

PROCLAMATION.

BY

HIS EXCELLENCY THE HIGH COMMISSIONER.

No. 2, 1910.—DATED 20th JANUARY, 1910.

Preamble.

WHEREAS it is expedient to provide for the formation, registration and management of Co-operative Agricultural Societies within the Bechuanaland Protectorate (hereinafter referred to as "the Territory");

Now, therefore, under and by virtue of the powers in me vested, I do hereby declare, proclaim and make known as follows:—

PRELIMINARY.

Definition of terms.

1. In this Proclamation unless inconsistent with the context "board" shall mean the board of directors of a co-operative agricultural society;

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"co-operative agricultural society" or "society" shall mean a society formed for all or any of the objects set forth in section four;

"Registrar" shall mean the Registrar of Deeds;

"model regulations" shall mean such regulations as may be published from time to time by the Resident Commissioner in the *Gazette*;

"regulations" shall mean in relation to a co-operative agricultural society, the regulations or any alterations thereof, or additions thereto registered in accordance with this Proclamation.

PART I.

FORMATION OF CO-OPERATIVE AGRICULTURAL SOCIETIES.

Registrar of Deeds to keep a register of co-operative agricultural societies.

2. The Registrar shall keep in the form from time to time prescribed by the Resident Commissioner a register of co-operative agricultural societies, and carry out such other powers and duties as the Resident Commissioner may subject to this Proclamation or any amendment thereof confer or impose upon him.

Who may form a co-operative agricultural society.

3. Any number of persons (not being less than seven) carrying on farming operations in the Territory may form a co-operative agricultural society on complying with the provisions hereinafter contained, and subject to the right of veto hereinafter conferred upon the Resident Commissioner.

Objects for which co-operative agricultural societies may be formed.

4. A co-operative agricultural society may subject to the provisions of this Proclamation be formed for all or any of the following objects, viz., of

- (1) disposing of the agricultural produce and live stock of any of its members in the manner most profitable to the society; or
- (2) manufacturing or treating on joint account the agricultural produce of its members, and of disposing in the manner most profitable to the society of the produce so manufactured or partly manufactured; or
- (3) initiating schemes of irrigation or water boring or of furthering and developing existing irrigation and water-boring schemes; or
- (4) purchasing, hiring or otherwise acquiring and working on behalf of its members, agricultural implements or machinery; or
- (5) purchasing, hiring or otherwise acquiring and using and controlling on behalf of its members breeding stock; or
- (6) purchasing or otherwise acquiring on behalf of, and supplying to its members agricultural implements and machinery, stock feeding stuffs, seeds, fruit trees, manure and other farming requisites; or
- (7) commencing acquiring and carrying on supply stores under a co-operative system for disposing of and supplying agricultural produce; or
- (8) commencing and carrying on insurance societies for its members under a co-operative system; or
- (9) acquiring and distributing information as to the best manner of carrying on farming operations profitably; or
- (10) acquiring by lease, purchase or donation, and holding any immovable property in the Territory for the better carrying on of any of the objects of the society; or

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- (11) raising money on loan for any of the lawful objects of the society; or
- (12) any other lawful object which the Resident Commissioner may from time to time permit for furthering the interests and development of agriculture in the Territory.

Time within which application must be made for registration.

5. (1) Within one month after the formation of any co-operative agricultural society or in the case of a society formed before the date of the operation of this Proclamation within six weeks after such date, application shall be made to the Registrar in the form from time to time prescribed by the Resident Commissioner for the registration of such society under this Proclamation.

(2) With such application there shall be transmitted the regulations of the society which has been formed or if no such regulations have been adopted a copy of the model regulations.

(3) In the event of non-compliance with the provisions of sub-section (1) by any person or body of persons formed into a co-operative agricultural society, every such person and every member of such body shall be liable on conviction for every day on which such non-compliance has continued, to a fine not exceeding one pound.

(4) For the purposes of this section a society shall be deemed to have been formed if it carries on operations as a co-operative agricultural society, or uses as part of its name the word "co-operative" in conjunction with the term "agricultural society," or other term importing a similar meaning, or holds itself out in any manner as a co-operative agricultural society.

