

38316

1938

38316

KENYA
CO533/499

CLOSED
UNTIL
1970

co-operative Societies Legislation

Previous

1937

Subsequent

291

8/12

209

20/1/39

McLarkin

20

Sir F. Stomsale

27/2

m: Dale

7.3

m: Freeston

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89

17/3

R. 299

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Reg 203

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Tills

II - nominal

1 Governor 662

28/11/38

2

In circs stated enquires whether any objection is seen to amendment of 1931 Ordce. enabling registration of Society in Kenya similar to the Tanganyika Ismailia Co-operative Society Ltd, registered in T.T.

I am afraid that I have kept this for rather long, but I have found it difficult to make time for reading the back papers which are complicated.

The history of this is, briefly, that in 1931 a Co-operative Societies (Registration) Ordinance was passed which, as was realised at the time, was so designed as to be useful for the regulation of large scale societies of the European type in which the liability of members would be limited, but was definitely unsuitable for the control of small scale societies, e.g. of native producers, with unlimited liability. The introduction of an Ordinance to make provision for the latter was given intermittent consideration during the following years and eventually the Bill which is enclosed in No.1 on -/37 was put together. In ^{this Bill} doing so, an attempt was made to make provision in one enactment for the control of both small and large scale societies. It was realised ^{after} when drawing up the Bill that this attempt had not been wholly successful: indeed the largest co-operative society in the Colony intimated that if the Bill became law it would prefer to remain an ordinary limited liability company rather than re-register as a co-operative society. In addition, the Governor, when sending home the Bill, said that he thought that there was danger in attempting to apply to the native producer an advanced system of co-operative organization. The Bill thus fell between two stools:

it was too advanced for the natives and too cumbersome for the Europeans. The Governor therefore thought that the Bill should not be introduced at present. The Secretary of State, in agreeing with this, said (paragraph 3 of No. 2 on -/37) that he proposed to have the Bill examined in detail with a view to preparing comments which might be helpful in preparing a revised version. Later, Dr. Tempany prepared a memorandum in which the conclusion was again reached that the Bill failed successfully to deal with both types of Society.

Turning now to the despatch on this file, the application of the projected "Ismailia Co-operative Society" for registration raises a question which appears to differ from those previously discussed in connection with this legislation. As far as the size and scope of the projected Society is concerned, it would appear that the Co-operative Societies legislation now in force is sufficient. The difficulty is solely in this, that the 1931 Ordinance defines "co-operative society" as one ^{engaged} concerned with various agricultural activities or with 'credit, financing, insurance or other co-operative activities'. The Ismailia Society proposes in the first place to confine itself to the provision of credit but at a later stage to open a number of general stores. The Governor is advised that, in view of the definition in the Ordinance, the projected Society should therefore not be registered.

Application was also made by the projected Society for registration under the Companies Ordinance, 1933. It seems that

the

the Governor's decision not to allow this, which is recorded in paragraph 3 of the despatch, cannot be called in question.

The Governor has been advised that the amendment of the Bill at (1) on -/37 would solve this present difficulty and enable the Ismailia Society to be registered. In view of the despatch at (2) on -/37 (see X above), he does not, however, propose to proceed with the Bill but asks instead whether objection is seen to an amendment of the 1931 Ordinance to enable the Ismailia Society to be registered under it. Presumably the amendment which he has in mind would be the substitution for the definition of "co-operative society" in the present Ordinance of a wider definition on the lines of Section 4 of the Tanganyika Ordinance of 1932 (copy on file). Subject to observations by Sir Frank Stockdale and the Legal Advisers, inform the Governor that no objection is seen.

C. C. White

20.2.39.

I am afraid that I am completely ignorant on this subject; but, from minutes on previous files, I gather the impression that § 4 of the T.O. Ord. is not appropriately to be superimposed on the Kenya Ord. Surely all that is required to meet the case of this particular application is that the phrase "engaged in the co-operative marketing of agricultural products" should be

intended to cover cooperative trading
in other branches. (It is a pity
that the despatch is not more explicit on
the kind of amendment which they
have in mind).

Subject to views of Mr. Paskin
& Legal Adviser

Reply that no objection is
seen in principle to the amendment
proposed - such a name as to
permit the registration of such societies
on the proposed lines; say that it is assumed
that they have in mind some such
amendment as that suggested above;
but that if they can go ahead
with the amendment now for reaching
an agreement - then the S.P.S.
will have to be amended.

J. Paskin
20/2

There is obviously no objection to the
formation in Kenya of a society on lines similar to
the Tanganyika Ismailia Co-operative Society Limited,
but in order that this may be permissible an amendment
of the Kenya legislation will be necessary.

