



**AGRICULTURAL CREDIT  
LEGISLATION  
IN  
SELECTED DEVELOPING COUNTRIES**

**FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS**

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AGRICULTURAL CREDIT LEGISLATION

A Preliminary Survey in Selected Developing Countries

prepared by

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for the

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LEGISLATION BRANCH, LEGAL OFFICE

## FOREWORD

The financing of agricultural activities, in particular through the furnishing of credit, has already been the subject of several FAO technical studies <sup>1/</sup>. However, no research has so far been published with regard to agricultural credit legislation and its formation in the developing countries.

The study represents a first attempt at filling the gap. Its purpose is to identify, in the light of an analysis of the legislative texts of certain developing countries, the fundamental lines followed by the different legal systems governing agricultural credit.

The following pages are the work of Dr. D.M. Mylonas, who undertook the study for the Legislation Branch. While the author's views are not necessarily those of FAO, acknowledgement is gratefully made of the collaboration received from the Credit Group of the Investment Centre, Development Department, the Credit Group of the Marketing and Credit Service, Agricultural Services Division, the Joint Committee for the Promotion of Agricultural Cooperatives (COPAC), Human Resources Division, as well as of the helpful contribution made by Prof. Emilio Cappelli.

I wish also to acknowledge the financial contribution made available from the proceeds of the "Grow More Food" coins issued by central banks at FAO's invitation (FAO Coin Plan), without which this study would not have been possible.

Given the complexity of the subject, it is necessary to point out from the start that no attempt has been made to go beyond the descriptive matrix illustrating the agricultural credit legislation in the countries examined. Accordingly, no solutions of a comparative nature are proposed. This does not mean, however, that the information provided does not constitute a valid basis for further research in this field.

The author has analysed the general scheme of agricultural credit institutions, the functioning of their short- and medium-term operations, with particular reference to the guarantees accompanying such operations and the procedures followed for loan recovery.

Considerations on banking techniques as such or the organization of credit in general lie outside the scope of this study, as do those regarding formulas of government intervention designed to ensure that the farmer may have access to credit facilities. While an attempt at classifying the legal systems described has been made, no comparative judgements in their regard are suggested.

It is hoped that the following pages may be of use to all those who, in whatever capacity, are responsible for agricultural credit planning and operation. Their comments and suggestions regarding the practical problems arising in connection with, or likely to be solved by, legislation in this sector would be much appreciated.

Dante A. Caponera  
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<sup>1/</sup> Agricultural Credit for Small Farmers, by Sir Bernard O. Binns, FAO, 1952; Manual of Supervised Agricultural Credit in Latin America, by D.D. Brossard, FAO, 1955; Agricultural Credit in Economically underdeveloped Countries, by Horace Belshaw, FAO, 1959; Cooperative Thrift Credit and Marketing in Economically Underdeveloped Countries, FAO, 1965; Agricultural Credit through Cooperatives and Other Institutions, FAO, 1971; New Approaches to Agricultural Credit, FAO, 1971.

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## INTRODUCTION

Credit is of primary importance in all aspects of modern economic activity. Scientific discoveries, technical improvements and the development of transport have brought about a revolution in the older methods of production, consumption habits and life in general. This revolution, which first affected the urban sector and created new industrial societies, later came to affect the traditional patterns of agriculture. New types of agriculture, intensive instead of extensive, mechanized instead of manual, have gradually been introduced demanding more capital and new commercial structures. The need for credit, already operating to good effect in industry, has come to be felt even more acutely in agriculture as well.

The development of the Latin American, Asian and African societies with the inevitable readjustment of the economic situation there and the search for higher productivity rates, has brought the farmer of the "third world" to a realization of the problems for which his opposite number in the developed countries had been striving to find a solution. Agricultural credit was one such problem; nor, indeed, was it entirely a new one. Traditionally, the farmer has always been a good customer of the moneylender or the village shopkeeper, from whom he had to borrow during the inter-harvest period, not only for his subsistence needs but at times for various social and religious purposes as well. What was new was the scope of the problem and the legal and institutional framework within which its solution was sought.

Today agricultural credit is recognized throughout the world as an indispensable tool of a national policy aiming at the development of agriculture and, thus, an improvement in the living conditions of the rural population. The shaping of a sound national agricultural credit system depends on the choice made by the governmental authorities as to the specific objectives to be attained on the basis of the available means.

The choice made at the political level needs to be clearly reflected in a set of legal provisions establishing the legal/institutional framework within which the national agricultural credit system can effectively work. The relationship between State and credit institutions, between these institutions and credit users, the conditions under which credit is made available and the rules governing the operations of the credit distributing bodies, etc., must all be defined by these legal provisions.

Agricultural credit distribution at the national level is handled mainly by ad hoc institutions established by government decision which, in spite of their various official names, may be called, for the sake of convenience, agricultural banks. Their structure and powers are similar to those of other banking institutions such as the commercial banks, although their functions are not always comparable. In agriculture, however, as experience has shown, operations are possible only with a very restricted number of persons. Agricultural banks therefore need to be special banks, operating along different lines from those of the commercial banks, in order to be able to channel financial resources to that sector of the farming population which most urgently needs them: the small, usually landless, peasants. This implies a different organizational and operational approach from the traditional one, as well as the need for a greater volume of financial support to be made available to this particular form of credit. The special nature of the agricultural banks is clearly reflected in the provisions of their basic laws that establish the privileges granted to them.

Agricultural credit is generally considered as a special kind of credit, yet national legislation does not always translate this view into specific provisions regulating the details. Such questions as the instruments to be used in agricultural credit operations, the guarantees required for agricultural loans, etc., do not generally receive close attention, while the rules and provisions governing credit in general still apply to agricultural credit operations. This creates a number of problems which hinder the distribution of agricultural credit and the realization of its objectives.

Real guarantees such as mortgages on land or other immovable property are usually required for long-term loans, or even medium-term loans above a certain amount. In developing countries, land tenure conditions and the poverty of the farmers make it impossible for large sectors of the rural populations to benefit from this kind of loan. Again, other guarantees securing the more common short-term or medium-term loans, such as pledges on crops, on agricultural implements or on livestock, tend to be ineffective for various reasons. For example, the pledged crops may be sold to an independent merchant and the money used for purposes other than loan repayment, or they may be damaged or destroyed by bad weather. Agricultural implements may equally be sold or destroyed by fire and livestock may be sold or die. In these cases, the result is that the loan cannot be repaid and the capital is lost for the credit institution. The problem is, therefore, what innovations are required for the adoption of solutions which, while providing for the security of the loans, may nevertheless liberalize the credit procedures by avoiding their more cumbersome aspects. A solution advocated by legislation in a number of countries is that of joint liability. This approach, however, creates a number of legal problems, though these should not be unduly difficult to solve.

Under the joint liability formula - already adopted in several countries - agricultural credit is distributed at the local level, not directly by the local branches of the credit institution, but by authorized farmer groups. In these cases, rural cooperatives either especially established as credit cooperatives or as multi-purpose cooperatives or simple farmers' associations without a cooperative status, but duly registered, act as the local credit bodies.

But what is even more important for the successful operation of agricultural credit in developing countries is that credit operations shall be linked at the local level with insurance of crops, livestock, farm implements, and even life, and also with marketing operations. This can again be secured - and in certain countries already is - by multipurpose rural cooperatives. Agrarian reform legislation - as for instance Law No. 117 of 1970 in Iraq - has in some cases provided for the creation of such cooperatives and also for special rules relating to credit facilities in the reform areas. Here again, the problem is one of political choice, and legislation usually can do nothing more than reflect this choice. Its rôle is not, however, merely a secondary one because, by providing a clear framework within which credit operations may take place, it also determines the objectives and the possibilities of the agricultural credit system.

The present study sets out to examine certain legal aspects of agricultural credit institutions disregarding both general credit legislation and commercial banks or specialized agencies financing particular projects or crops. It considers, however, farmers' cooperatives, especially credit and multi-purpose ones, to the extent that they are relevant to the subject. It is basically a study of the situation in a number of countries as reflected in the legal texts available in the Legislation Branch of PAO. It brings together the results of a legal fact-finding exercise but does not seek to analyse the legal aspects of credit in general, nor to evaluate credit operations and methods in the countries surveyed. It is, however, hoped that it will be useful, not only for the identification of possible weak points of existing systems which will need to be changed.

The countries under study have one characteristic in common: they are all what are known as developing countries. For the rest they differ as regards language, customs, former colonial dependence - a significant factor in determining the legal and institutional situation there, the legal influence of the former colonial power oftentimes persisting after its withdrawal - geographic position and legal systems, and a host of other things besides. An attempt has, nevertheless, been made to have as representative a list of countries as possible, whereby the variety described may be reasonably well covered.

GENERAL PART

I. SCOPE AND FORM OF LEGISLATION

1. Some Preliminary Notions

(a) Agricultural Credit: a Possible Definition

Under the connotation assigned to it in certain countries, "agricultural credit" may include all types of public financial assistance for agriculture. In the technical use of the term, however, and in its narrowest sense, it should refer to operations involving credit, and credit only, to be used solely for agricultural purposes. Accordingly, it differs from ordinary credit in that it is necessarily intended for agricultural purposes.

The notorious disadvantages besetting agriculture as compared with other sectors of the economy have made it-necessary for the public authorities to intervene on an increasing scale to encourage the flow of capital toward agriculture. Public aid takes the form of a, non-returnable contribution or (a typical feature of agricultural credit) State assistance in the payment of interest to the banks.

Given this aspect of assistance from public sources, it is clear that there is an additional meaning to the expression "agricultural credit", i.e. one that covers credit operations that are by definition intended for strictly agricultural purposes and are usually effected by banks specializing in this field - banks, furthermore, which are set up by special law, enjoy a contribution from the State and are often backed by a special form of guarantee.

Thus, one may adopt a definition of "agricultural credit legislation" for the purposes of this study whereby the expression is taken to denote all laws that regulate: (1) credit operations for agricultural purposes, (2) the banks authorized to carry out such operations, and, possibly, (3) special legal guarantees that are typically required in their regard <sup>1/</sup>.

In certain countries, the agricultural credit system is considered to be a public service or to be a matter of public interest. This is evident in the important generic regulations in force there governing the structural and functional aspects of the respective system. Finally, the term "agricultural credit" may be used with the restrictive connotation

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<sup>1/</sup> Cf. Brazil: Law No. 3829 of 5 November 1965, Art. 2: "By agricultural credit shall be understood the supply of financial resources by public institutions or by private credit institutions to rural producers and their cooperatives to be used exclusively for activities related to the objectives indicated by the laws in force."

of agricultural loan contract 1/.

(b) Parties to the Contract: the Matter of the Contract

Essentially linked to the definition of the term "agricultural credit" is that of the parties to, and the matter of, the agricultural loan contract. There are two parties to the contract: the lender and the borrower. The identification of the lender or creditor does not give rise to any problems: creditors may, in the case of agricultural credit, come under the relevant legislation and the institutions established by that legislation or else indicated by it as part of the national agricultural credit system. These make up the bulk of the subject matter of the present study.

The identity of the borrowers or, rather, of the potential borrowers does raise certain questions. As a rule, potential beneficiaries of agricultural credit are considered to be all individuals or corporate bodies engaged in activities related to agriculture. They are in the first instance the farmers. They are also the various types of farmers' associations, including cooperative societies, recognized by the law or in the traditions of the country (e.g. approved societies and cultivation committees, in Sri Lanka, ejidos in Mexico 2/, etc.).

In some cases the beneficiaries of agricultural credit are clearly identified in the legislation. This happens when the legislator seeks to help particularly certain categories of farmers (small farmers, ejido farmers, stockbreeders, olive cultivators, etc.) or to strengthen the cooperative movement of the country. In the last-mentioned case, credit is made available through cooperative banks to registered cooperatives only.

The matter of agricultural credit refers to the various types of credit facilities made available to the beneficiaries through the authorized channels. These can be in the form of cash, inputs (including implements) or services. In the latter two cases, what is due back is the value of the input, the implement or the service made available by the credit institution. National legislation generally specifies what forms agricultural credit may take, in which case the provisions are purely practical and do not affect the object of the agricultural credit as such.

## 2. The Need for Agricultural Credit Legislation; the Scope of Such Legislation

As explained in the introduction, the general line that a national agricultural credit system follows is the result, of evaluations by the government and of decisions -political decisions - taken by it. Accordingly, the definition of beneficiaries of agricultural credit, the form that credit operations will take, the specific terms and conditions under which lending operations will take place (length of the loan terms, interest rates, securities, repayment procedures, etc.) are all decided at the political level in accordance with the government's agricultural and financial policy. Agricultural credit legislation, then, is a translation into legal form of such a policy, whereby a framework of rules is established for its implementation - rules vested, furthermore, with a mandatory character where otherwise they might remain little more than a set of guidelines.

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1/ For a theoretical treatment of the question, cf. G. Verusio, Premesse ad una teoria giuridica del contratto di credito agrario, Istituto di Diritto Agrario Internazionale e Comparato, Prima Assemblea, Firenze, 4-8 April 1960.

2/ For details see the relevant country studies.

The need for such legislation is evident. In the first place, rules are laid down that must be followed in the implementation of the policy. In the second place, the law indicates (or, if necessary, establishes) the bodies and agencies through which that policy is to be implemented. To take some examples; in the absence of provisions to the effect that, as far as borrowing is concerned, corporate bodies (say, cooperative societies) are to receive the same treatment as individuals, the former would be denied access to lending facilities of the agricultural banks. Conversely, the provision often found in the organic basic Act setting up cooperative banks, restricting the credit facilities provided by them to cooperative societies, makes it impossible for individual farmers to apply for credit direct. Furthermore, provisions allowing the Central Bank to rediscount credit instruments with a period of maturity of up to 270 days permit the rediscounting by agricultural banks of promissory notes resulting from agricultural credit transactions. Now, operations of the kind would be precluded if rediscounting were possible only in the case of commercial paper with much shorter maturity periods. Again, credit secured by pledges on prospective harvests could hardly be envisaged unless specific provisions on the subject were written into the Law.

Of particular importance is the second function of agricultural credit legislation indicated above; namely, the establishment of agricultural credit institutions. In fact, in a number of countries, agricultural credit legislation is limited to the basic laws setting up such institutions and the regulations governing their operation. Without entering into a detailed discussion of the legal nature of agricultural credit institutions 1/, it may be said that the legislation governing these bodies - organized, as they usually are, in the form of banks - introduces no substantial innovations as compared with the general banking legislation. The fact that they are semigovernmental "institutions of public utility":, to use the terminology often found in the laws of French-speaking countries, makes it necessary to adopt rules and regulations different from those governing ordinary Commercial banks.

Ideally, agricultural credit legislation should therefore cover all those aspects of agricultural credit policy which need to be spelled out and regulated by law. This is not always done, however. Often legislation deals only with the institutional aspects, leaving aside a number of important issues which then need to be dealt with by special provisions. The lacunae are then filled by either applying the general provisions of the Civil Code, banking law, commercial law, etc., whenever appropriate, or by adopting ad hoc solutions agreed upon by the interested parties 2/.

### 3. Form of Legislation

The form taken by the various enactments making up agricultural credit legislation is governed by two main factors: first, the subject-matter they regulate and, secondly, the political-constitutional situation in the country at the time the specific law was introduced. However, among these enactments one can, as a rule, find samples of all the traditional kinds of legal texts.

Thus in countries with a parliamentary system, the basic legislation takes the form of an Act (or Law) laying down the general rules governing agricultural policy, or the specific rules governing agricultural credit 3/. This sort of enactment will normally

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1/ Infra. p.11.

2/ In this connection, it is interesting to note the solution (see the relevant country study) adopted by the Central Bank of Tunisia and the Banque Nationale de Tunisie to the problem of the rediscounting of agricultural credit instruments.

3/ Cf. Tunisia, Law No. 63-17 of 27 May 1963 and Brazil, Law No. 4829 of 9 November 1965, respectively.

set up the agricultural credit institutions. Various other provisions directly or indirectly concerning agricultural credit may equally be found in Acts such as agrarian reform Acts, water distribution and water rights Acts, land tenure Acts. These laws emanate from the Parliament of the country and are promulgated as provided in the Constitution.

Enactments of the kind usually state only the general principles governing the subject-matter, while the manner in which these principles are to be implemented and any other details are provided for in subsequent, secondary or subsidiary legislation such as a Decree, Ordinance or Order. These are made by the Executive of the country (President or Minister) in the case of a Decree, by virtue of powers vested in them by the principal Act, and are published in the official Gazette 1/. In particular, the specific rules applying to the functioning and operations of agricultural credit institutions are established by documents, usually called regulations or bylaws, of the governing body of the institution in accordance, again, with the provisions of the principal Act. Such regulations are rarely published in the Gazette.

In countries where the parliamentary process is, for any reason, not in operation, or in countries where there is no Parliament, the legislative function is carried out by the Executive. Enactments then take the form of an Ordinance 2/, Decree-Law 3/, or Decree 4/.

Thus, agricultural credit legislation is constituted by a series of enactments which, progressively passing from the more general to the more specific, take the following form: (i) Basic Act affirming the principle of agricultural credit, (ii) Special Act (Decree, Ordinance, etc.) providing for specific matters related to the implementation of the previous enactments, (iii) the regulations or by-laws of the institutions setting their rules of operation.

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1/ Cf. for example Sec, 43 of the People's Bank Act of Sri Lanka:

"(1) The Minister may make regulations for the purpose of carrying out or giving effect to the principles and provisions of this Act.

(2) In particular..... the Minister may make regulations in respect of the following matters:

(a) any matter required by this Act to be prescribed or in respect of which regulations are authorized or required by this Act to be made;

(b) the manner of application for shares of the Bank, the registration of the holders of such shares, the issue and renewal of share certificates, the transfer of such shares and any other matter connected with or incidental to, the aforesaid matters relating to shares;

(3) No regulation made by the Minister under this section shall take effect unless it is approved by the Senate and the House of Representatives and notification of such approval is published in the Gazette.

2/ Pakistan, Agricultural Development Bank Ordinance of 1961.

3/ Argentina, the Statutes of the Banco de la Nación Argentina issued by Decree-Law of the President No. 13.129 of 22 October 1957; Peru, Banco de Fomento Agropecuario de Peru, established by Decree-Law of the Military Junta No. 14509 of 14 June 1963, etc.

4/ Cameroon, Statutes of the Cameroon Development Bank approved by Decree No. 64-DF-487 of 16 December 1964.



One of the countries studied here, Mexico, did at one point attempt to simplify its agricultural credit legislation by enacting a law covering all relevant matters in a single text <sup>1/</sup>. In the event, however, this proved to be only a temporary solution, and it later became necessary to supplement the agricultural credit system thus brought into being, with additional institutions established and governed by laws which, although they refer to the first single text just mentioned, are entirely autonomous enactments.

#### 4. Sources of Agricultural Credit Legislation

Like any other legislation, that governing agricultural credit legislation, in most countries, derives from one of the major legal systems of the world or from a combination thereof. These systems may be referred to summarily, as:

- (a) Traditional customary law. This of particular significance at the local level, whenever statutory legislation has not been fully implemented;
- (b) Moslem Law, in those countries where the majority of the people follow Islam, in view of certain implications of Islamic Law on interest rates, etc.;
- (c) English or Common Law, applying to these countries which have derived their legal and institutional system from the original Common Law of England;
- (d) European or Continental Law (Civil Law Countries), deriving their laws and institutions from such countries as France, Spain, Germany, Portugal, the Netherlands, Belgium, Italy, etc.;
- (e) Other systems of law such as the Chinese and Soviet systems, which have influenced legislation and institutions in a number of countries.

The countries surveyed in this study basically reflect one or other of the first four systems though, in practice, the analysis concerns three groups of countries, whose legislation presents similar characteristics, namely those in which the Common Law and French Law still constitute the basis, and a third group of countries in which agricultural credit legislation has developed independently, as is the case with most Latin American countries.

#### Agricultural Credit Legislation in the Common Law Countries

Characteristic of the English legal system is the adoption of the Act as the main legislative instrument. Acts establishing agricultural credit institutions are comprehensive enactments dealing with all aspects of the functioning and administration of the bodies they create. In particular, where credit matters are concerned, they regulate all relevant aspects of loan operations, specifying the securities required, the repayment procedure and so on.

Individual provisions are found in the various national laws showing that the general pattern has been adapted to the particular situation of the country in question. Thus, in Ghana, special provisions are introduced to control the activities of individual moneylenders and favouring the Agricultural Credit and Cooperative Bank <sup>2/</sup>. In Pakistan,

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<sup>1/</sup> Agricultural Credit Act of 30 December 1955. Cf. the relevant country study.

<sup>2/</sup> Ghana, Agricultural Credit and Cooperative Bank Act, No. 286 of 1965.

the Agricultural Development Bank is specifically allowed to undertake the custody of gold ornaments, jewels, 1/ etc., a provision which seeks to institutionalize the existing custom in that country of giving jewelry as security for loans. In Iraq, a special link is established between agricultural credit and the Agrarian Reform administration through the Supreme Agricultural Council 2/.

But apart from particular variants of this kind, the pattern of the Act is invariably the same. The Agricultural Finance Corporation Act of Kenya 3/ - one of the most recent - can be considered as a model in this respect. All relevant issues are dealt in a well-structured instrument and loan distribution procedures also provided for in an exemplary manner.

One element which particularly distinguishes the agricultural credit institution legislation in these countries is the fact that a single legislative instrument creates the institution and at the same time gives it its statutes. This not only simplifies the legislative procedure but makes for clarity in the system itself.

In these countries, preference is generally accorded to agricultural banks. Thus, regardless of the actual name of the institution, its functions are described clearly in the law establishing it and show that it is to deal solely with agriculture. Another characteristic common to all these countries is the reference made to cooperative societies and their rôle in intermediate credit distribution.

### Agricultural Credit Legislation in the Civil Law Countries

The main characteristic of this type of legislation regulating agricultural credit distribution is that the creation and functioning of the credit institutions are not regulated by a single enactment. One legislative text (Decree, Law, or other) establishes the Bank or Caisse entrusted with agricultural credit distribution, while a second enactment gives the provisions governing the operations of the institution in question 4/.

A second notable trend in this type of legislation is a tendency to link agricultural credit distribution with general development and especially with the effort to modernize agriculture. This is to be seen not only in the legislative texts providing expressly for such links, as in Chad 5/, but also in the preference shown by these countries for

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1/ Pakistan, Agricultural Development Bank Ordinance, of 1961.

2/ Iraq, Agrarian Reform Law No. 117, of 1970.

3/ Kenya, the Agricultural Finance Corporation Act No. 1, of 1969.

4/ Cf., Chad, La Banque de Développement, created by Presidential Ordinance No. 1/EC of 13 January 1962, and whose statutes are "to be approved by Decree"; Niger, Union Nigérienne de Crédit et de Coopération created by Law No. 67-032 of 20 September 1967, statutes established by Decree No. 68-56/MBR of 8 April 1968; Niger, Caisse Nationale de Crédit Agricole, created by the same Law No. 67-032, statutes established by Decree No. 68-57/MF of 8 April 1968; Syria, Banque Agricole Coopérative created by Decree of 23 August 1950 under the name of Banque Agricole, present statutes established by Legislative Decree No. 141 of 20 July 1970 which gave it its present name. Slightly different, but of the same nature in essence is the case of Cameroon, Cameroon Development Bank, Decree No. 64-DF-487 of 16 December 1964 and Ivory Coast, Banque Nationale pour le Développement Agricole, Law No. 68-08 of 6 January 1968, where the statutes are given as annexes to the text creating these institutions.

5/ Chad, Arrêté No. 1003/AGRI of 6 April 1962, as amended by Arrêté No. 2879/AGRI of 29 September 1962.

development banks as opposed to purely agricultural banks. To the same context belongs the preference accorded to transactions through agricultural cooperative societies rather than directly with individual farmers.

A third element common in this type of legislation is the importance given to those bodies entrusted to guarantee agricultural loans advanced by credit institutions. This objective is achieved in the individual countries in various ways. Thus, in Cameroon and the Ivory Coast, special funds are created guaranteeing agricultural loans. In Niger, two institutions deal with agricultural credit, the first handling the administrative and technical aspects of the operation, the second being responsible for the actual financing of these operations <sup>1/</sup>. In Burundi, the Statutes of the Banque Nationale pour le Développement économique provide that loans can be given to individual farmers who are unable to offer satisfactory security only if they are guaranteed by a fund constituted, by the State or otherwise, for that purpose.

### Latin-American Legislation

With the notable exception of Mexico and Brazil <sup>2/</sup>, the Latin-American legislation reviewed does not provide for a comprehensive agricultural credit system. Rather, one finds texts regulating the form and procedures of the various bodies providing agricultural credit. These texts, compared to those of the other systems are more comprehensive in the sense that they are not limited to a few aspects of the institution they create, but give a complete picture in one and the same enactment. Thus such legislation provides for the legal status of the institution, its functions and the administrative arrangements laid down in this regard. Especially, reference is made to the kind of credit made available, and to the terms and conditions, including interest charged and securities required. A general trend in this respect is to promote schemes of supervised credit for small farmers and stockbreeders. A further point of interest is the tendency toward personal guarantees whenever possible and the greater freedom of action allowed to the Board of Directors.

Three other elements seem to constitute a common characteristic of this type of legislation: a) the preference of the legislator for general development banks rather than for purely agricultural banks <sup>3/</sup>; b) the fact that explicit reference is practically always made to animal husbandry along with agriculture in the restricted sense of crop farming <sup>4/</sup>; and c) the specific regulations laid down governing the provision of agricultural credit by commercial banks.

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<sup>1/</sup> Niger, Law No. 67-032 of 20 September 1967, Decree No. 68-56/MER of 8 April 1968 and Decree No. 68-57/MF of the same date.

<sup>2/</sup> See the relevant country studies.

<sup>3/</sup> For example, Ecuador, Banco Nacional de Fomento, Decree No. 2767 of 24 November 1964; Nicaragua, Banco Nacional de Nicaragua, Legislative Decree of 20 October 1940; Colombia, Caria de Crédito Agrario Industrial y Minero, Law No. 57 of 1931, as amended; Argentina, Banco de la Nación Argentina, Decree No. 13.129 of 22 October 1957. To a lesser extent, El Salvador, Banco Hipotecario de El Salvador, Special Law of 18 December 1954. Exceptions to this are Mexico and Peru.

<sup>4/</sup> This is a feature of the Latin-American legislation examined, which is not found in other legislative systems. The importance of stock-farming in the economies of Latin-American countries - especially the South — provides a ready explanation of this.

## II. LEGAL STRUCTURE OF AGRICULTURAL CREDIT LEGISLATION

### 1. Juridical Status

At the national level, agricultural credit distribution is entrusted to specialized institutions usually called agricultural banks, development banks or cooperative banks 1/. They all are corporate bodies with legal personality, and are given the powers necessary to achieve the objectives assigned to them. Accordingly, they may sue and be sued in their own name, enter into contracts, and acquire, hold and dispose of land and other -property. These attributes are sometimes specifically mentioned in the basic laws setting up the institutions in question. In other cases, they may be inferred from the fact that these bodies are endowed with legal personality. The structure and powers of the agricultural and other banks mentioned are similar to those of ordinary, e.g., commercial, banking institutions, but their functions are different. Agricultural banks are conceived as special banks, operating along lines distinct from those of the commercial banks. This implies an organizational and operational approach that is different from the traditional one.

The agricultural credit banks are generally joint stock companies with limited liability. The government usually holds the majority of the share capital and has a major participation in their management 2/ hence the description of some of these institutions as "state" or "semi-government" bodies of "public" or "national interest" 3/. This does not affect their legal status as such, although it is of considerable importance as far as their operational and financial autonomy is concerned.

In a number of countries, agricultural banks are seconded in their agricultural credit distribution functions by a variety of other institutions such as funds, registered

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1/ See, inter alia: the Agricultural Bank of Sudan Act, 1957, Act No. 19, as amended, and the Agricultural Bank Law No. 56 of 1959, as amended by Law No. 143 of 1960 and Law No. 126 of 1964 of Iraq; Agricultural Development Bank Ordinance, 1961, Ordinance No. IV of 1961 of Pakistan; The Statutes of the Agricultural Cooperative Bank of Iran of 1970, Legislative Decree No. 141 of July 1970, giving the Statutes of the Banque Agricole Coopérative of Syria.

2/ See Infra p. 13.

3/ Cf. Chad, La Banque de Développement, Presidential Ordinance No. I/EC of 13 January 1962; El Salvador, Banco Hipotecario de El Salvador, Special Law of December 18, 1954; Ivory Coast, Banque Nationale pour le Développement Agricole, Law No. 68-O8 of 6 January 1963; Cameroon, Cameroon Development Bank, Decree No. 60-247 of 29 December 1960.

farmers' cooperatives or specialized agencies financing particular crops 1/. Their legal status, however, is no different from that of the Banks; they, too, are usually corporate bodies organized in the form of joint stock companies with limited liability. The most interesting exception is that of the trust funds, which are established by contract between the Government and the Central Bank, as in the case of Mexico 2/. Specialized agencies for the promotion of selected crops differ from the rest in that they depend for their operations on an annual appropriation, usually coming from government sources. Land reform schemes often include credit programmes administered by, and forming part of, the land reform agency.

The chief interest, however, lies in three considerations, namely the effective powers that these institutions have been accorded, their operational efficiency and, most of all, the means placed at their disposal by the government for the accomplishment of their task.

## 2. Functions and Powers

Generally the main function of agricultural credit institutions is to assist in the development of agriculture and rural industries. Particular functions will differ with the kind of the institution and with the national policy as embodied in the enactment establishing it.

Thus, banking institutions normally perform all banking operations provided for by the laws of the country. They receive deposits and issue bank bonds with a view to stimulating and mobilizing savings in the rural sector. At the same time, they grant loans and other credit facilities to persons engaged in agriculture. Frequently, they also buy, sell or otherwise dispose of agricultural products, seeds and other inputs 3/. In certain cases, they have the power to establish, organize or supervise regional or local banks or - in the case of cooperative banks - credit or multipurpose cooperatives 4/.

A comparison between the agricultural credit institutions studied shows that two main distinctions need to be drawn. The first is that, while the sphere of competence of some of these institutions is confined to agriculture and related activities, that of others extends to additional sectors of the economy, such as industry and commerce, agriculture being only one of several areas of operation. This is the distinction referred to earlier between purely agricultural banks and development banks. Sometimes, even within a single country, one institution may deal exclusively with agriculture, while another will deal with economic development in general, including agriculture. In Argentina, for instance, the Banco de la Nación supports agricultural production but also attends to the current needs of industry, commerce and other branches of economic activity, while the national Agricultural Promotion Commission is a body set up solely to promote agricultural productivity. Similarly, the Development Bank of the Philippines deals with agriculture, commerce and industry, while the Rural Banks and the Cooperative Financing Corporation are responsible solely for agriculture.

A further though less important. distinction is that, even when an institution concentrates on agricultural development, it may or may not concern itself solely with agricultural credit operations. Indeed, agricultural credit may be only one of its

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1/ Examples are the Financiera Azucarera in Mexico and the Marketing Boards in Kenya.

2/ Cf. the relevant country study.

3/ For examples, see the respective country studies.

4/ See in particular the country studies on Mexico and on Sri Lanka.

agricultural promotion activities. For instance, the purposes of the People's Bank of Sri Lanka are, in addition to furnishing agricultural credit, to develop the cooperative movement and rural banking by providing financial and other assistance to cooperative societies, cultivation committee. and individuals. It may act as pawnbroker and provide technical assistance to any person to whom it grants a loan or overdraft. Similarly, in Peru, the Agricultural Development Bank, in addition to handling agricultural credit, may engage in all normal banking transactions and in all other operations that contribute directly or indirectly to the development of agriculture. It may also invest in works essential to the promotion of farming, and import and purchase of animals for sale to farmers; maintain and establish experimental farms, and purchase agricultural products. In Mexico, there are separate groups of institutions for ejido farmers and comuneros and for those not so associated 1/. Both groups, in addition to dealing with agricultural credit proper, may carry on certain specified related activities.

The functions and powers of non-banking corporations are considerably different. Not being banks, they are not allowed to receive deposits or issue bonds or debentures. Their primary function is therefore to grant loans and other credit facilities and in some cases to run directly specific undertakings and projects designed for agricultural development, as in Kenya.

Guarantee funds are, as their name implies, established in order to guarantee the repayment of loans granted by the credit institutions and their operations are limited to that object 2/.

Farmers' cooperatives - to the extent that they interest the present study - either concentrate on credit operations with their members (credit cooperatives), as in Pakistan, or deal with credit in an integrated approach, associating it with marketing operations both of agricultural inputs and of the agricultural production of their members as in Kenya 3/.

### 3. Management

#### (a) Management in General

As is to be expected, there is no great variety in the organizational structures and procedures adopted for the administration of the agricultural credit institutions. Most of these institutions are administered by a Board of Directors, the members of which are all, or in their great majority, appointed by the government. In the legislation of a number of countries, there is provision for nomination by specific ministries, including, almost invariably, the Treasury, the Ministry of Agriculture and the Ministry of Agrarian Reform. In certain cases 4/, the members of the Board, and even more often the Chairman of the Board or the General Manager of the bank, are appointed by act of the highest authority of the country 5/.

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1/ For a definition of ejido and comuneros, see the Mexico study, p. 73.

2/ See country studies on Ivory Coast and Philippines.

3/ For more details, see the relevant country studies.

4/ Cf., for instance, the Development Bank of the Philippines. See relevant country study.

5/ Thus, for example, the Director of the Cameroon Development Bank; the Managing Director of the Agricultural Credit and Cooperative Bank of Ghana; the Director-General of the Caisse Nationale de Crédit Agricole of Morocco, the Chairman of the Agricultural Development Bank of Peru, etc.

Generally speaking, board members or board chairmen represent the ministry, the government service or the semi-governmental body which has nominated them. This is the case, for instance, of the Agricultural Development Corporation of Kenya, certain members of the board of the Agricultural Development Bank of Pakistan, the People's Bank of Sri Lanka, etc. 1/.

In other cases, however, members of the government are statutorily appointed as *ex officio* chairmen or members of the boards of agricultural credit institutions. Thus, in the Banque Nationale pour le Développement Agricole of the Ivory Coast, three Ministers are members of the Board in their official capacity; in the Agricultural Finance Corporation of Kenya, one of the members of the Board is the Permanent Secretary of the Ministry of Agriculture; in Mexico, the Chairman of both the Banco Nacional de Crédito Agrícola and the Banco Nacional de Crédito Ejidal is the Secretary of State for Agriculture and Stockbreeding; in the Philippines the *ex officio* Chairman of the Agricultural Credit Administration is the Undersecretary of Agrarian Reform 1/, etc.