What regulations may be adopted.

6. (1) Any society which it is proposed to register under this Proclamation may adopt as its regulations all, or any, of the model regulations.

(2) Upon any registration under this Proclamation of a society in so far as any regulations tendered for registration are not inconsistent with or do not exclude or modify the model regulations, the model regulations shall form part of the regulations of that society in the same manner, and to the same extent as if they were contained in the regulations tendered and shall be registered as part of such regulations.

Preliminary steps necessary before registration.

7. (1) No society formed after the date of the operation of this Proclamation shall be registered unless the members shall have first held a meeting at which there has been presented a written report stating

- (a) the objects of the society;
- (b) a list of the promoters;
- (c) the business prospects of the society and facts and statistics calculated to show that when registered it will be able to carry out its objects successfully;
- (d) a copy of the regulations which it is proposed to tender for registration.

(2) If after consideration of such report and the documents comprised or referred to therein a majority of the meeting shall approve the same the meeting shall proceed to select the directors of the society in accordance with the provisions of section *twelve* and the regulations of the society, and may elect a person qualified as prescribed in section *twenty-one* as its first auditor. Provided that if the meeting shall not elect an auditor the directors of the society shall as soon as practicable, after their election, appoint an auditor as provided for in paragraph (5) of section *twenty-one* of this Proclamation.

(3) A copy of any such report together with a list containing the full names, true signatures, addresses and occupations of the existing members shall be transmitted to the Registrar when the application for registration is made.

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Registrar not to register unless regulations are in order.

8. (1) The Registrar shall not register any society unless the regulations tendered with the application comply with and are in no way repugnant to or inconsistent with the provisions of this Proclamation nor until all other provisions of this Proclamation in respect of registration have been complied with.

(2) The regulations shall be divided into paragraphs and numbered consecutively, and shall set forth *inter alia*:

- (a) the proposed name of the society with the word "co-operative" as part of its name;
- (b) a correct and full description of the locality and premises where the office of the society is to be situate;
- (c) the objects of the society;
- (d) the period for which the society is to be established;
- (e) the manner in which the capital of the society is to be raised or procured;
- (f) the mode and conditions of admission to membership of the society, and the circumstances permitting of resignation or justifying exclusion or expulsion therefrom, and the rights and liabilities of members, resigned members, expelled members, whether as between the society and themselves or between each other;
- (g) the number of directors of the society and the powers and duties of directors and other officers;
- (h) the intervals between the holding of general meetings of the society (not exceeding in any case an interval of six months) the requisite notices of and procedure at meetings (including the particular rights of members in voting thereat and the manner of voting and the majority necessary for carrying any particular class of resolution);
- (i) the mode of managing the funds of the society of keeping and auditing its accounts of the keeping of registers of members;

and may provide for the settlement by arbitration of disputes arising between members or between the society and any member, resigned member or expelled member.

(3) The regulations which it is proposed to register, shall be tendered in duplicate to the Registrar, who shall submit the same to the Resident Commissioner. The Resident Commissioner may, in his discretion, veto the registration of any society, but, if within a period of one month, he shall not exercise his right to veto, and if the provisions of this Proclamation have been complied with, the Registrar shall register the regulations, file one duplicate in his office, and return the other with the date of registration endorsed thereon to the society.

(4) The regulations so tendered for registration shall be signed by not less than seven persons, each of whose signatures shall be attested by at least one witness.

(5) A fee of one pound denoted by means of stamps shall be payable to the Registrar upon registration, and such stamps shall, as soon as registration is approved by him, be affixed to the application for registration and defaced by the Registrar.

(6) As soon as registration of a society has been so effected the Registrar shall transmit to the office of the society a certificate of registration in the form prescribed by the Resident Commissioner, which shall in all courts and places be conclusive evidence of the facts stated therein. Upon receipt of such certificate, such society shall be deemed for all purposes to be a co-operative agricultural society under this Proclamation, and to have all the rights, powers, privileges and duties by this Proclamation or any amendment thereof or by any other law conferred or imposed on co-operative agricultural

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societies and shall be thereupon entitled to commence, or if formed before the date of the operation of this Proclamation to continue operations as a co-operative agricultural society.

