

CHAPTER 74:06
BOTSWANA AGRICULTURAL MARKETING BOARD
ARRANGEMENT OF SECTIONS

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Act 2, 1974,
S.I. 87, 1974,
S.I. 1, 1977,
S.I. 66, 1981.

An Act to provide for the establishment of a board to be known as the Botswana Agricultural Marketing Board, to provide for its powers, functions and duties and for matters incidental thereto and connected therewith.

[Date of Commencement: 14th June, 1974]

PART I

Preliminary (ss 1-2)

1. Short title

This Act may be cited as the Botswana Agricultural Marketing Board Act.

2. Interpretation

In this Act, unless the context otherwise requires-

"**Board**" means the Botswana Agricultural Marketing Board established under section 3;

"**chairman**" means the member designated as such by the Minister under section 4(1);

"**deputy chairman**" means the member designated as such by the Minister under section 4(1);

"**development fund**" means the development fund established under section 13(1);

"**member**" means a member of the Board;

"**scheduled produce**" means the produce specified in the First Schedule;

"**stabilization fund**" means the stabilization fund established under section 12(1).

PART II

Establishment of the Board (ss 3-9)

3. Establishment of Board

There is hereby established a Board to be known as the Botswana Agricultural Marketing Board, which shall be a body corporate with perpetual succession and a common seal, with power to sue and be sued and to purchase, hold, manage and dispose of land and other property for the purposes of performing its functions and exercising its power under this Act and for those purposes entering into such contracts as it may consider necessary or expedient.

4. Membership of Board

(1) The Board shall consist of not less than eight nor more than 10 members appointed by the Minister, of whom one member shall be designated by the Minister as chairman and one member shall be designated by the minister as deputy chairman.

(2) No person shall be appointed to be a member of the Board-

- (a) if he has been declared insolvent or bankrupt under any law in any country and has not been rehabilitated or discharged, or has made a composition with his creditors and has not paid his debts in full;
- (b) if he is incapacitated by physical or mental illness or infirmity from performing his functions as a member;
- (c) if he has been sentenced to imprisonment without the option of a fine or has been convicted of any offence involving dishonesty; or
- (d) if he is a Member of the National Assembly.

(3) Every appointment to the Board shall be published in the *Gazette*.

5. Terms of office of members

(1) Subject to the provisions of this section, the members of the Board shall hold office for such period not exceeding three years as the Minister may in each case specify.

(2) A member of the Board shall cease to hold office-

- (a) if, after appointment as such, he ceases to be eligible for appointment by virtue of section 4(2);
- (b) if he delivers to the Minister a written resignation of his office;
- (c) if he accepts office as a member of the staff of the Board; or
- (d) if the Board declares by resolution that he has been absent from two consecutive meetings of the Board without leave of the Board.

(3) A member of the Board who retires or resigns shall be eligible for reappointment.

6. Payment of members

The Board shall pay to each member such remuneration, fees and allowances as the Minister may determine.

7. Meetings of Board

(1) The Board shall hold ordinary meetings as and when necessary but not less than once in every three months.

(2) The chairman, or in his absence the deputy chairman, shall convene a special meeting of the Board at any time upon receipt of a requisition signed by not less than three members calling upon him to do so, and such special meeting shall be held not later than 14 days after receipt of such requisition.

(3) The procedure at meetings of the Board shall be as provided for in the Second Schedule.

8. Members to declare financial interest

If a member of the Board or his spouse-

- (a) tenders for or acquires or holds any direct or indirect pecuniary interest in any contract with the Board;
- (b) acquires or holds any direct or indirect interest in a company or firm which, to the knowledge of such member, tenders, applies or negotiates for a contract with the Board; or
- (c) owns immovable property or any right in immovable property, or has any direct or indirect pecuniary interest in any company or firm owning immovable property, as a result of which that member's or his spouse's interest come or appear to come into conflict with the member's duties as such,

that member shall immediately disclose the facts to the Board and shall not take part in the Board's consideration or discussion of a vote in any question which relates to such contract, right or interest without the consent of the chairman or other member presiding:

Provided that the provisions of this section shall not apply in relation to a contract for the sale or purchase by the Board of scheduled produce entered into by a member or his spouse of which the terms and conditions are the same as for other members of the public.

9. Appointment of general manager and other staff

(1) Subject to the approval of the Minister, the Board shall appoint a general manager.

(2) The Board may employ such other officers, servants and agents as may be necessary for the efficient conduct and operation of the Board.

(3) The general manager shall be the chief executive officer of the Board and shall, subject to the direction of the Board, manage the undertakings, operations and property of the Board and exercise such of the powers of the Board as the Board may from time to time delegate to him.