An interesting exception is that of the Rural Banks in the Philippines, whose rules and regulations explicitly exclude from their Boards of Directors any person who is an officer or employee of a governmental service. State control is exercised in their case through the appropriate services of the Central Bank of the country.

These provisions, in conjunction with those regarding the share capital, etc., of the credit institutions reflect a characteristic feature of such institutions in developing countries. As it will be seen later on 2/, the State is the main, if not the exclusive, contributor of the funds necessary for the establishment and the operations of agricultural credit institutions in these countries. Accordingly, it will work to make sure that these funds are used according to the policy traced and the directions given by the government. As a result, the body or person entrusted with the implementation of this policy (Board of Directors, General Manager, etc.) needs to be as close to and as dependent as possible on the government authorities.

Representation of interested parties inside the managing bodies tends therefore to become representation of the interested Government services. Thus, the relevant provisions of the basic laws setting up the credit institutions prescribe the number of board members to be nominated by each particular minister.

It is often provided that representatives of non-governmental bodies, such as cooperatives, farmers' associations also sit on the boards of certain other institutions» They are selected by the responsible minister from a list of names furnished by the body they are representing 3/.

The same is true even for cooperative banks at the national level 4/. Under these conditions, although the composition of the governing bodies of agricultural credit institutions reflects a fair representation of the parties interested in the operations of those institutions, sometimes such non-governmental members have little weight in the decision-making process 5/.

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1/ For more details, see the relevant country studies.

2/ Infra, p. 17.

3/ Cf. for example: Syria, Legislative Decree No. 141 of 20 July 1970, Art. 15(a) and (b) etc.

4/ See country studies on Kenya (the Cooperative Bank) and Sri Lanka.

5/ See, in this respect, the Agricultural Credit Act of Mexico, Art. 13 which provides that three negative votes from government board members can veto any resolution of the board.

Provisions governing the delegation of certain powers or functions of the Board of Directors again show the care taken to subordinate decision on a number of items to the judgement of the government representatives 1/.

The degree of dependence of the Board members on the government is accentuated by the fact that usually they are freely revocable by the Minister or other nominating authority 2/.

The basic laws of a very few agricultural credit institutions 3/ also provide for general meetings of the shareholders, which are normally -the highest bodies of control of the activities of the Boards of Directors as well as of the general state of affairs in corporate bodies established in the form of stock companies. It is difficult, however, to see the necessity of such a body in institutions of a semi-governmental character in which the State is not only the main capital subscriber and shareholder but also the real manager through a board controlled in the way explained above. The case of Tunisia is an exception. Thus, the Banque Nationale de Tunisie is a commercial bank where the State has a participation in the capital limited to 25 percent, the rest being freely subscribed by cooperative societies, etc. Consequently, State participation in the management of the bank is equally limited and the real control of its operations is in the hands of the General Assembly of the bank's shareholders.

An essential question, therefore, is whether agricultural credit institutions in developing countries should be organized as private stock companies or as governmental undertakings. An answer to this question, however, would go beyond the scope of the present study.

Apart from the direct participation in the boards of the credit institutions the laws setting up these institutions often enable the government to impose its policy through directives and instructions issued by, say, the Minister having the general supervision of the affairs of the institution 4/.

With regard to cooperative societies, these are managed by boards or committees elected by the general assemblies of their members. As a rule, there is no direct government participation in either the constitution of the managing bodies or their operations. There is, however, indirect government control through special offices existing in all countries. The head of the office, usually called Registrar of cooperative societies or Commissioner of cooperative development, is invariably given wide powers of control regarding the registration of societies, their operations, the auditing of their accounts, the replacement of committee members in cases of incorrect management, etc.

#### (b) Accounts and Audit

The accounts of agricultural banks and other official credit institutions are closely controlled by the appropriate State authorities. In certain cases, the auditors are themselves appointed by the government 5/; in other cases, high governmental officials are

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1/ As an example, see the Cooperative Bank of Kenya Bylaws, Bylaw 30. Details in the relevant country study.

2/ Cf. for instance the People's Bank Act of Sri Lanka, Sec. 8 (7), the Agricultural Finance Corporation Act of Kenya, Sec, 5(2) etc.

3/ For example, the Banque Nationale pour le Développement Economique of Burundi, the "Cameroon Development Bank, the Banco de Cooperativas del Ecuador, the Guyana National Cooperative Bank, the Agricultural Cooperative Bank of Iran, the Banque Nationale de Tunisie, etc.

4/ See, for instance, country studies on Ivory Coast, Kenya, Pakistan, etc.

5/ As in the case of the Agricultural Development Bank of Pakistan.



ex officio auditors of these institutions 1/. In general, the report of the auditors together with other justifying documents such as annual balance sheets, reports on the operations of the institution during the year etc., are submitted to the Minister responsible for the operations of the institution or to the Minister of Finance or to both. These documents must be so submitted within a period of time from the end of the financial year of the institution, as prescribed by law. Furthermore, it is usually provided that the auditors' report, together with the various supporting documents, shall be published in the official Gazette,

The accounts of cooperative societies are either directly audited or otherwise controlled by the government office(or Registrar or Commissioner) in charge of the cooperative movement in the country 2/.

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1/ The Auditor General of the Philippines is the ex officio auditor of the Agricultural Credit Administration. The accounts of the Rural Banks in this country are controlled by the Central Bank,

2/ Cf. the various country studies.

### III. LEGAL PROVISIONS OP AGRICULTURAL CREDIT FINANCING

#### 1. Capital of Agricultural Credit Institutions

The amount of the capital of agricultural credit institutions and its structure are determined, as a rule, by the basic laws or in their statutes. As already seen, the great majority of these institutions in the developing world are semi-governmental bodies closely controlled by the State authorities. This is also reflected in the provisions governing their capital.

The capital is fixed by government decision as is also the percentage of the capital to be subscribed by the government, by other governmental agencies and, in a relatively few cases, by the private sector. When agricultural credit institutions are organized as banks, their capital generally consists of shares. In the two Kenyan Corporations, for instance, the opposite is the case, the amount of the capital not being fixed in their statutes but left to be determined, according to need, by the Government.

Regarding government participation in their capital, nation-wide agricultural credit institutions can be divided into three types: entirely government-owned; majority government participation, minority government participation.

The first type is to be found in a considerable number of countries <sup>1/</sup>. It comprises all the kinds of banks already examined: agricultural banks, development banks and even cooperative banks. In some of these cases, no mention is made in the laws setting up the institutions of division of the capital into shares (Iraq). In others, however, such mention is found (Philippines) although the division does not seem to fulfil any practical purpose.

Institutions in whose capital, the State holds a majority share are also frequent <sup>2/</sup>. Here again the organic laws of the agricultural credit institutions may either provide that the capital must be subscribed to at least 50 percent by the State, or give the exact

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<sup>1/</sup> Ecuador, Banco Nacional de Fomento. Decree Ho. 2767 of 24 November 1964 (Law No. 56 of 1959, as amended); Malaysia, Bank Pertanian Malaysia, Act of 22 April 1969; Nicaragua Banco Nacional de Nicaragua, Legislative Decree of 20 December 1940; Peru, Agricultural Development Bank of Peru, Decree-Law No. 14509 of 14 June 1963; Philippines, the Development Bank of the Philippines, Republic Act No. 85 of 1946 (as amended); the Sudan, The Agricultural Bank of Sudan Act, 1957; Syria, Banque Agricole Coopérative. Decree of 23 August 1958, etc.

<sup>2/</sup> See for instance: Burundi, Statutes of the Banque Nationale pour le Développement Economique; Colombia, Caja de Crédito Agrario, Industrial y Minero, Law No. 57 of 1931 (as amended); Ghana, Agricultural Credit Cooperative Bank Act No. 286 of 1965; Guyana, Guyana National Cooperative Bank Act No. 10 of 1970; Ivory Coast, Banque Nationale pour le Développement Agricole. Law No. 68-08 of 1968; Kenya, The Agricultural Finance Corporation Act, 1969; Mexico, see the relevant country study; Pakistan, the Agricultural Development Bank Ordinance of 1961; Sri Lanka, The People's Bank Act No. 29 of 1965, etc.

amount, in percentage or as a lump sum, of the capital paid in by the Government. The difference is of practical importance because in the first case the State allows itself to hold an even more important part - sometimes the entire amount, or nearly so - of the capital. In other institutions this distinction has no real weight for the simple reason that a considerable part of their capital is subscribed by semi-governmental bodies 1/.

A particularity found in a certain number of countries is the distinction made between shares of the agricultural credit institutions in various series (series "A", "B", etc.) of which one (series "A") is reserved to the government or government institutions. This happens in Burundi (Banque Nationale pour le Développement Economique), Colombia (Caja de Crédito Agrario, Industrial y Minero), Mexico, etc. Series "A" shares enjoy a special status. They are usually registered shares, and the members of the Board of Directors of the institution representing them have certain privileges vis-à-vis their colleagues 2/.

Agricultural credit institutions in whose capital the State holds only a minority share are rare. Sudan 3/ and Tunisia 4/ are two countries where this is the case. But, in the case of Sudan, the central bank holds the majority capital (60 percent), while the Banque Nationale de Tunisie is a normal commercial bank with State participation in its capital. Increases (or, more rarely, reduction) in the capital are possible by decision of the governing bodies of the institutions and with the approval of the government. In such cases, the legislation provides that the percentage of State-held capital shall remain unchanged. If new shares are issued, the government normally retains the right of preemption.

The capital of regional or other agricultural credit institutions is usually subscribed by either the private sector or by national credit bodies or both together 5/. The capital of cooperative societies, regional or local cooperative banks or other farmers' associations is subscribed by their members.

## 2. Other Relationships between Agricultural Credit Institutions and the State

Apart from government participation in the capital of agricultural credit institutions, the close connection existing between these and the State becomes also evident from a number of other provisions usually contained in their organic laws. This is the case with respect to provisions regarding financial aid granted by the State to agricultural credit institutions, protection against losses in operations undertaken at the request of the government, fiscal and other privileges granted to these institutions.

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1/ See country study on Ivory Coast.

2/ See, for instance, country study on Mexico. Series "A" shares do not have privileges only. The Agricultural Credit Act, Sec. 9 provides that "where a reduction of capital is due for losses, Series "A" shares alone shall be affected."

3/ Agricultural Bank of Sudan Act of 1957.

4/ Banque Nationale de Tunisie; see the relevant country study.

5/ Thus, in Mexico, the share capital of regional banks is subscribed by one or other of the national banks (see country study) and by the public. In the Philippines, the capital of private development banks and of rural banks may be entirely owned by the private sector. If private, capital is not forthcoming, provision is made, with a view to encouraging the creation of such banks, for the Development Bank of the Philippines to subscribe funds.

Financial aid from the State for the institutions can take various forms. Sometimes it is a contribution fixed annually by the government and given to cover the cost of organization and distribution of agricultural credit, as in the case of the national banks in Mexico 1/. This contribution is paid until each bank, on the basis of the funds provided by the Federal Government and those coming from private sources, is in a position to meet entirely the credit requirements of its clientele. In other cases it may consist of funds voted by the legislative bodies of the country annually 2/ or as often as necessary 3/. It can also take the form of a statutory allocation of a percentage of the institution's annual net profits, as happens in Syria ( 10 percent) 4/. In the Arab Republic of Egypt, the State may make available to the Agricultural Bank advances up to 9 million pounds which are not due for repayment until such time as the Bank is wound up 5/.

A different form of financial aid may be seen in the guarantee often given by the Government to obligations, debentures, etc., issued by agricultural credit institutions with the approval of the responsible ministers 6/.

Provisions protecting agricultural credit institutions against losses in operations undertaken at government request are not found in all the constituent laws or statutes examined here. A clearly formulated provision on this matter is contained in the Agricultural Finance Corporation Act of Kenya: "In the exercise of its powers and in the performance of its functions under this Act, the Board shall act in accordance with any general or special directions that the Minister may give it: provided that, if the Minister gives the Board directions which in the Board's opinion will involve the Corporation in financial loss, the Board is not required to act in accordance with those directions unless the Government has undertaken to reimburse the Corporation the amount of any losses incurred in so acting" 7/.

In other laws, this formula is implicit in the provision that certain loans can be given by the institution without specific security if guaranteed by the government 8/.

The absence of any provisions relevant to that matter in the laws setting up agricultural credit institutions or their statutes does not imply that the government cannot require them to undertake specific operations which may result in losses. But protection measures are more often decided by the interested parties (government or institution) in the ad hoc agreements regarding such operations.

The special nature of agricultural credit institutions is reflected by the provisions often found in legislation establishing the privileges granted by the State. These privileges, consisting mainly in fiscal exemptions and in the use of a special procedure for the recovery of their dues, are not, however, the rule.

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1/ Agricultural Credit Act of 1955, Art. 10.

2/ Statuts de la Banque Nationale pour le Développement Agricole, Art. 6.

3/ People's Bank Act No. 29 of 1961, Sec. 15(1) (a) (iii).

4/ Décret législatif Ho. 141 of 20 July 1970, Arts. 9(1-a) and 55(2-b).

5/ Decree-Law No. 50 of 1930, Art. 2 (2), as amended by Law No. 139 of 1948 and Law No. 222 of 1951.

6/ See, for instance, Philippines, Republic Act No. 85 (as amended) Sec. 2(g) and also Infra p. 20 ff.

7/ Agricultural Finance Corporation Act of 1969, Sec. 4 (5).

8/ See, for instance: Pakistan, Agricultural Development Bank Ordinance, 1961 Sec. 19(2); Sri Lanka, People's Bank Act No. 29 of 1961, Sec. 21(1) etc.

Fiscal exemptions are not granted to all institutions in all the countries examined here and, when they are, they differ in - nature and extent. Thus, exemptions from stamp duty on instruments executed "by or on behalf of agricultural credit institutions are found in the constituent laws and statutes in a considerable number of cases 1/. Other exemptions, however, such as tax exemptions on income, surpluses, dividends, etc., are less usual 2/. They are more common, however, in the case of farmers' credit cooperatives or of local banks of a cooperative character 3/. In the case of the private development banks in the Philippines, the law provides for a gradually increasing taxation, after a period of exemption 4/. This system allows for the financial consolidation of the banks. Regarding recovery of their dues, agricultural credit institutions are, in some countries, accorded the privilege of using the same procedures and channels as the Treasury or other governmental institutions. These provisions aim at facilitating recovery by simplifying administrative formalities 5/.

### 3. Borrowing and Rediscounting

The capacity of agricultural credit institutions to borrow is generally recognized by the laws creating them and/or their statutes. Borrowing can take the form either of direct advances and loans contracted with other banking institutions national or international or of issuing bonds and debentures.

Both these forms of borrowing are always explicitly provided for as a constituent part of the objects or powers of agricultural credit institutions, but are very often subject to a number of restrictions which reduce their effective freedom of action in this matter. Thus, their capacity for borrowing money or obtaining credit is usually limited to a certain ceiling fixed either by the statutes of the institution or by the government authorities 6/. Similarly, external borrowing may be restricted not only in amount, term, etc., but also as regards the use of the funds borrowed 7/, again by the appropriate government departments.

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1/ See, for instance: Ivory Coast, Statutes of the Bank., etc. Art. 20; Kenya, Agricultural Development Corporation Act, 1965, Sec. 21; Philippines, Rep. Act No. 720 (establishing the Rural Banks) Sec. 14 and Republic Act No. 3844 (establishing the Agricultural Credit Administration) Sec. 118fg. Sri Lanka, People's Bank Act, No. 29 of 1961, Sec. 41, etc.

2/ Philippines, Republic Act No. 3844, Idem; Sri Lanka, Idem, etc.

3/ Pakistan, The Cooperative Societies Act, 1925 (as amended) Sec. 33; Philippines, Republic Act No. 720, Sec. 14; Tunisia, Law No. 63-19 of 1963, Art. 70 etc.

4/ Cf. Republic Act No. 4093, Sec. 10.

5/ Infra P- 31 ff.

6/ Cf. Kenya, Agricultural Finance Corporation Act, 1969, Sec. 14(2) "...the Corporation shall not borrow any money where the result would be that the total indebtedness (whether present or contingent) of the Corporation would exceed the sum of fifteen million pounds, or such larger amount as the Treasury may, by notice in the Gazette, determine".

7/ See, for instance, Mexico, Agricultural Credit Act of 1955, Art. 5 XIV. "The National Banks may] with the approval of the Secretariat of Finance and Public Credit, negotiate foreign bank loans, for terms of not more than one year, with a view to the cultivation of export products or to the pledging thereof."

In cases where such limitations and restrictions do not appear in the legislation regulating agricultural credit institutions 1/, they can derive from other general laws or simply be the result of policy decisions made by the responsible political authority.

Regarding the power of these institutions to issue bonds, debentures or other obligations similar provisions to the above can be found.

Thus, although the principle whereby these bodies are empowered to issue such instruments is generally recognized, other specific or general provisions limit this power considerably. Such limitations may refer either to the issue procedure or to the terms and conditions under which they are issued.

(a) Procedure

Instruments may be issued at the request of the institution not directly by it but by the governmental body responsible for the institution, after approval by the State authority dealing with financial and credit matters. This is the case in Syria and, to a certain extent, in Sri Lanka 2/.

They may be issued directly by an agricultural credit institution after approval of the government authority having the supervision of its business and operations, as happens in the Philippines and in certain cases in Sri Lanka 3/.

They may also be issued directly by the institution concerned without any specific control other than the general supervision exercised by the authority responsible for the activities of the institution. This is the case in the majority of the countries.

(b) Terms and Conditions

The terms and conditions under which debentures etc., are issued may be contained either in the principal enactments regulating agricultural credit institutions or in the Regulations made under the provisions of these enactments. In a number of instances, however, no explicit provision is made.

In the first case, the relevant provisions specify in detail not only the procedure of issue but also the terms for which these instruments can be issued, their total amount in relation to the capital of the institution or to the loan portfolio, the body responsible for fixing their interest rates, the conditions under which they can be redeemed by the institution, whether or not such issue is guaranteed by the government etc. 4/

Whenever the matter is dealt with in the Regulations, similar provisions are to be found in these subsidiary enactments.

If the agricultural credit legislation itself is silent on the terms and conditions under which bonds, debentures, etc., are issued, then it is to be expected that the matter will be governed either by the general legislation of the country or by ad hoc agreements entered into by the institution concerned and the responsible government authority.

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1/ Cf. the case of the National Agricultural Development Bank in Ivory Coast which is subject, for its financial and related policy, to the Law of 4 August 1965 and its Regulations. Decree No. 68-306 of 24 June 1968, Art. 2.

2/ Cf. Legislative Decree No. 141, Art. 7 and People's Bank Act, Sec. 20, respectively.

3/ See Republic Act No. 85 (as amended) Sec.2(8) and People's Bank Act, Idem, respectively.

4/ Idem, see, again, Republic Act -No. 85; Syria, Legislative Decree op. cit. Idem; Mexico Agricultural Credit Act, Arts. 67 ff., etc.

The rediscounting of agricultural credit instruments (bills of exchange, promissory notes, etc.) at the national level depends on the existence of appropriate provisions which are normally found not in the agricultural credit legislation stricto sensu, but in the laws setting up the central banks. If such specific provisions do not exist either the rediscounting of agricultural credit instruments becomes impossible or else a complicated procedure needs to be set up. The latter is not always efficient but it provides a means of applying the provisions regulating the rediscounting of commercial credit instruments to that of instruments related to the financing of agriculture. Thus, in Tunisia, Art. 43 of the Statutes of the Central Bank authorizes only the rediscounting of notes, etc., with a maturity period not exceeding three months.

In order to benefit from the rediscounting facilities of the Central Bank, the former Banque Nationale Agricole and the present Banque Nationale de Tunisie <sup>1/</sup> have had to adopt the following procedure: for each short- or medium-term loan, the bank signs a series of instruments, at three months each, covering the period of the loan, which are discounted with the Central Bank. The system is not entirely satisfactory for the reason, among others, that the Central Bank is not obliged to rediscount credit instruments drawn for the financing of seasonal agricultural operations (prêts de campagne) <sup>2/</sup>.

In the majority of the countries studied here, special provisions regarding rediscounting of agricultural credit instruments do exist in the legislation governing central bank operations. On the basis of these provisions, the countries can be divided into three main categories:

- (i) those which allow for the rediscounting of agricultural credit instruments maturing at not more than 270 days from the date of rediscounting. This makes possible the rediscounting of instruments drawn in relation to short-term loans only <sup>3/</sup>;
- (ii) those which allow for the rediscounting of instruments having maturity periods exceeding nine months. These institutions thus have the possibility to rediscount instruments drawn not only in relation to short-term loans <sup>4/</sup>;
- (iii) those which provide simply for the rediscounting of instruments arising from agricultural operations, without specifying their period of maturity <sup>5/</sup>.

Rediscounting facilities are not only limited in respect of the maturity period of the credit instruments. They can also be restricted to certain types of agricultural operations especially in the case of medium-term financing <sup>6/</sup>. On the other hand, they are always limited to instruments bearing at least two good signatures (i.e. of persons or bodies) one of which shall be that of the institution requesting the discounting <sup>7/</sup>. This provision,

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<sup>1/</sup> See country study on Tunisia.

<sup>2/</sup> A.H. Ballendux et J. Haiat (consultants to the BNA): Manuel provisoire de la Banque Nationale Agricole sur l'administration des prêts agricoles et la composition des statistiques (undated, mimeographed study) p. 9 ff.

<sup>3/</sup> See, for more details, country studies on Kenya and Sri Lanka.

<sup>4/</sup> See country studies on Ivory Coast and Pakistan.

<sup>5/</sup> See country study on Mexico.

<sup>6/</sup> See, for instance, Statuts de la Banque Centrale des Etats de l'Afrique de l'Ouest. Art.17.

<sup>7/</sup> Cf. The State Bank of Pakistan Act, 1956, Sec. 17(2)(d); The Central Bank of Kenya Act, 1966, Sec. 35, etc.

if followed to the letter, would drastically reduce the number of promissory notes, exchange bills, etc., presented for rediscounting, since the signatures of hundreds of thousands of peasants unknown to the central bank are certainly not "good" in the meaning of the law. In innumerable other cases, furthermore, one cannot properly speak of signature even, the illiterate farmers being allowed to use their fingerprint in the place of the signature. This is certainly why, in some cases, the legislation states that agricultural credit instruments presented for rediscount are to bear only one good signature, if they are deemed to be properly guaranteed 1/.

#### 4. Reserves and Disposal of Profits

Provisions regarding the constitution of reserves and the disposal of the profits are found in the constituent laws and the statutes of practically all the agricultural credit institutions examined here. What differs is the mode of constitution of these reserves, the percentage allocated to them out of the annual net profits of the institutions, their total amount, etc. The way in which these issues are regulated depends to a great extent on the specific nature of the institution and the degree of government participation in the capital.

Thus, in the case of the Banque Nationale pour le Développement Agricole of the Ivory Coast and of the Agricultural Finance Corporation of Kenya, practically the whole amount of their annual net profit is credited to the reserve fund. While the statutes of the former bank do not specify the purpose of this fund (to be decided by the Board of Directors 2/), the Act establishing the Corporation states explicitly that the fund is to be applied by the Board in making good any losses or deficiencies which may occur in any of the transactions of the Corporation 3/. The bank's statutes also remain silent as to the total amount of the reserve fund. The Corporation Act states, on the other hand, that the fund may at the maximum exceed by ten percent the funds (capital) of the Corporation after deduction of any sums covering losses or deficiencies of the Corporation, and be thereafter kept to that level 4/. Remaining net profits may be credited to special reserve funds established by the Corporation Board. However, it is left to the Board to decide the amount of these special reserve funds. The Board can then decide that any further net profits or even sums taken from the special reserve funds shall be paid to the Treasury for the redemption of loans made by the Government to the Corporation 5/.

In Syria, the Banque Agricole Coopérative and in Mexico the National Banks must each constitute a reserve fund of an amount equal to their capital by crediting them with the 35 and 20 percent respectively of their annual net profits. The disposal of the remaining amount of the net profit differs however substantially in the two cases. In Syria, 10 percent are affected by the State back to the bank for the realization of its object and the rest is added to the capital of the bank until it reaches the level provided by the law (150 million of Syrian pounds); after this ceiling is reached, any remaining sums are paid to the Government 6/. In Mexico, a dividend is paid to the shareholders

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1/ Cf. The Organic Law instituting the Bank of Mexico, Art. 24(VIII) and (X(c)) etc.

2/ Statutes of the Banque Nationale pour le Développement Agricole. Art. 19.

3/ Agricultural Finance Corporation Act, 1969, Sec. 16(1) and (2).

4/ Ibid., (4).

5/ ibid., (5) and (6).

6/ Legislative Decree No. 141 of 20 July. 1970, Arts. 55, 9 and 6.



representing for series "B" shareholders 6 percent on the paid-up capital and for series "A" shareholders 6 percent on the capital represented by series "A" shares; the remaining profit is transferred to a special fund the purpose of which is determined by the general assembly of the shareholders 1/.

In the Agricultural Development Bank of Pakistan, the percentage of net profits (after provision for bad debts, etc.) transferred to the general reserve fund is determined every year by the Board of Directors, The total amount of the fund must equal the subscribed share capital. The remaining net profit is used for paying a dividend not exceeding 5 percent to the shareholders and - if any surplus remains - for the constitution of other special reserves 2/.

Finally, two interesting, as well as contrasting, examples are those of the People's Bank of Sri Lanka and the Banque Nationale de Tunisie. The former has a general reserve and a special reserve fund, but both are constituted with sums granted by the Government as specifically provided for by the Act establishing the Bank 3/. The Act contains no mention of profits or, consequently, of disposal of profits. In the Tunisian Bank.' s statutes, the relevant provisions are typically those of commercial banks. The reserve fund is constituted, accordingly, by an annual 5 percent of the net profits until it reaches the 10 percent of the share capital. The appropriate sum is then deducted in order to pay to shareholders a first dividend of 3 percent on the paid-up and as yet unredeemed amount of each share.

As to the surplus, the ordinary general assembly may, on the proposal of the Board of Directors, decide either the carry-over of certain sums to the next fiscal year or the allocation of these sums to general or special reserve funds. These funds can either be distributed to the shareholders or used for the repurchase and cancellation of shares or for the total or partial redemption of these shares. Ten percent of the remainder is paid to the Board of Directors and the rest is distributed to the shareholders 4/. It is evident 'that, in the case of the bank of Tunisia, what is more important in the disposal of the profits is the interest of the shareholders and not the capitalization of the, institution.

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1/ Agricultural Credit Act of 1955, Art. 24.

2/ Agricultural Development Bank Ordinance, 1961, Sec. 27.

3/ People's Bank Act, No. 29 of 1961, Secs. 22, 15(1)(a) (i) and (ii).

4/ Statutes of the Banque Nationale de Tunisie. Art. 49.

## IV. LEGAL BASIS OF AGRICULTURAL CREDIT OPERATIONS

### 1. Credit Instruments

Leaving aside long-term credit and the relevant contracts, agricultural credit operations are served by two main credit instruments: bills of exchange and promissory notes, with a marked preference for the latter. An analysis of the peculiarities or the uses of these instruments would entail a complex discussion of commercial law practices in the various countries but the exercise falls outside the scope of this study. In any event, national agricultural credit legislation does not enter into such specifications and the only clarifications to be found concern maturity periods.

As already pointed out, maturity periods of credit instruments relating to agricultural short-term financing are, by necessity, longer than those of usual commercial paper. Central banks normally accept instruments for re-discounting with maturity periods not exceeding 270 days from the date of presentation of the instrument for re-discounting, but agricultural credit institutions cannot accept such instruments having much longer maturity periods than that mentioned above if they wish to be able to re-discount them by the desired date 1/. Only in exceptional cases can central banks accept for re-discounting agricultural credit instruments with longer maturity periods, and even then, usually not exceeding one year 2/.

Brazilian legislation treats of agricultural instruments at great length but without introducing any major new elements in their regard. The principal instrument there described is the cédula - a kind of promissory note - of which different types have been developed by way of adapting the basic instrument to the various formulas of agricultural credit securities 3/.

The question of the suitability of the various types of instruments as used in a given national context for agricultural credit purposes cannot have a general answer, for this depends on the specific way in which the use of these instruments has been practised nationally, on the adaptation process followed and on the final results obtained.

Another question affecting to agricultural credit instruments concerns the legal commitment of illiterate people.

The question is, in fact, a more general one and affects not only credit instruments but also any kind of obligation undertaken by an illiterate person through a written document; it also covers the case in which the person in question is literate in one language (Arabic, for instance) but illiterate in another (say, French), which is the language used in the written document. The problem, although of great practical interest, does not appear to have retained the attention of the legislator. An original solution has been adopted in Nigeria, where it is provided that any person who writes a document at the request of, on behalf of,

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1/ Supra, p. 21ff.

2/ Ibid., p.

3/ For a detailed discussion on this issue, cf. country study on Brazil.

or in the name of, an illiterate, "shall also write on such..... document his own name as the writer thereof and his address, and in so doing it shall be equivalent to a statement:

- (a) that he was instructed to write such.....document by the person for whom it purports to have been written and that the..... document fully and correctly represents his instructions; and
- (b) if the.... document purports to be signed with the signature or mark of the illiterate person, that prior to it being signed, it is read over and explained to the illiterate person, and that the signature or mark is made by such person 1/.

This provision, interesting as it is, does no more than acknowledge the existence of the problem; it does not solve and it does not offer real protection to the illiterate borrower. Other means should therefore be devised, combining protection of the borrower and security for the credit institution.

## 2. Agricultural Credit Guarantees

Agricultural credit legislation has not introduced innovations as compared with traditional commercial law in the matter of guarantees securing agricultural loans. It has used essentially the same concepts of commercial law and even the same terminology, although, by necessity, it has been obliged to adapt them to the requirements of agricultural life. On the other hand, it has not followed the evolution of commercial law and practice. Because of the risky nature of agriculture, agricultural lending needs to be secured by solid guarantees related more to things than to persons and, above all, to land. Especially in developing countries, this presents a major disadvantage, given the land tenure systems found in these, for it excludes all those peasants who have no recognized title to their lands from the agricultural credit facilities, in particular, medium- and long-term loans.

Securities depend on the term of the loan. Thus, long-and certain medium-term loans are, as a rule, secured by real property guarantees; other medium-term loans may, depending on the amount, be secured by guarantees on personal property, while short-term loans are secured either by guarantees on personal property or by personal guarantees.

These three categories of guarantees, i.e. real property, personal property and personal guarantees, include a variety of securities, with an even greater number of national variations. Their content is rarely explained in the agricultural credit legislation itself. What is more usually found in that legislation is the type of security required for the type of loan. The exact meaning of the security, its content, the procedure to be followed in its regard, etc., are contained in other, more general enactments, such as Civil Codes, Commercial Codes or other relevant commercial laws, etc.2/. These enactments also apply in the case of agricultural credit securities unless special provisions in the agricultural credit legislation introduce specific deviations from the general regulations.

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1/ The Illiterate Protection Act, Sec. 3, in Laws of the Federation, 1958.

2/ A notable exception to the above may be seen in the Agricultural Credit Act of 1955, of Mexico which (Part III) establishes and regulates the functioning of an agricultural credit register, in which all transactions relating to agricultural credit systems, including securities, must be registered.

These three categories of guarantees will be examined below. Once again, however, as in all the various matters relevant to agricultural credit, generalization is difficult and dangerous, because each country has its own provisions and regulations, which, although similar, are by no means identical.

(a) Real Property Guarantees

These guarantees are taken on land (whether used for agricultural production or not) or any other immovables. Obviously, guarantees of the kind can be offered only by those who own such immovable property. Furthermore, only those who can show valid titles to their property can legally encumber it by offering it as a guarantee.

Real property guarantees normally take the form of a mortgage or a charge on land. Mortgage is considered to be the best possible security but it also has considerable disadvantages. First, there are the heavy costs and the complicated procedure. Secondly, there is the need for the applicant to show an absolutely sound title to the property to be mortgaged. This is often difficult, owing, as has been mentioned, to the rather unstable systems of land tenure in certain countries. In that case, "the verification of titles becomes an uncertain and long-drawn out process lasting many months" 1/ and bank authorities are consequently allowed to resort to all possible channels of information enabling them to determine the value of the securities offered 2/.

In the Philippines, in order to simplify things and by-pass the difficulties arising out of the non-existence of recognized title (Torrens title) on the land, it is provided that the owner of land who can demonstrate at least five years of peaceful, continuous and uninterrupted possession in the concept of ownership, can validly offer it as real property guarantee, even if he has not recognized title to it 3/.

All agricultural credit legislation reviewed requires that long-term and large medium-term loans shall be secured by mortgages. Preferably such mortgages are executed on the immovable property purchased, improved or otherwise related to the loan 4/. Preferably, also, such mortgage must be first mortgage 5/ on the real property thus charged. If this is not the case, other forms of security are sought.

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1/ Cf. Tilakaratna, W.M.: "Agricultural Credit in a Developing Economy - Ceylon", Central Bank of Ceylon, 1963, p. 11

2/ See, for instance, Sri Lanka People's Bank Act No. 29 of 1961, Sec. 27. "For the purpose of deciding whether any immovable property tendered as security for any loan, overdraft or other accommodation should or should not be accepted by the Bank, the Board shall have access without fee or charge to the valuation roll of any local rating or taxing authority, and the officers of every such authority shall, upon application, supply to the Board full particulars as to any valuation of property in respect of which such authority has power under the provisions of any law to levy any rate or tax".

3/ Cf. Revised Rules and Regulations Governing Rural Banks, 1967, Sec. 95.

4/ For instance: Mexico, General Act on Credit Institutions, Art. 36, etc.

5/ See Kenya, The Agricultural Finance Corporation Act, 1969, Sec. 20(1), etc.

A number of countries that are trying to keep the advantages of the mortgage and, at the same time, eliminate its cost and cumbersome procedure, have adopted a new form of real security known as "charge on land". This was first introduced by the Co-operative Societies Act of 1947 of the former Bombay State in India. It was provided in the Act that a cooperative borrower who owns land or has any interest in land as a tenant could make a declaration creating a charge on such land or interest in favour of the society. This secured for the society a first charge on land or interest on land, subject only to the prior claim of the government for land revenue. Charge on land differs from a mortgage because it does not involve any transfer of interest in the property by the borrower. But, from the point of view of security, the charge is almost as good as a mortgage and cannot be superseded by a subsequent mortgage or purchase <sup>1/</sup>. Depending on the administrative arrangements made for the recording of the charge, etc., this type of security could satisfactorily replace the mortgage, being cheaper, simpler and less time-consuming.