9. (1) Any part of the regulations of a society may be altered from time to time by the member thereof in general meeting subject to the provisions of section *nineteen*.

(2) Every alteration of regulations so made shall within one month thereafter be tendered to the Registrar for registration, who shall subject to a power which is hereby conferred upon the Resident Commissioner of refusing to allow the alteration, register the same, and thereupon the regulations of the society as originally registered shall be read subject to the alteration.

(3) The provisions of sub-sections (3), (4) and (5) of the last preceding section shall apply in respect of the registration of regulations so altered.

Conditions of membership.

10. It shall be a condition of membership of every society that all its members shall be jointly and severally liable for payment of the obligations of the society, provided that the liability of the estate of any person who has died, or any person who has resigned his membership, or has been expelled from the society, shall cease.

(1) in respect of any of its obligations incurred after his decease or after he has ceased to be a member; and in all respects

(2) as soon as the financial statement of the society signed by its auditor as hereinafter provided, discloses a credit balance in favour of the society.

No fixed capital required.

11. (1) No society shall be required to have any fixed capital.

(2) The funds necessary for carrying on the operations of the society shall consist of:

(a) capital funds—including any loans raised by the society—any stock-in-trade of the society and any securities for loans advanced by the society to members;

(b) revenue funds—including entrance fees of members, the reserve fund (if any) of the society, and undistributed profits (if any) of the society.

(3) No part of the funds of any society shall be divided amongst its members by way of profit, bonus, dividend, or in any other manner than is authorised by its regulations in respect of credit balances due to members.

PART II.

MANAGEMENT OF CO-OPERATIVE AGRICULTURAL SOCIETIES.

Board of directors to control.

12. (1) The operations of every society shall be managed and controlled by a board of directors consisting of not less than five nor more than seven of the members of the society, who shall be elected at the annual general meeting thereof.

(2) Subject to the provisions of this section the directors shall be elected in manner prescribed by the regulations of the society and subject to the next succeeding section shall hold office and retire as so prescribed.

(3) The directors shall hold meetings as often as may be necessary for properly conducting the business and operations of the society, but in no case at intervals exceeding one month unless it has been impossible to obtain a quorum in which case a meeting shall be held as soon as it is so possible.

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- (4) Three directors shall be the quorum of any meeting of directors.
- (5) The directors shall at the first meeting of the board, held after the annual general meeting, elect one of their number to be chairman until the next annual general meeting, and if any vacancy occur during the year in the office of chairman it shall be filled as soon as a meeting of the board can be convened.

When a director shall vacate office.

13. (1) A director shall vacate his office
- (a) if he becomes insolvent or assigns his estate for the benefit of, or compounds with his creditors; or
 - (b) if he dies or becomes of unsound mind or is convicted of an offence and sentenced to any period of imprisonment without the option of a fine; or
 - (c) if he absents himself from four consecutive ordinary meetings of the board without its leave (and such leave shall not be granted for a period covering more than six consecutive ordinary meetings unless the absence be on the business of the society); or
 - (d) if he resigns his membership of the society or is lawfully expelled therefrom; or
 - (e) if he gives one month's notice in writing to the board of his intention to resign office and his resignation is accepted by the board.
- (2) Any vacancy so occurring shall be filled as prescribed by the regulations of the society.

Powers and obligations of board of directors.

14. (1) Subject to the provision of sub-section (2) of this section to the regulations of the society and to any restrictions thereby imposed on the powers of the board or of the directors, the board shall have the same powers and be subject to the same obligations in respect of the society as if they had been conferred or imposed by a general meeting of the society, and every director acting upon a resolution of the board shall be deemed to be the agent of the society for all purposes within the scope of its objects.

(2) No loan shall be raised by the board involving a liability of the society exceeding the amount of one hundred pounds, unless the same has been sanctioned by a general meeting of the society specially convened for the purpose of considering the proposal to raise such loan.