(4) In the event of the general manager being absent, whether on leave or owing to illness or other cause, or otherwise incapable of carrying out the functions of general manager, such other officer of the Board as the Board, with the approval of the Minister, may appoint, shall, during the period of absence or incapacity, exercise all the powers and discharge all the duties of the general manager.

(5) The general manager and other persons appointed under this section shall be paid from the funds of the Board such remuneration and allowances, and shall be subject to such conditions of employment as the Board, with the approval of the Minister, shall determine.

PART III

Functions of the Board (s 10)

10. Functions of Board

(1) The functions of the Board shall, subject to the provisions of this Act, be to secure, for producers and consumers alike, a stable market for scheduled produce and to ensure efficient and fair distribution thereof throughout Botswana at prices that are, in all the circumstances, equitable, avoiding any undue preference or advantage.

(2) It shall be the duty of the Board-

- (a) to buy all scheduled produce offered to it for sale by producers at not less than any guaranteed minimum price which may be in force at the time of purchase;

- (b) to ensure adequate supplies of scheduled produce for sale to consumers at prices which are, in the prevailing circumstances of the market, reasonable.

(3) Without prejudice to the generality of subsections (1) and (2), the Board shall have power to-

- (a) purchase or otherwise obtain supplies of scheduled produce from any source;
- (b) make arrangements for the transport, storage, processing and sale of scheduled produce;
- (c) distribute or market or cause to be distributed or marketed throughout Botswana scheduled produce;
- (d) specify different grades for different qualities of scheduled produce;
- (e) fix minimum prices for the purchase or sale by the Board of any scheduled produce and to fix different prices for different grades thereof;
- (f) import into or export from Botswana any scheduled produce;
- (g) appoint agents, on such terms and conditions as it may think fit, to purchase, sell, process or otherwise deal with any scheduled produce;
- (h) charge fees and give commission or other remuneration for services provided by or to the Board; and
- (i) do anything and enter into any transaction which, in the opinion of the Board, is calculated to facilitate the proper discharge of its functions under this Act, or the carrying on by it of any of the activities specified in this subsection, or is incidental or conducive thereto.

PART IV

Financial Provisions (ss 11-17)

11. Funds of Board

(1) The funds of the Board shall consist of-

- (a) such sums as may be payable to the Board from money appropriated by Parliament for the purpose;
- (b) such other moneys or assets as may accrue to or vest in the Board pursuant to this or any other enactment; and
- (c) such other moneys or assets which may accrue to or vest in the Board, whether in the performance of its functions or otherwise.

(2) The Board may, with the consent of the Minister and of the Minister for the time being responsible for finance, or in terms of any general authority given by them and subject to such conditions and limitations as they may determine, borrow temporarily by way of overdraft or otherwise such sums as it may require for meeting its obligations and discharging its functions under this Act.

(3) The Board shall charge to its revenue account all charges which in the normal conduct of business are properly chargeable to a revenue account and in so doing it shall make adequate annual provision, whether by sinking fund or other proper means, for-

- (a) interest and other like charges and expenses incurred in connection with loans;
- (b) the depreciation or diminution in value of assets;
- (c) the redemption of loans at due times to the extent that the annual provision exceeds the amount to be provided under paragraph (a);
- (d) any amount to be appropriated from revenue to the stabilization fund; and
- (e) any amount to be appropriated from revenue to the development fund.

(4) Moneys in any sinking funds established under subsection (3), the stabilization fund or the development fund or such moneys as are not required for the day to day business of the Board, shall be invested in such manner as the Minister for the time being responsible for finance may approve.

12. Stabilization fund

(1) The Board shall establish a stabilization fund into which shall be paid-

- (a) any amount appropriated by Parliament specifically for the purposes of such fund; and
- (b) such other amounts as the Board considers necessary for the purposes of such fund.

(2) Subject to the provisions of section 15, moneys in the stabilization fund shall not be used except to stabilize prices paid by the Board from time to time in respect of scheduled produce, or for such other purposes as the Board may from time to time determine with the approval of the Minister and the Minister for the time being responsible for finance.

(3) Moneys in the stabilization fund shall at no time exceed the sum of P1 000 000 or such other sum as may from time to time be approved by resolution of the National Assembly.

13. Development fund

(1) The Board shall establish a development fund into which shall be paid-

- (a) amounts appropriated by Parliament to be specifically applied for development purposes; and
- (b) such amounts as the Board may consider necessary for the purposes of such fund:

Provided that the Board shall not in any financial year appropriate to the fund any amount exceeding P2 per ton of scheduled produce dealt with by the Board in that year, or such other sum as the Minister, with the approval of the Minister for the time being responsible for finance, may determine.

(2) Subject to the provisions of section 15, moneys in the development fund shall not be used except for the purposes of a development programme or programmes approved by the Minister.