A good description of the procedure creating charge on land is found in the Agricultural Finance Corporation Act, of Kenya. Under the terms of the Act, when the Board of the Agricultural Finance Corporation considers that the execution of a "formal first mortgage is not necessary", a written notification of the loan is delivered by the General Manager to the land registrar, who registers it against the title of the borrower's land; the registrar endorses, where appropriate, a memorandum of the loan on the grant or certificate of title, thus charging the borrower's land with the repayment of the loan and the interest, subject to any prior registered charges. Upon repayment of the loan, the General Manager issues to the registrar a written notice which, once registered against the title of the borrower's land, extinguishes the prior charge. Although the procedure described above does not constitute a formal mortgage, it is considered to do so for all purposes of the Act <sup>2/</sup>. It is evident from the above that such a security can, again, be offered only by landowners with a clear title to their land. However, the procedure adopted is certainly much simpler and less expensive than that of a mortgage. Other countries besides Kenya seem to adopt similar arrangements although no specific description of the operation involved is given in the texts <sup>3/</sup>.

#### (b) Personal Property Guarantees

They are guarantees constituted by all kinds of movable goods plus standing crops. Such things can range from government bonds to agricultural implements bought with the money borrowed and from jewelry to animals and crops.

As a general rule short- and medium-term loans given for the purchase of agricultural equipment or stock are secured by pledge on the goods purchased <sup>4/</sup>, and cultivation loans are secured by pledge on the crops to be grown <sup>5/</sup>. But often credit is provided against pledge, assignment, chattel mortgage or charge on other movables on the property of the borrower.

Personal property guarantees present a number of advantages, mainly that they avoid the problem of title: movables are in fact considered to belong to the person who publicly

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<sup>1/</sup> Cf. Report of the All-Indian Rural Credit Review Committee - Reserve Bank of India, 1969, P. 486.

<sup>2/</sup> Kenya, Agricultural Finance Corporation Act of 1969, Sec. 20(2).

<sup>3/</sup>, Cf. Pakistan, Agricultural Development Bank Ordinance, 1961, Sec. 19(d); Ghana, The Agricultural Credit and Cooperative Bank Act, 1965, Sec. 13(3).

<sup>4/</sup> Cf. Ecuador, Banco Nacional de Fomento, Law No. 2767 of 1964; Ivory Coast, Règlement Général de la Banque, Art. 39; Mexico, Credit Act, Art. 54, etc.

<sup>5/</sup> Cf. Malaysia, Bank Pertanian Malaysia Act of 1969; Mexico, Credit Act, Art. 54; Philippines, Republic Act No. 821, Sec. 14(d) etc.

behaves as the owner without provoking objections from third parties; crops also, in a certain measure at least, are deemed to belong to the person who cultivates the land on which they grow. They present, however, a number of disadvantages as well, the most important being that their value is usually limited and therefore cannot guarantee large loans, and that they can easily be sold. In order to avoid such dangers, the Agricultural Credit Act of Mexico provides that pledges on personal property must be entered in an appropriate register, a fact that entitles the creditor to preference in the collection of his debt not only on the basis of the property pledged but also of the products into which such property has been converted or of the cash or securities resulting from the sale of the property 1/. If the pledge consists in standing crops or unfinished products, they can, on the request and at the expenses of the creditors, be placed for better protection on harvesting or completion of appropriate processing, in general warehouses 2/.

In Kenya, the movable property of the borrower (other than his household and personal effects) can be transferred to the Agricultural Finance Corporation by way of mortgage as soon as a written notification of the loan, issued by the General Manager of the Corporation is registered by the Registrar General under the Chattels Transfer Act 3/. Such provisions however offer very limited protection to the creditor in the case of a dishonest debtor, the bona fide purchaser of movable property being universally protected by the law 4/.

Especially regarding crops, the risk of misappropriation of the security is obviated in a number of countries by combining agricultural credit with marketing of agricultural products. The credit institution can then require the borrower to enter into a marketing agreement containing detailed provisions on the terms and conditions of disposition of the product covered by the contract 5/.

### (c) Personal Guarantees

Most agricultural credit experts consider that if credit is to be effective, the primary criterion should be repayment capacity 6/. This raises not only the question of the material ability of the borrower to achieve the expected income and repay the loan received, but also his character, an element that is far more difficult to assess. Village moneylenders are certainly in a better position to know their customers than distant institutions are to know theirs 7/. Agricultural credit legislation in certain countries does recognize the possibility of loans granted without any specific security if the borrower is of proven

1/ Agricultural Credit Act, Art. 72.

2/ Ibid., Art. 73.

3/ The Agricultural Finance Corporation Act, Sec. 20(3).

4/ See also Pakistans The Cooperative Societies Act, 1925 (as amended) Sec. 24 (2).

5/ For example: Ivory Coast, Règlement Général de la Banque, Art. 39; Malaysia, Bank

Pertainian Malaysia Act of 1969; Mexico. Agricultural Credit Act, Art. 5; Philippines, Republic Act Ho. 821, Sec. 14(d) and (e), etc.

6/ See Horace Belshaw: Agricultural Credit in Economically Underdeveloped Countries, FAO, Rome, 1959, p. 32.

7/ See, Credit Problems of Small Farmers in Asia and the Far East, ECAFE/FAO, Bangkok, 1952, p. 10.

integrity of character and of recognized managerial capacity 1/. These, however, are exceptions and even more exceptional are the cases in which such provisions are really put into effect.

What is more common is that guarantees on real' or personal property are replaced, in particular for relatively small amounts of short-term loans, by the guarantee of other farmers, persons of proved solvency, who agree to stand as sureties or guarantors for the borrower. No specific conditions are normally found in the relevant laws regarding sureties. Exceptionally it is stated that they must be persons of recognized integrity and character 2/ and more often provisions are found precluding certain categories of persons as members of the Boards of Directors of agricultural credit institutions etc., from being sureties in loans given by these institutions 3/. In practice, however, this type of security does not seem to enjoy wide approval, so that more tangible securities are required 4/.

A special form of personal guarantees may be seen in the various types of collective securities involving groups of people as jointly or mutually responsible for the repayment of loans granted to each of them or to some of them only. Such forms of collective securities are to be found in countries which have mutual credit societies or cooperative credit societies with unlimited liability 5/.

All these various types of securities directly or indirectly offered by the borrower are in some countries reinforced by other forms of guarantees for the agricultural credit institutions mainly consisting in special funds, established either by the government or by the institutions themselves. By creating such funds of guarantee 6/, agricultural credit legislation seeks to substitute new methods of securing the operations of agricultural credit institutions especially the short-term ones independently of the traditional forms of guarantees, which have not always proved to be of an unquestioned efficacy.

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1/ Cf, for instance, country study on Philippines and also Nicaragua, Decree No. 20 of 14 November 1957: "[Officials and employees of the National Bank] shall adapt their methods to the level of the persons for whom the credit services have been established, in all cases taking preferential account of the moral qualities of applicants rather than of the material guarantees which they are in a position to offer."

2/ Cf. Philippines, Revised Rules and Regulations, *op. cit.*, Sec,96 and 92.

3/ Iraq, The Agricultural Bank, Law No, 56 of 1959t as amended.

4/ In some Indian States the limit of surety loans is so low (Rs 50) that it tends to stultify the entire provision. In other States where surety loan limits are higher (Rs. 100) banks do not apply the regulations or ask real securities for such loans. See: Report of the All-Indian Rural Credit Review Committee, *op. cit.*, p. 485.

5/ See Cameroon, Cameroon Development Bank, Decree No. 60-242 of 1960; Kenya, the Agricultural Finance Corporation Act, Sec. 25(1) and (2); on various experiments with mutual credit societies in Africa, see Guy Belloncle: Le crédit agricole dans les pays d'Afrique d'expression française au Sud du Sahara. PAO, Rome, 1968.

6/ Cf. for instance, Ivory Coast, Règlement Général de la Banque. Arts, 50 and 57.

In reality, all the type. of contractual guarantees examined above could be replaced, in particular in the case of short-term loans, by other forms of statutory or legal privileges accorded to the lending institutions upon the property of the borrower. This may well create a number of problems, the most important being that of the possible conflict of the rights of various creditors to the limited property of the borrower. Such problems, however, can be restricted to the minimum by appropriate provisions.

Guarantees represent for the borrower simply a constraint obliging him to honour his debt. Constraints could very well take a multitude of forms, all of them equally valid and efficient, if adapted to the national context. Imprisonment, a not very elegant way of obliging a person to fulfil a commitment, is still practised. A bond signed by the borrower and stipulating that in case of default in the repayment of the loan he will have to surrender his and his family's rice ration book until he repays the loan <sup>1/</sup> is one rather unusual way of obliging a person to honour his undertakings.

### 3. Recovery of Loans

Loans (principal and interest) are normally repaid in a number of instalments calculated over the period for which the loan has been granted. Short-term production loans are, however, as a rule, repaid at the end of the annual cultivation period, or of the farming operation, for which they have been used <sup>2/</sup>.

Legislation usually leaves ample possibilities of contractual arrangements for recovery between the parties. This in effect means that the conditions are formulated by the lending institution and accepted by the borrower. A certain number of points are nonetheless directly regulated by legal provisions <sup>3/</sup>. In the case, for instance, of payment made before maturity, it is often provided that the borrower has a right to reimbursement for the unearned interest, if the interest has already been paid, or to a rebate of interest in respect of the prematurely paid amount; or, that if the borrower pays to the credit institution amounts exceeding the instalments due, the latter should apply the excess amount in payment of the principal of one or more of the future instalments, which should then be recalculated on the basis of the balance of principal owed over the remainder of the term for which the loan was originally granted <sup>4/</sup>.

Agricultural credit legislation further provides for cases in which the credit institution may require the borrower to repay the loan in full immediately, i.e. before maturity. These are generally cases of failure of the borrower to comply with the terms of the credit agreement, of misuse of the financial resources granted, of deterioration of the securities offered, etc. <sup>5/</sup>

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<sup>1/</sup> See Sri Lanka, Cooperative Societies Loans (Special Provisions) Act, No. 14 of 1969, Sec. 2.

<sup>2/</sup> See for instance: Kenya, Agricultural Finance Corporation Act, Sec. 32; Mexico, Agricultural Credit Act, Art. 55; Philippines, Revised Rules and Regulations, Sec. 128; Tunisia, Décrets d'application de la Loi No. 63-17, etc.

<sup>3/</sup> Thus, two contrasting examples; Pakistan, Agricultural Development Bank Ordinance; Sec. 24 and Ivory Coast, Règlement Général..., Arts. 36, 37, etc.

<sup>4/</sup> Kenya, Agricultural Finance Corporation Act, Sec. 32; Philippines, Revised Rules and Regulations, Sec. 128, etc.

<sup>5/</sup> Cf. Kenya, Ibid. Sec. 33(1); Mexico, Agricultural Credit Act, Art. 63(II); Pakistan, Agricultural Development Bank Ordinance, Sec. 24; Philippines, Revised Rules and /Regulations, Sec. 130, etc.



If loans are not repaid upon maturity (or whenever considered due before maturity, as in the above case), the legislation allows for two possibilities; either a new agreement may be made between the borrower and the lender, arranging for new repayment conditions, or else the credit institution may start recovery proceedings. In the former case, the "borrower obtains a prorogation of the term of the loan, or a renewal of the loan is offered under rather exceptional conditions 1/. Otherwise, the procedure followed for the recovery of a loan in the case of default in repayment is not always described or provided for in detail in agricultural credit legislation. Sometimes reference is simply made to the relevant provisions of other, more general enactments, i.e., the Code of Civil Procedure 2/. In other cases, agricultural debts are accorded legal privilege, similar to that of debts due to the Public Treasury, on the movable and immovable property of the debtor and his surety whether that property has been offered as security for the agricultural debt or not» In such cases agricultural credit institutions can recover their dues according to the legislation governing the recovery of debts owed to the State or State institutions 3/.

In certain cases, however, provisions on this matter are more detailed and establish a statutory procedure of recovery independent of any general regulations. Thus, in Kenya, the Act setting up the Agricultural Finance Corporation provides that the latter may, without applying to a court, enter the mortgaged land and either take possession of it or sell it by public auction. Before such a sale is carried out, a notice must be published in the Official Gazette or in a newspaper of the area where the land is situated giving the date, time, terms and conditions of the sale 4/.

In Pakistan, the law that established the Agricultural Development Bank states that upon default of repayment of a loan or failure on the part of the debtor to comply with the terms of the loan agreement with the Bank, the latter can take over the management of the concern of the debtor and sell or realize the property given as security for the loan. But, here again, the property must be sold only by public auction, and only so much of it as is sufficient to recover the Bank's dues. During the auction the Bank is not allowed to bid except in cases where the bid of third persons is not sufficient to pay up the debt or where there are no bidders 5/.

In the Philippines, the Revised Rules and Regulations of the Rural Banks provide that for the recovery of a loan secured by a real estate mortgage, the Bank will proceed with judicial or (if authorized by the mortgage contract) extra-judicial foreclosure as provided for at law. If the proceeds of the foreclosure are not sufficient to cover the debt, the Bank can take all proper steps to obtain a judgement for the balance. If the loan is secured by a chattel mortgage, the Bank may again enforce the borrower's obligation by judicial or extra-judicial foreclosure or by ordinary court action. Should the sale of the chattels mortgaged result in a loss, the Bank can relinquish its rights to the mortgage and, if the borrower has other properties, sue him in ordinary action, attaching the mortgaged articles as well as the other property of the borrower. In the case of deficiency, the difference is recovered by a motion in the judicial foreclosure case and if the foreclosure is extra-judicial, by an ordinary action to collect the difference. If, finally,

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1/ See Brazil, Law No. 4829, Art. 61; Ivory Coast, Règlement Général de la Banque, Art. 37; Philippines, Revised Rules and Regulations, Sec. 131, etc,

2/ Brazil, Ibid., Art. 41 §1.

3/ See, for instance: Arab Republic of Egypt, Decree Law No. 50 of 1930 (as amended), Art.7; Iraq, Agricultural Bank's Regulations No. 13 of 1959 (as amended), Art. 12(2); Pakistan, Agricultural Development Bank Ordinance, 1961, Sec. 25(2); Syria, Legislative Decree No. 105 of 1965, Arts. 1, 2, 3, 4, etc.

4/ Cf. Agricultural Finance Corporation Act, Secs. 31 and 33(1) and (4).

5/ Cf. Agricultural Development Bank Ordinance, Secs. 19(3) and 25(1).

the loan is secured by a pledge, the Bank can sell the pledged article in a judicial or extra-judicial auction sale. Any excess may be kept by the Bank unless agreed otherwise but in the case of deficiency, the Bank is not allowed to recover the difference, notwithstanding any stipulation to the contrary <sup>1/</sup>.

Provisions regarding prescription of principal or interest of agricultural credit are not contained in the agricultural credit legislation itself. They are found in enactments ad hoc taken by the government when such measures are considered necessary for the general agricultural policy of the country.

## CONCLUSIONS

The agricultural credit systems examined here have one characteristic in common: they are all government controlled credit systems. The government is therefore the main source of agricultural credit financing and the manager of the system itself through controlled institutions and detailed regulations covering agricultural credit operations. This is true not only for all the developing countries, in one form or another, but also for a great number of economically developed countries where agricultural loans are granted through institutions administered or supported by the State. Thus, to cite only a few examples: in France, farmers receive about 60 percent of the credit they need from a State-supported agricultural credit system, the Caisse de Crédit agricole mutuel. The parent organization, the Caisse nationale, a government body enjoying financial autonomy, covers a nationwide network of caisses organized at the département level (caisses régionales) and at the canton or commune level (caisses locales). Both types are private institutions and are represented on the board of the Caisse nationale, which, however, has been given wide supervisory power over the business and administrative activities of the caisses régionales. In Italy, too, the agricultural credit system is partly financed and administered by the government. Agricultural credit is supplied by several institutions which, by law, require government authorization. The Consorzio Nazionale per il Credito Agrario, which operates throughout the country, and a number of other national and regional banks are authorized to make farm improvement loans, in part subsidized by the Ministry of Agriculture. Seasonal operation loans are made by special banks while small loans are given by rural cooperative-type banks (casse rurali),

A certain degree of government support is also to be found in cooperative credit systems as they have been developed especially in Western European countries (Austria, Belgium, Denmark, Federal Republic of Germany, the Netherlands, Sweden, Switzerland) and, to a certain extent, in Japan. In these countries the local cooperative society constitutes the base of the system.. These bodies are associated in regional or State institutions which are usually joined together in a single national organization. Credit and other activities (marketing, for instance) of these bodies are generally subject to government regulations, but responsibility for management and control rests with their members and administrative personnel.

What characterizes agricultural credit in the developing countries, however, is the degree of participation in the private sector. Private commercial banks are playing an increasingly important rôle in agricultural financing and cover a considerable part of the credit needs of farmers. But even in the United States, where commercial banks and private companies provide the bulk of agricultural credit financing, government institutions

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<sup>1/</sup> Revised Rules and Regulations, Secs. 132 and 133; see also Republic Act No.720, Sec.5.

are nevertheless to be found such as the Rural Electrification Administration, the Commodity Credit Corporation, etc.

It may therefore be said that an element of control is to be found, to a greater or lesser extent, in all agricultural credit systems - the actual degree of control being reflected in the agricultural credit legislation.

Agricultural credit must necessarily be adapted to the peculiarities of farming. A system of credit for commerce and industry cannot, without modification, suit the needs of financing in agriculture. The fact that farming is based on plant and animal life results in a slow rate of turnover of invested capital and a varying flow of income. Loans therefore need to be made for longer periods of time than in commercial or industrial operations and their terms must be flexible, with a repayment schedule compatible with the income flow. By the nature of farming, risks in agricultural lending are greater than in industrial or commercial credit, and cash incomes are in general low in relation to the capital invested compared with industry and commerce. Loan securities and interest rates consequently need to be adapted to these peculiarities. Finally, the institutions entrusted with the granting of agricultural credit, being bodies charged with special functions, must be statutorily enabled to perform their specific task.

All these issues have to be regulated by the agricultural credit legislation itself, the resultant, as pointed out in the introduction, of the decisions taken and the line of action established by the political authorities of the country concerned.

The present study, in the preceding descriptive-comparative part, as well as in the country studies that now follow, sets out to show how these various issues have been dealt with at the national level. It is not the purpose, here, to suggest changes in existing legislation - in any-case an impossible task for two main reasons: it can only be done on a country by country basis; it requires a more thorough study of the much wider context of the legal system in the individual countries. Beyond the strictly agricultural credit legislation there is commercial legislation, the areas where the provisions of the civil and criminal codes apply, legislation on such matters as land tenure, water distribution and water rights, cooperative societies and many others besides. So, it is hoped that the information given here and the discussion of certain aspects of the subject should prove of interest and help to those working in the field of agricultural credit or concerned with the drafting or application of legislation in its regard.

## COUNTRY STUDIES

There are several caveats that must accompany the publication of country studies relating to legislation in a given field. In the first place, it is difficult to be sure that an enactment, even the most up-to-date, on file in a documentation centre as opposed to the national archives, is still in force on the day that the study is drafted. Secondly, requests for information on legislation and the supply of enactments addressed to national authorities through the normal channels, though through an international agency such as PAO, do not always receive satisfactory replies. These two difficulties combined mean that there is no absolute guarantee that the documentation available is complete and accurate.

In the studies on the eight countries selected the intention is to illustrate the agricultural credit legislation practices found in four developing countries of the FAO regions. The two countries covered per region have been selected in such a way as to give a good, sample of countries differing not only in language but also in such aspects as legal tradition, stage of development, and former colonial administration.

With the notable exception of Brazil (given that country's particular agricultural credit system), the studies follow to a large extent the same pattern. They deal primarily with those issues related to the agricultural credit institutions operating in each country. In the first section they examine the legal structure and the object of these institutions and from there go on to consider the relationships between these institutions and the State, while State participation in the management and the capital of the credit institutions, financial aid granted to them by the State and the privileges they enjoy, as reflected in the relevant legal provisions, are discussed in the second section.

In the third section the relationships between agricultural credit institutions and allied institutions, in particular relationships with Central Banks and with farmers' co-operatives are reviewed and, in the fourth section, the relationships between agricultural credit institutions and individual borrowers. This last section is based on the provisions governing applications for loans (whenever such provisions are found in the main or subsidiary enactments), terms and conditions of loans, with particular reference to interest and securities, recovery of loans and penalties provided to offences under agricultural credit laws. This same section also describes (to the extent that the relevant information is available) the provisions that govern the relationships between co-operative societies and their members in credit matters.

These studies present what is hoped is a fair picture given the documentation available of agricultural credit regulations at the national level. The use of the same outline for seven of the eight countries should facilitate comparison between them.

At the beginning of each country study a list of the enactments consulted is given.

## I. BRAZIL

### Sources of regulations

- Decree No. 56.835 instituting the General Agriculture and Industry Fund (FUNAGRI), -3 September 1965. - Diário Oficial No. 170, 6 September 1965, p. 9086.
- Law No. 4.829 to organize Agricultural Credit. - 5 November 1965. - Diário Oficial No. 214f 9 November 1965, p. 11465.
- Decree No. 58.380 approving the regulations for. the enforcement of Law No. 4.829. -10 May 1966.
- Decree-Law No. 167 regulating agricultural credit documents. - 4 February 1967.-Text reproduced in Arco-Iris. June 1967, p. 23.
- Decree No. 62.141 relative to conditions governing the securities provided for in Decree-Law No. 167. - 18 January 1968.

### 1. Legal structure of the agricultural credit system

The national agricultural credit system is made up of institutions participating therein with full status, of institutions in association with it, and of others, again, linking up with it under special agreements.

The institutions participating in the system with full status are:

- (a) The Central Bank of the Republic of Brazil. This is the controlling organ of the system, and has the following terms of reference
  - i) to coordinate the action of the agencies financing agricultural credit among themselves and with the bodies responsible for technical and economic assistance to the agricultural sector)
  - ii) to develop general plans for the application of agricultural credit and to follow up their implementation
  - iii) to determine procedural means for selection and priority in the distribution of agricultural credit and to lay down criteria in the light of the plans referred to in(ii), for the division of the national territory into operational areas for the respective sources of financingj
  - iv) to promote the expansion of the agricultural credit distribution network, in particular through the agency of the cooperatives
  - v) to stimulate the development of agricultural credit programmes through financing by the bodies participating in the abovementioned distribution network, in particular the banks that have their registered offices in the respective areas of production and allocate more than 50 percent of their holdings to agricultural credit  
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1/ Law No. 4.829, Section 7.I and Section 6.

- (b) The Bank of Brazil, through its specialized portfolios;
- (c) The Amazon Credit Bank, and the Bank of the Brazilian North-East, through their specialized portfolios;
- (d) The National Cooperative Credit Bank 1/.

The following are associated with the system:

- (a) The Brazilian Land Settlement and Land Reform Institute (INCRA) 2/;
- (b) The National Economic Development (BNDE);
- (c) Banks in which the State is majority shareholder;
- (d) Savings Banks;
- (e) Private Banks;
- (f) Credit, finance and investment companies;
- (g) Cooperatives authorized to operate in the agricultural credit field 3/.

In addition to the two groups just described, there is a third which may link up with the agricultural credit system, under specific agreements, such as the official regional development agencies and institutions providing technical and financial assistance to the farmer and offering services of a kind that can be used jointly with the actual credit. Other institutions, again, may link up with the system if authorized by the National Monetary Council for the purpose 4/.

Overall supervision of agricultural credit is the responsibility of the National Monetary Council, which also, pursuant to Act No. 4.574 of 1964, makes the rules governing the operation of the system. In particular, the Council evaluates funds required, prepares directives and instructions relative to the application and control of credit, lays down criteria for its distribution and decides the expansion of agricultural credit programmes of whatever kind, together with all matters relative to their refinancing 5/. The Council's decisions regarding agricultural credit are guided and coordinated by the Central Bank of the Republic 6/.

Organs have been established in each of the states for the guidance and coordination of agricultural activities. These develop their own agricultural credit action programmes, pursuant to the laws and regulations and to such by-laws as the National Monetary Council may issue 7/.

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1/ Law No. 4,829f Section 7, II-IV.

2/ Pursuant to Law No. 4.505, of 3 November 1964.

3/ Law No. 4.829, para. 1, as amended.

4/ Ibid., Section 7, paras. 2 and 2.

5/ Ibid., Section 4.

6/ Ibid., Section 5.

7/ Ibid., Section 32.

## 2. FUNAGRI: Legal structure, capital and operations

The General Agriculture and Industry Fund (FUNAGRI) is an accountancy-type fund established within the Central Bank for the supplying of financial resources required for agriculture and industry 1/.

FUNAGRI's own assets are made up of funds obtained from financial institutions, both national and international, or from capital mobilized by the Central Bank, as well as proceeds from its own operations and such allocations as may be made to it under the national budget 2/.

The Fund's operations take the form of loans, financing and refinancing, through public or private financial institutions appointed as its agents again in accordance with the rules laid down by the National Monetary Council 3/.

Certain special funds set up by decree in 1964 and 1965 have been brought within FUNAGRI as sub-accounts operated by it. Similar accounts can be opened as need arises 4/. Financial control over the Fund's operations and the coordination of its resources are the responsibility of the Central Bank 5/.

## 3. Financing of the agricultural credit system

Brazil's agricultural credit system obtains financing from both national and international sources»

National sources are represented for the most part by allocations to the various agricultural development funds, budgetary allocations made to the institutions participating in the system and these institutions\* own assets, the proceeds of investments of agricultural credit funds or mortgages or securities issued by institutions participating in the system 6/.

In addition, all credit institutions associated with or otherwise linking up with the system are required to devote to loan contracts entered into directly with farmers or their cooperatives a percentage of their operating resources as prescribed by the National Monetary Council. Those institutions which do not wish to or cannot undertake direct operations are required to place the relevant amount in a deposit account with Central Bank for use in accordance with the system's needs. Failure to comply with the Bank's directives entails severe penalties for the offender 7/.

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1/ Decree No. 56.835 of 1965, Sec. 1.

2/ Ibid., Sec. 2.

3/ Ibid., Sec. 3.

4/ Ibid., Secs. 4 and 5.

5/ Ibid., Sec. 7.

6/ Law No. 4829, Sec. 15.I.

7/ Ibid. Sec. 21.

Funds obtained from international resources consist for the most part of those specifically allocated to agricultural development programmes and those obtained under agreements entered into by the Central Bank with foreign institutions 1/.

All resources devoted to agricultural credit continue to be under the control of the National Monetary Council. Each year the latter lays down rules governing the distribution of such resources to institutions taking part in the system 2/.

#### 4. Agricultural credit operations

##### (a) Terms and conditions of loans

Agricultural credit is officially defined as "the supply of financial resources by public agencies and private credit institutions to agricultural producers or their cooperatives for application exclusively in activities compatible with the objectives contemplated by the law and regulations in force" 3/. The objectives of agricultural credit are specified as being to stimulate the orderly expansion of investment in the rural sector: to promote the marketing of agricultural products; to strengthen the economic position of agricultural producers, particularly the small and medium-size farmers; and to encourage the introduction of sound methods of husbandry, whereby productivity may be enhanced and the living standards of the rural population raised; and to secure soil conservation 4/.

Financing may take on a number of forms according to the end being pursued. There is financing for agricultural operations, for investment, for marketing and for processing 5/, a diversity reflected in agricultural credit, thus:

- i) guided agricultural credit, with technical assistance provided by the financial institution either direct or through its specialized institutions;
- ii) credit to farmers' cooperatives, for operations and the provision of facilities, the provision of services to members and financing the latter in circumstances similar to those contemplated for direct agriculture credit operations;
- iii) marketing credit. This is for the purpose of ensuring that the farmer gets a reasonable return and for processing agricultural products, whether the operations in question are performed by cooperatives or by the farmer himself on his own land;
- iv) credit for land settlement and land reform programmes, and for financing projects connected therewith 6/.

The granting of an agricultural loan in one form or another, together with the constitution of the relevant securities, by public or private institutions, is conditional upon the applicant submitting evidence that he has paid his taxes and social security contributions, together with a statement of the land etc, owned by him, and another to the effect that he has not been fined for offences under the Forest Code. Failure in these matters entails refusal of the loan unless, with the guarantees otherwise supplied, it is certain that the debt can be repaid 7/.

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1/ Law No. 4829, Sec. 15 II.

2/ Ibid., Sec. 16.

3/ Ibid., Sec. 2.

4/ Ibid., Sec. 3.

5/ Ibid., Sec. 9.

6/ Ibid., Sec. 11.

7/ Ibid., Sec. 10. No explanation is given as to how checks can be made on the applicant's solvency, etc.



Agricultural credit operations are subject to the presentation of a plan of specific activities with the relevant costs, to supervision by the institution supplying the capital and to the applicant's ability to carry through the proposed operation 1/. The plan/budget in question, bearing the signature of the applicant for the loan and the authentication of the grantor, sets forth the application for the credits and makes express mention of any subsequent alterations 2/.

If the loan thus granted is to be used a portion at a time, the financing institution opens an account tied to the respective operations as planned. The beneficiary may draw on the account by means of cheques, drafts, orders or any other type of instrument as provided for in the cédula 3/ or the budget mentioned 4/.

The beneficiary is required to allow the financing institution to supervise the use to which the loan is put and supply any information required relevant thereto 5/. The institution may appoint representatives to follow up the performance of any agreement relative to the application of the loan 6/.

The specific terms and conditions governing agricultural credit operations are laid down by the National Monetary Council 7/.

i) Agricultural credit instruments

Financing granted by the institutions making up the national agricultural credit system to individuals or corporate bodies may take one or other of the following forms:

Agricultural credit warrant (cédula de crédito rural), agricultural promissory note (nota promissória rural), or a certified and negotiable copy of an invoice known as the duplicata rural. The same papers may be used by cooperatives for loans granted to their members or branches 8/.

The agricultural credit warrant is a certificate "governed by civil law, encashable, and certain". The person providing the credit may demand payment of the sum appearing on the certificate or endorsement thereon, together with any interest and commission payable, and supervision costs where appropriate, and any other expenditure incurred by the creditor for the purposes of security etc., or creditor's dues. It is thus a promise to pay in cash, with or without security provided for in the warrant itself, the sums there indicated 9/. The warrant may be supplemented, ratified or amended by means of additional clauses dated and signed by the creditor and the beneficiary of the loan 10/.

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1/ Law No. 4829, Sec. 37.

2/ Decree-Law No. 167, Sec. 3.

3/ See following Section.

4/ Decree-Law No. 167, Sec. 4.

5/ Ibid., Sec. 6.

6/ Law No. 4.829, Sec. 13.

7/ Ibid., Sec. 14.

8/ Decree-Law No. 167, Secs. 1, 42 and 46.

9/ Ibid., Secs. 9 and 10.

10/ Ibid., Sec. 12.

Agricultural credit warrants may, depending on the security attaching to them (or the lack of any such security), take one or other of the following forms:

- (a) Agricultural credit warrant with pledge;
- (b) Agricultural credit warrant with mortgage;
- (c) Agricultural warrant with pledge and mortgage;
- (d) Agricultural credit note 1/.

In all four cases the instrument used is the same, the differences consisting in the description given either in the instrument itself or in an appendix, of the security on movable or immovable property. The agricultural credit note is in effect an agricultural credit warrant without security in terms of real property 2/.

Each warrant must contain, in addition to the appropriate name (see (a.) -(d), above), the following details: date and terms and conditions of payment; name of creditor and the pay-to-order clause; the agreed amount of the loan; description of the security offered, if any. In the case of a warrant with mortgage, the detailed description may be omitted if the property certificates concerned are attached, together with information as to fees payable, the place of payment, the date and place of issue, the signature of the person issuing or his representative especially delegated for the purpose 3/. Immediately following references to the security there may be included, where appropriate, a "form of payment" clause establishing the amount and the dates of the benefits provided, and also a second "extension agreement" specifying the extension contemplated and the conditions to which they are subject 4/.

One agricultural promissory note and the agricultural duplicata are agricultural credit certificates used in forward sales of the products of crop or animal husbandry or of extractive activities when made directly by the farmers or their cooperatives. The promissory note may also be used in connection with sales made by cooperatives to their members of capital or consumer goods, or with deliveries of farm or extractive products made by farmers to the cooperatives. In the latter case, the promissory note issued by the cooperative constitutes a promise to pay the price of the products received 5/.

In all other cases, both the promissory note and the duplicata are issued by the vendor, and the purchaser is bound to accept a duplicata 6/.

In addition to the name "promissory note" such an instrument must also contain the following details: date of payment; name of person or institution selling or delivering; together with the pay-to-order clause; place of payment; the amount payable corresponding to the products purchased; a description of the products affected by the sale or delivery; date and place of issue; and signature of the person issuing the note (or of his especially appointed representative) 7/.

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1/ Decree-Law No. 167, Sec. 9.

2/ Ibid., Secs., 14 to 29.

3/ Ibid., Secs. 14, 20, 25 and 27.

4/ Ibid., Sec. 14, para. 1.

5/ Ibid., Secs. 42 and 46.

6/ Ibid., Sec. 44 paras. provisor and 47.

7/ Ibid., Sec. 43.

The duplicata must contain, in addition to this description, the following i date of payment, or a declaration of intention to pay upon expiry of a stated number of days from the date of presentation or on sight; name and domicile of vendor; name and domicile of purchaser; amount payable corresponding to the goods affooted by the sale; date and place of issue; pay-to-order clause; confirmation of the exactitude of the contents, and of the obligation to pay, by means of the signature of the purchaser or of the special representative 1/.

Agricultural credit warrants, agricultural promissory notes and agricultural duplicata may be rediscounted at the Central Bank subject to such terms and conditions as the National Monetary Council may determine 2/.

ii) Interest

Interest rates, together with other terms and conditions governing agricultural credit operations, are fixed by the National Monetary Council 3/. In accordance with the latter's decision, the Central Bank sets maximum interest rates for official and compulsory commercial bank agricultural credit. These range, according to the size and purpose of the loan, between 7 and 17 percent 4/.

iii) Securities

Brazilian legislation contemplates the following types of security:

- Crop pledge
- livestock pledge           warrant
- mercantile pledge       bond
- industrial pledge       mortgage
- merchandise certificate   fidejussion

These securities and any others recognized by the National Monetary Council are made use of according to the operation for which the loan is intended 5/. The constitution of such securities, freely contracted between creditor and beneficiary of the loan, must conform to the law appropriate to each type and such further rules as the National Monetary Council may make 6/. Property or goods purchased and crops grown with the aid of these loans constitute special securities therefor and are specified as such in the respective contracts 7/.

Pledges as securities for agricultural loans may be given in respect of products of crop or animal husbandry or of extractive activities, whether intended for use unprocessed or for processing, implements, vehicles, machinery, etc. 8/. These items may belong to the beneficiary, or to a third party in which case the latter's signature is also required binding him jointly and severally with the beneficiary to the due care of the goods so pledged 9/.

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1/ Decree-Law No. 167, Sec. 48.

