notice published in the Gazette, and shall specify a period, being not less than 30 days, within which the association and any other person may submit to him reasons why the association's registration should not be cancelled.

(3) At the expiry of the period specified under subsection (2) and after considering any reasons that may have been submitted to him, if the Commissioner decides to cancel the registration of the association, he shall proceed to cancel the registration and shall give notice of such cancellation to the association and shall publish notice thereof in the Gazette.

(4) Any person aggrieved by the cancellation of registration of an association may, within 21 days of the publication of the notice under subsection (3), appeal to the Minister whose decision shall be final and shall not be questioned in any court.

### 25. Winding up on cancellation of registration

(1) Where the Commissioner cancels the registration of an association under section 24 he may order that the property of the association, both movable and immovable, shall vest in such person as shall be named in the order and thereupon the person so named shall proceed to wind up the affairs of the association.

(2) Where it is necessary that an entry be made in any book, register, title deed, lease or other document in order to vest any property in the person named in an order made under subsection (1), the entry shall, on production of the order, be made by the person whose duty it is to make such entry, without the payment of any fee or duty in respect thereof.

(3) For the purpose of winding up the affairs of an association in pursuance of an order made under subsection (1), the person named in such order shall have all the powers vested by the Insolvency Act in the trustee of an insolvent estate for the purpose of the discovery of the property of a debtor and the realization thereof.

(4) The Commissioner may, for the purpose of enabling an association to wind up its own affairs, suspend the operation of an order made under subsection (1) for such period as may seem expedient to him:

Provided that no order shall be suspended unless he is satisfied that the association is solvent.

### 26. Application of assets on winding up

Where the affairs of an association are being wound up in pursuance of an order under section 25(1), the assets of the association shall be applied in accordance with the provisions of the Insolvency Act and those provisions shall apply mutatis mutandis as if the same were set out seriatim in this Act.

### 27. Inspection of register and other documents

Any person may inspect the register and any document kept in relation to an association kept at the office of the Commissioner and may obtain from the Commissioner a copy of or extract from such register or document.