(3) Subject to his compliance with the provisions of this Proclamation no director shall be held liable to the society for any loss it may sustain unless the loss was due to his wilful misconduct or gross negligence.

Financial year.

15. Unless it is otherwise provided in the regulations of the society the financial year shall be from the first day of July to the thirtieth day of June next ensuing both days inclusive.

Annual general meeting.

16. (1) A general meeting of every society shall be held within six weeks after the close of the society's financial year for the purpose of considering and dealing with the financial position and the balance sheet and statement of accounts of the society, and for the election of directors and auditor, and for general business. Such meeting shall be called the annual general meeting and shall be held at such convenient place and time as shall be prescribed by the board.

(2) In addition to the annual general meeting, the board or any two directors jointly signing the notice may, by written notice, convene a special general meeting of the society when the holding of such meeting appears necessary in the interests of the society and the board shall convene such

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meeting if a requisition in writing signed, by one-fifth of the members of the society, be transmitted to the board.

(3) If within fourteen days after the transmission of such requisition, a special meeting be not convened by the board it may be convened by the requisitionists.

(4) The periods and forms of notice of annual and special general meetings of the society shall be as prescribed by the regulations of the society.

Chairman of meeting.

17. (1) The chairman of the directors, if present, shall, unless the meeting otherwise determine by resolution, be the chairman of any general meeting.

(2) No item of business shall be transacted at any general meeting unless a quorum of members is present during the time when the meeting proceeds to consider that item.

(3) One-fifth of the members of the society shall be a quorum thereof; provided that a quorum shall in no case consist of less than five members.

(4) If, within one hour, from the time appointed for the meeting a quorum is not present the meeting if convened upon the requisition of members shall be dissolved; in any other case it shall stand adjourned to the same day in the next week at the same time and place, and if at such adjourned meeting a quorum is not present within one hour from such time, the members present shall constitute a quorum.

Voting.

18. (1) Save as is otherwise provided in this Proclamation or the regulations of the society, every question for decision by a general meeting shall be determined by the majority of members present thereat, and on a show of hands unless a poll be demanded by at least five members.

(2) The declaration by the chairman that a question to be so decided has been carried or carried unanimously or by a particular majority or lost, and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against the resolution.

(3) A poll if demanded shall be taken forthwith but in the manner prescribed by the regulations of the society.

(4) The chairman of the meeting shall in addition to his deliberative vote have also a casting vote in the case of an equality of votes whether on a show of hands or on a poll unless it is otherwise provided by the regulations of the society.

Proceedings before loans may be raised or regulations altered.

19. Notwithstanding anything in section *seventeen* or *eighteen* or in the regulations of a society contained,

(1) no loan involving a liability of the society exceeding one hundred pounds shall be raised, and no alteration of its regulations shall be made unless the loan or alteration (as the case may be) has been approved by two-thirds of the members of the society; and

(2) no alteration of the regulations affecting the reserve fund of the society shall be made unless approved by five-sixths of the members;

and in every such case the question of such loan or alteration shall not be considered except at a special meeting convened for that purpose, and at which all votes are recorded in person. If an insufficient number of members be present, or a sufficient number being present, an insufficient number vote at the meeting it shall be adjourned to a date and place to be fixed by two-thirds of the members present, and the meeting shall be constituted in the manner hereinbefore in this section stated.

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Minutes of proceedings to be preserved.

20. (1) Minutes of the proceedings at all general meetings and of every meeting of the board shall be regularly entered in separate books kept for the purpose, and containing proper tabulated details of the business conducted at the meeting.

(2) The minutes and proceedings of each meeting shall be submitted at the next ensuing meeting, and if passed thereat as correct, shall be confirmed by the chairman thereof, and shall thereupon without further proof be *prima facie* evidence in all courts and places of the proceedings of the meetings of which they purport to be minutes.

(3) Every such minute book shall be kept at the office of the society and shall be open to inspection of any person authorized thereto in writing by the Resident Commissioner.

Appointment of auditor.

21. (1) Every society shall at each annual general meeting appoint a person who publicly carries on the business of an accountant as the auditor of its accounts for the current financial year. The retiring auditor shall be eligible for re-election.