2/ Ibid., Sec. 72

3/ Law No. 4.829, Sec. 14.

4/ Central Bank Resolution No. 140 of March 1970.

5/ Law No. 4.829, Sec. 25.

6/ Ibid., Sec. 26.

7/ Ibid., Sec. 29.

8/ Decree-Law No. 167, Secs. 15, 55 and 56.

9/ Ibid., Secs. 17 and 68.

Mortgages may be taken out on rural and urban immovable property 1/ such as buildings and the land on which they stand, and machinery, installations and improvements existing or to be made with the loan in question 2/.

Since the two forms of security just described accompany the agricultural credit warrant and are described therein, they constitute the three types of warrants implying security based on real property mentioned above (warrant with pledge, with mortgage, with pledge and mortgage).

The warrant with security not based on real property (agricultural credit note) assigns the creditor a special lien on goods contemplated in Article 1563 of the Brazilian Civil Code 3/.

In order for them to be enforceable vis-à-vis third parties, agricultural credit warrants must be entered in the Register of Immovable Property - in a special book called the Register of agricultural credit warrants 4/. In particular, those of the warrant-with-pledge type are required to be registered with the local authorities of the place when the immovable property on which the goods pledged are to be found is situated; those of the warrant-with-mortgage type are to be registered with the authorities of the place where the mortgage property lies; those of the warrant-with-pledge-and-mortgage type, again, with the authorities of the place where the property, on which also the pledged goods are to be found, is situated. Agricultural credit notes are registered with the offices where the property it is intended to farm with the loan is situated. If however, the note is issued by a cooperative, the registration is made at the office of the place where the cooperative is itself registered 5/.

All subsequent endorsements, additional clauses, notices of extension, agreed modifications of the security or conditions governing the warrants must be duly noted in the appropriate register 6/.

(b) Recovery of loans

Agricultural credit warrants lapse, irrespective of judicial or extra-judicial notification, upon nonperformance of any of the obligations agreed between the parties or duly legalized by the person issuing the certificate or by the third party offering security based on real property 7/.

Warrants may be redeemed by instalments, and the dates on which the latter fall due may be extended by agreement between the parties. In particular, warrants with pledge on crops, being normally valid for a period of three years, may be extended for a maximum of three years. Similar arrangements - i.e. a further three years - are possible with pledges on livestock, which are normally valid for five years in the first place. Once the second term of three years for crop pledges, or the total of eight years for livestock pledges, expires, the pledge must be reconstituted and the fact endorsed on the warrant, if no claim for execution has been filed meanwhile 8/.

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1/ Decree-Law No. 167. Sec.

2/ Ibid., Secs. 21 and 22.

3/ Ibid., Sec. 28.

4/ Ibid., Secs. 30 and 31.

5/ Ibid., Sec. 30.

6/ Ibid., Sec. 36.

7/ Ibid., Sec. 11.

8/ Ibid., Secs. 13 and 61.

Partial payments may likewise be made during the period of validity of an agricultural promissory note or of a duplicata, in which case the creditor signs an endorsement on the certificate in respect of the amount received and the date, whereafter only the balance may be demanded of the borrower 1/.

Agricultural credit certificates may be recovered by court action. The goods constituting the security are seized, the creditor being entitled at any time, whether the court proceedings he has instituted are contested or not, to have them sold, with due regard to the provisions of the Code of Civil Procedure. In such cases the creditor may, subject to the payment of a suitable guarantee deposit, appropriate the cash proceeds to an amount equivalent to that owing to him, the court proceedings continuing the while. The payment of a guarantee deposit is waived in the case of farmers' cooperatives and public financial institutions, in particular the Bank of Brazil. If, subsequently, the court proceedings are by judicial ruling deemed to have been wholly or to a given extent unjustified, the creditor is required to restore the amount or the excess amount, as the case may be, that he has taken - this without prejudice to any other consequences arising out of the law of procedure 2/.

(c) Sanctions

Credit institutions linked with the national agricultural credit system which fail to observe the regulations governing the allocation of a proportion of their resources to agricultural credit operations are liable to a fine ranging from 10 to 20 percent of the amount which should have been, but was not in fact, so allocated. Failure to pay the fine entails the penalties provided for in Act No. 4.595, of 31 December 1964 3/.

Any person making false or incorrect statements concerning ownership titles or the nature of property to be mortgaged or fails to reveal that such property is already encumbered with their charges of whatever kind is deemed to be guilty of fraudulent misrepresentation and is liable to the penalties contemplated in Art. 171 of the Criminal Code 4/.

Any person who issues an agricultural duplicata not corresponding to an effective sale of goods contemplated by the law, and delivered materially or symbolically, is liable to imprisonment for a term of from one to four years and to a fine of ten percent of the amount appearing on the certificate 5/.

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1/ Decree-Law No. 167, Sec. 64.

2/ Ibid., Secs. 41, 44 and 52.

3/ Law No. 4.829, Chapter V, Sec. 21, para. 3 and 4.

4/ Decree-Law No. 167, Sec. 21.

5/ Ibid., Sec. 54.

## II. IVORY COAST

### Sources of regulations

- Act Ko. 68-08 to set up the National Agricultural Development Bank, together with Statutes of the BNDA. - 6 January 1968. - Journal Officiel de la République de la Côte d'Ivoire No. 5, 25 January 1968.
- Decree No. 68-305 relative to the National Agricultural Development Bank. - 24 June 1968. - J.O. No. 32, 4 July 1968.
- Decree No. 68-306 providing for the Government authority to which the National Agricultural Development Bank shall report. - 24 June 1968. - J.O. No. 32, 4 July 1968.
- Decree No. 69-305 amending Decree No. 68-305 relative to the National Agricultural Development Bank. - 24 June 1968. - Reproduced in National Agricultural Development Bank. Abidjan, 1969.
- Decree No. 68-149 relative to the extension and renewal fund for the implementation of Agricultural Development Programmes. - 30 March 1968. - J.O. No. 17, 4 April 1968.
- Act No. 68-346 to institute the Credit Guarantee Fund for Ivory Coast business-under-takings. - 26 October 1968. - J.O. No. 57, 21 November 1968.
- Act No. 66-251 to issue statutes for cooperatives in the Ivory Coast. - 5 August 1966. -Reproduced in Statut de la Coopération en Côte d'Ivoire published by the Ministry of Agriculture.
- Decree No. 66-409 prescribing procedures for the application of cooperative statutes. -Ibid.
- Decree No. 67-297 relative to the organization and operation of the Cooperatives Approval Committee. - Ibid.
- Bylaws of the National Development Bank. - Published by BNDA, undated.
- Statutes of the Central Bank of the West African States, as amended by decisions of the Board of Directors of 4 June 1966, 10 December 1968 and 16 September 1970. - Reproduced in West African Monetary Union published by the Central Bank of West African States (English edition undated; fourth French edition February 1971).

### Introduction

The Ivory Coast is one of the seven countries that are members of the West African Monetary Union and have a joint central bank <sup>1/</sup>, namely the Central Bank of the West African States, with Headquarters in Paris.

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<sup>1/</sup> The other members are Dahomey, Mauritania, Niger, Senegal, Togo and Upper Volta.

The chief institution responsible for providing agricultural credit in the Ivory Coast is the National Agricultural Development Bank (BNDA), which in 1968 replaced the former National Agricultural Credit Fund. There is also another institution, the Fonds de Garantie des Crédits aux Entreprises Ivoiriennes, also set up in 1968, which, while not strictly an agricultural credit agency, is nevertheless part of the country's general credit system and will, accordingly, be examined in the pages that follow. Attention will also be given to cooperative societies which help in the distribution of agricultural credit at the local level. In addition, there are special organizations promoting the development of specific sectors of the economy, such as the Société pour le Développement Forestier or the Société pour le Développement et l'Exploitation du Palmier à Huile, which will come in for mention.

## 1. Legal structure of agricultural credit institutions

The National Agricultural Development Bank (BNDA) is defined in the basic law of its constitution as a banking establishment in the national interest, coming under the general law on joint stock companies and being further governed by its own by-laws 1/. Also applicable in its regard are the provisions of the Act to regulate credit and to organize the banking and related sectors 2/.

The registered offices of the BNDA are at Abidjan, though they may be transferred elsewhere by decision of the Board of Directors. The Bank is empowered to open branches in accordance with the country's general banking regulations 3/.

The object of the BNDA is to provide technical and financial aid for the implementation of any project for the promotion of rural development, specifically crop, animal, forest or fisheries production and cottage industries. In the accomplishment of its task it may act on its own account or on behalf of the State or Government agencies. When acting on its own account it is empowered to carry out, on its own responsibility, all operations offering sufficient likelihood of breaking-even financially. Thus, it may mobilize local resources in the form of call or time deposits, or by the issue of short-, medium- or long-term loans, rediscount loans and contract loans necessary for the pursuit of its objectives, discount bills and, generally, engage in all financial operations or operations affecting movable or immovable property and conducive to the objectives embodied in its statutes. With operations on behalf of the State or the Government agencies, the Bank may make its technical services available for the study of any agricultural problem having financial implications; it may take part in the study and implementation of operations carried out with funds belonging to third parties which it employs at no risk to itself, and in rendering account of such operations. It may accept on deposit and make use of public funds, subject to terms and conditions to be agreed with the agencies concerned 4/.

The duration of the Bank is set at 99 years from its constitution, with due regard, however, to any decision that may be made regarding the extension of that time limit or winding-up prior thereto 5/.

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1/ Act No. 68-08, Sec. 1.

2/ Statutes, Art. 1 (the Act referred to in this article is Act No. 65-252 of 4 August 1965).

3/ Ibid., Art. 2.

4/ Ibid., Art. 3.

5/ Ibid., Art. 4.

The Bank is under the supervisory responsibility of the Minister' of Economic and Financial Affairs and the Minister of Agriculture 1/.

The Fonds de Garantie des Crédits aux Entreprises Ivoiriennes is a public law body with corporate and financially self-governing status 2/. The purpose of the Fund is to facilitate the promotion of all types of business enterprise in the country (whether of Ivory Coast nationality or companies where more than fifty percent of the capital is held by nationals of the country) by providing security for short-, medium- and long-term bank loans necessary for their operations 3/.

Cooperatives. Cooperative societies and their unions are civil law societies of individuals Or corporate bodies with capital and membership that may vary. They are mandated to act on behalf of their members, for non-profit purposes 4/. They may be, inter alia, savings cooperatives, credit cooperatives or mutual guarantee cooperatives with the object of encouraging savings or facilitating credit for individuals or groups 5/.

Cooperatives must be approved, pursuant to the laws in force, by the cooperatives approval committee, while their operations are supervised by the Minister of Agriculture 6/. The general law governing these associations is the Act to issue the statutes for cooperatives in the Ivory Coast, together with the various decrees implementing that Act, For all matters not specifically covered by these enactments, the provisions of the Civil Code apply 7/.

## 2. Relations between agricultural credit institutions and the State

### (a) State participants in the management of credit institutions

Of the twelve members of the Board of Directors of the BNDA, ten are members of the Government or otherwise connected with State bodies. They are: the Minister of Agriculture or his representative, the Minister of Livestock Production or his representative, the Minister of Economic and Financial Affairs or his representative, a representative of the National Assembly, a representative of the Economic and Social Council, a representative of the Central Bank of the West African States, two representatives of the Agricultural Products Price Stabilization and Support Fund, and a Technical Officer of the Ministry of Agriculture. The other members of the Board are a representative of the Economic Cooperation Central Fund and a representative of the private sector 8/. Members of the Board are appointed by Order of the Minister of Economic and Financial Affairs on the proposal of the Ministers or institutions concerned 9/.

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1/ Decree Ho. 68-306, Art. 1.

2/ Act Ko. 68-346, Sec. 1.

3/ Ibid., Sec. 2 and Decree No. 68-508, Art. 2.

4/ Act No. 66-251, Sec. 1.

5/ Ibid., Sec. 2, 6.

6/ Ibid.. Sec. 22; Decree No. 66-409, Arts. 4, 34, 35, and Decree No. 62-297.

7/ Ibid., sec. 38.

8/ Decree No. 68-305, Art. 2.

9/ Ibid., Art. 4.



The Chairman of the Board and the Director-General are each elected, on a majority of three-quarters, from among the members upon nomination by the supervising Minister 1/. The Director-General is personally responsible for the implementation of the decisions of the Board and of the Loans Committee and for the general functioning of the Bank's services. For this purpose, the Board may delegate to him certain of its powers as specified in the Statutes 2/.

As already noted, the BNDA is placed under the supervisory authority of the Minister of Economic and Financial Affairs and of the Minister of Agriculture. The former is responsible for the Bank's observance of the provisions of the Act of 4 August 1965 organizing the banking sector, and its implementing decrees 3/. The Minister of Agriculture's responsibility is exercised in the definition and implementation of agricultural credit policy 4/.

As regards State representation on the Board and the control exercised by the Government nominees, the Bank is subject to the provisions of Act No. 62-255, of 31 July 1962, relative to State shareholding in limited liability companies 5/.

The Fonds de Garantie des Crédits aux Entreprises Ivoiriennes is administered by a Management Committee of nine members the majority of whom are either members of the Government or representatives of public agencies. The Committee is chaired by the Minister of Economic and Financial Affairs, who is also responsible for the general supervision of the fund's operation, or by his representative. The Minister for the National Plan, or his representative, and the Managing Director of the Central Bank Of the West African States are also members of the Management Committee 6/.

Cooperatives are managed by the Boards of Governors elected by the General Assembly of their members, while the Minister of Agriculture is responsible for control over their operations. In the event of audit or inspection revealing incapacity on the part of the governors, violation of the law of the regulations or statutes, or grave disservice to the interests of the cooperative, the Minister may convene a general assembly to declare the winding-up of the society or to take measures to remedy the situation and appoint fresh governors to carry out the measures so 'decided 7/.

The Board of Directors of the BNDA is required within four months from the closing date of its trading year (30 September) to publish its balance sheet, operating account and profit and loss account, to take cognizance of the auditors' report and to transmit for approval to the supervising Minister all these documents together with a report on the year's activities. The Minister may within three months from the date of the submission, raise objections to, or otherwise comment on, the accounts. In the absence of any such objections, the accounts are deemed to have been approved 8/.

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1/ Statute Art. 9.

2/ Ibid., Art. 12.

3/ Decree No. 68-306, Art. 2.

4/ Ibid., Art. 3.

5/ Act No. 62-255 relative to State shareholding in limited liability companies, 31 July 1962, Sec. 2.

6/ Decree No. 68-508, Art. 4.

7/ Act No. 56-251, Sec. 27.

8/ Statutes, Art. 11, and Decree No. 68-306, Art. 2.

The financial control and the administrative management of the Fonde de Garantie des Crédits aux Entreprises Ivoiriennes are assigned to the Director of the Caisse Autonome d'Amortissement, who is in any case a member of that Fund's management committee. The Caisse publishes each year a report on its activities and a statement of the situation at the date of closing the books (30 September) showing the assets of the Fund and the outstanding securities that it has provided, including that portion of the latter applied to loans which the management committee have written off as bad debts 1/. The Caisse Autonome d'Amortissement is a public institution responsible for the management of the public debts and of cash transactions of certain public utility agencies.

The Cooperatives and their unions are required to submit each year to the appropriate Service of the Ministry of Agriculture, within one month of the ordinary general assembly which approved the accounts, two copies of the following:

- Minutes of the General Assembly, together with the report of the Board of Governors and the Auditor's Report;
- The latest balance sheet and profit and loss account; and
- A statement showing the number of secretaries, the names of the Governors and of the Auditors and, as appropriate, of the Manager.

All these documents must be certified correct by the Chairman of the Board of Governors or his representative 2/.

(b) State participation in the share capital of credit institutions

The capital of the BNDA is 700 millions CFA francs subscribed by four shareholders, all four being public institutions. The proportion of the holdings is laid down by decree. The State is majority shareholder, with 66.7 percent (446.7 million francs). A further 16.7 percent (116.7 million francs) is held by the Caisse de Stabilisation et de Soutien des Prix des Produits Agricoles, while the Central Bank of the West African States and the Caisse Centrale de Coopération Economique hold 8.3 percent (58.3 million francs) each.. Increases in capital of the BNDA may be made by further subscription by the original shareholders or by additional shareholders. Such increases must be approved by decree 3/.

The Fonds de Garantie des Crédits aux Entreprises Ivoiriennes has no capital of its own but is funded by allocation from the State budget subsidies, donations, proceeds on its investments and the earnings made on its loans 4/.

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1/ Decree No. 68-508, Art. 6.

2/ Decree No. 66-409, Art. 36.

3/ Statutes, Art. 5.

4/ Act No. 68-346, Sec. 3.

(c) Financial aid granted by the State

The State makes annual grants to BNDA pursuant to laws passed or regulations issued to that effect, and also subsidies 1/. It may also supply capital or security to the Bank (subject to the rules for the control of the public finances) for the contracting of loans necessary for its operations 2/.

As shown earlier, the bulk of the Fund's assets is constituted by financial aid from the State,

(d) Privileges of credit institutions

All instruments, contracts, loans and, as a general rule, any paper issued by the BNDA pursuant to its statutes, are exempt from stamp and registration duty. The exemption in question must be mentioned in the respective documents 3/.

### 3. Agricultural credit institutions and other institutions

(a) Relationships between the Central Bank and the BNDA

Mention has already been made of the fact that the Ivory Coast, as member of the West African Monetary Union, has a share, together with the other six countries of the Union, in one and the same Central Bank (the Central Bank of the West African States - or, as it is known by its French initials, BCEAO). Its statutes (which form part of the Treaty of 12 May 1962 establishing a West African Monetary Union) vest the Bank with very wide powers of control over the economies of the Member Republics - powers which are exercised through the National Monetary Committees attached to the respective national agencies of the Bank. The rules described in what follows apply to all Member Republics and to all banks operating there. By the same token, they apply to the BNDA.

At intervals decided by the Board of Directors of BCEAO, the national monetary committees evaluate needs for short—term funds for the respective countries and local resources able to meet those needs. From the findings there emerges the estimated total amount of aid to be requested in the form of discounting from the Central Bank. The general ceilings for rediscounting, advances and other short-term facilities which the BCEAO may allocate to each country are a matter for the final decision of the Board of Directors. If these maximum allocations are different from the requirements by the national committee, the latter must make the necessary adjustments.

Within the ceilings so determined, the national committee establishes the rediscount ceilings granted to each bank. For the relevant calculations they take into account the activities of the banks, their resources, liquidities and level of risk in the respective countries.

The same procedure is followed in determining the rediscount ceilings for each bank.

The Board of Directors of BCEAO decides, on the proposal of the National Monetary Committee, regarding the various requests for individual short- or medium-term rediscount ceilings that depart in any way from the general rules, and regarding the extension or renewal of instruments not duly settled by maturity dates 4/.

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1/ Statutes, Art. 6.

2/ Ibid., Art. 11.

3/ Ibid., Art. 20.

4/ Statutes of BCEAO, Arts. 55-59.

BCEAO may discount or accept "en pension" for banks with offices in the Member Republics, and subject to terms and conditions laid down by the Board of Directors, the following kinds of paper:

- i) instruments mobilizing farming-season credit secured on receipts and pledges on commodities;
- ii) commercial and agricultural warants;
- iii) capital-mobilizing instruments secured on shipping (maritime or fluvial) mortgages;
- iv) credit instruments secured on delegations of public contracts duly registered with the appropriate authorities or on delegations in respect of certificates of entitlement to payment issued by the same authorities;
- v) instruments mobilizing series of instruments made in connection with the sale of capital goods, provided the sales themselves have been approved by the Bank,

The term of the loans covered by the above-described instruments may not exceed nine months 1/.

The Bank may also discount medium-term (i.e. 2 - 7 years) loan certificates for the benefit of the various national banks. The certificates themselves must be guaranteed by two or more signatures of persons of acknowledged creditworthiness.

For the medium-term loans described to be available from the Bank, their purpose must be that of financing either operations for the provision of basic facilities contemplated in the economic and social plan of the country concerned or for the exporting of industrial products, again subject to approval by the Bank 2/.

Generally, BCEAO supervises the implementation, in all Member Republics of the Union, of the laws and regulations made by the national authorities in the matter of credit control. It may demand information from any bank or credit institution such as a statement from time to time of its operations and of all loans granted or bills unpaid and protested cheques 3/.

(b) The BNDA and the farmers' cooperatives

Farmers' cooperatives are recognized under the BNDA by-laws as being eligible for its loans. However, loan applications made by cooperatives or similar associations must observe special formalities. These are described in 4 (a) below.

#### 4. Relationships between agricultural credit institutions and individual borrowers

(a) Application for loans

Any application for a loan must be made to the Bank on the latter's prescribed form, itself accompanied by information permitting an assessment of the applicant and his farm and the value of the securities he offers 4/.

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1/ Ibid., Art. 13.

2/ Ibid., Art. 17.

3/ Ibid., Arts. 19-22.

4/ Ibid., Art. 25.

Applications from individuals, on the standard form, are to be accompanied by a duly-completed questionnaire permitting an assessment of the creditworthiness and the income of the applicant. If the latter keeps regular accounts, he must show them on demand 1/.

Applications made by corporate bodies are also submitted on a standard form, to which the following documents must be attached:

(i) a basic administrative file, to be brought up to date at each subsequent loan application, and containing:

- a copy of the articles of association and a certificate attesting their deposit with the official registrar;
- a certificate of authorization to engage in business, where appropriate;
- a list of the directors, showing their names, addresses and professions;
- a statement showing the distribution of company stock among persons holding more than 5 percent of the shares or of other interest in the enterprise;
- authorization to take out the loan, with specimen signatures of persons authorized for the purpose.

In particular, cooperatives or similar associations (with less than 30 members) which prior to the loan application had a turnover of less than 10 million CFA francs are required to attach to this basic file a list of members giving details concerning their civil status, assets and activities and with an undertaking as to the provision, jointly and severally, of security from the said members.

(ii) a technical file comprising:

- a memorandum on the activities of the Company (or other);
- a plan of farming operations, with special reference to those for which the loan is requested;
- the references of the person responsible for the enterprise,

(iii) a financial/economic file comprising:

- balance sheets, farm operations accounts, and profit and loss accounts for the previous three years;
- inventory of fixed assets and their depreciation;
- inventory of stocks and lists of debtors and creditors;
- a recent financial statement (when the balance sheet is more than six months old);
- investment plan;
- financial plan;

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1/ Statutes of BCEAO, Art. 27.

- provisional farm operation account;
- planned cash management 1/.

In cases of loans for the constitution of fixed assets or equipment, the following additional information must be attached to the application:

- a certificate attesting the juridical status of assets held and mortgageable by way of security for the loans;
- specifications, with estimated costs, of the proposed operations;
- a pro-forma invoice for the items to be purchased.

In addition, all the applications here described are to be accompanied by operational budget and planned cash management for each year of the term of the loan. Budgets drawn up for the years following that in which production starts must demonstrate a profit-making potential sufficient to provide for the normal repayment of the amount outstanding of the loan as requested, due allowance being made for upkeep and renewal costs, inherent in good farming 2/.

The Director-General of the Bank examines applications with their accompanying documentation and transmits these, together with his opinion and the grounds therefor, to the Loans Committee for their decision. The Committee has full powers of decision in respect of operations involving not more than 25 million CFA francs over a single signature. Where larger amounts are involved the matter is referred to the Board of Directors, whose decision, once again, must be accompanied by a statement of reasons 3/.

Applications for loans to tide over the farmer till his crops are harvested (see 4(b) below) are submitted by the Bank's representative to a loan counselling committee appointed in each sub-prefecture (with the subprefect as chairman and the rest of the membership consisting of the chief of the chief of the Agricultural District, the representative(s) of technical assistance bodies operating in the locality and three farmers). The Secretariat is provided by the BNDA. The Committee meets according to a schedule agreed with the Bank 4/.

Applications made by individuals are entertained if it can be shown that the production volume or the accountancy or extra-accountancy information furnished by them is such that they are capable of meeting their debts in the normal way.

Applications from corporate bodies are entertained if from an examination of their latest balance sheets the following equation emerges:

$$\frac{\text{Stocks + Cashable assets + Liquid assets}}{\text{short term liabilities}} > 1$$

A further condition is that the operating accounts and the profit and loss accounts shall show the farm to be profit-making in the normal way.

1/ Statutes of BCEAO, Art. 26.

2/ Ibid., Art. 41.

3/ Statutes, Art. 11, Decree No. 68-305, Art. 3, by-laws, Art. 15.

4/ By-laws, Art. 54.

Loan applications cannot be entertained:

- (i) if their purpose is to settle with bankers or suppliers in relation to risks, or to settle capital expenses incurred prior to the application;
- (ii) if they are submitted by persons who have failed to honour their commitments, whether on their own account or as shareholder in a company vis-À-vis the State, banking institutions or other third parties, or who have been taken to court to oblige them to honour such commitments 1/

The loan agreement is drawn up by private deed when no mortgage securities are involved and by deed executed by a notary at other times. In the case of married persons, the spouse cosigns as borrower. In addition to any special conditions, the agreement must contain reference to the general conditions for the opening of the credit imposed by the BNDA Board of Directors 2/. Once the formalities and the registration of securities called for in the decision to grant the loan have been completed, the amount of the loan may be made available to the borrower in accordance with an agreed schedule.

The loan is made available, against submission of the appropriate vouchers, in the form of direct settling of accounts invoices submitted by suppliers or contractors (these must be named in the loan agreement) or by payment into the borrower's account of that part of the loan not earmarked for remittances to such suppliers or contractors. In any event, outlay of his own capital by the borrower must be completed before the credit can be released 3/.

(b) Terms and conditions of loans

Loans made by the Bank are exclusively for operations for lines of agricultural production traditional in the Ivory Coast or those of proven profitability that are widely promoted by the extension services and carried on under their supervision. For the operations in question, the Bank may grant three kinds of loan, thus:

- (i) loans for the provision of capital assets and equipment;
- (ii) farming season loans, and
- (iii) tide-over loans 4/.

Loans for the provision of capital assets and equipment. - These are medium- or long-term (2-10 years) loans for financing the purchase of livestock; farm modernization; construction or conversion of farm buildings; management of basic plant cover; provision or improvement of facilities such as irrigation and drainage; land clearance and crop processing.

The Bank does not make loans for the purchase of land, plantations, second-hand equipment or the carrying out of collective rural housing programmes 5/.

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1/ Bylaws, Arts. 28-30.

2/ Ibid., Art. 34.

3/ Ibid., Art. 35.

4/ Ibid., Art. 23.

5/ Ibid., Arts. 31 and 40.

All proposed investments are evaluated in terms of the economic advantage emerging from the opinion given by the appropriate ministerial departments. The total loan is always less than the total cost of the investment for which it is requested, the maximum proportion being 80 percent for operations costing less than 2 million CFA francs, 70 percent for those costing between 2 and 5 million, and 65 percent for those costing over 5 million 1/. The period allowed for repaying a loan is governed by the kind of investment proposed and the borrower's total resources. The loan agreement also lays down the schedule for repayments. It may provide for deferred repayments of the principal, while requiring interest to be paid from the start 2/.

Farming season loans. - These are short-term loans (maximum: two years) to provide money for current farming expenses in the way of fertilizer, seed, pesticides, victuals for the farmer's family, fuel and other consumer's goods, the preparation and marketing of farm products and the performance of contracts entered into with the State and the Development companies (in these cases subject to a waiver naming the Bank privileged creditor and registered depository of the company's own by-laws).

The term of farming season loans may not be longer than that necessary for the operation in respect of which they have been granted 3/.

The maximum amount of farming-season loans is equal to the needs specified in the cash management plans and in any case limited to 5 million CFA francs 4/.

Tide-over loans. - These, again, are short-term loans granted for a maximum term of six months for the purpose of enabling farmers to meet current operating expenses until the harvest comes in (crédit de soudure). They are available only to persons deriving their entire income from farming.

Again, only farmers associating among themselves for the purpose of furnishing each other security are eligible for this type of loan. Default by a group entails the exclusion of all its members from bridging credit facilities the following year.

Individual loans may not exceed 15 percent of the average value of the crop for the previous two years, subject, in any case, to a ceiling of 50,000 CFA francs 5/.

#### - Interest

Interest and commission rates are determined in accordance with the scale accompanying Decree Ho. 66-171 of 26 April 1966 laying down the general conditions applicable to Banks, or with such exceptions thereto as are permitted by the appropriate authorities as provided for in the same decree 6/.

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1/ By-laws, Art. 42.

2/ Ibid., Art. 45.

3/ Ibid., Arts. 31 and 46.

4/ Ibid., Arts. 32 and 37.

5/ Ibid., Arts. 51 to 53 and 56.

6/ Ibid., Art. 53.



Under BNDA by-laws, interest rates (including the Bank's own commission) are as follows:

- Investment loans; loans for the purchase of capital goods

- Long-term: 8 percent
- Medium-term: loans rediscountable in favour of other borrowers: 6 percent nonrediscountable loans: 8 percent

- Farming - season loans

Loans rediscountable in favour of development companies, etc.: 5.25 percent

Loans rediscountable in favour of other borrowers: 6 percent

Nonrediscountable loans: 9 percent.

- Bridging loans

In addition to a flat rate commission of 10 percent, a down payment of 1000 CFA francs must accompany application for a loan for the provision of fixed assets and equipment goods or for farming season purposes before the file can be opened 1/.

- Securities

As a general rule, loans granted by the BNDA must be secured in one or more ways, thus:

- (i) a bond furnished by an individual or corporate body domiciled in the Ivory Coast and in receipt of income sufficient for them to substitute themselves for the borrower if the latter defaults. The bond, which has effect jointly and severally, forms a constituent part of the loan agreement between the Bank and the principal borrower. The bond may consist of a security attaching to real property (e.g. pledge or mortgage);
- (ii) an undertaking to make over the crop. This is required when the purpose of the loan concerns a crop marketed wholly or partly by a public or semi-public agency or by an agency under contract to the State;
- (iii) a group life insurance taken out by the Bank on behalf of the individuals making up a group of borrowers. The premium is payable by the borrowers, in advance, and before the loan is made available;
- (iv) pledge on the equipment purchased by the borrower with the BNDA loan;
- (v) a mortgage on the registered assets held by the borrower.

Costs entailed in obtaining the above-described securities are borne by the borrower.

Among the guarantee funds that the Bank may open in its books 2/ with moneys from various sources, including public grants, may be noted those for tide-over credits. In addition to moneys earmarked for it, the fund in question may receive a proportion of the

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1/ By-laws, Arts. 43, 48 and 56.

2/ Ibid., Art. 39.

10 percent commission charged by the Bank 1/.

Farming season loans granted to farmers' associations for distribution to their members are made only if such associations constitute their own guarantee funds subject to terms and conditions laid down by the Loan Committee. Amounts outstanding at the term of the loan are chargeable on a priority basis to the guarantee fund 2/.

Cooperatives. When cooperatives obtain loans from a public credit institution they must constitute a security chapter in their bank account, which remains blocked until the loan is repaid in full. The amount involved is determined by the lending institution by agreement with the Minister of Agriculture and is constituted in some cases by withdrawal from the cooperative capital and priority allocation before distribution of operating surpluses. The amount set aside for loan security purposes may bear interest for the benefit of the cooperative in question 3/.

The financial liabilities of credit cooperative members may be specified by the statutes at a level considerably higher than the shares held by each 4/.

Cooperative statutes may also contain provisions for the institution of a solidarity fund among members with a view to augmenting their credit basis 5/.

(c) Recovery of loans

Repayment day for loans granted by the Bank is the fifth of the month whatever the term agreed, the number of payments and the intervals between one of these and the next. Sums due are payable at the Bank itself or through its many correspondents.

Repayments may be effected by direct remittance or, in the case of investment loans for the provision of fixed assets or equipment and farming season loans, by domiciliation for payment purposes, transfer, credit transfer or assignment of wages, remittance order, surrender of rents receivable etc. The last two forms of repayment are used chiefly in the case of loans for the provision of fixed assets or equipment 6/.

If the borrower is unable to honour his debt by any of the dates laid down in the loan agreement, the Loan Committee examines the matter and readjusts the original terms and conditions. All readjustments so decided must be covered by signature of a codicil to the original agreement. The Director-General may, however, allow a delay in payment provided this does not exceed three months, in the case of the final instalment, or provided subsequent instalments are not endangered, where it is an intermediate instalment that finds the borrower unable to pay 7/.

(d) Penalties

Failure to pay an instalment, or breach of any of the terms and conditions of the loan,

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1/ By-laws, Art. 57.

2/ Ibid., Art. 50.

3/ Act No. 66-251, see 19 para 3; Decree No. 66-409. Art. 31.

4/ Decree No. 66.409, Art. 30.

5/ Ibid., Art. 13.

6/ By-laws, Arts. 36, 44 and 49.

7/ Ibid., Art. 37.

renders the borrower liable to certain penalties, which must be expressly stated in those same terms and conditions 1/.

(e) Cooperative societies and their members

The rights and obligations of cooperative members vis-à-vis their society are governed by the laws in force and the statutes of the society. Among the provisions governing these matters there are clauses to the effect that the financial liabilities of a member as laid down in the statutes (at the lowest these are equal to the member's share) may not exceed five times the total shares held, except in the case of credit cooperatives whose statutes provide otherwise 2/.

Any cooperative member who for whatever reason ceases to enjoy that status remains liable, for five years and up to the level of the share held by him, for all debts of the society in being at the moment of his ceasing to be a member.

This applies equally to heirs or successors in title of deceased members 3/.

Cooperatives exist in the first place to serve their members. They may, however, within the limits of a proportion mandatorily specified in the statutes, engage in operations with nonmembers. Similarly, cooperative unions may exceptionally and subject to the agreement of the Board of Governors, engage in operations with the quasi-cooperative groups 4/, which are accepted as nonmember operators 5/.

The operators in question are required to contribute to defraying operational costs as provided for in the statutes of the cooperative but without being assigned administrative or managerial responsibilities.

Committees and corporate bodies which have interests in the area coming within that of a cooperative may become members or "operators" as they prefer.

Operators are required, within a period of three years from the time of their admission, either to take out membership or renounce the cooperative's services. This, however, does not apply to individuals or corporate bodies under private law that do not meet the statutory conditions for taking out full membership 6/.

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1/ By-laws, Arts. 38 and 34(2).

2/ Act No. 66.251, Sections 9 and 12; Decree No.66.409, Art. 30.

3/ Decree No. 66.409, Art. 17.

4/ I.e., groups formed to place their members in a position to set up a socially and economically viable cooperative society by first educating and training them in cooperative methods and practices.

5/ Decree No. 66. 409, Art. 1.

6/ Act No. 66.251, Section 8.