An amendment to the definition of co-opera-
tive society will be required and it could be met on
the lines suggested by Mr. Paskin unless it is felt
that it would be desirable also to replace the wording
"a society or association of producers of agricultural
products"

products" by "a society or association which has as
its objects the promotion of the economic interests of
its members in accordance with co-operative principles".

The full wording, subject to legal opinion,
might possibly be on lines indicated in the attached
sheet.

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J. A. Slinkdale
27/2

Being unable to undertake this
despatch, I had a word with Mr. Wallace (Crown
Counsel, Kenya) who knew something of this
business. The Governor in paragraph 4 of his
despatch says that an application was made for
permission to register a limited liability company
that is, I take it, to register a company under
the Companies Ordinance. Nothing is said in the
despatch about any application to register this
body as a co-operative society. The sole difficulty
in registering the Council as a company is one of
policy. If the Governor in Council is willing to
give his consent under both Section 35(1) of the
Co-operative Societies Ordinance and Section 1(1)
of the Companies Ordinance there is no legal
objection whatever to the registration of the
Council under the Companies Ordinance, and no
amendment of the law is required.

But I gather from Mr. Wallace that what
the company really want is registration under the
Co-operative Societies Ordinance and for I agree
that some amendment is required. This is not a
satisfactory despatch, as Mr. Paskin mentions, and
Mr. Wallace has the idea that the intention behind
the vagueness of paragraph 4 was to prompt us to

proceed with the examination of the draft legislation previously submitted. To meet this particular point I agree that the amendment suggested by Sir Frank Stockdale in his second paragraph is the kind of thing required. I think we should say this to Kenya and say they will also no doubt consider whether express mention of trading activities should not also be made in the definition. I do not think we need send out Sir Frank Stockdale's draft as I think probably Kenya will wish to reject the definition altogether. So long as they keep within the above principles I think we can leave the drafting to them.

W.D.

7.3.59.

Pl. aft. session

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G. O.

Mr. Costley White. 8/3
m. Dale 10.3
Mr. Parkin 11.3
Mr. Denton 11.3



DOWNING STREET.

21. March, 1939.

Mr. A. J. Dawe.
Sir H. Moore.
Sir G. Tomlinson.
Sir J. Shuckburgh
Permt. U.S. of S.
Parly. U.S. of S.
Secretary of State.

Sir,

I have etc. to refer to your
despatch No. 682 of the 28th of
November 1938 on the subject of the
Co-operative Societies (Registration)
Ordinance, 1931.

DRAFT. *Currin*

KENYA
NO. 192
GOVERNOR

2. In para 2 of your despatch you
state that an application ^{was} had
made by the His Highness the Aga Khan
Ismailia Provincial Council of Nairobi
for permission to register a limited
liability company. I assume however
that the wish of the Council is to be

FURTHER ACTION.

registered as a Co-operative
Society, and not a limited liability
company. If that is so,

I agree that an amendment of
the Ordinance is desirable in order
that the application can be granted
to meet the situation which has arisen
as a result of the application under
Section 38(1) of the Ordinance for
permission to register a Society
similar to the Tanganyika Ismailia
Co-operative Society, Limited. I am
advised that it is desirable that this
amendment should include the replace-
ment of the words "..... a society
or association of producers' agricultural
products" which appear in the
definition

definition of 'co-operative society' in Section 2 of the Ordinance, by some such wording as "..... a society or association which has as its objects the promotion of the economic interests of its members in accordance with co-operative principles".

You will no doubt also consider whether, in the amended definition of 'co-operative society', express mention of trading activities should be made.

I have, etc.

Draft.

'Co-operative Society' means a society or association which has as its objects the promotion of the economic interests of its members in accordance with co-operative principles, including combinations of such societies or associations, and societies or associations subsidiary thereto, engaged in the co-operative marketing of agricultural products, including processing, warehousing, manufacturing and storage, or in the co-operative purchasing of farm supplies or live stock or in credit financing, insurance or other activities including trading in merchandise in accordance with co-operative principles.

KENYA
No. 682



GOVERNMENT HOUSE
NAIROBI
KENYA

28 November 1938.

Sir,

2 on 1938/11

I have the honour to refer to despatch No.570 of the 22nd July, 1937, from Mr. Ormsby-Gore (now Lord Harlech) on the subject of revision of the Co-operative Societies (Registration) Ordinance, 1931.

2. In September, 1937, an application was made to the Governor in Council by His Highness the Aga Khan's Ismailia Provincial Council of Nairobi, under Section 38(1) of the Ordinance and under Section 18(2) of the Companies Ordinance, 1933, for permission to register a Limited Liability Company with a name of which the word "Co-operative" was to form part, namely the "Ismailia Co-operative Society (Nairobi) Limited".

