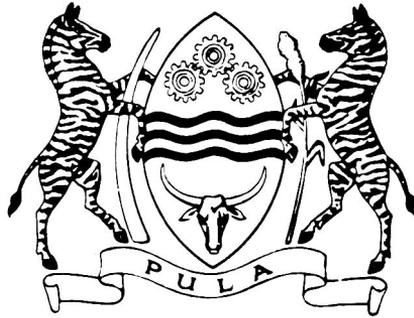




REPUBLIC OF BOTSWANA



GOVERNMENT GAZETTE

EXTRAORDINARY

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Bill No. 12 of 1978

AGRICULTURAL MANAGEMENT ASSOCIATIONS BILL, 1978

(Published on 6th March, 1978)

MEMORANDUM

A draft of the above Bill, which it is proposed to present to the National Assembly, is set out below.

2. The object of the Bill is to make provision for the creation of a new legal entity to be involved in agriculture, namely, agricultural management associations. This Bill replaces the Communal Management Associations Bill, 1977, which was published last year but was not proceeded with. This Bill is intended to facilitate the full implementation of the Tribal Land Grazing Policy, Phase II.

3. Agricultural managements associations are groups of ten or more citizens who wish to be associated together for the purpose of undertaking a collective agricultural venture.

4. Clauses 3 and 4 provide for a Commissioner of Agricultural Management Associations and for the maintenance by him of a register of associations containing the details required by the Bill to be entered.

5. Clause 5 specifies the method of application for registration as an association and clause 6 requires that the Commissioner should publish notice in the Gazette of the application, should invite objections thereto, and, after consideration of any objections, decide whether or not to register. If an application involves the use and exploitation of tribal land the consent of the land board concerned is a pre-requisite. An appeal against the Commissioner's decision on registration lies to the Minister, and, in deciding to register, the Commissioner may register subject to conditions and limitations.

6. Every association must have a written constitution which must, as a minimum, contain the provisions set out in clause 7. By clause 8, on registration an association becomes a body corporate. Clause 10 sets out the powers of an association and clause 11 makes provision for the office-bearers thereof. Clause 12 requires each association to maintain a membership register and specifies the details to be contained therein. Clause 13 makes provision for the liability of members for the debts of the association and clause 14 provides that no member shall, merely by virtue of membership, have any claim on the assets of the association.

7. By clause 15 an association making profits may distribute those profits to its members, but only after the Commissioner has audited the accounts as he is required to do by clause 20. Clauses 16 and 17 make provision for annual general meetings, and also for special general meetings to be called by the Commissioner. Clauses 18 and 19 relate to the books of account to be maintained by an association and to the inspection thereof and of other documents and records, by members, the Commissioner and the Minister. Clauses 21 and 22 require the fact that an association is registered to be published on letterheads, etc., and to have an office and postal address so that members of the public are aware of the entity with which they are dealing, and may communicate with them.

8. Clause 24 empowers the Commissioner to cancel the registration of an association on specified grounds having first given notice of his intention to the association and by notice in the Gazette and inviting objections. Clauses 25 and 26 provide for the winding up of an association whose registration is

cancelled, and for the distribution of its assets.

9. Part IV, contains the regulation making power and provides for the amendment of the Branding of Cattle Act made necessary by this Bill.

E.S. MASISI,
Minister of Agriculture.

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A BILL entitled

An Act to provide for the constitution, registration and control of agricultural management associations; to provide for the rights, privileges, obligations and liabilities of members thereof; and to provide for matters connected therewith and incidental thereto

Date of Assent:

Date of Commencement:

ENACTED by the Parliament of Botswana.

PART I Preliminary

1. This Act may be cited as the Agricultural Management Associations Act, 1978, and shall come into operation on such date as the Minister may, by notice published in the Gazette, appoint.

Short title and commencement

2. In this Act, unless the context otherwise requires —
“agricultural venture” means a venture concerned with horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow lands, market gardens and nursery grounds, and the use of land for woodlands;

Interpretation

“association” means an agricultural management association registered under section 6;

“Commissioner” means the Commissioner of Agricultural Management Associations referred to in section 3;

“register” means the register maintained by the Commissioner under section 4.

PART II Agricultural Management Associations

3. There shall be a Commissioner of Agricultural Management Associations.

Commissioner of Agricultural Management Associations

4. 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.

Register of agricultural management associations

5. (1) Where 10 or more 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 may apply to the Commissioner for registration under this Act.

Association of 10 or more persons

(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. (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.

Consideration of application by Commissioner

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

(3) The Commissioner shall not register any association which proposes to use and exploit tribal land unless the land board concerned has consented to such registration.

(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.

Constitution of associations

7. (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.

Incorporation of association

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

Certificate of registration

9. (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).

Powers of associations

10. 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.

Officers of associations

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

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

(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. 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. Limitation on liability of members

14. 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. No individual claim on capital

15. 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: Disposal of profits

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

(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.

B.44

Commissioner may convene special general meeting

17. (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 right to vote except where there be 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.

Books of account

18. 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.

Records to be available for inspection

19. (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 of P500 and to imprisonment for 6 months.

20. (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 so to do, 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 of P1 000 and to imprisonment for 12 months.
21. The style or firm name an association shall include the words "Agricultural Management Association No. " and the number allocated by the Commissioner on registration.
22. (1) Every association shall have its style or firm name, and registered number, printed on prominent legible Roman letters on all notices, advertisement, 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. (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

Annual and
extraordinary
audits of
accounts

Style or
firm name
to include
registered
number

Association
style or firm
name to be
made public

Office and
postal address
of association

Commissioner shall accordingly alter the entries in the register in relation to such address.

Cancellation of registration

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

- (a) the number of members has dropped below 10;
- (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.

Winding up on cancellation of registration

25. (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.

Cap. 16:01

(3) For the purpose of winding up the affairs of an association in pursuance of an order made 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 discovering 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. 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.

Application
of assets on
winding up

27. 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.

Inspection of
register and
other
documents

PART III *Regulations*

28. The Minister may make regulations prescribing any matter or thing which under this Act is to be or may be prescribed and generally for the better carrying into effect of the purposes and provisions of this Act.

Regulations

29. Section 19 of the Branding of Cattle Act is amended by substituting for the words "Communal Management Act, 1977", which appear in the proviso thereto, the words "Agricultural Management Associations Act, 1978".

Amendment
of Cap. 36:02

L2/4/703 II