### III. KENYA

#### Sources of regulations

- The Agricultural Act, 1955, Laws of Kenya, Vol. VII, Chapter 318. (Later amendments of the Act do not concern the subject discussed here).
- The Agricultural Development Corporation Act, 1965, No. 7 of 1965, Kenya Gazette Supplement No. 33 (Acts No. 3), 27 April 1965.
- The Central Bank of Kenya Act, 1966, No. 15 of 1966, K.G.S. No. 24 (Acts No. 4), 29 March 1966.
- The Co-operative Societies Rules, 1966, K.G.S. No. 60 (Legislative Supplement No. 36) 5 July 1966.
- The Co-operative Societies Act, 1966, No. 39 of 1966 (Date of Assent: 31 December 1966).
- By-laws of the Co-operative Bank of Kenya Limited, 5 December 1967.
- Otoo Agricultural Finance Corporation Act, 1969, No. 1 of 1969, K.G.S. No. 21 (Acts No. 1), 21 March 1969.
- The Agricultural Finance Corporation (Forms) Rules, 1969, K.G.S. No. 73 (Legislative Supplement No. 49), 3 October 1969.

#### Introduction

Institutional agricultural credit in Kenya is mostly centralized in three bodies: the Agricultural Finance Corporation (AFC), the Agricultural Development Corporation (ADC) and the Co-operative Bank of Kenya. The AFC was first established in 1963 by the Agricultural Credit Act 1/, as amended by Ordinance No. 27 of 1963, which also established the Land and Agricultural Bank of Kenya. In 1969 the Agricultural Finance Corporation Act No. 1 of 1969, repealed the Agricultural Credit Act and merged the two bodies into the new AFC. The ADC was established in 1965 by the Agricultural Development Corporation Act No. 7 of 1965, which still governs its functioning. The Co-operative Bank was founded at the initiative of the Government in 1965 to finance registered co-operative societies by using the funds accumulated by them through their operations and members' savings. The Bank is governed by the Co-operative Societies Act of 1966 and its by-laws of 1967; its operations started in 1968. At the local level, agricultural credit is made available through cooperative societies registered under the Co-operative Societies Act. Private sector contributions to the financing of agriculture are channeled through a number of commercial banks 2/.

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1/ Laws of Kenya, Chapter 323.

2/ See Sven Lindquist, Report on Credit and Finance in the Agricultural Movement in Kenya, Document (67) 14, 1967, pp. 15 ff.

## 1. Legal structure, functions and power of agricultural credit institutions

### (a) The Corporations

Both the AFC and the ADC are corporate bodies with perpetual succession and common seals; they have power to acquire, own, possess and dispose of property, to enter into contracts for the purposes of their functions and to sue, and be sued, in their own name 1/. The AFC is not subject to the Companies Act or the Banking Act 2/.

The functions of the AFC are to assist in the development of agriculture and agricultural industries by making available loans to farmers, co-operative societies, local authorities and other persons engaging in agriculture or agricultural industries 3/. The functions of the ADC are to promote and execute schemes for agricultural development and reconstruction by the initiation, assistance or expansion of agricultural undertakings or enterprises. In the performance of its functions the ADC must properly take into account the economic and commercial merits of the undertakings it plans to support 4/.

### (b) The Co-operative Bank

It is an apex society registered under the Co-operative Societies Act of 1966 and, as such, it is a corporate body with the normal attributes of these bodies. It has a common seal 5/ and the power to do all things necessary for the accomplishment of its objects 6/.

The objects of the Bank are "to promote the prosperity of members of the Bank". In particular, it can carry on the business of banking, including borrowing, raising or lending money; dealing in bills of exchange; promissory notes, warrants, debentures, certificates and other instruments and securities; issuing guarantees and letters of credit; negotiating loans and advances; receiving money and valuables on deposit, and, in general, transacting all kinds of activities transacted by bankers. The Bank may also undertake and execute any trusts, act as executor, administrator, treasurer, etc., as well as take or concur in taking all such steps as may seem best calculated to support its credit and encourage the growth of the Co-operative movement in the country 7/.

Members of the Bank are registered co-operative societies, co-operative unions and countrywide organizations 8/.

### (c) Co-operative societies

Registered under the Co-operative Societies Act, these become corporate bodies by the name under which they are registered, with perpetual succession and a common seal, and with power to hold any kind of movable and immovable property, to enter into contracts,

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1/ See, respectively, the Agricultural Finance Corporation Act, 1969, Sec. (3) and the Agricultural Development Corporation Act, 1965, Sec. 3.

2/ The 1969 Act, Sec. 3(4).

3/ Ibid., Sec. 3(2).

4/ The 1965 Act, Sec. 12(1) and (2).

5/ By-laws of the Co-operative Bank of Kenya Limited, By-law 43.

6/ Ibid., By-law 3(2)(a).

7/ Ibid., By-law 3(1)(a).

8/ Ibid., By-law 4(1).

to institute and defend suits and other legal proceedings, and to do everything necessary for the purpose of, or in accordance with, their by-laws 1/. Any society which either consists of at least ten persons qualified for membership or has a registered society as one of its members and has for its object the promotion of the economic interest of its members, in accordance with co-operative principles, can be registered as a co-operative society. Registration is subject to the opinion of the Commissioner for Co-operative Development that the applicant society is capable of realizing its object. Co-operative societies may be registered with or without limited liability; co-operative unions or apex societies can be registered only with limited liability 2/.

## 2. Relationships between agricultural credit institutions and the State

### (a) State participation in the management of credit institutions

#### i) Management in general

The APC is managed by a Board of Directors composed of not less than six and not more than eight members, and a general manager. The members of the Board are all appointed by the Government in the following way: (a) not less than four and not more than six by the Minister of Agriculture, of whom at least two are appointed by reason of their knowledge of banking or financial matters; (b) one of the members is the Permanent Secretary of the Ministry of Agriculture or a person deputed by him in writing 3/.

The Chairman and the Deputy Chairman of the Board are appointed by the Minister of Agriculture, after consultation with the Minister of Finance, from among the Directors 4/.

The General Manager of the AFC is appointed by the Minister of Agriculture after consultation with the Minister of Finance 5/.

In the exercise of its powers and in the performance of its functions, the Board of Directors acts in accordance with any special directives that the Minister of Agriculture may issue. If in the opinion of the Board these directives involve the Corporation in financial losses, the Board may not comply unless the Government has undertaken to reimburse the Corporation the amount of any losses incurred 6/.

Salaries and allowances of the Directors (other than public officers in receipt of a salary), the General Manager and the staff of the AFC are determined by the Corporation itself with the approval of the Treasury 7/.

The members of the Board of Directors of the ADC are: (a) a chairman, appointed by the Minister and possessing, in his opinion, qualities likely to benefit the Corporation. Of these members - (i) at least one must be a member of one of the professional bodies specified in the Schedule to the Accountants (Designations) Act; (ii) at least one is appointed by reason of his knowledge of international finance; (iii) not less than one must be appointed by reason of his knowledge of the processing and marketing of agricultural produce; and (iv) not less than one must be appointed to represent the interests

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1/ The Co-operative Societies Act 1966, Sec. 28.

2/ Ibid., Secs. 5 and 6.

3/ The 1969 Act, Sec. 4(2).

4/ Ibid., Sec. 4(3).

5/ Ibid., Sec. 9(1).

6/ Ibid., Sec. 4(5).

7/ Ibid., Sec. 11.

of lenders of funds to the Corporation. (c) Two members appointed by the Minister of Agriculture from a panel of not less than five names submitted by the Central Agricultural Board established under the Agriculture Act. (d) The Permanent Secretary to the Ministry of Agriculture or a person designated by him in writing. (e) The Permanent Secretary to the Ministry of Finance or a person deputed by him in writing. (f ) The Permanent Secretary to the Ministry of Economic Planning and Development or a person deputed by him in writing 1/.

The General Manager, who is the chief executive officer of the ADC 2/. is appointed by the Minister of Agriculture with the agreement of the Board of Directors of the Corporation.

In the exercise of its powers and in the performance of its functions, the ADC must comply with the general or special directives of the Minister of Agriculture 3/.

The salaries, allowances and other pecuniary benefits of the members of the Board of the Corporation, other than public officers in receipt of a salary, the General Manager and its staff are determined by the Minister of Agriculture in consultation with the Corporation 4/.

The Co-operative Bank is managed by a Board of Directors of nine members appointed as follows: one, who is also the Chairman of the Board, is appointed by the Minister responsible for Co-operative Development, with the concurrence of the Minister of Finance, from a panel of candidates nominated by the Executive Committee of the Kenya National Federation of Co-operatives; one is elected by that Federation; three are elected by the delegates to the annual National Conference of the members of the Bank; two appointed by the Minister responsible for Co-operative Development, and two appointed by the Minister of Finance 5/. The Board may coopt any person whose assistance it may require. Such a person, however, is not entitled to vote, and cannot be counted as a member of the Board for quorum purposes 6/.

The members of the Board are paid out of the funds of the Bank a remuneration determined by the Minister for Co-operative Development after consultation with the Board and the Minister of Finance 7/.

The Board may, by resolution, delegate its powers to any of its officers or to any committee or sub-committee composed of a small number of its members or coopted members. However, any decision relating to the investment of the Bank's funds or to borrowing by the Bank can only be made by a body comprising at least the members of the Board appointed by the Minister of Finance and one of its members appointed by the Minister responsible for Co-operative Development 8/.

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1/ The 1965 Act, Sec. 5(1 ).

2/ Ibid. Sec. 15(1).

3/ Ibid. Sec. 4.

4/ Ibid. Secs. 7 and 15(2).

5/ By-laws of the Co-operative Bank of Kenya Limited, By-law 19(i).

6/ Ibid. (iii).

7/ Ibid. By-law 26.

8/ Ibid. By-law 30.

In the exercise of its powers the Board complies with any general or special directives that the Minister responsible for Co-operative Development may prescribe in consultation with the Minister of Finance 1/.

The State participates in the management of registered co-operative societies only indirectly through the Commissioner for Co-operative Development, who is appointed by the Minister responsible for Co-operative Development 2/. The Act gives the Commissioner the widest possible rights concerning not only the registration of co-operative societies but also their membership (in the case of companies unincorporated or registered under the Companies Act or of unincorporated bodies), their accounts and audits, winding up etc.

If after due enquiry the Commissioner is of the opinion that the managing committee of a co-operative society is not performing its duties properly, he may remove it and appoint a new one, comprising at least two members and a manager, to administer its affairs. Such a measure can be taken initially for a period not exceeding one year, but the Commissioner may extend it if he thinks fit 3/.

ii) Accounts, audit, etc.

Within four months after 31 March each year, the General Manager of the AFC delivers to the Minister of Agriculture a statement of accounts duly audited showing the assets and liabilities of the Corporation on that date and the profits and losses of the Corporation for that year. The statement is signed by the General Manager and at least two Directors. In addition, the General Manager submits all other accounts reports and statements to the Minister that he may require from time to time. The annual statement of accounts is to be laid before the National Assembly by the Minister 4/.

The Treasury, on the other hand, has full access to all accounts, documents, papers and books of the AFC and the General Manager must furnish all such information that it may require. The accounts of the Corporation are examined, audited and reported on annually by the Controller and Auditor-General, or by such other person as the Minister may appoint from among the members of the bodies specified in the Schedule to the Accountants (Designations) Act 5/.

The annual balance sheets of the ADC, together with a report on its operations and the auditors' report, are submitted to the Minister of Agriculture, who presents them to the National Assembly. The Minister may also specify the manner in which they are published 6/. The Minister may require the preparation of any other special accounts for submission to him. The auditors are appointed by the ADC among members of the professional bodies specified in the Schedule to the Accountants (Designations) Act 7/.

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1/ By-laws of the Co-operative Bank of Kenya Limited, By-law 39.

2/ The Co-operative Societies Act, Secs. 3 ff.

3/ Ibid., Sec. 64.

4/ The 1969 Act, Sec. 40.

5/ Ibid., Sec. 41.

6/ The 1965 Act, Sec. 18.

7/ Ibid., Sec 17(1) and (2).



The accounts and other books of the Co-operative Bank are examined, audited and reported upon annually by its duly appointed auditors 1/. Such auditors may either be appointed by the Commissioner of Co-operative Development or, if so requested in writing, by the Bank, with the approval of the Commissioner 2/.

The Board of the Bank must, within a period of four months after the end of the financial year of the Bank (1 July to 30 June), submit to the Minister responsible for Co-operative Development for his consideration a draft report of its operations during the year. The final report on the Bank's operations together with the audited balance sheet, the auditor's report and any other statement that the Minister may require must be submitted to him within seven months of the end of the financial year. All these documents are then published in the manner specified by the Minister responsible for Co-operative Development in consultation with the Minister of Finance 3/.

The accounts of co-operative societies are audited by an auditor appointed by or with the approval of the Commissioner as referred above.

(b) State participation in the capital of credit institutions

The capital of the AFC is not divided into shares and its amount is not fixed by the Act establishing the Corporation. It consists of the property of the former AFC and the property of the Land and Agricultural Bank which have been transferred to the new AFC 4/, any funds provided by Parliament, sums of money borrowed by the Corporation, any money received in connexion with the loans operations of the Corporation and any funds that the Minister of Agriculture may from time to time approve as funds of the Corporation 5/.

The capital of the former AFC consisted of funds provided by Parliament, money borrowed by the Corporation, any money received by the Corporation from the Central Agricultural Board by virtue of a direction under regulation II of the Kenya (Amendment of Laws) (Agriculture) Regulations, 1963, money received in connexion with the loans operations of the AFC and the amounts of money that the Minister might from time to time approve for that purpose 6/. The capital of the Land and Agricultural Bank on the other hand consisted of any money that the Parliament had authorized the Permanent Secretary to the Treasury to pay to the Bank as part of its funds, funds raised specifically for the purposes of the Bank by loan, by the Government or by the Bank with the approval of the National Assembly, funds raised by the Bank, with the consent of the Treasury (overdrafts, Land Bank bills, deposits, debentures) money received in repayment of loans owing to the Bank, funds that the Minister had approved in that behalf 7/.

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1/ By-laws of the Co-operative Bank of Kenya, By-law 35(ii).

2/ Co-operative Societies Act, Sec. 23(2).

3/ By-laws of the Co-operative Bank of Kenya, By-law 36.

4/ See 1969 Act, Sec. 15(1)(a) and Sec. 48(1)(a).

5/ Ibid., Sec. 15(1)(b) to (e)

6/ Laws of Kenya, the Agricultural Credit Act, Chapter 323 (repealed by the 1969 Act, Sec. 15).

7/ Ibid., Sec. 39(1).

From the above it is clear that, although no specific indications are given, the amounts of government-originated funds in the capital of the AFC is considerable. These funds, and especially those provided by the Parliament, are not, however, considered by the government as given away to the AFC but rather as loans made to the AFC for its purposes. The Corporation is therefore paying to the Government interest for these funds at a rate fixed by the Treasury after consultation with the Minister of Agriculture and the AFC's Board of Directors. Interest is also paid on the money allocated by Parliament to the former AFC and to the Land and Agriculture Bank which have been transferred to the new AFC 1/.

The 1965 Act contains no reference to the capital of the Agricultural Development Corporation. The structure of the ADC suggests however that it has been established as an agent of the Government for agricultural development schemes 2/ and it appears 3/ that the Corporation operates in fact exclusively with Government funds.

The share capital of the Co-operative Bank is constituted by the total nominal value of the number of the shares of the Bank held by its member societies at any time. There is no limit on the number of shares which may be issued. The nominal value of each share is one hundred Kenya shillings 4/.

As it is clear from the text, the State does not own any of the Bank's capital and holds no shares. In order to apply for membership to the Bank co-operative societies must pay the nominal value of at least one share 5/. If their membership is not confirmed by the General Meeting of the Bank they can withdraw their shares. In this case the share capital of the Bank is automatically reduced by the amount in question 6/.

The Bank's funds thus consist of the undetermined amount of the share capital, statutory and other reserve funds, income derived from its operations, loans and deposits, grants, donations and any other miscellaneous income 7/.

(c) Financial aid granted by the State

As was pointed out in the previous section, the AFC from time to time receives from Parliament financial aid in the form of loans which are added to its own capital 8/ and for which it has to pay interest to the Government.

With the concurrence of the Treasury on the other hand, and subject to the limitations that it may impose, the AFC may obtain credit either in Kenya or abroad 9/.

The remarks made under (b) hold true also for the Agricultural Development Corporation. In the case of the ADC, it seems that Government participation in the capital of the Corporation takes the form of financial aid granted by the Government to the ADC whenever necessary for the realization of its purpose.

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1/ The 1969 Act, Sec. 15(z).

2/ The 1965 Act Sec. 12(1).

3/ See also Lindquist op.cit. p. 22.

4/ By-laws of the Co-operative Bank of Kenya, By-law 5.

5/ Ibid., By-law 4(i)(b).

6/ Ibid., By-law 7.

7/ Ibid., By-law 13.

8/ The 1969 Act, Sec. 15(1)(b).

9/ Ibid., Sec. 14(1)(b).

(d) Privileges of agricultural credit institutions

The only provision regarding privileges of the agricultural credit institutions in Kenya concerns the Agricultural Development Corporation, whereby the latter is exempted from stamp duty in respect of any instrument executed by or on behalf of or in favour of it 1/.

3. Agricultural credit institutions and other institutions

(a) Agricultural credit institutions and the Central Bank

Established in 1966, the Central Bank of Kenya is responsible, among other things, for the development and maintenance of a sound credit system in the country that shall be "conducive to an orderly and balanced economic development" 2/.

From an analysis of the Central Bank Act one may conclude that relationships between the Bank and the credit institutions treated here are rather limited. The Bank may establish working relations regarding rediscount, loans, conditions for credit transactions etc., with what the Act describes as "specified banks". The term "specified banks" is interpreted by the Act as meaning any licensed bank, under the Banking Act 3/, which is specified by the Central Bank for the purposes of the Central Bank Act 4/. But the AFC is not subject to the Banking Act 5/ and the ADC, although no reference is made in its basic text to this subject, cannot by reason of its structure be considered as a bank.

Both the AFC and the ADC, together with the Co-operative Bank may, however, "create, make, draw, accept, endorse, execute, issue, discount, buy, sell, negotiate and deal in bills, notes, warrants, coupons, stock, debentures and other negotiable or transferable instruments" 6/. "The Central Bank is entitled to purchase from, sell to or rediscount for "specified banks" bills of exchange, promissory notes and other credit instruments bearing at least two good signatures, the last being the endorsement of a "specified bank", maturing within 180 days from the date of rediscount by the Bank and issued for the purpose of financing, among other activities, agricultural production 7/. If the Bank finds it to be in the interest of the economy of the country, it may accept such instruments maturing within 270 days from the date of rediscount. The Bank may require that credit instruments accepted for rediscounting be secured by a pledge, hypothecation or assignment of the relevant products or crops 8/.

Read together, these provisions suggest that the AFC, the ADC and the Co-operative Bank should, if the meaning of "specified banks" could be extended in order to cover them, have the benefit of the rediscount facilities of the Central Bank. It is difficult, in fact, to see how this could be otherwise. Yet a literal interpretation of the texts precludes such direct relations between the Central Bank and the three agricultural credit institutions examined here, though it might allow of indirect relations through the Government.

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1/ The 1965 Act, Sec. 21.

2/ The Central Bank of Kenya Act, 1966, Sec. 4.

3/ Laws of Kenya, Chapter 488.

4/ The Central Bank Act, Sec. 2.

5/ The 1969 Act, Sec. 3(4).

6/ The 1965 Act, Sec. 13(2)(b), the 1969 Act Sec. 14(1)(e) and By-laws of the Co-operative Bank of Kenya, By-law 3(1)(a) respectively.

7/ The Central Bank Act, Sec. 35.

8/ Ibid.

The only direct relations that seem possible in this context are those related to the credit controls of the former AFC over financial institutions specified by the Bank. It is in fact provided that the Bank may issue instructions designed to control the volume, terms and conditions of credit, including instalment facilities, in the form of loans, advances or investments, extended by such financial institutions 1/.

(b) Agricultural credit institutions and co-operative societies

The basic texts of the Corporation treat farmers' co-operatives exclusively as potential borrowers. Provisions governing the application for loans by co-operative societies differ from those governing applications by individuals or other corporate bodies as will be seen in the following section. In particular, the Board of the AFC has at all times full access to all accounts, books, papers and documents of co-operative societies to which a loan has been made or from which an application for a loan has been received, and it may direct a member of the AFC staff or any other person to examine all such accounts, books, etc. 2/.

The Co-operative Bank, itself an apex society, as already seen, has been established to serve co-operative societies exclusively, in particular those that have become members of the Bank.

In order to become members of the Bank, co-operative societies must, in addition to being registered under the Co-operative Societies Act, meet the following conditions:

- accept the by-laws of the Bank;
- undertake to purchase a number of the shares of the Bank as directed by the Commissioner;
- pay to the Bank the nominal value of at least one share, and
- be admitted to membership by the Board of the Bank and confirmed by a General Meeting of delegates of the members 3/.

A society ceases to be a member of the Bank on the date on which the Registrar of the Bank receives notification in writing of cancellation of the member's registration as a co-operative society 4/.

The Bank maintains a register of members containing the name and address, the date at which each member was admitted, the date at which it ceases to be a member and the amount of share capital due from and held by each member, together with the date on which it was paid 5/.

The Bank, finally, grants loans exclusively to co-operative societies admitted to membership 6/ although it may receive deposits by individuals or societies which are not members 7/.

As will be seen from the foregoing, co-operative societies are the only shareholders of the Bank, and their participation in the management of its affairs is by no means negligible.

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1/ The Central Bank Act, Sec. 41(1).

2/ The 1969 Act, Sec. 24.

3/ By-laws of the Co-operative Bank of Kenya, By-law 4.

4/ Ibid., By-law 8.

5/ Ibid., By-law 12.

6/ Ibid., By-law 16.

7/ Ibid., By-law 18.

(c) Agricultural credit institutions and other allied institutions

In addition to the registered co-operative societies, the two Corporations (AFC and ADC), enjoy the right to deal directly with any other institutions they consider necessary for the proper accomplishment of their objectives 1/.

4. Relationships between agricultural credit institutions and individual borrowers

(a) Application for loans

i) Farmers

Applications for loans addressed to the AFC are made in writing and in the form prescribed by the Board. They are granted if approved by the Board 2/. Under the former AFC applications for loans by farmers were made on forms approved by the Board of the Corporation stating in detail the purpose for which the loan was required, securities offered and the proposed budget of the farming operation for which the loan was to be used. The applications were considered first at the local level by District Loans Committees and then sent to Nairobi for consideration by a Loans Committee composed of members of the Board of the Corporation 3/.

The detailed procedure for applying for loans is governed by the rules and regulations that the Minister of Agriculture may make on the advise of the Board of the AFC 4/.

ii) Co-operative societies

Applications for loans made by co-operative societies to the Agricultural Finance Corporation must be made in writing and be accompanied by a number of supporting documents, namely: a resolution of the meeting of the society which authorized, by a majority of two-thirds of the members of the society, the application being made for the loan and a list of the persons who were members of the society at the time of the resolution. The application must be signed by the chairman and the secretary of the society. Grant is made by resolution of the Board of the AFC, if it is satisfied that the accounts, books, papers and documents of the society are in order. If the Board of the Corporation so requests the Commissioner for Co-operative Development all necessary information regarding co-operative societies 5/.

Applications by members of the Co-operative Bank, co-operative societies, co-operative unions etc., for loans or advances are considered by the Board of Management of the Bank. The latter may refuse the applications without being required to state its reasons for so doing 6/.

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1/ See the 1969 Act, Sec. 14(1), the 1965 Act, Sec. 13(1) and the Co-operative Societies Act, Sec. 28.

2/ The 1969 Act, Sec. 19(1)(a)(b).

3/ See Lindquist op.cit. p. 19.

4/ The 1969 Act, Sec. 45(a).

5/ Ibid., Sec. 23.

6/ By-laws of the Co-operative Bank of Kenya, By-law 17.

(b) Terms and conditions of loans

AFC loans are made for a period of time not exceeding thirty years and upon such terms and conditions as to the interest, repayment and security as the Board of Directors of the Corporation may determine. Broadly, the purpose of these loans is to enable farmers and rural co-operatives to engage more effectively in agriculture. A loan may be made specifically for the purpose of reducing or discharging an existing first mortgage, if in the opinion of the AFC Board, the terms of the mortgage are onerous, provided that the mortgagee executes a waiver of priority in favour of the Corporation 1/.

Loans and advances granted by the Co-operative Bank are made on the terms and conditions prescribed by the Board of the Bank 2/. The credit which may be extended by the Bank to a member cannot, when taken together with the amount of any outstanding credit, exceed the maximum liability of the member as fixed by the Commissioner of Co-operative Development pursuant to the Co-operative Societies Act 3/.

As a rule, short-term credit is provided by way of marketing finance mainly for coffee producing societies, and on a seasonal basis for crop production. Medium-term credit is given for the development of co-operative enterprises such as coffee processing factories, cotton ginning plants and farms.

i) Interest

The interest rates for loans made by the AFC are fixed by the Board of the Corporation with the approval of the Minister of finance given after consultation with the Minister of Agriculture. They can be prescribed either in general or for any particular class of loan 4/.

Regarding the Co-operative Bank, the interest rate structure is governed by the lending mechanism. Thus the Bank charges 8 percent per annum on daily outstandings. On a loan made to a co-operative union for further lending to a co-operative society the farmer and the society each bear a further one percent, so that the farmer pays, in effect ten percent.

ii) Securities

For loans made by the AFC, the maximum possible security is demanded. If the borrower is a farmer who is the registered owner of land not encumbered with a first mortgage the Board may direct that a first mortgage in favour of the Corporation be executed 5/. Where the Board considers that the conditions of the loan are such that the execution of a formal first mortgage is not necessary the Corporation may secure the loan by a charge on the borrower's title to the land. In order to do so the General Manager of the AFC delivers a written notification of the loan to the land registrar 6/, who then registers it against the title of the borrower. The land is thus charged with the repayment of the loan and the interest, subject to any prior registered charge. This charge is deemed to be a mortgage of the land executed by the borrower 7/.

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1/ The 1969 Act, Sec. 19.

2/ By-laws of the Co-operative Bank of Kenya, By-law 17.

3/ Ibid., By-law 16.

4/ The 1969 Act, Sec. 26(1).

5/ Ibid., Sec. 20(1).

6/ This is made on the special form indicated in the schedule of the Agricultural Finance Corporation (Farms) Rules, 1969.

7/ The 1969 Act, Sec. 20(2).

In addition to the above, a charge on the chattels of the borrower (other than his household and personal effects) can be created as a further security by the AFC. Again, the General Manager of the Corporation delivers a written notification of the loan 1/ to the Registrar General. The notification is registered as an instrument under the Chattels Transfer Act, assigning and transferring to the Corporation by way of mortgage all the movable property of the borrower thus encumbered, to secure both the interest of principle and the loan 2/.

Loans made to co-operative societies are granted subject to the provision of such securities (if any) as the Board of the AFC may require 3/. Normally they are secured on the societies' capital and other assets; in the case of co-operative societies with unlimited liability all persons who were members of the society at the time of the application for the loan and are named in the list of members attached to the application are jointly and severally liable for repayment of the loan and the interest. Persons who were members of a co-operative society at the time of the application for a loan remain liable for the repayment even if they later cease to be members of the society, unless they can provide any other security to the satisfaction of the Board of the AFC for the discharge of their liability 4/.

In general, a registered co-operative society may, with the consent of the Commissioner for Co-operative Development and if its by-laws expressly empower it to do so, charge the whole or part of its property in order to secure a loan made to it or debentures issued by it.

Such a charge (and this term includes any mortgage or charge of agricultural produce deliverable to the society by its members under any contract) must be duly registered with the Commissioner within thirty days of the date of creation of the charge. Upon evidence produced that the debt for which the charge was created has been paid, the Commissioner enters in the register of charges a memorandum of satisfaction and, if required, furnishes the society concerned a copy of such a memorandum 5/.

(c) Recovery of loans

The repayment of loans and the payment of interest on them are normally made by the borrower in a number of instalments calculated over the period for which the loan has been made. If the borrower at any time pays to the credit institution an amount exceeding the instalment due, the latter may apply the excess amount in payment of the capital portion of one or more of the future instalments. These instalments will then be recalculated on the basis of the balance of capital owed by the borrower over the remainder of the period for which the loan was originally made. Such an excess payment does not exempt the borrower from paying his next instalment when it is due, reduced or recalculated as appropriate. The borrower may be allowed a rebate of interest in respect of the amount thus paid in advance, in the form of a reduction of the rate of interest charge on that amount by one percent per annum from the date that the next instalment falls due.

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1/ The form on which this notification is delivered is also given by the schedule of the Agricultural Finance Corporation (Forms) Rules, 1969.

2/ The 1969 Act, Sec. 20(3).

3/ Ibid., Sec. 23(1)(e).

4/ Ibid., Sec. 25(1) and (2).

5/ See the Co-operative Societies Act 1966, Part IX.

In the case of the AFC, if the total amount owing to the Corporation is paid before the due date for payment, interest is claimed only up to the actual date of payment. In this case, however, the borrower must give the Corporation three month's notice. If such notice is not given the Corporation may claim interest for the period by which the notice actually given falls short of three months 1/.

Upon repayment of the loan and all interest due on it all appropriate steps are taken by the General Manager of the AFC for the release of any mortgage and the extinction of any charge on land or on chattels 2/.

If the borrower does not pay any sum of money due in respect of a loan granted by the AFC or, in the opinion of the Board, does not make use of the loan for the purpose for which it was made, or becomes insolvent, or in general fails to observe any of the conditions of the loan, the Corporation may by notice demand the repayment of the loan. On default of such repayment and after due notice of the demand has been given to all subsequent mortgages of the land securing the loan, the Corporation may initiate recovery procedure. It may, then, without recourse to any court, enter upon the land and either take possession of it (or any part of it upon the terms and conditions that the Board may consider proper) or sell it (the whole or, where subdivision is not prohibited, a part of it) by public auction 3/. A notice of the sale must be published beforehand in the Kenya Gazette or in a newspaper of the area in which the land is situated, stating the date, time and place, and the terms and conditions of the sale. All reasonable steps must be taken by the Corporation to notify in writing any person having a registered interest (or my unregistered interest of which the Corporation knows) in the land of the intended sale. The sale may be effected twenty-one days from the date of the publication 4/.

(d) Sanctions

The AFC may refuse to pay any portion of a loan approved but not yet made over and proceed to recover the money already lent, if t

- at any time any sum of money, whether principal or interest, due in respect of the loan is unpaid;
- the Board of the Corporaiton considers that the loan has not been applied for the purposes for which it was granted or has not been carefully and economically used;
- the loan is not applied within the time that the Corporation considers reasonable to the purpose for which it was made;
- the debtor becomes insolvent, or is sentenced to imprisonment without the option of a fine, or assigns his property for the benefit of his creditors generally, or otherwise makes an arrangement with them, or the debtor having died, his estate is to be administered in bankruptcy;
- there has been a breach of any condition of the loan 5/.

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1/ The 1969 Act, Sec. 32.

2/ Ibid., Sec. 20(2)(b) and (3)(b).

3/ Ibid., Sec. 33(1) and 31.

4/ Ibid., Sec. 33(4).

5/ Ibid., Seos. 31 and 33(1).



The Corporation may equally refuse to pay any part of the loan which has not been yet paid and proceed at once to call in and recover the money already lent if:

- the land comprised in any mortgage or other security document in respect of the development of which a loan was granted is not to be used for agricultural purposes;
- the loan is applied for purposes other than that for which it was made 1/.

(e) Co-operative societies and their members

Members of registered co-operative societies are bound in their relations with their society by its registered by-laws in general and by any specific contract or agreements they may enter into with it in accordance with those by-laws 2/.

Thus, a registered society which has as one of its objects the disposal of agricultural produce may enter into a contract with its members binding them to dispose of all or part of their agricultural produce to or through the society. Such a contract has the effect of creating in favour of the society a charge upon the proceeds of sale of the produce whether existing or expected. The society may, on the other hand, on the authority of a resolution passed at a general meeting, pledge such produce as security for loans made to it as if it were the owner of the produce 3/.

Registered societies may make loans or allow credits only to their members. They may, however, with the written authorization of the Commissioner, make a loan or allow credit to another registered society, or stand surety for a loan to be granted to any of their employees where such a loan is for the benefit of the society.

A registered society that has as one of its objects the supply of commodities to its members is not allowed to make loans without the sanction of the Commissioner, given generally or in any particular case, and upon such conditions as he thinks fit. In general the Commissioner may, by notice in the Official Gazette, prohibit or restrict the lending of money on a charge of immovable property of any kind by a registered society 4/.

A co-operative society has a first charge upon any agricultural inputs and implements that it has supplied to its members on credit and upon all produce, animals or articles produced or bought by money that the society has lent or with the help of services that it has rendered to its members. Such a charge subsists for a period of two years from the date of supply or the rendering of the services or the loan 5/. The society also has a first charge upon the shares or interest in the capital and on the deposits etc\*, of any member or past member generally indebted to the society 6/.

Past members remain liable for the debts of their co-operative societies for two years after the date on which they ceased to be members. In the case of societies with limited liability, the liability of past members ceases if the first audit of the accounts of the society after they ceased to be members shows that it is solvent 7/.

The estate of a deceased member is also liable for the debts of a registered society as they existed at the time of his death and for a period of one year from thereafter. Such liability ceases, in the case of societies with limited liability, if the first audit of the society's accounts after the debt shows that it is solvent 8/.

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1/ The 1969 Act, Sec. 35.

2/ The Co-operative Societies Act, Sec. 29(1).

4/ Ibid., Sec. 40.

5/ Ibid., Sec. 32.

6/ Ibid., Sec. 33.

7/ Ibid., Sec. 35.

8/ Ibid., Sec. 36.

## IV. MEXICO

### Sources of regulations

- Agricultural Credit Act, of 30 December 1955, Diario Oficial No. 53, 31 December 1955 (English translation in Food and Agricultural Legislation, Vol. V, No. 1, 1956)
- Decree of 30 December 1965, D.O. No. 11, 14 January 1966.
- Decree of 24 December 1968 (not available), and
- Decree of 30 October 1969, D.O. No. 1, 2 January 1970.
- Decree authorizing the establishment of Land Banks, of 22 December 1960, D.O. No. 4, 5 January 1961.
- Decree authorizing the establishment of the National Agricultural Bank, of 2 March 1965, D.O. No. 7, 8 March 1965.
- Act establishing the Guarantee and Promotion Fund for Crops, Livestock and Poultry Farming, of 30 December 1954, D.O. No. 51, 31 December 1954, as corrected by:
- Corrigendum of 2 March 1955, D.O. No. 4, 4 March 1955, Regulations of the Guarantee and Production Fund for Crops, Livestock and Poultry Farming, of 21 April 1955, D.O. No. 4, 6 May 1955.
- The Organic Law of the Bank of Mexico, -English version of the law as amended up to 1 June 1960 in H. Aufricht ed., Central Banking Legislation, International Monetary Fund, Washington P.C. 1961, Vol. I, pp. 857 ff. The original Law in D.O. of 31 May 1941.
- The General Law on Credit Institutions and Auxiliary Organizations, English summary in Central Banking Legislation, Supra pp. 878 ff. as amended to 1 June 1960. The original law in D.O., 31 May 1941.