It was proposed that:-

- (a) all members of the Ismailia Community should be eligible to take up shares in the Company;
- (b) on the Company being registered, it should for some time confine its activities to making advances at a very reasonable rate of interest to such of its members as require financial aid for the purpose of their business, whether agricultural, commercial or industrial;
- (c) at a later stage the Company would open one or more general stores for the sale to the public of commodities of all kinds whether produced by its members or otherwise;
- (d) the nominal value of the Shares would be Sh.10/- each so that a member of the Community would be able by taking up one share to become a member of the Company; and
- (e) the first Directors would be appointed by H.H. the Aga Khan Ismailia Provincial Council of Nairobi, but thereafter Directors would be appointed by the members of the Company in general meeting.

Sumner (2)

It/

**THE RIGHT HONOURABLE
MALCOLM MACDONALD, M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S.W. 1.**

It was anticipated that at least 10,000 shares would be subscribed for in cash forthwith after the Company had been registered.

I was advised that in the near future similar applications would be addressed to me by His Highness the Aga Khan's Ismailia Provincial Councils of Mombasa, Kisumu and possibly of other towns in this Colony, and that the proposal to form such a Company or Society was the result of advice in that behalf received from His Highness the Aga Khan, who is so keenly interested in the proposal, as being one certain to benefit the members of his Community, that he had sent out a special commissioner to this Colony to get matters effectively organized to assure the success of the venture.

3. In view of the definition in the Ordinance of the words "co-operative society", my legal advisers recommended that the application be refused. I was further advised by my Registrar of Companies that he had corresponded with the Board of Trade (Companies Department) regarding this particular application. The reply from the Board of Trade stated, inter alia, that under the Companies Act, 1929, no consent has yet been given by the Board of Trade to the registration of any company containing the word "Co-operative" and the general tenor of that reply seemed to indicate that a society of the type proposed would not be allowed to use the word "Co-operative" in England. In the circumstances I accepted my Executive Council's advice that the application should be refused.

4. More recently His Highness the Aga Khan's Ismailia Provincial Council in Nairobi has suggested the amendment of the existing Kenya legislation in order to permit of the registration of a society of the type proposed. A copy of

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the relevant letter is enclosed for your information.

I am advised that new legislation would be necessary for the purpose, but that the draft Bill forwarded under cover of my despatch No.243 of the 30th April, 1937, would cover the point.

5. In view of paragraph 3 of Lord Harlech's despatch under reference I shall be glad to learn whether you would see any objection to an amendment of the 1931 Ordinance enabling the registration in the Colony of a Society similar to the Tanganyika Ismailia Co-operative Society Limited, which is registered in the Tanganyika Territory.

I have the honour to be,
Sir,
Your most obedient,
humble servant,

R Brooke-Polham

AIR CHIEF MARSHAL
GOVERNOR.

COPY

H.H. THE AGA KHAN ISMAILIA
PROVINCIAL COUNCIL.

P.O. BOX No.190.,

NAIROBI.

Ref.No.444/1647/38.

24th October 1938.

The Hon'ble the Chief Secretary,
The Secretariat,
NAIROBI

Sir,

Further to your letter of the 5th October 1937
Ref.No.S/A.RG.6/12/3/2/24 I have been directed by my
Council to approach the Government that in view of the
fact that as under Section 18(2)(c) of the Companies
Ordinance, 1933 & 38 (I) of the Co-Operative Societies
Registration Ordinance, 1931, permission cannot be granted
for the use of the term "Co-Operative" in connection with
the proposed "ISMAILIA CO-OPERATIVE SOCIETY (NAIROBI)
LIMITED, an amended Ordinance of a comprehensive nature
be introduced immediately, embracing the different
branches of the Co-Operative Scheme.

In this connection may I be permitted to invite
the attention of the Government to the Ordinance at
present existing in the Tanganyika Territory, viz: THE
CO-OPERATIVE SOCIETY ORDINANCE 1932. I would suggest
that an Ordinance on similar lines would meet with the
present requirements.

It is the earnest desire of H.H. The Aga Khan
that the Co-Operative Scheme in the Colony be put into
force forthwith (on the lines already in existence in
Tanganyika) my Council would deem it a great favour if
the Government could see their way to introducing the
 requisite amendment immediately as the details of this
 scheme are complete and are awaiting execution pending the
 permission under the Ordinance.

I have etc.
(sgd) SALEH MAHOMED.
Hon. Secretary.