14. Financial policy of Board

It shall be the duty of the Board to perform its functions and conduct its activities so far as is possible to ensure that, taking one financial year with another, its revenues are sufficient to enable the Board to meet the expenditure of the Board properly chargeable to its revenue account.

15. Shortfalls

If, in any financial year, the revenues of the Board, together with any surplus revenues brought forward from any previous financial year, are insufficient to enable the Board to meet expenditure properly chargeable to revenue account under section 11(3), the deficiency shall, unless the Minister, with the approval of the Minister for the time being responsible for finance, otherwise determines, be met from the stabilization fund or, if the moneys in such fund are insufficient for meeting the whole of the deficiency, then, to the extent of the shortfall, from the development fund:

Provided that no moneys specifically appropriated by Parliament to the development fund or made available to the Board specifically for the purposes of such fund shall be utilized to make up any deficiency in revenue.

16. Accounts and audit

(1) The Board shall keep or cause to be kept proper books of account and other books and records in relation thereto and to all its undertakings, operations, work and property, and in addition such particular accounts and records in respect of any of its undertakings, operations, works and property as the Minister may direct.

(2) The Board shall prepare or cause to be prepared in respect of each financial year a statement of accounts showing in all necessary detail the assets and liabilities (real or contingent), and the income and expenditure of the Board; such statement shall be in such form and shall contain such additional information as the Minister may require.

(3) The accounts of the Board in respect of each financial year shall be audited by auditors appointed by the Board with the approval of the Minister, and the audited accounts and the auditor's report shall be prepared and forwarded to the Minister within four months of the end of each financial year.

(4) In addition to the report referred to in subsection (3) the Minister may, at any time, require the Board to obtain from the auditors such other reports, statements or explanations in

connection with the undertakings, operations, works and property of the Board as the Minister may consider expedient.

(5) The auditors shall report in respect of the accounts for each financial year, in addition to any other matters which they deem pertinent to comment on, whether or not-

- (a) they have received all the information and explanations which, to the best of their knowledge and belief, were necessary for the performance of their duties as auditors;
- (b) the accounts and related records of the Board have been properly kept;
- (c) the Board has complied with all the financial provisions of this Act with which it is the duty of the Board to comply; and
- (d) the statement of accounts prepared by the Board was prepared on a basis consistent with that of the preceding year and represents a true and fair view of the transactions and financial affairs of the Board.

17. Annual report

(1) The Board shall, not later than four months after the end of each financial year, submit to the Minister an annual report on its undertakings, operations, works and property during the year.

(2) The Minister shall, within 30 days of receiving the annual report referred to in subsection (1), lay the same, together with the audited accounts of the Board and the auditor's report thereon, before the National Assembly.

PART V

Miscellaneous (ss 18-20)

18. Immunity

No matter or thing done or omitted by any member of the Board or by any officer or employee of the Board shall, if the matter or thing is done or omitted *bona fide* in the course of the discharge of the Board's functions, render such member or officer or employee, or any person acting by his direction, personally liable to any action, claim or demand.

19. Regulations

The Minister may after consultation with the Board make regulations for the better carrying out of any of the purposes of this Act, and such regulations may prescribe offences and provide penalties in respect of such offences not exceeding imprisonment for one year or fines not exceeding P2000, or both.

20. Amendment of Schedules

The Minister may, by order published in the *Gazette*, amend the Schedules.

FIRST SCHEDULE SCHEDULED PRODUCE

(section 2)

1. Sorghum, maize, wheat and pulses.
2. Sorghum meal, maize meal and wheat flour.
3. Any seed of sorghum, maize, wheat or any pulse, intended for use as planting material.
4. Sunflower seeds, ground nuts, castor beans, cotton seeds and soya beans.
5. Rice and rice seeds.
6. Millet, millet seed and millet products.

SECOND SCHEDULE MEETINGS OF THE BOARD

(section 7)

1. At any meeting of the Board the chairman shall preside, but if the chairman is not present at any meeting the deputy chairman shall preside, or, if the chairman and the deputy chairman are not present at any meeting, the members present and forming a quorum shall elect one of their number to act as chairman for that meeting.

2. At any meeting of the Board any five members thereof shall constitute a quorum.

3. Decisions of the Board shall be decided by a majority of the members present and voting on the matter in question, and in the event of an equality of votes the chairman or the person acting as chairman

at that meeting shall have a casting vote in addition to his deliberative vote.

4. Minutes of each meeting of the Board shall be kept in proper form, and shall be confirmed by the Board at its next meeting and signed by the chairman or the person acting as chairman at such next meeting.

5. The Board may in its discretion invite any person to attend a meeting of the Board, and such person may, with the consent of the chairman or the person acting as chairman at that meeting, speak but shall have no power to vote.

6. Subject to the provisions of the Act and this Schedule and to any directions given by the Minister, the Board may regulate its own procedure.