### Introduction

Agricultural credit in Mexico is serviced by a complex institutional network comprising a great number of institutions, which can be conveniently divided into the following categories s

#### (a) The National Banks

Included under this heading are the Banco Nacional de Crédito Agrícola (Banco Agrícola) and the Banco Nacional de Crédito Ejidal, hereafter referred to as the National Banks. The former, established in 1926, concentrates on lending to small-scale farmers. The latter, founded in 1935, lends mostly to ejidatarios <sup>1/</sup> comuneros <sup>2/</sup>. Both institutions receive funds for lending purposes from the Banco Nacional de Comercio Exterior and from the Federal Government through annual budget allocations. The operations of these two banks, which cannot be considered as having been extremely successful, are governed by the Agricultural Credit Act of 1955, as amended.

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<sup>1/</sup> Ejidatarios: Farmers in association (ejido) receiving under the land reform now in force a collective grant of State land, which may, however, be worked individually as well as collectively.

<sup>2/</sup> Comuneros: Members of a community or farmer group maintaining de jure or de facto the collective tenure and working of land as granted to the indigenous peasants in colonial times.

(b) Banco Nacional Agropecuario (Banagro)

This bank was established in 1965 to assist medium- and large-scale farmers who do not qualify for assistance from the National Banks. According to the Decree of March 1965, one of its functions should also be to decentralize agricultural credit. Banagro has developed into the main public institution for agricultural credit in the country.

(c) The Regional Banks

Mexico has three main networks of Regional Banks, coming under one or other of the above-mentioned national banks. There are thus six Bancos Regionales de Crédito Agrícola (BROA) established under the Banco Agrícola, with more than 40 agencies and many branch offices. Under the Banco Ejidal there three Bancos Regionales de Crédito Ejidal (BRCE), with 46 agencies. The Banagro regional network is more diversified. It has seven regional banks and 17 agencies and also controls two private banks t the Banco de Zamora in Guadalajara and the Banco Provincial de Sinaloa in Culiacán. Although the situation regarding the last-mentioned network is not very clear from the existing legislation, it appears to include regional agricultural credit banks similar to the BRCA and the Bancos Agrarios the creation of which was authorized by the Decree of January 1961.

The regional banks of the Banco Agrícola and Banco Ejidal networks are governed by the Agricultural Credit Act of 1955. The Bancos Agrarios are governed by this same Act and more specifically by the Decree of 1961.

(d) The Fondo de Garantía y Fomento para la Agricultura, Ganadería y Avicultura  
(Fondo)

This fund is governed by the Act of 31 December 1954, which establishes it to replace the Fondo Nacional de Garantía Agrícola, by the Regulations of 6 May 1955.

(e) Private banks of various kinds

Encouraged by the services and facilities provided by Fondo there are many of these banks having a considerable role in the agricultural credit system of the country.

The present study will deal with the first four categories of agricultural credit institutions, leaving aside the private sector institutions. Regional banks will be treated in two separate groups: the first, under the title "Regional Banks" will comprise the BRCA and the BRCE together, since they are both regulated by the Agricultural Credit Act of 1955, as amended; the second will deal with Bancos Agrarios.

## 1. Legal structure of agricultural credit institutions

The National Banks, Banagro, the Regional Banks and Bancos Agrarios are all limited liability companies <sup>1/</sup> and, as such, enjoy legal personality and have the necessary powers for the pursuit of their objects.

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<sup>1/</sup> See, respectively: Agricultural Credit Act, Arts. 4 and 26; Decree of 1965, Art. 2(1); Decree of 1961, Art. 2.

Regional Banks and Bancos Agrarios can be established only with the prior authorization of the Ministry of Finance and Public Credit given after the views of the National Banking Commission 1/, and of the Central Bank 2/ have been ascertained.

The Fondo is a trust managed by the Central Bank (Banco de México, S.A.) pursuant to the 1954 Act creating the Fondo, the Regulations of May 1955 and the trust agreement entered into with the Federal Government on 24 June 1955 3/ The trustor in this trust is the Federal Government, represented by the Secretariat of Finance and Public Credit; the trustee is the Central Bank, and the beneficiaries of the trust are private banks and farming and livestock producers.

The main objects of these various institutions as far as the present study is concerned are as follows:

### The National Banks

In general, these may perform all banking operations which are in accordance with the legislation in force. In particular, they may accept sight and fixed term deposits; issue agricultural bank bonds, rural mortgage bonds and rural mortgage certificates; organize, supervise and where appropriate administer warehouses under the direct control of the Banks and given over to the storage of products of local associations 4/ and, in certain cases, of non-associated farmers; purchase, sell and administer property intended exclusively for the development or processing of agricultural products; pledge the crops of their clients with a view to their sale on the most "favourable terms through the regulatory effect thus achieved on the market; and act as agents for their clients. The National Banks may also guarantee, in line with resolutions of the Federal Government, commercial, short-term production, long-term financing and real estate loans 5/ granted by associations or individuals in connection with agricultural credit and with the approval of the Secretariat of Finance and Public Credit; negotiate foreign bank loans for terms of not more than one year, with a view to the cultivation or pledging of export products. One of their most important purposes is to organize, regulate and supervise the operations of the regional banks and the local credit societies, in their respective ejido or agricultural credit fields. The Banco Ejidal is allowed to undertake active credit transactions only with associations of ejido farmers and with decentralized State bodies or institutions in which the State is a shareholder 6/.

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1/ The Commission consists of nine members, six appointed by the Ministry of Finance and Public Credit and three representing banking institutions (one for the commercial banks and two for other banking institutions). The General Law on Credit Institutions and Auxiliary Organizations, Art. 161.

2/ See, respectively: Credit Act, Art. 26, Decree of 1961, Art. 1 and the General Law on Credit Institutions and Auxiliary Organizations, Art. 2.

3/ Banco de México, S.A., Fondo de Garantía y Fomento para la Agricultura, Ganadería y Agricultura s Guarantee and Promotion Fund for Agriculture, Livestock and Poultry Features and Purposes, México, 1968, p. 7. See also Act of 1945, Art. 1; and Regulations of 1955. Art. 1.

4/ Infra, under 3 b).

5/ For the meaning of these various terms, see infra under "Terms and Conditions of Loans".

6/ Ibid., Art. 5.

### Regional Banks

Their purpose is substantially the same as that of the National Banks, with the following exceptions: they may not issue agricultural bank bonds, rural mortgage bonds or rural mortgage certificates, and they may not guarantee commercial, short-term production, long-term financing or real estate loans granted in relation to agricultural credit 1/.

### Banagro

This banking network has been created in order to encourage the decentralization of agricultural credit through the establishment and supporting regional banks of agricultural credit, Bancos Agrarios and other institutions active in this field. It may operate in the deposit, savings and trustee sectors and to undertake any other activities conducive to its objectives 2/.

### Bancos Agrarios

The functions of these banks are to: contract direct or indirect liabilities on behalf of corporate bodies or individuals; to accept savings deposits from their clients; to grant equipment and re-equipment loans, open credits on current accounts, make discounts and grant pledged loans and real property loans; to undertake the sale of their clients production; to purchase and sell the agricultural production of their clientele or other farmers on behalf of the Federal Government, decentralized bodies and institutions with State participation; acquire movable and real property; to acquire machinery, animals, fertilizers, seeds fungicides and other agricultural equipment and requisites for the grant of loans in kind to their clientele 3/.

The Bancos Agrarios effect these operations with individuals or groups of ejidatarios or comuneros organized in the ejidos to the satisfaction of the banco. In the case of groups, operations are based on the joint liability principle 4/.

### The Fondo

This has been established for the purpose of guaranteeing the recovery by private credit institutions of the loans they have granted for agricultural purposes; discounting agricultural credit documents for private credit institutions; opening credit accounts and granting loans to private credit institutions to enable them to make credit available to farmers; engaging in any other operations contemplated in its rules and at all times through private credit institutions 5/.

Since August 1965, the Fondo has been in a position to perform these operations with regional banks belonging to the Banagro network. On the 21 August of that year a new trust called Fondo Especial para Financiamientos Agropecuarios (Fondo Especial) was established by a new trust agreement between the Federal Government and the Central Bank. The purpose of this special fund is to extend the Foncb's functions of the regional banks of the Banagro 6/.

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1/ Regulations of 1955, Art. 26.

2/ Decree of 1965, Art. 2(iv).

3/ Decree of 1961, Art. 4-

4/ Ibid., Art. 9.

5/ Act of 1954, Art. 2.

6/ Security Fund, op.cit. t P. 10.

With the exception of those for stock and poultry farming, credits granted or guaranteed by the Fondo must be for improvement, equipment or re-equipment works and for the cultivation of basic food crops or export crops. Agricultural credits can only be guaranteed when the beneficiary undertakes to invest such amounts of his own as indicated in the rules of operations and when he has sufficient property to meet all the financing independently of the expected value of the crop 1/.

## 2. Relationships between agricultural credit institutions and the State

### (a) State participation in the management of credit institutions

Each of the two National Banks is administered by a Board of Directors composed of nine full members and six alternates appointed for a term of six years. Six full members and three alternates are nominated by the Federal Government in its capacity as series "A" shareholder 2/, and appointed by the President of the Republic 3/. These full members and three alternates are elected by majority vote of series "B" shareholders. Where the Bank of Mexico is a shareholder it appoints one full and one alternate board member 4/. The Secretary of State for Agriculture and Stockbreeding is the chairman of the Board of both banks, while the Head of the Department of Agrarian Affairs is the Deputy Chairman of the National Bank of ejido credit. They are both Board members ex officio. Three negative votes from members representing the Government can veto any resolution before the Board 5/.

The Managing Director of each bank is freely appointed and dismissed by the Board and is responsible for the management of the Bank 6/.

The supervision of the Bank's activities is entrusted to two Commissioners one of whom is appointed by the Government 7/.

Each regional bank is administered by a Board of five Directors, with two alternates. Three of the Directors and the alternates are appointed by the National Bank of the appropriate type under which the regional bank has been established, as a series "A" shareholder. The term of office of Board members is six years. Two of the Directors appointed by the National Bank may veto resolutions of the Board 7/.

The General Assembly of shareholders appoints a commissioner to supervise the Bank's activities 8/.

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1/ Act of 1954, Art. 5.

2/ Infra 2 b).

3/ Credit Act, Arts. 11, 12 and 13.

4/ Ibid., Art. 14.

5/ Ibid., Art. 13.

6/ Ibid., Art. 20.

7/ Ibid., Art. 22.

8/ Ibid., Art. 32.

Banagro is administered by a Board of nine directors with an equal number of alternates. Five directors and five alternates are appointed by the Government, while one representative each from the following offices or institutions must always be members of the Board: Secretariat of Finance and Public Credit, Secretariat of Agriculture, Department of Rural Affairs and Land Settlement, Banco de Mexico (Central Bank), Almacenes Nacionales de Depósito, S.A. and Aseguradora Nacional Agrícola y Ganadera, S.A. The Central Bank must be represented by its General Manager; he is the ex officio Chairman of the Board of Banagro 1/.

The Bank is managed by a General Manager who is freely appointed and dismissed by the Board, whose legal representative he also is 2/

Supervision of the Bank's activities lies in the responsibility of commissioners, appointed by the Ordinary General Assembly of the shareholders, one for series "A" and one for series "B" shareholders 3/.

The Bancos Agrarios are administered by a Board of Directors with not less than seven and not more than eleven members, and with an equal number of alternates. At least two members of the Board are ejido members who use agricultural credit facilities, while five are appointed upon nomination by the Secretariat of Agriculture, the Secretariat of Finance and Public Credit, the Secretariat of Water Resources, the Department of Rural Affairs and Settlement and the National Bank of ejidal credit respectively. The other members of the Board, if any, are appointed from among persons nominated by social agencies or departments, as laid down in the statutes of the individual bank. The Chairman of the Board is the member appointed upon nomination by the Banco Nacional de Crédito Ejidal. The Board members appointed by the Secretariat of Agriculture and the Secretariat of Finance and Public Credit may each veto the Board's resolutions 4/.

The Board of each bank appoints a Manager who is responsible for the management and the legal representation of the bank 5/. Each bank is supervised by two Commissioners appointed by the Assembly of their shareholders, one of whom is nominated by the Banco Nacional de Crédito Ejidal 6/.

The Fondo is governed by the Technical Committee of the trust contract composed of nine members representing, one each, the Secretariat of Finance and Public Credit, the Secretariat of Agriculture, the Banco de México, the National Bank for Foreign Trade, the Bankers' Association of Mexico, the Agricultural Insurance Consortium, ejido members, small crop farmers and livestock farmers respectively. The last three are appointed by the Executive through the Secretariat of Agriculture. Each member has an alternate 7/, The chairman is elected by the Committee members from among themselves for one year 8/.

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1/ Decree of 1965, Art. 3.

2/ Ibid., Art. 6.

3/ Ibid., Art. 7.

4/ Decree of 1961, Art. 5.

5/ Ibid., Art. 7.

6/ Ibid., Art. 8.

7/ Act of 1954, Art. 8 and Regulations of the Fondo, Art. 2.

8/ Regulations, Art. 5.

Recently the Technical Committee has been expanded to include a representative of the Banagro 1/. The Bank of Mexico appoints the technical and administrative personnel necessary for the management of the Fondo; salaries as well as any other expenses related to the management and the operation of the Fondo are borne by the Fondo itself 2/.

The Fondo Especial is under the same management and uses the same administrative and technical staff as for the Fondo but it has its own Technical Committee authorizing its own operations. The latter consists of six regular members and six alternates appointed as follows: two by the Secretariat of Finance and Public Credit, two by the Central Bank and one each by the Secretariat of Agriculture and Banagro 3/.

(b) State participation in the share capital of credit institutions

The capital of the National Banks, Banagro, and Bancos Agrarios consists of two series of shares: series "A" shares, which only the Federal Government (or national credit institutions, in the case of Bancos Agrarios) may subscribe and series "B" shares which may be subscribed freely 4/. Series "A" shares are registered shares and those of series "B" may be of the bearer type. In the case of Banagro and of the Bancos Agrarios, series "A" shares must represent at least 51 percent of the total amount. Increases and reductions in the capital of the National Banks are subject to the General Commercial Companies Law and must be approved by the Federal Executive 5/.

The share capital of the Regional Banks is also divided in series "A" and series "B" shares. The first are subscribed only by the National Bank of the appropriate type, while the second are freely subscribed. The capital of each regional bank is to be fixed by the respective Charter but it may in no case be less than 10 million pesos 6/.

The working capital put at the disposal of the Fondo consists of the assets of the National Agricultural Guarantee Fund (replaced by the Fondo); funds and other resources that the Federal Government had put at the disposal of private credit institutions for their agricultural credit operations; an initial contribution of 100 million pesos from the Federal Government; appropriations earmarked annually in the Federal Expenditure Budget; proceeds of investments made by the Fondo itself; revenue from the latter's guarantee services; any additional monies made over to it by the Federal Executive 7/.

(c) Privileges of credit institutions

The establishment of Regional Banks, together with amendments to the foundation charters or agreements made with any of the Banks making up the credit system established under the Act of 1955 are not subject to tax 8/.

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1/ Security Fund, *op.cit.*, p. 9.

2/ Regulations, Arts. 8 and 9.

3/ Security Fund, *op.cit.*, p. 10.

4/ See Credit Act Art. 1, Decree of 1961, Art. 2 and Decree of 1965, Arts. 2, 4, respectively.

5/ Credit Act, Arts. 8 and 9, Decree of 1951, *Ibid.*, Decree of 1965, *Ibid.*,

6/ Credit Act, Art. 28.

7/ Act of 1954, Art. 2.

8/ *Ibid.*, Art. 127.



### 3. Agricultural credit institutions and other institutions

#### (a) Agricultural credit institutions and the Central Bank

The Central Bank (Banco de México) is represented on the Board of Directors of Banagro in the person as already mentioned of the Chairman of that Board 1/. It is also represented in the Board of Directors of the National Banks, where it is series "B" shareholder, by-one full and one alternate board member 2/. The relationship existing between the Fondo and the Central Bank have been noted earlier. Otherwise the Bancos Agrarios are required to deposit all the funds that they dispose of or manage with the Central Bank 3/.

Apart from these specific links, the Central Bank authorizes minimum or maximum limits of interest, premiums and discount rates that credit institutes and auxiliary organizations may apply to their customers 4/. It also establishes the limits within which such credit institutions and auxiliary organizations may issue or guarantee bonds, certificates or debentures or accept or guarantee order papers 5/.

The Central Bank may furthermore rediscount for credit institutions bills of exchange, promissory notes and warehouse pledge noted to order arising from operations related, among other things, to the cultivation or negotiation of agricultural products or to livestock farming and bearing the signature of the discounting institution and another signature of recognized solvency. The signature of the discounting institution by itself is sufficient and the second signature not necessary if the documents are adequately guaranteed by such securities as mortgage debentures, general bonds and mortgage bonds 6/.

#### (b) Agricultural credit institutions and farmers' co-operatives

The legal texts studied here do not speak of farmers' co-operatives as such, though several provisions are to be found refer to farmers' groups (these are named ejido members) with which the various banks may enter into credit transactions 7/.

The most important of these groupings and by far the most interesting when credit operations are concerned are the local agricultural credit societies and the local ejido credit societies Operating within the respective national and or regional bank networks 8/.

The establishment or modification of a local society is null and void without the express approval of the National or Regional bank, of the relevant type, which also keeps a Register of societies 9/.

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1/ Decree of 1965, Art. 3.

2/ Credit Act, Art. 14.

3/ Decree of 1961, Art. 11.

4/ The Organic Law of the Bank of Mexico, Art. 32.

5/ Ibid., Art. 34.

6/ Ibid., Art. 24(VIII) and (X(c)).

7/ See for instance Credit Act, Art. 5 (XII), Decree of 1961, Arts. 9 and 10.

8/ Credit Act, Art. 3.5(I).

9/ Ibid., Art. 51.

Local societies may be established for the purpose of constructing or purchasing and managing warehouses, cotton gins, processing plants, sugar mills or plants for the processing of products, electric power plants, dams, canals, pumping stations, land improvement works and, in general, the immovables required by the society, the joint cultivation of the land of their members or carrying out, on a collective basis, any productive agricultural activity and purchasing, for common use, seeds, fertilizers, breeding animals, machinery, implements and any movable property required for operating purposes 1/.

local societies are established with limited, unlimited or supplemental liability. In the latter case each member is, in addition to his contributions to the registered capital, individually liable for all the society's obligations up to an amount fixed in the articles of association; this supplement may in no case be less than twice the member's main contribution 2/.

A minimum of ten members is required for the constitution and operation of a local society 3/. The minimum initial capital in the case of a society with limited liability must be 50 000 pesos and in that of a society with supplemental liability 25 000 pesos 4/. Each society is managed by a Management Committee of three to five members appointed by the general assembly of the members. The Bank with which the society operates has the widest powers of supervision and may, in addition, undertake all accounting, banking, custody of securities, storage of crops, etc. through its own paid staff 5/.

(c) Relationships between the various kinds of agricultural credit institutions

National Banks are allowed to transact with the Regional Banks of their respective network the following operations: they may grant commercial loans with collateral security, provided by their holdings of a similar kind, and at an amount not exceeding 80 percent of the value of such security, discount their holdings secured by pledges and resulting from commercial loans; discount their holdings of short-term and long-term equipment and fixed installation loans, or grant them simple or current account credits with security provided by such holdings. The total of the real and potential liabilities of a Regional Bank vis-à-vis its respective National Bank may not exceed 75 percent of the former's capital and reserves 6/.

National and Regional Banks may effect the following transactions with local societies: they may grant them loans for investments in the common interest, provided that the societies are legally constituted and can furnish the appropriate securities, grant them commercial, short-term and long-term equipment as well as fixed installations loans up to the amount and with the securities of the loans of the same type which they grant to their members. The sum of the repayments, in respect of loans of any kind, for which a society becomes liable during the course of a year may not exceed 80 percent of the value of that year's crop and the profits of the society or its members. Amount of the loans which a bank may grant to a society must be limited to its total assets and liabilities situation; in no case may it exceed 500 000 pesos unless the Board of the Bank decides otherwise by a majority of seven or more votes. The National Banks are not allowed to effect transactions with local societies situated within the area of operations of the Regional Banks 7/.

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1/ Credit Act, Art. 38 as amended by Decree of 1966, Art. 1.

2/ Ibid., Arts. 39 and 42.

3/ Ibid., Art. 45.

4/ Ibid., Art. 43.

5/ Ibid., Art. 47.

6/ Ibid., Art. 75.

7/ Ibid., Arts. 76(I-V), 65 and 79.

The transactions that National or Regional Banks may effect with institutions which, while not forming part of the agricultural credit system, undertake agricultural credit operations, consist in discounting their holdings of short-term and long-term equipment or fixed-installation loans or of simple or current account credits secured by such holdings 1/.

Banagro operates agricultural credit transactions mainly with regional agricultural credit banks and with the Bancos Agrarios as well as with other institutions active in the agricultural credit field 2/. The explicit intention of the Act is that this bank shall gradually replace the National Banks in their role of dispensers of agricultural credit funds to the Regional Banks and the Bancos Agrarios. Especially concerning the latter the situation is somewhat complicated for the Decree that authorizes the creation of these bancos stipulates that their credit and other operations are to be supervised by the Banco Ejidal 3/, while the more recent Decree of 1965 creating Banagro places the Bancos Agrarios under its supervision.

The Fondo, as already seen, was initially established to deal with private banks only. Since 1965 it has also operated with regional banks established within the Banagro network. The Fondo guarantees trust beneficiaries up to 60 percent of their short-term production and long-term financing loans which cannot be insured under the Integrated Farming and Livestock Insurance scheme. The amount guaranteed is that actually withdrawn by the borrower, and it is not extended to cover interest or other charges. The Trustee (Central Bank) covers the beneficiary (private bank, etc. ) up to the amount for which it has not obtained repayment within 12 months computed from the date when the loan was due. For this service the Fondo charges a varying fee up to a maximum of 2.5 percent per transaction if related to short-term production loan, or annually if related to a long-term financing loan 4/.

The main activity of the Fondo is its discounting operations. It discounts promissory notes resulting from financing operations carried out by private banks etc., either directly with farmers producers, or through credit unions or, again, ejidal societies. Discounting by the Fondo is possible only when the following requirements are met:

#### Kind of loans

Loans must be of the short-term production or long-term financing type and designed for the production of basic foodstuffs or export crops and approved by the Fondo Technical Committee 5/.

#### Loan ceilings

The credit for farming operations made available to individual producers must not exceed 100,000 pesos if intended for meeting production needs or 200,000 pesos if granted for financing purposes. The combined amount of both kinds of loans must never exceed 250,000 pesos. In extraordinary cases the Technical Committee may decide that these credit totals may be doubled. For operations related to livestock production the maximum must not exceed 500,000 pesos for each individual stock breeder. For loans granted under the Alliance for Progress programme the maximum limit has been established to 150,000 pesos. There is no fixed limit to loans operated with funds proceeding from the World Bank (IBRD), in which case the IBRD's operational rules apply 6/.

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1/ Credit Act, Arts. 77, 5(XI) and 79.

2/ Decree of 1965, Art. 2(iv).

3/ Decree of 1961, Art. 13.

4/ Act of 1954, Arts. 6 and 7, Regulations Acts 14(I), 17, 19, Security Fund, op.cit, pp. 19 and 20.

5/ Ibid., Art. 5(I), 15 and p. 23 respectively.

6/ Security Fund, op.cit, pp. 23 and 24.

### Loan purposes

Loans may be granted only to producers and for outright investment purposes. Exceptionally, in the case of long-term financing loans covered by national resources, 25 percent of the credit may go to settle liabilities arising from operations carried out by the producer within the year prior to the contract date 1/.

### Interest rates

The discounting facilities of the Fondo are reserved to credit transactions for which the maximum interest rate charged does not exceed 12 percent per year for credits used for the purchase of materials and implements and 10 percent for credits used in long-term financing. These maximum rates must include basic interest as well as the costs of collection, supervision, inspection and any other expenses and charges 2/. For financing operations using Alliance for Progress or IRBD resources the interest rate must not exceed 7 percent per year 3/.

## 4. Relationships between agricultural credit institutions and individual borrowers

### (a) Application for loans

The texts are silent as regards the procedure for applications for loans. Provision, however, is made to the effect that the institution granting the loan must estimate with the assistance of experts the value of the property held by the application. Such an estimation must ascertain the mean probable value of his crops and products, the amount of other income available to him through agricultural or other activities, liabilities, personal expenses and those arising out of his agricultural activities and, in general, his overall economic situation and personal standing 4/.

In fixing the term of any loan the institution must take into account the applicant's capacity to repay, taking as a basis the fact that as a general rule the only source of income will be the crops or the products (except in the case of special credits secured by pledge, mortgages or by the guarantee of a solvent institution) 5/. The beneficiary receives the amount of the loan in instalments, spaced as required by the purposes for which the investment is being made.

Loans granted by credit institutions under the provisions of the Agricultural Credit Act, must be documented by means of a contract for the opening of credit in accordance with the General Act on Credit Certificates and Operations 6/.

In the case of short-term production and long-term financing loans, contracts may take the form of private deeds executed before two witnesses, or before a Public Notary. These must show the amount of the loan and the purpose for which it is made, the repayment schedule, interest rates and the terms under which the credit will be used by the borrower. Contracts must also accurately list the properties encumbered as collateral and all other terms and conditions. They must be recorded in the Mortgage Records of the locality of the encumbered estate and/or in the pertinent Commerce Records if the guarantee consists of, or includes, chattels 7/.

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1/ Security Fund, op.cit., p. 25.

2/ Ibid., and Regulations, Art. 16.

3/ Security Fund, op.cit., p. 26.

4/ Credit Act, Art. 65.

5/ Ibid., Art. 66.

6/ Ibid., Art. 63.

7/ Security Fund, op.cit., pp. 49-50.

(b) Terms and conditions of loans

Agricultural credit legislation in Mexico distinguishes between four different kinds of loans: Comercial (commercial), habilitación or avío (short-term production), refaccionario (long-term financing) and inmobiliario (real estate) loans.

Commercial loans

These are given for production or consumption purposes for a term not exceeding six months and are effected by direct promissory notes or bills of exchange. They may be secured or unsecured 1/.

Short-term production loans

These are loans which the borrower must use exclusively for cultivation or other farming expenses, purchase of seeds, fertilizers, raw materials and other supplies and in general expenses that can be recovered within the same farming cycle of a single crop or within the economic cycle of the farming enterprise to which the loan has been given. They are granted for a maximum term of 24 months.

Long-term financing loans

These are used to purchase farming tools, implements, cultivation requisites, draft animals, and fat or breeding stock, to plant cyclical or permanent crops, to open up new land, to purchase and instal machinery and build or carry out necessary, physical works for developing his enterprise. It may also be agreed that a portion of the loan shall be used to cover fiscal liabilities or debts of the borrower's enterprise resulting from operations within the year immediately prior to the date of the loan contract. The maximum term of these loans is 12 years, depending on the kind of investment it is proposed to finance.

Real estate loans

They are used exclusively for the purchase or parcelling or settlement of land, building roads, purchase of materials and equipment for farming purposes, building or installation of plants, mills, workshops or farm buildings of all kinds and the building of of urban sanitation works and dwelling rural inhabitants. The term of real estate loans is 20 years; repayment is arranged on the basis of the most appropriate system of amortization 2/.

i) Interest

Maximum and minimum interest rates are fixed, as already noted, by the Central Bank of Mexico. Interest rates charged by the various individual institutions are not given in the respective texts. The Fondo may, however, discount only with those institutions which do not charge, and for those operations which do not attract, more than 12 percent per annum 3/. Discounting of the kind is limited to short-term production loans at not more than 10 percent and to long-term financing loans at not more than 10 percent per annum. For Alliance for Progress and IBRD-financed loans the interest rate must be even lower, namely a maximum of 7 percent. All other expenses and charges, moreover, in these rates must be included.

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1/ Infra, 4.b)ii).

2/ Credit Act, Arts. 54-57 and Security Fund, op. cit., pp. 47-51.

3/ Regulations, Art. 16.

The interest chargeable by local societies to their members on loans received from Banks in the credit system may not be more than one point higher than that chargeable by the Banks themselves 1/.

ii) Securities

Securities are closely linked to the kind of the loan they guarantee.

Commercial loans

They are normally secured by pledge on crops or other agricultural products held available for the creditor at a point designated by him, preferably a general warehouse. In this case, the amount of the loan may not exceed 80 percent of the value of the pledge.

Commercial loans can be granted to select customers of the lending institution without any specific security and without any formal credit contract. In that event, the credit documents, promissory note or bill of exchange, are jointly underwritten by not less than two persons of recognized solvency 2/.

Short-term production loans

They are secured by the raw materials and other supplies purchased and by the crops or other agricultural products obtained through the investment of the loan. The amount of the loan must not exceed two percent of the estimated value of the crop or annual yield which the debtor is likely to obtain. Short-term production loans may be made only to owners of land, or to cultivators of land who are able to furnish proof of the security of their tenure throughout the period fixed for repayment 3/.

Long-term financing loans

These must be secured by mortgage on the farm land and buildings and by pledge on the machinery, implements, tools and other chattels as well as on the crops or other agricultural products projected, standing or already obtained from the investment of the loan. The amount of the loan must not exceed the value, attested by expert valuation, of the property or improvements for which the credit is intended, or 50 percent of the value of crops or income obtained during the period of amortization of the loan 4/.

Real estate loans

These are primarily secured by mortgage on the property for the purchase, construction or improvement of which the loan has been granted. Other immovable or fixed property can also be offered as security under the provisions of the law 5/, in order to be mortgaged or taken in trust 6/. The amount of real estate loans must not exceed the value, as estimated by experts, of the works on which they are to be spent or of the property for the purchase of which they are requested or, again, 30 percent of the value of the expected crops or other revenue of the borrower during the amortization period 7/.

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1/ Credit Act, Art. 64.

2/ Ibid., Art. 54 and Security Fund, op.cit., p. 50.

3/ Ibid., Arts. 55 and p. 46, respectively.

4/ Ibid., Art. 56 (I-II) and p. 49. respectively.

5/ General Act on Credit Institutions, Art. 36.

6/ Credit Act, Art. 61.

7/ Ibid., Art. 60.

It can be agreed that where this form is adopted, the property and rights constituting the pledge, remain with the debtor acting as judicial custodian of the property for purposes of civil and criminal liability 1/. A pledge entered in the Public Register entitles the creditor to preference in the recovery of his debt on the basis of the property constituting the security, of the products into which such property has been converted or of the cash or securities resulting from sale of that property. Bankruptcy, winding-up or other failure of the debtor does not affect the property constituting the security. Pledged standing crops or unfinished products can, on the request of the creditor and at his expense, be placed in general warehouses upon harvesting or completion of the appropriate processing 2/.

Mortgages constituted in favour of credit institutions under the Credit Act, embrace the entire holding and all its material, movable and immovable elements. Cash on hand for current operating purposes and credits in favour of the debtor arising directly out of his farming activity can also be included without prejudice to the debtor's right to use them in the normal course of business without the consent of the creditor, unless stipulation is made to the contrary 3/.

Pledges and mortgages in favour of the credit institution and local associations, as well as any contracts related to agricultural credit operations engaged in by these institutions must be entered in the Agricultural Credit Register maintained by a central office in Mexico City and a number of local officers 4/.

(c) Recovery of loans

Repayment of short-term production loans is normally made at the end of the crop year period or the farming operation for which the loan is intended 5/.

Amortization of long-term financing loans is effected by repayments made annually, or more frequently when the state of cultivation so permits. Where the type of cultivation does not allow for annual repayments, the instalments relating to the first years may be deferred and spread over subsequent amortization periods 6/.

Generally, in cases where the debtor is unable to repay the amount of the loan because of total or partial loss of his crops or other serious cause not imputable to negligence on his part, the amount not settled when due may be deferred in accordance with his capacity to pay 7/.

Where there is a danger that through negligence on the part of the borrower, the crops constituting the pledge may not be realized or may be lost, the creditor may take possession of his lands and cultivate them for his own profit until the debt is paid off. This measure may also be applied if the crops have in fact been lost or even when the creditor has had disposal of the pledge but, due to the negligence of the borrower, the realization of the pledge was unsatisfactory. The application of this measure is without prejudice to any other legal action the creditor may take 8/.

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1/ Credit Act, Art. 70.

2/ Ibid., Arts. 72 and 73.

3/ Ibid., Art. 74.

4/ Ibid., Art. 99 (VII-IX), 84, 85, 89.

5/ Ibid., Art. 55.

6/ Ibid., Art. 56(III)

7/ Ibid., Art. 63(I)

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## V. PAKISTAN

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## Introduction

Agricultural credit in Pakistan is made available from three main institutional sources:

- a) The Agricultural Development Bank
- b) The Cooperatives, and
- c) The Taccavi system.

The Agricultural Development Bank of Pakistan (ADBP), established in 1961 by the Agricultural Development Bank Ordinance, 1961, was the result of a merger of the Agricultural Bank of Pakistan set up by the Act of that name of 1957 and of the Agricultural Development Finance Corporation created by Act No. XVII of 1952. At the time of writing, the Bank is in the process of reorganization <sup>1/</sup>. A network of credit cooperatives, cooperative banks and central (cooperative) banks covers the whole of the country. These are governed by the Cooperative Societies Act of 1925 and the Cooperative Societies Rules of 1927, as amended.

The Taccavi system consists in loans granted directly by the Government through the revenue officer. It constitutes the older source of agricultural credit in the country established by the Land Improvement Act of 1883 and the Agriculturists' Loans Act of 1884, which in part still governs the system; the 1884 Act having been repealed by the West Pakistan Agriculturists' Loans of 1958.

What follows will concentrate mainly on the ADBP with reference to the cooperative credit network within the limits imposed by the documentation available. Due to the lack of relevant information, discussion of the third source of credit will be no more than incidental to the rest.

### 1. Legal structure of agricultural credit institutions

The Agricultural Development Bank. This is a corporate body having perpetual succession and a common seal, with power to hold and dispose of property and sue and be sued in its own name. It is deemed to be a "banking company" for the purposes of the relevant legislation <sup>2/</sup>. The main function of the Bank is to provide credit in cash or in kind, and credit facilities, generally including the hiring and renting of anything that it may advance by way of loan, and the provision of warehouse facilities. The beneficiaries must be persons engaged in agriculture or cottage industries in rural areas, and the credit or credit facilities must be for those respective purposes.