(2) If an appointment of such person as auditor be not made at that meeting the Resident Commissioner on the application of any member of the society may appoint an auditor qualified as aforesaid to hold office till he has audited the accounts for that year.

(3) The Resident Commissioner may at any time appoint an auditor or auditors to investigate and report upon the books, accounts, and affairs of any society.

(4) A director or officer of the society shall not be capable of being appointed its auditor.

(5) A casual vacancy in the office of auditor may be filled by the directors by appointing a person qualified as aforesaid to hold office till the audit of the accounts of that year is completed.

(6) The remuneration of the auditor shall be fixed by the society in general meeting; provided that

(a) the Resident Commissioner may fix the remuneration of an auditor appointed under sub-section (2); and

(b) the directors may fix the remuneration of an auditor appointed under sub-section (5).

All such remuneration shall be payable out of the revenues of the society.

(7) Every auditor appointed under this section shall have a right of access to the books, accounts, and vouchers of the society, and may require from its directors and other officers such information as may be necessary for the performance of his duties as auditor.

(8) In making any report to the members of the society or in signing the statements mentioned in the next succeeding section the auditor shall state

(a) whether he has obtained the information and explanations required by him; and

(b) whether in his opinion the statements are properly drawn up so as to exhibit a true and correct view of the financial position of the society according to the information at his disposal and explanations given to him and as shown by the books of the society.

Accounts and balance sheet.

22. (1) Not less than three weeks before the date fixed for the annual general meeting the board shall prepare the balance sheet and profit and loss account, and a financial statement made up to the close of the previous financial year of the society.

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(2) Such balance sheet, profit and loss account, and financial statement signed by a majority of directors and by the auditor of the society if approved by him after examination of the accounts of the society shall be transmitted to each member of the society with the notice of such general meeting, or in the alternative if it be so provided by the regulations of the society such statements shall be open to inspection of members at its offices for a period to be fixed by those regulations.

(3) Such balance sheet, account and statement aforesaid signed as aforesaid shall further be published in a newspaper circulating in the district in which the society's office is situate.

(4) Such balance sheet, account and statement aforesaid, signed as aforesaid shall further be transmitted to the Resident Commissioner who may in any case in which he deems it advisable submit the same for report to any auditor nominated by him.

List of members and copy of regulations to be kept for inspection.

23. (1) Every society shall keep at its office and open to inspection at all reasonable hours

- (a) a complete list of its members showing the name address and occupation of each member; and
- (b) a correct copy of its regulations with any alterations therein made and registered under this Proclamation; and
- (c) a list of the directors showing the name, address and occupation of each director.

(2) A copy of each such list made up to the last days of the months of June and December showing which members have during the previous six months been admitted as members together with their true signatures, addresses and occupations and a list of persons who have resigned their membership or been expelled therefrom during the same period, shall be transmitted by the board to the Registrar within fourteen days after the expiry of each such period.

PART III.

DISSOLUTION OF CO-OPERATIVE AGRICULTURAL SOCIETIES.

Dissolution of society.

24. (1) A society may be dissolved

- (a) by resolution of a special general meeting called for the purpose passed by two-thirds of the members of the society, such members being personally present; and in such event any person or persons may, at such meeting, be appointed to wind up the affairs of the society, or if no such persons are appointed the directors shall wind up the affairs of the society;
- (b) on the order of the High Court or a Judge thereof or of the Court of Resident Commissioner provided application be made for dissolution by a person who would, if such society were a company registered in the Territory under the law for the time being regulating the registration and winding up of registered companies, have been entitled to obtain an order for the compulsory winding up of the company.

(2) If the society is dissolved under paragraph (a) of sub-section (1) after all the liabilities and obligations present or contingent of the society have been discharged, the surplus (if any) including the reserve fund (if any) shall be distributed among existing members in proportion to the aggregate of the sale moneys on account of each member by the society during the last preceding three years, or if the society has not existed for such period during the existence of the society.