The Bank may transact all kinds of business related to the performance and the security of its main lending functions. In particular, it may issue and sell bonds and debentures, subscribe to debentures repayable within a period not exceeding ten years of any cooperate body concerned with agriculture or the financing of agriculture and cottage industries in

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<sup>1/</sup> See Notification No. F.7-2/72-AID of the Ministry of Food, Agriculture and Under-Developed Areas.

<sup>2/</sup> Notably, the Banking Companies (Inspection) Ordinance, 1946 (Ordinance IV of 1946); the Banking Companies (Restriction of Branches) Act, 1946 (Act No. XXVII of 1946); the Banking Companies (Control) Act, 1948 (Act No. XXII of 1948); the State Bank of Pakistan Act, 1956 (Act No. XXXIII of 1956). See Agricultural Development Bank Ordinance, 1961, Sec. 3(2-3).

rural areas. It also may buy, stock and supply on credit seeds, agricultural machinery, implements and equipment, fertilizers, chemicals and materials used in agriculture as well as act as agent for any organization for the sale of such goods 1/.

Cooperatives. Two kinds of cooperatives are of interest to the present section, viz., cooperative banks and agricultural credit societies. Cooperative banks or banking societies are cooperative societies which either carry on banking business (accepting deposits of money subject to withdrawal by cheque, draft or order) or use as part of the name under which they carry on business the word "bank" or "banking" 2/. Agricultural credit societies are those "resource societies" 3/ of which the primary object is the creation of funds to be lent to their members; while the majority of such members must be agriculturists and all of them physical persons 4/. Both cooperative banks and agricultural credit societies must be registered under the 1925 Act in order legally and validly to carry on business<sup>5/</sup>.

The registration of a cooperative society automatically renders it a body corporate by the name under which it is registered, with perpetual succession and a common seal and with power to hold property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purposes of its constitution 6/. Cooperative banks as well as credit societies are registered with limited liability 7/. No society, however, may be registered as a cooperative bank unless its paid-up share capital amounts to at least rupees 20,000 8/.

## 2. Relationship between agricultural credit institutions and the State

- a) State participation in the management of credit institutions
  - (i) Management in general

The policies and operations of the Bank are supervised by a Board of Directors, of ten or more members appointed by the Central Government, as follows: the Chairman; two officers serving under the Central Government, of whom one should be a representative of the Ministry of Finance and the other of the Ministry of Food and Agriculture; two officers serving under the Governments of East (but see below) and West Pakistan, to be nominated by their respective Governments; two non-officials, one from West Pakistan, to be nominated by the Central Government in consultation with the Provincial Government concerned and such other person or persons, if any, as the Central Government may consider necessary to give due representation to cooperative societies and the members of the public holding shares in the Bank 9/.

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1/ Agricultural Development Bank Ordinance, 1961, Sec, 19(1).

2/ Cooperative Societies Act, Sec. 7(2)

3/ One of the five categories in which the Act divides cooperative societies, the other four being: Producers' societies, Consumers' societies, Housing societies and General societies, Ibid., Sec. 3(4).

4/ Ibid., Sec. 17A, Explanation.

5/ Ibid., Sec. 5.

6/ Ibid., Sec. 23.

7/ Ibid., Secs. 7(2) and 17 A, Explanation, respectively.

8/ Ibid., Sec. 7(2).

9/ The 1961 Ordinance, Sec. 9.

Before the proclamation of independence of East Pakistan as Bangladesh, the composition of the Board was the following: two members representing, one each, the Ministry of Food, Agriculture and Underdeveloped Areas and the Ministry of Finance of the Central Government, five officers serving under the Provincial Governments, four non-officers, two from East Pakistan and one each from the two Provinces of West Pakistan nominated after consultation with the respective Provincial Governments, and the Chairman, also appointed by the Central Government 1/.

The Chairman of the Board is the Chief Executive Officer of the Bank and has the power to direct and control, on behalf of the Board, the entire affairs of the Bank subject to any rules that the Central Government may make 2/.

An Executive Committee consisting of the Chairman and three Directors, of whom at least one should be a person belonging to East and one to West Pakistan, may deal with any matters within the competence of the Board, subject to rules made for this purpose 3/.

In discharging its functions the Board must act on commercial considerations, with due regard to the interests of agriculture and cottage industries in rural areas 4/.

For each regional office of the Bank there is constituted with the approval of the Central Government an Advisory Committee consisting of three officers serving under the Provincial Government concerned and nominated by that Government, three non-officials representing the agricultural interests of the region, and the Manager of the Regional Office as Chairman 5/.

There is no direct State participation in the management of credit (or other) cooperatives or cooperative banks. However, overall control over them is exercised through the registration requirement. Thus, Registrars of cooperative societies are appointed by the Provincial Government for their respective Provinces 6/. Furthermore, the Registrar may, on his own initiative, personally or through a third person duly authorized by him in writing, hold an inquiry into the constitution, working and financial conditions of any cooperative society 7/.

(ii) Accounts, audit, etc.

The Bank's accounts are audited by at least two certified auditors appointed by the Central Government, in consultation with the Auditor General. The last-mentioned has the power to direct the auditors in regard to the extent and method of their audit 8/ and to

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1/ Information supplied by the ADBP.

2/ 1961 Ordinance, Sec. 10(2).

3/ Ibid., Sec. 12.

4/ Ibid., Sec. 8(2).

5/ Ibid., Sec. 17(1)-(13).

6/ The 1925 Act, Sec. 4.

7/ Ibid., Sec. 43(1).

8/ Subject to provisions of the Companies Act, 1913, Act No. VII of 1913.

prescribe the forms of accounts to be maintained by the Bank consistent with the requirements of the Companies Act. He may also, in certain cases, personally or by officers duly authorized by him, undertake the audit of the accounts of the Bank. The latter must then produce its account books, registers and any related documents and furnish any information required 1/.

The Central Government may issue directions to the auditors requiring them to report to it upon the adequacy of measures taken by the Bank for the protection of the interests of its shareholders and creditors. It also may enlarge the scope of the audit or direct that a different procedure be adopted or that any other examination be made by the auditors if in its opinion the public interest so requires. The auditors must send as soon as possible to the Central Government and to the Board a report giving the results of the audit together with their comments on the annual balance sheet of the Bank and on the examination, if any, of Directors or officers of the Bank 2/.

The Bank must also submit to the Central Government, within four months of the close of each financial year, an audited statement of its assets and liabilities together with a profit and loss account for the year and a report on its operations during the year elapsed. The Government publishes this statement etc., in the Official Gazette. The Bank must also furnish to the Government any returns and statements concerning its affairs as required by it 3/.

The accounts of cooperative societies (credit societies and cooperative banks are included in these provisions) are audited at least once every year by the Registrar or a person specially authorized by him in writing. The audit includes the examination of overdue debts, if any, the verification of cash balance and securities and a valuation of the assets and liabilities of the society. The Registrar, or the person authorized by him, has free access to the books, accounts etc., of the society and may require from its Directors and any other officers any information regarding its operations and transactions. He has power to summon at the time of his audit any officer, agent, etc., able to give information and to require the production of any book and document relating to the operations of the society 4/.

b) State participation in the share capital of credit institutions

The original share capital of the Bank was 200 million rupees, divided into two million shares of one hundred rupees each, issued by the Bank from time to time with the prior approval of the Central Government. Not less than fifty-one per cent of the shares issued at any time are to be subscribed by the Central Government. The remaining shares, if any, are offered to the Provincial Governments, cooperative societies and the public for subscription in such proportion and on such terms and conditions as the Central Government may determine at the time of each issue 5/. Subject to the prior approval of the Central Government, the original share capital may be increased from time to time 6/.

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1/ The 1961 Ordinance, Sec. 28(1)-(3).

2/ Ibid., (5) and (7).

3/ Ibid., Sec. 29(1) and (3).

4/ The 1925 Act, Sec. 22.

5/ The 1961 Ordinance, Sec. 4. In October 1968 the paid-up capital of the ADBP was 130 million rupees, wholly Government owned, the Central Government holding 90 percent and the Provincial Governments holding 5 percent each.

6/ Ibid., Sec. 5.

c) Privileges of agricultural credit institutions

The Central Government may by notification in the Official Gazette remit the income tax or super-tax payable in respect of the profits of any cooperative society or class of societies. It may also exempt from such taxes the dividends or other payments received by society members on account of profit or in respect of interest on securities held by the society.

The Provincial Governments may similarly by notification in the Official Gazette exempt a society or class of societies from stamp-duties on instruments executed for the business of such society and from any registration or court fees 1/.

3. Agricultural credit institutions and other institutions

a) Agricultural credit institutions and the Central Bank

The State Bank (Central Bank) of Pakistan participates in agricultural credit policies and operations by granting loans and making advances to agricultural credit institutions either directly or through the Rural Credit Fund that it has established and by negotiating agricultural credit instruments.

Direct loans and advances. The State Bank makes advances and loans to institutions or banks specially established for the purpose of promoting agricultural or industrial development or to cooperative banks for such amounts and on such terms and conditions as the Central Board may decide 2/.

The Bank also makes advances and loans to cooperative banks, among other institutions, repayable on demand or on the expiry of fixed periods not exceeding ninety days, against security. Such security may be in the form of the following:

- (i) stocks, funds or securities, other than immovable property, in which a trustee is authorized to invest trust money by any law in force in Pakistan;
- (ii) Gold or silver or documents of title to the same;
- (iii) Bills of exchange or promissory notes eligible for purchase or rediscount by the Bank; and
- (iv) Promissory notes of any scheduled bank, supported by documents of title relating to goods which have been transferred, assigned or pledged to any such bank as security for cash credit or overdraft granted for the purpose of financing seasonal agricultural operations or the marketing of crops 3/.

If the cooperative bank in receipt of such a loan is unable, for reasons that the Bank is satisfied are valid, to repay in time the loan or advance can be converted into a medium-term loan or advance (not exceeding three years) covered by the Rural Credit Fund 4/.

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1/ The 1925 Act, Sec. 33.

2/ The State Bank of Pakistan Act, 1956, Sec. 17(b).

3/ Ibid., (4).

4/ Ibid., Sec. 17A(2)(c).

Rural Credit Fund. This was established by the State Bank which made over to it an initial sum of 10 million rupees. It also receives appropriations of certain amounts from the surplus profits of the Bank as determined in consultation with the Central Government. The resources of the Fund are used by the Bank for the following purposes:

- (i) To make medium-term loans and advances to cooperative banks, repayable on the expiry of a fixed period not exceeding three years and against such securities as the Bank may prescribe;
- (ii) To make medium- and long-term loans and advances to rural credit agencies established or to be established, on the terms and conditions that the Bank may prescribe 1/.

Agricultural credit instruments. The State Bank is authorized to purchase, sell and rediscount bills of exchange and promissory notes drawn or issued for the purpose of financing seasonal agricultural operations or the marketing of crops. These bills or promissory notes must be drawn on and payable in Pakistan and bear two or more good signatures, one of which must be that of a scheduled bank. Their maturity period must not exceed fifteen months from the date of their purchase or rediscount, exclusive of days of grace 2/. By agricultural operations are meant all those activities jointly undertaken with such operations. By crops are understood any products of agricultural operations while the term marketing includes the processing of such products 3/.

The Bank is also authorized to purchase, sell and rediscount within limits established by it bills of exchange and promissory notes drawn and issued for financing the development of agriculture or of agricultural and animal production and maturing in a period not exceeding five years. These instruments must be drawn and payable in the country and bear two or more good signatures one of which must be that of a scheduled bank or a corporation approved by the Central Government which has among its objects that of making loans or advances in cash or in kind 4/.

In addition to the above, the State Bank closely controls the general credit and monetary policy of the Agricultural Development Bank of Pakistan through directives that it may give from time to time. If there is a difference of opinion between the State Bank and the ADBP as to whether a particular question is one of credit and monetary policy the matter is referred to the Central Government whose decision is final 5/.

b) Agricultural credit institutions and farmers cooperatives

No special relationship exists between the ADBP and farmers cooperatives. The latter are in fact treated like any other customers designated by the Ordinance under the general term of "agriculturists" 6/.

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1/ The State Bank of Pakistan Act, 1956, Sec. 17A(1) and (2)(a) and (b).

2/ Ibid., Sec. 17(2)(b).

3/ Ibid., Explanation,

4/ Ibid., Sec. 17(2)(d).

5/ The 1961 Ordinance, Sec. 8(2) and (3).

6/ Ibid., Sec. 2(c).

Cooperative banks. There are two main categories, viz., a) apex banks 1/ and central banks located in the district towns and b) ordinary cooperative banks.

The former must have as their members cooperative societies (including cooperative banks only 2/, while the second may be formed by individuals as well as cooperative societies. Central banks in particular must be constituted by at least ten other societies 3/.

This distinction is not only a formal one. In fact, the provisions of the loans to persons other than their own members is subject to special permission of the Registrar 4/ This means that apex or central banks can grant loans only to cooperative societies which are their members and not to individual farmers. Such farmers can receive loans from ordinary cooperative banks or agricultural credit societies of which they are members. A cooperative network is thus established which should considerably facilitate agricultural credit distribution. It takes the following form: apex banks → central banks → cooperative banks (or agricultural credit societies) → farmers.

#### 4. Relationships between agricultural credit institutions and individuals borrowers

##### a) Application for loans

Applications for loans from the Bank must be addressed to the appropriate regional branch where the officers have authority to examine and approve or reject them. Members of cooperatives or cooperative banks apply for loans to the institutions of which they are members. Non-members may apply for credit to a cooperative only if the latter has received special permission from the Registrar to grant loans to non-members 5/. Applications for taccavi loans are made to the revenue departments the officers of which are in charge of issuing them 6/.

##### b) Terms and conditions of loans

Short-term loans (up to 18 months) are given mainly to cover seasonal farming expenses. Medium- and long-term loans are intended as development loans. They are given especially for the purchase of draft animals and power pumps (medium-term - up to 5 years) and for the purchase of tractors, installation of tubewells, etc. (long-term -5 to 15 years). Loans may not be given for the purchase of land. The intention of the Government was that the ADBP should concentrate on development loans and leave short-term loans to be handled by cooperatives.

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1/ These are provincial banks, such as the Punjab Provincial Cooperative Bank Ltd., Lahore, the Frontier Cooperative Bank Ltd., Peshawar, the Sind Baluchistan Provincial Cooperative Bank, Ltd., Quetta, or any other cooperative bank which the Provincial Government may declare to be an apex bank. The Cooperative Societies (Reforms) Order 1972, Sec. 2(b).

2/ Ibid., Sec. 4.

3/ Ibid., Sec. 2(c).

4/ The 1925 Act, Sec. 24(1).

5/ Ibid..

6/ See S. Anania: Credit and Fertilizer Promotion in Pakistan, UNDP/SF report, 31 July 1969 (RU:SF/PAK/69/5) p. 18.

It was also the intention that the Bank should as far as possible give preference to the credit needs of small agriculturists, including share-croppers 1/. This aim, however, does not appear to have been realized, so that by 1972 the Government was seeking other solutions which would satisfy the credit requirements of the small farmer if the ADBP were "inherently incapable of serving [them] because of its professional banking approach"2/.

The Bank requires and, as far as possible, ensures that the loan is spent on the purpose for which it is made. If the borrower does not comply, the Bank may demand the immediate repayment of the loan 3/.

(i) Interest

The Bank charges an interest of 7 percent per annum on all its loans, regardless of the term. In addition, applicants for loans must pay application fees ranging from 4 rupees for loans of up to 1,000 rupees, to 1 percent of the loan for amounts exceeding 7,500 rupees.

Interest rates charged by cooperatives are generally higher. Thus, although interest on short-term loans is on a rate similar to that of the ADBP, interest on medium-and long-term loans is between 9 and 11 percent, and sometimes as high as 15 percent for a certain type of cooperative.

(ii) Securities

Loans and advances granted by the Bank may be guaranteed by pledges on crops or other movable property, mortgages on the land and immovables, assignment to the Bank of any kind of movable or immovable property or by the unconditional guarantee of a scheduled bank. Loans not exceeding 1,000 rupees in the aggregate and made to individual agriculturists may be secured by a bond with one or more sureties as the Bank may deem necessary. In this case, the bond must be accompanied by an agreement with the Bank creating a charge on any of the borrower's specified property with a view to securing the performance 4/. It seems, however, that preference is always given to real estate securities. Loans guaranteed by the Central Government or any provincial Government may be given without any specific security 5/.

Loans granted by cooperative banks and agricultural credit societies are secured by the some kind of guarantees. With regard to surety bonds, these may be given only by members of the cooperative granting the loan. They may be given by non-members only for special reasons with the specific permission of the Registrar 6/. In addition, cooperative societies make a first charge upon any crops or other agricultural produce that is raised, in whole or in part, with a loan taken from the society, or upon any cattle, implements or machinery, etc., purchased with such a loan. This charge, however, does not affect the claims of any bona fide purchaser or transferee of such crops or other property 7/.

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1/ The 1961 Ordinance, Sec. 21.

2/ Notification No. P 7-2/72 - AID Sec. 1 (5).

3/ The 1961 Ordinance, Sec. 23.

4/ Ibid., Sec. 19(1) (d).

5/ Ibid., (2).

6/ The Cooperative Societies Rules, 1927, Rule 11.

7/ The 1925 Act, Sec. 24(2).



c) Recovery of loans

Loans granted by the Bank are repaid in accordance with the specific loan agreement between the borrower and lender. However, even where such an agreement exists, the Bank may require the borrower to repay his debt in full immediately in the following cases:

- (i) if he has failed to comply with any of the terms of the agreement;
- (ii) if the Bank reasonably apprehends that he is unable to pay his debt;
- (iii) when, in the Bank's opinion, the loan has been granted on the basis of false or misleading information contained in the application or in any other statement or communication made in connection with the loan;
- (iv) if the property given as security for the loan is not kept in proper condition to the satisfaction of the Bank, or when its value, as originally estimated by the Bank, has depreciated by more than 20 percent and further security acceptable to the Bank is not given in time;
- (v) when, without the permission of the Bank, the property guaranteeing a loan is leased or rented to third parties, or is in any way charged, disposed of or removed from the place where it was at the time the loan was granted; and
- (vi) in any other case, where, in the opinion of the Bank, it is necessary to do so in order to protect its interests 1/.

Upon default of repayment or failure on the part of the debtor to comply with the terms of the loan agreement, the Bank may take over the management of the concern of the debtor and sell or realize any property given as security for the loan 2/. Such property (pledged, mortgaged, assigned or otherwise charged) must, however, be sold or otherwise disposed of only by public auction, and only so much of it as is sufficient to recover the Bank's dues. The Bank is not allowed to bid at such auctions except in cases where the bid is not sufficient to pay the debt or where there are no bidders 3/.

Concerning a charge created on a property in order to secure the performance of the stipulations of a bond executed in favour of the Bank, such a charge is enforceable against the property in the hands of any person to whom it may have been transferred, including any person who has acquired the property without notice of the charge 4/.

All sums due to the Bank are recoverable as arrears of land revenue 5/. Sums due from a cooperative society may be recovered from the property of the society and from its members and past members. In the case of a society where the liability of membership is limited, such recovery is subject to the limit of each member's liability 6/.

The cooperatives have, in general, at their disposal the same means of loan recovery as the Bank. In addition, they are allowed to use the special procedure of distraint,

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1/ The 1961 Ordinance, Sec. 24.

2/ Ibid., Sec. 25(1).

3/ Ibid., Sec. 19(3).

4/ Ibid., (4).

5/ Ibid., Sec. 25(2).

6/ Ibid., (4) and the 1925 Act, Sec. 65(2).

whereby a cooperative may file an application requesting the Registrar to recover amounts due to it by distraining crops or other produce belonging to the debtor 1/. If the application is granted, the Registrar orders the confiscation of the crop or produce and its sale by public auction in one or more lots as necessary for the realisation of the amount of the debt 2/.

If after a distraint has been ordered and before the sale of the distrained property, the defaulter or any other person deposits with the distraining officer the amount due, together with any costs incurred, the order is not executed 3/.

d) Sanctions

Any person who has applied for credit or has submitted to the Bank any other kind of document related to such application and wilfully makes or permits to be made any false statement, is punishable with an imprisonment for up to 6 months or with a fine not exceeding 1,000 rupees, or both. A person who uses, or allows to be used, any loan, etc., granted by the Bank for purposes other than that for which the loan has been granted is also liable to the same penalties 4/.

Any member of a cooperative society who wilfully furnishes false information or, without reasonable excuse, does not furnish information lawfully required of him by an authorized person is guilty of an offence and is liable to a fine not exceeding 50 rupees 5/.

e) Cooperative societies and their members

All persons seeking membership in an agricultural credit society must make, at the time of their application, a declaration by which they agree to a charge being created for the dues of the society on a part of their immovable property specified in the declaration. Additional parts of immovable property may be offered for the same purpose by members of a society after the acceptance of their application for membership. The property thus charged cannot be alienated by the owner so long as he remains a member of the society in favour of which the charge has been created. Any attempted alienation of the kind is automatically void.

The property so charged, or any variation made with the consent of the society is entered in the record of rights maintained under Chapter XA of the Sind Land Revenue Code of 1879 and, subject to the prior claim of the Government in respect of land revenue, the society has on it a first charge for any debt owing by the proprietor-member to it 6/.

Cooperative societies have, on the other hand, a statutory charge upon the share or interest in their capital and deposits of a member or past member in respect of any debt due from him 7/.

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1/ The 1925 Act, Sec. 59C.

2/ Ibid., Secs. 59 F and 59 L.

3/ Ibid., Sec. 59 R.

4/ The 1961 Ordinance, Sec. 34.

5/ The 1925 Act, Secs. 60(c),(d) and 61.

6/ Ibid., 17. A.

7/ Ibid., Sec. 25.

Past members are liable for the debts of a society, as they existed at the time when they ceased to be members, for a period of two years from the date of separation 1/. Estates of deceased members are also liable for the debts of the society, as they existed at the time of the members' death, for a period of one year from the date of death 2/.

It should be noted that recent provisions explicitly preclude traders from being members of societies engaged in agricultural credit or marketing of agricultural produce. Any question as to whether a person is or is not a trader is settled by the Registrar whose decision is final 3/.

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1/ The 1925 Act, Sec. 28.

2/ Ibid., Sec. 29.

3/ The Cooperative Societies (Reform) Order, 1972, Sec. 9 (1) and (2).

## VI. PHILIPPINES

### Sources of regulations

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- Republic Act No. 720, of 1952, as amended by Republic Acts Nos. 1097, 1403, 2670, 3128, 3778, 4106 and 4199 - consolidated text - published as Appendix A to the Revised Rules and Regulations Governing Rural Banks, of 1967, O.G. No. 37, 11 September 1967.
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- Republic Act No. 2702, of 1960, O.G. No. 2, 9 January 1961.
- Republic Act No. 821, of 1952, O.G. No. 10, October 1952 amended by Republic Act No. 2049, of 1957, O.G. No. 23, 15 December 1957; and Republic Act No. 3844, of 1963, Agricultural Land Reform Code, O.G. No. 18, 4 May 1964.
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- Republic Act No. 4693, of 1968, O.G. No. 48, 25 November 1968.
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- Republic Act No. 6389, of 1971, O.G. No. 5, 31 January 1972.
- Republic Act No. 6390, of 1971, O.G. No. 5, 31 January 1972.
- Agricultural Guarantee Fund Rules and Regulations, of 1971, O.G. No. 3, 17 January 1972.
- Presidential Decree No. 57, of 19 November 1972, stencilled copy.

### Introduction

In the Philippines there are three major specialized agricultural credit institutions:

- (a) The Development Bank of the Philippines and the network of private development banks;
- (b) The Rural Banks under the supervision of the Rural Banks administration of the Central Bank of the Philippines; and
- (c) The Agricultural Credit Administration.

In 1952 the Rural Banks Act (Republic Act No. 720) provided for the establishment of a network of Rural Banks under the authority of the Central Bank of the Philippines with the purpose of placing within easy access of the rural population credit facilities on reasonable terms. One Agricultural Credit and Co-operative Financing Administration was established that same year by Republic Act No. 821 with the dual responsibility of extending credit to small farmers and promoting the organization of farmers' co-operative marketing associations. The Administration was reorganized by the Agricultural Land Reform Code (Republic Act No. 3844 of 1963) and renamed the Agricultural Credit Administration (ACA). In 1958, the Development Bank of the Philippines replaced the Rehabilitation Finance Corporation, set up in 1946 by Republic Act No. 85 (which still governs the Bank), with the object of providing credit facilities for the rehabilitation of agriculture, commerce and industry. Private development banks are governed by Republic Act No. 4093 of 1964. Later, Republic Act No. 6390 of 1971 created an Agricultural Guarantee Fund in order to guarantee the 70 percent of any losses in the lending operations of Rural Banks in the context of the Agrarian Reforms. This guarantee was extended by Presidential Decree No. 57 of November 1972 to all institutions that finance agrarian reform programmes.

### 1. Legal structure of agricultural credit institutions

The Development Bank of Philippines is a corporate body, established for 50 years, having its principal place of business in Manila. Its main object is to provide credit facilities for the rehabilitation, development and expansion of the agriculture and industry of the country 1/. It has the usual powers of corporate bodies and can, among other things, grant loans for the establishment or development of agricultural or industrial enterprises, including public utilities, mining, livestock industry and fishing, grant loans to provincial, city and municipal governments for the rehabilitation, construction, or reconstruction of public markets, irrigation, waterworks, slaughterhouses, etc., and grant loans to co-operative associations to facilitate production, the marketing of crops and the acquisition of essential commodities 2/.

The Bank is charged with the task of promoting the establishment of private development banks in provinces and cities throughout the Philippines 3/. The private development banks are organized in the form of stock corporations, and their purpose is to meet the needs for capital and the demand for adequate investment medium and long-term loans for Filipino entrepreneurs 4/. They may operate only with a certificate of authority from the Monetary Board of the Central Bank, and are incorporated under the provision of the General Banking Act for mortgage banks 5/.

Rural Banks are organized in the form of stock corporations. They can be established only with the approval and under the authority of the Monetary Board of the Central Bank 6/ by individuals or duly established co-operatives 7/ in accordance with the provisions of the relevant legal enactments. The declared purpose of the banks is to provide adequate credit facilities for small farmers and merchants or for co-operatives of such farmers and merchants 8/.

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1/ Republic Act No. 83, Sec. 1, as amended by Republic Act No. 2085, Sec. 1.

2/ Ibid., Sec. 2 as further amended by Republic Act No. 3517, Sec. 2.

3/ Republic Act No. 85, Sec. 1, as amended by Republic Act No. 2085, Sec. 1.

4/ Republic Act No. 4093, Secs. 1 and 4.

5/ Ibid., Sec. 3.

6/ Republic Act No. 720 consolidated text (see sources of regulations), Sec. 4.

7/ Rules and Regulations of 1967, Sec. 2.

8/ Republic Act No. 720, Sec. 3.

The Agricultural Credit Administration is a corporate body 1/, established in order to "assist small farmers in securing liberal credit and to promote the effective groupings of farmers into co-operative associations to enable them to market efficiently their agricultural commodities, so as to place agriculture (including livestock, poultry and fishing, including deep-sea fishing) on a basis of economic equality with other industries, and to improve the standard of living of ••• people engaged in agriculture" 2/.

The Agricultural Guarantee Fund is a special fund initially established in order to guarantee 70 percent of the losses of Rural Banks from their lending operations for production purposes under the Agrarian Reform Program, the remaining 30 percent of such losses being absorbed by the rural banking system itself 3/.

This coverage has now be extended to all financial institutions granting loans to tenants and to farmers' co-operatives consistent with the supervised credit programme of the Agrarian Reform 4/. Only loans made in accordance to specific requirements set by Republic Act No. 6390 are covered by the guarantee of the Fund 5/.

## 2. Relationship between agricultural credit institutions and the State

### (a) State participation in the, management of credit institutions

#### i) Management in general

The Development Bank is managed by a Board of Governors consisting of a chairman and eight members appointed by the President of the Philippines with the consent of the Commission on Appointments 6/.

State control over the management of Rural Banks is exercised through the appropriate services and officers of the Central Bank 7/. Otherwise the government avoids any interference in the management of the banks, and the rules and regulations explicitly exclude from the Board of Directors of the Banks any person who is an officer or employee of a governmental department or agency 8/.

The Agricultural Credit Administration is managed by a Board of Governors consisting of a chairman and four members. The Undersecretary of Agrarian Reform is ex officio chairman of the Board, the Administraor of the ACA is ex officio vice-chairman and the Vice-President in charge of agricultural loans of the Philippine National Bank is ex officio member. The two other members are appointed by the President of the Philippines with the consent of the Commission on Appointments for a term of three years. One of these two members represents the beneficiary farmers of the Agrarian Reform Program and is appointed upon

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1/ See Republic Act No. 821, Secs. 2 and 3.

2/ Ibid., Sec. 1 as amended by Republic Act No. 2049, Sec. 1.

3/ Republic Act No. 6390, Sec. 12, and Agricultural Guarantee Fund Rules and Regulations, Sec 2.

4/ Presidential Decree No. 57, Secs. 2 and 3.

5/ See infra under Sec. 4 a).

6/ Republic Act No. 85, Sec. 14 as amended by Republic Act No. 3517, Sec. 4.

7/ See below p.

8/ Rules and Regulations, Sec 33 b).

recommendation of the farmers' or cooperative movement, federation or league existing at the time of appointment; the second represents the political party receiving the second highest number of votes in the immediately preceding presidential elections. The term of the first is ipso facto terminated when he ceases to be a member of the movement etc., that he represents, and the term of the second at the pleasure of the nominating political party. The Administrator is the chief executive of the Act and is appointed for a term of six years. The procedure of appointment is not explained by the new provisions of the Act. According to the old provisions the Administrator was appointed by the President of the country 1/. His compensation is likewise fixed by the President 2/.

ii) Accounts, audit, etc.

State control over the accounts of Rural Banks is maintained through the close supervision by the Central Bank of their accounting system and procedures 3/.

The financial situation of the Agricultural Credit Administration is closely controlled by the State. To that end the auditing office of the ACA prepares and submits a quarterly rapport to the President of the Philippines, the Secretary of Finance, the Auditor General of the State and the Board of Governors. The report contains a statement of the assets and liabilities including earnings and expenses, the amount of the paid-up capital, surplus reserve and profits, losses, bad debts, etc. The Auditor General is ex officio auditor responsible for the ACA and appoints or removes personnel of the auditing office upon recommendation of the Auditor of the ACA 4/.

(b) State participation in the share capital of credit institutions

The capital stock of the Bank is two billion pesos made up of two million shares of one thousand pesos each. The capital is fully subscribed by the Government 5/. Private development banks are distinguished according to the amount of their capital into three classes: class A, with a capital of not less than 4 million pesos; class B, with a capital of not less than two million pesos, and class C, with a capital of not less than one million pesos. A minimum of 60 percent of the capital of these Banks must be subscribed by citizens of the Philippines. In the event of that amount being undersubscribed or otherwise not available, the Development Bank, on representation of the private shareholders and with the approval of the Board Governors, may subscribe capital stock in an amount equal to the fully paid-up capital of these private shareholders. These are preference shares of the Bank and may be sold at any time to private citizens of the Philippines through with a right of preemption for the registered stockholders of the private bank 6/. Funds for this purpose are made available through a trust fund of 75 million pesos placed at the disposal of the Development Bank by the Government 7/. In addition, a sum of 10 million pesos yearly may be appropriated in case of need from the net profits of the Central Bank to form a revolving fund to be used in part for the same purpose 8/.

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1/ See Republic Act No. 821, Sec. 8.

2/ Republic Act No. 3844, Sec. 101, as amended by Republic Act No. 6389, Sec. 22.

3/ See Rules and Regulations, Sec. 79 and Chap. V.

4/ Republic Act No. 821, Sec. 9 g).

5/ Republic Act No. 85, Sec. 3.

6/ Republic Act No. 4093, Sec. 4.

7/ Republic Act No. 85, Sec. 3, as amended by Republic Act No. 3517, Sec. 3.

8/ Republic Act No. 4093, Sec. 6.

At least sixty percent of the capital stock of any Rural Bank must be owned by citizens of the Philippines. If however the subscription of private shareholders up to sixty percent cannot be secured, the Development Bank on representation of the existing private shareholders and after approval of the Monetary Board of the Central Bank, can subscribe in an amount equal to the fully paid capital of the private shareholders; such amount must be paid in full at the time of subscription.

Shares subscribed by the Development Bank may be sold at any time at par to private citizens of the Philippines. Registered stockholders of the Rural Bank are given the right of preemption within five years from the date of offer of the shares owned by the Development Bank, in proportion to their respective holdings 1/.

Furthermore, in order to provide supplementary capital for and stimulate private investments in Rural Banks, the Development Bank can subscribe to the capital stock of any Rural Bank in an amount equal to the total capital subscribed by private shareholders. Such subscription is possible, provided the Monetary Board of the Central Bank certifies the need for supplementary capital and within thirty days from the certification. Shares issued to the Development Bank may at any time be paid off at par if in the opinion of the Monetary Board the Rural Bank has gained enough capital strength to allow the withdrawal of the shares or if private sources offer to replace the investments of the Development Bank with an equivalent or greater amount 2/. The Development Bank, in subscribing such shares, uses the resources of the revolving fund established under Republic Act No. 2702 of 1960. The main assets of this fund are constituted by an annual appropriation of seven million pesos from the net profits of the Central Bank paid into the General Fund of the Government 3/. For this reason any capital of a Rural Bank subscribed and paid by the Development Bank is considered as having been subscribed and paid by the Government 4/.

The capital of the ACA is constituted in the form of a revolving fund that it administers. The initial capital of the fund was 100 million pesos made available mainly by the Congress and including sums or assets allocated to it from various other sources 5/. To finance the additional credit functions of the ACA as a result of the land reform programme the Land Reform Code earmarked to the fund an additional 150 million pesos out of funds in the National Treasury not otherwise appropriated 6/. Again, in order to accelerate the implementation of the agrarian reform programme a special account in the General Fund was created in 1971 giving the ACA the following additional assets for the programme: 20 million pesos for the fiscal year ending 30 June 1972 and 10 million pesos every year for 1973 and 1974 - a total of 40 million pesos 7/.

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1/ Republic Act No. 720, Sec 4.

2/ Ibid., Sec. 7.

3/ Republic Act No. 2702, Sec. 1. See also Republic Act No. 720, Sec. 8.

4/ See Republic No. 720, Sec. 14.

5/ Republic Act No. 821, Sec. 10.