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(3) If the society is dissolved under paragraph (b) of sub-section (1) the Court exercising jurisdiction to dissolve may, in its discretion, apply any provision of the law for the time being in force regulating the winding up of registered companies as if the society were a registered company and if any assets remain over after satisfying the liabilities and obligations of the society, and the costs of the dissolution the same, shall be distributed in accordance with the provisions of sub-section (2) of this section.

(4) A society shall be dissolved without any such resolution thereof or order of Court when the number of its qualified members is reduced below seven, or when the period (if any) fixed for the duration of the society by its regulations expires or whenever any event occurs upon the occurrence of which the regulations provide that the society is to be dissolved.

Upon dissolution the provisions of paragraph (a) of sub-section (1) of this section shall apply without prejudice, however, to any application to Court that may be made under paragraph (b) of such sub-section, and if such application be made, the provisions of sub-section (3) shall apply.

Directors to give notice of dissolution to Registrar.

25. Whenever a society has been dissolved under the last preceding section the directors thereof shall, if the dissolution be by resolution or under sub-section (4) or if the dissolution be by the court the officer registering orders of such court shall within fourteen days of the dissolution, give notice thereof to the Registrar who shall thereupon remove the name of the society from his register of societies.

PART IV.

MISCELLANEOUS.

No licence to trade with members necessary.

26. Notwithstanding anything in the laws in force in the Bechuanaland Protectorate relating to stamps and licences it shall not be obligatory upon any society to obtain a licence to trade or carry on business in so far as the trade or business carried on is exclusively with the members of the society or in so far as the goods sold by it are the agricultural produce of the Territory.

Penalty for carrying on business when members less than seven.

27. If a society continues to carry on its operations when the number of its members (qualified to be members in accordance with section three) is reduced below seven for a period of one month after the number is so reduced every person who is a member of the society during the time that it continues to carry on its operations after such period, and is cognisant of the fact that it is so carrying on its operations with less than seven qualified members shall be liable to a fine of one pound for every day, during which the operations are so carried on and shall further be severally liable to satisfy all the obligations of the society incurred during such time and may be sued for the same without any other member being joined in the action.

Penalty for making false returns or statements.

28. If any person shall wilfully make in any return, report, financial statement or balance-sheet, or other document required for the purposes of this Proclamation a statement false in any material particular knowing it to be false, he shall be guilty of an offence, and liable on conviction to a fine not exceeding one hundred pounds or in default of payment to imprisonment with or without hard labour for a period not exceeding one year, or to such period of imprisonment without the option of a fine.

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Penalty if any director or officer accepts commission.

29. Any director or officer of a society who shall accept any commission fee or reward, whether pecuniary or otherwise, from any person for or in connection with any transaction with the society shall be guilty of an offence and liable on conviction to the penalties mentioned in the last preceding section, and shall further be liable to make good to the society double the value or amount of such commission, fee or reward.

Punishment where no penalty is provided.

30. Any person who shall where no penalty is expressly provided fail to comply with any requirements of this Proclamation within the time or in the manner thereby prescribed, or commit any other contravention thereof, shall be liable on conviction to a fine not exceeding ten pounds or in default of payment to imprisonment with or without hard labour for a period not exceeding one month.

Legal proceedings to be in name of society.

31. (1) All legal proceedings by or against any society shall be instituted or taken in the name of the society.

(2) If judgment has been obtained against the society and such judgment is not within three months thereafter satisfied, the plaintiff may proceed against all members or any member of such society in respect of such liability.

(3) Save as aforesaid no legal proceeding shall lie against a member of a society individually in respect of an obligation of the society.

Registration of immovable property.

32. (1) Any immovable property acquired and held by a society under this Proclamation or its regulations may be registered in the name of the society without reference to the names of the members thereof.

(2) All movable property acquired and held by the society shall be deemed in all legal proceedings civil or criminal to be vested in the society.

Short title commencement of Proclamation.

33. This Proclamation may be cited for all purposes as the "Co-Operative Agricultural Societies (Bechuanaland Protectorate) Proclamation 1910" and shall have force and take effect from the date of its publication in the *Gazette*.