6/ Republic Act No. 3844, Sec. 10.

7/ Republic Act No. 6390, Seos. 6 and 7.



(c) Financial aid granted by the State

Where there is a dearth of private capital in the area of operation of a private development bank and it is not possible for its stockholders to increase its paid-up capital, and if the Development Bank is satisfied that the resources of the private development bank are inadequate to meet the credit requirements of the locality, it can provide the private bank with a loan repayable in ten years at an interest rate to be agreed upon and against securities that the bank or any of its stockholders may offer 1/. In an emergency or when a financial crisis is imminent, the Central Bank may make a loan to any private development bank subject to the agreement of the Monetary Board 2/.

The Development Bank may, after certification of the Monetary Board of the Central Bank extend to a Rural Bank loans repayable in ten years, at an interest rate of two percent p.a., and against securities which may be offered by any stockholders of the Rural Bank concerned. Such loans are given if, in the opinion of the Monetary Board, the resources of the Rural Bank are inadequate to meet the legitimate credit requirements in its area, if there is a dearth of private capital there and if it is not possible for the stockholders of the Rural Bank to increase the paid-up capital of the Bank 3/. The funds used for these loans are obtained from the same revolving fund mentioned under (b) above.

In emergency periods or when a financial crisis is imminent, the Central Bank may give a loan to any Rural Bank against such assets of the Bank which can be considered acceptable by a concurrent vote of at least five members of the Monetary Board.

Rural Banks may also borrow on a medium or long-term basis from any funds that the Central Bank or any other governmental financing institutions has borrowed from the International Bank for Reconstruction and Development or other international or foreign lending institutions for the financing of national agricultural or industrial development programmes. The repayment of these loans is guaranteed by the State 4/.

The ACA has powers to obtain any additional funds necessary for the implementation of the land reform programme. These must be used for loans to farmers and farmers' co-operatives. Such loans can be obtained from the Central Bank of the Philippines, the Development Bank of the Philippines, the Philippine National Bank and other financing institutions 5/. Debentures, bonds, collaterals, notes or such other obligations issued by the Administration are guaranteed by the Government 6/. In addition, the ACA may receive from the unappropriated funds of the Treasury such amounts as are necessary to cover capitalization losses due to the limitation of its interest rate imposed by the law. The amount in question may exceed six million pesos per year 7/.

(d) Status of agricultural credit institution personnel

The officers and employees of the ACA are appointed subject to the civil service legislation 8/.

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1/ Republic Act No. 4093, Sec. 8.

2/ Ibid. Sec. 9.

3/ Republic Act No. 720, Sec. 12.

4/ Ibid., Sec. 13 for the terms and conditions under which loans are granted to Rural Banks from IBRD funds; see: Rules and Regulations governing Medium and Long-Term Loans under the Central Bank - International Bank for Reconstruction and Development Loan Agreement.

5/ Republic Act No. 3844, Sec. 104.

6/ Republic Act No. 821, Sec. 19(b).

7/ Republic Act No. 3844, Sec. 110, as amended.

(e) Privileges of agricultural credit institutions

Private development banks existing at the time of the entry into force of Republic Act No. 4093 in 1965 were exempted from tax on income and gross receipt for a period of 3 years. Thereafter they were taxed on a gradually increasing basis of 25 percent per year for the succeeding four years following which they were liable to pay taxes in full. Banks established within 3 years of the entry into force of the Act were totally exempted from income and gross receipts taxes for 3 years from the date of their establishment. Then the same provision as for the preexisting banks applies 1/.

All Rural Banks with net assets not exceeding one million pesos, excluding the counterpart capital subscribed and paid by the government - the Development Bank - are exempt from the payment of all taxes, charges and fees of whatever nature and description 2/.

The Administration is exempted from the payment of all duties, taxes, levies and fees, including docket and sheriff's fees, of whatever kind, in the performance of its functions and in the exercise of its powers 3/.

3. Agricultural credit institutions and other institutions

(a) Agricultural credit institutions and the Central Bank

In general the Central Bank may rediscount, discount, buy and sell to or from banking institutions bills, acceptances, promissory notes and other credit instruments having maturities of not more than 270 days from the date of transaction with the Central Bank and related to the production or processing of agricultural, animal, mineral or industrial products. Such instruments must be secured by a pledge on the respective crops or products. Against these same credit instruments, the Bank may also grant to these institutions advances for fixed periods not exceeding 270 days 4/.

Whenever in the opinion of the Monetary Board of the Bank, a deflationary situation exists which requires special expansionary credit measures, the Central Bank may extend the maximum maturities of credit instruments to periods not exceeding one year 5/.

Under special circumstances in which the Monetary Board considers it advisable to promote or facilitate the lending operations of savings banks, loan associations, etc, or of the Development Bank, the Central Bank may grant them loans or advances with maturities of not more than one year. Such loans or advances can be made against pledge or assignment of payments, instalments or amortizations made by their borrowers and falling due within twelve months and in an amount not exceeding 40 percent of these payments, instalments or amortizations. Such loans or advances cannot be made whenever they can aggravate or contribute to inflationary tendencies existing in the country. Nor can they be granted if the payments, instalments or amortizations to be pledged or assigned are currently in arrears or if they are not adequately secured by mortgages, which must, in their turn, be assigned to the Central Bank 6/.

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1/ Republic Act No. 4093, Sec. 10.

2/ Republic Act No. 720, Sec. 14.

3/ Republic Act No. 3844, Sec. 118.

4/ Republic Act No. 265, Sec 87(b) and (c).

5/ Ibid., Sec. 89.

6/ Ibid., Sec. 88.

In particular, the relationship between the Central Bank and the agricultural credit institutions examined here is as follows: Private development banks are closely controlled by the Central Bank. They cannot be organized without a certificate of authority of the Monetary Board of the Central Bank 1/. The establishment of their branches and agencies is also subject to the approval of the Monetary Board 2/, and it is the Central Bank that specifies the nature of papers acceptable for rediscount by it or any other banks, as well as the rediscount rate 3/.

Both the establishment and operations of Rural Banks are under the close control of the Monetary Board of the Central Bank. No Rural Bank may be operated without a certificate of authority of the Board. The rules and regulations governing the establishment and operations of such Banks are formulated by the same Monetary Board 4/. The control in question takes the form of: placing limits to the maximum credit allowed individual borrowers; prescribing interest rates; determining the loan period and loan procedures; indicating the manner in which technical assistance can be extended to Rural Banks, imposing a uniform credit examination of the Rural Banks; instituting periodic surveys of lending procedures, audits, test checks for the personnel of the Banks and, in general, supervising their business operations.

The supervision of Rural Banks is entrusted by the Monetary Board to a special Department of the Central Bank. The director of the latter has powers to enforce the laws, orders, instructions, rules and regulations promulgated by the Monetary Board and applicable to Rural Banks. He may also require directors, officers and agents of Rural Banks to conduct and manage the affairs of the Banks in a lawful and orderly manner. Upon proof that the Board of Directors manages the affairs of a Rural Bank in a manner contrary to the laws, instructions, regulations etc., or in a manner prejudicial to the interests of the government or the depositors or creditors of the Bank, the director of the Department of Rural Banks of the Central Bank may take over the management of such Bank if so authorized by the Monetary Board, and retain the management until a new Board of Directors and new officers are elected 5/.

If a Rural Bank persists in violating the laws and regulations, the director of the Department of Rural Banks may file the necessary action with the Court of first instance to compel the Bank to desist. Action of the kind may, in some cases, lead to the liquidation of the bank in question 6/.

The ACA may rediscount with the Central Bank, as well as with the Development Bank and the Philippine National Bank, eligible evidence of indebtedment acquired by it in carrying on its authorized activities. Rediscounting is made at the lowest interest rate charged to any private person or body 7/. The Administration can also request the Central Bank to provide any technical assistance needed for its operations 8/.

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1/ Republic Act No. 4093, Sec. 3.

2/ Ibid., Sec. 11.

3/ Ibid., Sec. 7(c).

4/ Republic Act No. 720, Secs. 3 and 4.

5/ Ibid., Sec. 10.

6/ Rules and Regulations, Ec. 85 and Republic Act No. 265, Sec. 34.

7/ Republic Act No. 3844, Sec. 103.

8/ Republic Act No. 821, Sec. 21.

(b) Agricultural credit institutions and farmers' co-operatives

Farmers' Co-operatives are defined as "all co-operatives relating to the production and marketing of agricultural products and those formed to manage and/or own, on a co-operative basis, agricultural farmlands, services and facilities, such as irrigation and transport systems, established to support production and/or marketing of agricultural products" 1/.

Specific reference is made to the power of the Bank to grant loans to co-operative associations to facilitate production, the marketing of crops and the purchase of essential commodities 2/.

Farmers' co-operatives are recognized by the legislation in force both as possible users of the services extended by Rural Banks on the same basis as individual farmers 3/ and as possible organizers of such Banks. They may also subscribe to the share capital of any Rural Bank 4/.

One of the main purposes of the ACA is to take charge of all government activities relating to the promotion, organization and supervision of co-operative associations in rural areas, in particular, to promote education in the principles and practices of co-operative production, marketing and credit among farmers 5/.

To that end the ACA is given powers to register, finance and supervise all agricultural co-operatives, including multipurpose co-operatives and farm associations and organizations, and provide credit guidance or assistance to all agricultural, irrigation or other co-operative associations, multi-purpose co-operatives, farm organizations or fund corporations which have a juridical personality 6/.

For the effective supervision of farmers' co-operatives the Administration has powers to audit their operations, records and books of account and in general inquire into their affairs 7/. It may prosecute any action it may have against officials or employees of co-operatives arising from any unlawful activities or omissions in office 8/.

Loans to farmers' co-operatives registered with the ACA are made under such terms and conditions as it may impose. The interest rate for loans to co-operatives is considerably lower compared to that requested for loans to individual farmers. Only those co-operatives are eligible for the loan facilities of the ACA which, in the judgement of the Administration, have an organization, management and business policies likely to ensure safe and effective use of the loans 9/.

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1/ Republic Act No. 3844, Sec. 105, as amended by Republic Act No. 6389, Sec. 23.

2/ Republic Act No. 85, Sec. 2, as amended by Republic Act No. 2081, Sec. 1.

3/ Republic Act No. 720, Sec. 3.

4/ Ibid., Sec. 4.

5/ Republic Act No. 821, Sec. 5(7).

6/ Republic Act No. 3844, Sec. 112, as amended by Republic Act No. 6389, Sec. 26.

7/ Republic Act No. 3844, Sec. 113.

8/ Ibid., Sec. 114.

9/ Republic Act No. 3844, Sec. 108, as amended by Republic Act No. 6389, Sec. 24.

(c) Agricultural credit institutions and other allied institutions

The Bank establishes close working relations with Rural Banks, private development banks 1/ and other institutions and agencies as appropriate and necessary for its purpose.

The main institution with which, apart from the Central Bank and rural co-operatives, Rural Banks can establish working relations is the Development Bank. Rural Banks can act as agents of the Development Bank in places where the latter have no branch or agency 2/. They may also co-operate with other institutions, in particular the National Bank of Philippines (of which also they may act as agents) and other financial institutions 3/.

The AGA may establish working relations with various allied institutions. In particular, it may appoint Rural Banks, Co-operative Banks and Development Banks to act as its agents in connexion with loan activities, in their respective localities 4/.

#### 4. Relationship between agricultural credit institutions and individual borrowers

(a) Application for loans

Rural Banks grant three kinds of loan: i) agricultural; ii) commercial, and iii) industrial. In the following sections only procedures and conditions relating to agricultural loans will be examined.

Agricultural loans are granted by Rural Banks only to farmers, individuals or duly organised co-operatives, owning or cultivating as tenants, lessees etc., not more than 50 hectares of land given over to agricultural production 5/. Such loans are given exclusively for the following purposes:

- farm expenses, such as labour, in connection with the preparation, planning and cultivation of the land; harvesting, transportation and storage, and marketing of produce;
- purchase of seeds, fertilizers, draught animals, implements and equipment necessary for the operation of the farm, or for the hiring of such animals and equipment;
- purchase of animals, poultry or fish for breeding purposes;
- minor repairs, constructions or improvements to the farm or fish pond necessary to maintain or increase productivity; and
- payment of current taxes and irrigation fees.

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1/ See the various sections of the present country study.

2/ Republic Act No. 720, Sec. 21.

3/ Ibid., Secs. 11 and 21.

4/ Republic Act No. 3844, Sec. 105, as amended by Republic Act No. 6389, Sec. 23.

5/ Rules and Regulations, Secs. 101 and 91, 1st para. 2.

During the period between the production and marketing of farm products small loans, which should always be covered by proper security, may also be granted for food, clothing and shelter and for the elementary schooling or vocational training of members of the farmer's family 1/.

Persons qualified to borrow money from a Rural Bank are required to submit a duly completed application form provided by the Bank, stating the amount requested, terms desired, securities offered, and the special purpose for which the loan is to be used, with detailed estimates of disbursements or expenses intended to be covered by the loan.

Upon receipt of the application, a full investigation is conducted, including verification of the existence of the project to be financed by the loan, of the property offered as security, and determination of the actual credit needs and repayment capacity of the borrower 2/.

The application is then processed by the manager of the bank and is passed to the Credit Committee (the Credit Committee is appointed by the Board of Directors of the Rural Bank and consists of one of its members as chairman and another as member with an alternate, and the manager of the Bank as ex-officio third member) 3/, or the Board, together with a report, giving information on the following:

- the applicant's qualifications to borrow in accordance with the Rules and Regulations;
- the purpose of the loan applied for; and
- the applicant as a credit risk, with special reference to his character, management ability, capital and the collateral he is able to offer.

Each applicant must be interviewed and is required to submit a statement of assets and liabilities and sources of income. Further information may be obtained, whenever possible, on the applicant's credit standing in order to reduce risks to the minimum. In all cases, field investigations must be conducted to establish the actual purpose of the application for a loan and to verify the securities offered 4/.

Final action on all loan applications lies with the Board of Directors. The Board may, however, delegate to the manager of the bank the power to act on applications involving up to 1000 pesos, and to the Credit Committee for those between 1000 and 5000 pesos. Applications in excess of 5000 pesos must dealt with by the Board, which must subsequently confirm all loans granted by either the manager or the Committee 5/.

Loans to rural co-operatives are subject to the same terms and conditions as those imposed on individual borrowers 6/.

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1/ Rules and Regulations, Sec. 101.

2/ Ibid., Sec. 119.

3/ Ibid., Sec. 43.

4/ Ibid., Sec. 120.

5/ Ibid., Sec. 121.

6/ Ibid., Sec. 113.

(b) Terms and conditions of loans

The amount of a loan granted by Rural Banks depends on the essential needs of the applicant and the security he offers. For loans secured by pledge or chattel or mortgage on agricultural products the amount may vary between 30 and 70 percent of the value of the production of the previous year, depending on the crop and the effective control of the bank over the agricultural produce 1/.

Agricultural loans are normally granted for a period not exceeding one year, although renewal is possible 2/. Medium-term and long-term loans are less common and can be granted by a Rural Bank only if the latter is authorised for the purpose by the director of the Rural Banks Department of the Central Bank and if its unimpaired capital, plus savings and time deposits, are not less than 20,000 pesos, the unimpaired capital not less half this figure 3/. Loans of this kind are limited to 50 percent of the amount necessary to finance the projected expenditure 4/.

i) Interest

The maximum interest rate that a Rural Bank can charge is 12 percent per annum or 1 percent per month. However, in order to encourage the development of certain types of agricultural activities, a Rural Bank may establish a scale of preferential or priority rates of interest within the limits mentioned above 5/.

The maximum interest rate chargeable by ACA is fixed by the law. Republic Act No. 821 of 1952 established this rate at not more than 8 percent 6/. In 1971, Republic Act No. 6389 fixed the interest rate at not more than 12 percent per calendar year. Insurance fees, inspection and all other service charges are included in this rate 7/. Eligible farmers' co-operatives receiving loans from the ACA are charged an interest rate not exceeding 8 percent per annum. They are authorized to provide loans for their members at not more than 12 percent per calendar year 8/.

ii) Securities

Loans may be given by Rural Banks without any security if the borrower is of proven integrity of character and has management capacity 9/. In all other cases they must be secured by collateral or personal securities. Any unencumbered real or personal property may be offered as collateral, such as:

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1/ Rules and Regulations, Secs. 93 and 102.

2/ Ibid., Secs. 94, 103 and 131.

3/ Ibid., Sec. 114.

4/ Ibid., Sec. 116.

5/ Ibid., Sec. 92.

6/ Republic Act No. 821, Sec. 16.

7/ Republic Act No. 3844, Sec. 110, as amended by Republic Act No. 6389, Sec. 25.

8/ Republic Act No. 6389, Sec. 24.

9/ Rules and Regulations, Secs. 95 and 92.

(Real property)

- private lands with torrens title;
- private lands not registered under the torrens system, where the owner can demonstrate five years or more of peaceful, continuous and uninterrupted possession the concept of owner;
- homestead and free patent land applications which have been approved but where the issuance of the title is still pending.

(Personal property)

- Government or government guaranteed bonds;
- stocks and other securities of private companies and establishments which may be accepted as collateral, with the prior approval of the Central Bank;
- produce of agricultural land corresponding to the share of the borrower if a tenant;
- sugar quedans issued by known and reputable sugar milling centres covering the expected produce of the applicant;
- any other personal property.

A real estate mortgage on the real property offered and a chattel mortgage, or pledge on any personal property of the borrower must be constituted by the latter in favour of the Bank 1/.

Personal securities - sureties, guarantees etc., - may be accepted only if they are of proven integrity, character and managerial capacity 2/.

Before an approved loan is released, the borrower must sign a promissory note containing an unconditional promise to pay the amount of money borrowed. The note must be payable on demand, or at a fixed or determined time in the future, to order of the bearer, and must state the date and place of execution, the rate of interest, waiver of demand, presentment, dishonour and ruin, and the attorney's fees (the maximum may not exceed 10 percent of the total amount due), in case of extra-judicial or judicial proceedings necessary to enforce the note. The note must also be signed by two witnesses, one of whom must be a responsible officer of the Bank 3/.

The primary security of any loan granted by the ACA to a farmer is constituted by the latter's production properly pledged in order to safeguard against unauthorized disposal. The Administration may, if it considers it to be necessary, require a borrower to enter into a marketing agreement covering the terms which must be complied with, including notice to the ACA and the manner of disposal of the produce covered by the contract. The duration of such a contract is terminated when the borrower has satisfied his obligation 4/.

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1/ Rules and Regulations, Sec. 95. See also Republic Act No. 720, Sec. 5.

2/ Rules and Regulations, Secs. 96 and 92.

3/ Ibid., Secs. 122 and 123.

4/ Republic Act No. 821, Sec. 14(d) and (e).



The value of the produce offered as a security is calculated after deduction of any lease, rental and any other liens thereon. The amount of the loan may not exceed 60 percent of the estimated value of the produce 1/. In cases where credit is granted for the purchase of items which are not consumed in their use, these items may be pledged as security for the loan 2/. Loans to co-operatives are made on such securities as the ACA may require 3/.

(c) Recovery of loans

Loans by Rural Banks are normally collected on the day of maturity. If a "borrower pays before the maturity date, he has a right to reimbursement for the unearned interest if the interest has been paid in advance 4/.

Any partial payment made by a borrower to a Rural Bank is first applied to the interest due and payable. The balance is applied to the principal of the loan. However, if the loan is in litigation, payments made by the borrower are first applied to the cost of the suit and legal expenses, and then to the interest and the principal 5/.

Renewals of loans are granted only in exceptional and highly meritorious cases, and only if they will in no way prejudice the interest of the bank but rather improve the borrower's financial position and enable him to pay within the period of renewal. Renewals are granted on the further condition that at least 30 percent of the loan, including interest, is paid, and that the securities of the loan are not reduced or impaired. Not more than two renewals may be granted. In the case of renewal, a new promissory note must be executed and stamped with the word "renewal" for immediate reference 6/.

Notice must be given by the Rural Bank to the borrower at least 15 days in advance of the date when the loan falls due, with warning in case of default. This is done by the management of the Bank, which sends by registered mail at least two demand or collection letters with a return card at an interval of one month to the borrower at his last known address. If no favourable arrangements for the liquidation of the loan result, the Bank may refer to a lawyer for the recovery of the loan 7/.

If the loan is secured by a real estate mortgage, the Bank will proceed to judicial or, if authorized in the mortgage contract, extra judicial foreclosure, in accordance with the legislation in force. If the proceeds of the foreclosure are not sufficient to cover all the obligations of the borrower secured by the mortgage, the Bank may take proper steps to obtain a judgement for the balance. When a homestead or free patent land not yet covered by a torrens title is foreclosed, the homesteader or free patentee has the right to redeem them within two years from the date of foreclosure, as well as his liens. In all other cases of foreclosure of real estate, the mortgagor has the right to redeem the property within one year from the date of sale 8/.

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1/ Republic Act No. 3844, Sec. 107.

2/ Republic Act No. 3844, Sec. 106 as amended by Republic Act No. 6389, Sec. 23.

3/ Ibid., Sec. 24.

4/ Rules and Regulations, Sec. 128.

5/ Ibid., Sec. 129.

6/ Ibid., Sec. 131.

7/ Rules and Regulations, Sec. 128.

8/ Ibid., Sec. 133. See also Republic Act No. 720, Sec. 5.

If the loan is secured by a chattel mortgage, the Bank may enforce the borrower's obligation by judicial or extrajudicial foreclosure or by ordinary court action. If the sale of the articles mortgaged results in a loss, the Bank may relinquish its right to the mortgage and, if the borrower has other properties, sue him in ordinary action, attaching the mortgaged articles and any other property belonging to him. Anything in excess of the chattel mortgage at the auction sale is restituted to the borrower or his representative. In the case of deficiency, the difference is recovered by the Bank by a motion in the judicial foreclosure case, or if the foreclosure is extrajudicial, by a judicial action to collect the difference.

Finally, if the loan is secured by a pledge, the Bank may sell the pledged article in a judicial or extrajudicial auction sale. Any excess from that sale may be kept by the Rural Bank unless otherwise agreed. In the case of deficiency, the Bank is not allowed to recover the difference, notwithstanding any stipulation to the contrary 1/.

The duration of ACA loans and their terms of repayment must be such as to permit repayment from the income of the borrower's production. When the produce has been damaged by pests, weather or other causes beyond the borrower's control, extensions in the time of repayment may be granted 2/.

(d) Sanctions

A fine of not more than 2,000 pesos or imprisonment for not more than one year, or both, at the discretion of the court, is imposed s

- i) on any officer, employee or agent of a private development bank who makes false entries in the reports or statements of the bank, thereby causing damage to the bank or to any third person) discloses without order of a competent jurisdiction information relating to the funds or properties belonging to any ordinary or juridical person in the custody of the bank) accepts gifts, fees or any other form of remuneration in connection with a loan from the bank; overvalues any security for the purpose of influencing in any way the action of the bank on a loan) appears or signs as a guarantor, endorses or gives surety for loans granted by the bank)
- ii) on any applicant for a loan from or on any borrower from, a private development bank, who misuses, misapplies or diverts the proceeds of the loan obtained by him for its declared purposes) fraudulently over-values property offered as security for a loan) furnishes false information for the purpose of obtaining, renewing or increasing a loan or extending the period) attempts to defraud the bank in the event of court action to recover a loan) offers any officer, employee or agent of a private development bank a gift, fee or any other form of remuneration in order to influence him in approving the loan application) disposes of or encumbers the property or the crops offered as security for the loan)
- iii) on any examiner, officer or employee of the Central Bank of the Philippines, or of any government office, who being assigned to examine, supervise, assist or render technical service to a private development bank, commits or aids in the commission of any of the acts enumerated under i) above 3/.

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1/ Rules and Regulations, Sec. 132.

2/ Republic Act No. 821, Sec. 14(a) to (c).

3/ Republic Act No. 4093, Sec. 14.

A borrower loses his right to the term of the loan and the Rural Bank must demand immediate repayment without waiting for the due date of the promissory note in the following cases:

- the borrower attempts to abscond;
- the borrower violates any provision stipulated in the contract of the loan or any undertaking in consideration of which the term of the loan has been granted him, for example, when he diverts the proceeds for purposes other than those for which the loan has been granted)
- by his act, the borrower has impaired any of the securities given by him;
- through fortuitous events, the securities given by the borrower disappear, unless he gives equally safe securities; and
- the borrower and the guarantors become insolvent, unless other safe and sufficient guarantee is furnished 1/.

Any person who gives false information or causes the existence and production of any false information with regard to anything related to a loan, granted by the ACA, is punished with imprisonment for not less than three months and not more than three years and with a fine of not less than the amount of the loan in question and not more than three times that amount. This punishment is applicable to any person whether acting on his own behalf or for a third person, whether an officer or employee of the ACA and whatever the purpose of the false information may be 2/.

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1/ Rules and Regulations, Sec. 130.

2/ Republic Act No. 821, Sec. 27.

## VII. SRI LANKA

### Sources of regulations

- Bank of Ceylon Ordinance of 1938 (not available).
- Finance Act No. 65 of 1961, published as Appendix I, A(5) to: Central Bank of Ceylon, Annual Report of the Monetary Board to the Minister of Finance. 1961.
- People's Bank Act No. 29 of 1961. - Date of assent: 30 May 1961. - Supplement to Ceylon government Gazette. - Undated. - As amended by: Finance Act No. 11 of 1963, published as Appendix I, A(iii) to: Central Bank of Ceylon, Annual Report of the Monetary Board to the Minister of Finance. 1963.
- The Monetary Law Act, No. 58 of 1949 (as amended by the Monetary Law (Amendment) Act, No. 33 of 1954) in H. Anziet ed., Central Banking Legislation. International Monetary Fund, Washington B.C. 1961, Vol. I, pp. 287 ss., as amended by: Finance Act, No. 11 of 1963, op. cit., and further amended by: Monetary Law (Amendment) Act, No. 21 of 1968, published as Appendix I, A(c) to: Central Bank of Ceylon, Annual Report of the Monetary Board to the Minister of Finance. 1968.
- Cooperative Societies Law, No. 5 of 1972. - 11 October 1972. - Printed on the Ordern of Government.
- Cooperative Societies Loans (Special Provisions) Act, No. 14 of 1969. - Date of assent: 1 June 1969. - Printed on the Orders of Government.
- Cooperative Societies (Temporary Provision) Act, No. 43 of 1968. - Date of assent: 24 November 1968. - Printed on the Orders of Government.
- Cooperative Societies (Special Provisions) Act, No. 34 of 1970. - Date of assent: 31 December 1970. - Supplement to C.G.G., Part II. - 15 January 1971.

### Introduction

Agricultural credit in Sri Lanka is made available essentially through the Bank of, Ceylon and the People's Bank, both forming part of the commercial banking system of the country.

Other institutions providing finance to agriculture are the State Mortgage Bank and the Agricultural and Industrial Credit Corporation, two statutory institutions set up to provide long-term credit for development activities. It is now planned to merge these into a State Mortgage and Investment Bank.

The Bank of Ceylon was established in 1938 by the Bank of Ceylon Ordinance as a State-aided institution. In 1961, it was nationalized under the Finance Act No. 65 of 1961. The People's Bank was set up in 1961 to succeed the Cooperative Federal Bank of Ceylon under the People's Bank Act No. 29 of 1961. A number of district cooperative banks were

amalgamated with the People's Bank in several stages. From the first, the Bank has been the main financing agency for the village multipurpose cooperative societies and the cooperative agricultural production and sales societies. Since 1967, the Bank has also administered the New Agricultural Loan Scheme under which the governmental production loans were transferred from the Department of Agrarian Services to the People's Bank.

Since legal documentation on other institutions is unavailable, the present study will concentrate mainly on the People's Bank with reference, where appropriate, to the cooperative societies.

## 1. Legal structure of agricultural credit institutions

The People's Bank. This is a corporate body with perpetual succession and a common seal and can sue and be sued in its own name 1/.

The purposes of the Bank are to develop the cooperative movement in the country and rural banking and agricultural credit by furnishing financial and other assistance to cooperative societies, "approved societies" 2/, cultivation committees and other persons 3/. In carrying out its purposes, the Bank may inter alia:

a) Grant short-, medium- and long-term loans and other credit facilities to cooperative societies, approved societies and cultivation committees; to individuals for constructing, repairing or renovating buildings; to any person who intends to carry on or is carrying on any agricultural, industrial or business undertaking which, in the opinion of the Board of the Bank is "a small scale undertaking". (Short-term loans can also be given to persons resident in rural areas for the purchase of articles necessary for their personal or domestic requirements.)

b) Carry on the business of pawnbroker.

c) Provide technical assistance to any person to whom the Bank grants a loan or overdraft, and to undertake or sponsor the training of persons in assessing the value of land and the creditworthiness of borrowers, in assaying gold, in banking and finance 4/.

The credit facilities of the Bank were initially reserved to cooperative societies only. Other kinds of societies or classes of persons may benefit from such facilities only when the Minister in charge of the affairs of the Bank explicitly provides in that sense 5/.

The Bank of Ceylon is a corporation set up by the Bank of Ceylon Ordinance of 1938. Its juridical status remained unchanged by the 1961 nationalization and the Bank is still counted as a commercial bank 6/.

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1/ People's Bank Act, Sec. 2(2), hereinafter cited as "The Act".

2/ Approved societies are those societies which have been approved for the purposes of the People's Bank Act by the Minister of Agriculture by Order published in the Government Gazette.

3/ The Act, Sec. 4.

4/ Ibid., Sec. 5(1) (a)-(d).

5/ Ibid., (2).

6/ See Finance Act No. 65 of 1961, Sec. 11.

A distinction is sometimes made between rural cooperative and simple cooperative societies. Both are governed by the same basic law (the Cooperative Societies Law of 1972) and their legal status is the same. Cooperative societies registered under the Law become corporate bodies by the name under which they are registered, with perpetual succession and a common seal and with all the usual powers of corporate bodies 1/. Registration is not regarded as an obligation but rather as a right of a society which complies with the provisions of the Law. Cooperative societies may be registered with limited or with unlimited liability. However societies of which a member is a registered society must be registered with limited liability 2/.

The Government is now sponsoring a new comprehensive agricultural credit scheme under which the rural banks, as the banking departments of multipurpose cooperatives, are to assess the creditworthiness of individual borrowers. This is part of the new policy of trying to link credit with cooperative marketing 3/.

## 2. Relationships between agricultural credit institutions and the State

### a) State participation in the management of credit institutions

#### (i) Management in general

The general supervision, control and administration of the affairs of the People's Bank are vested in a Board of Directors, consisting of eight members appointed as follows:

- the Commissioner of Cooperative Development, who is ex officio member of the Board;
- two members appointed by the Minister in charge of the affairs of the Bank;
- one member appointed by the Minister in charge of rural development;
- one member appointed by the Minister of Finance; and
- three members elected by the general body of the Bank among persons possessing the relevant qualifications. In the first Board of the Bank, and for a period of two years, these three members were also appointed by the Minister in charge of the affairs of the Bank. Directors appointed by a Minister may be removed from office at any time by an instrument signed by the same Minister. The Board members, with the exception of the ex officio director, receive a remuneration fixed by the Minister in charge of the affairs of the Bank with the concurrence of the Minister of Finance 4/.

The Chairman of the Board is elected by its members in a meeting presided over by the ex officio director, who for this purpose has a casting vote 5/.

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1/ Cooperative Societies Law No. 5 of 1972, Sec. 20.

2/ Ibid., Sec. 3 (1).

3/ See infra., Sec. 4(e).

4/ The Act, Sec. 7 (1) and 8 (1), (2), (7) and (10).

5/ Ibid., Sec. 10 (1).

The Board may delegate, for any period of time, its powers or duties to an officer of the Bank who, in exercising such powers or performing such duties, must conform to the directives received from the Board 1/.

In addition to the Board of Directors, the Bank also has a "general body" consisting of the Secretary of the Treasury, the members of the Board and a number of representatives of cooperative societies which hold shares in the Bank. The number of these representatives, their qualifications and the procedure for their election are established by regulations 2/. The functions and powers of the general body are not further defined by the Act.

The chief executive officer of the Bank is its General Manager, who conducts the business of the Bank under the general supervision and control of the Board 3/. The procedure for appointing the General Manager is not specified.

The management and administration of the business and affairs of the Bank of Ceylon are vested in the Board of Directors consisting of six Directors, five of whom are appointed by the Minister in charge of the affairs of the Bank, the sixth being the Secretary to the Treasury (now the Secretary of Foreign and Internal Trade). The Chairman of the Board is also appointed by the Minister from among the Directors 4/.

Cooperatives are managed by elected committees. Their management and operation are closely controlled by the office of the Registrar of Cooperative Societies and the Commissioner of Cooperative Development, who may enquire at any time into the constitution, working etc., of any registered society 5/. If the enquiry shows that the committee in question is not performing its duties properly, the Registrar may dissolve the committee and appoint one or more persons to administer the affairs of the society. Before the dissolution is decided upon, the committee must be given an opportunity to state its objections at a general meeting of the society, summoned by the Registrar 6/. The Registrar may also dissolve any registered society, by order cancelling the registration, after an enquiry or an inspection made on the application of a creditor of the society or by three-fourths of the society's members. An appeal can be presented against such an order to the Minister in charge of Cooperative Development 7/.

The Minister may also dissolve the committee of a registered society by order and for the same reasons as above, and direct that the affairs of the society shall be managed by one or more persons appointed by him or the Registrar. Persons so appointed can be removed or replaced by the Minister at any time 8/.

The Minister further has the power to dissolve a cooperative bank by Order published in the Government Gazette if, in the light of written information from the Commissioner of Cooperative Development, he considers that the bank has been conducting its affairs in

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1/ The Act, Sec. 23 (2) and (3).

2/ Ibid. Sec. 9.

3/ Ibid., Sec. 32 (1).

4/ The Finance Act No. 65 of 1961, Sec. 8.

5/ Cooperative Societies Law, Sec. 2 and 46.

6/ Ibid., Sec. 48 (1).

7/ Ibid., Sec. 49 (1) and (2).

8/ Cooperative Societies (Temporary Provisions) Act, Sec. 3 (1), (3) and (6).

an unsatisfactory or inefficient manner. He may also dissolve a cooperative bank which desires to be dissolved and its business taken over by the People's Bank, provided that the latter agrees to do so 1/.

Again, whenever the Registrar deems it to be necessary, he may by Order amalgamate two or more registered societies into one new society or cancel the registration of any registered society for the purpose of reorganizing the cooperative movement in the country. No appeal lies against decisions of this nature 2/.

(ii) Audit, accounts, etc.

The accounts of the People's Bank are kept in the form and manner determined by the Board of Directors 3/, and are submitted before 30 June of the year succeeding each financial year to the Auditor-General for audit. The Auditor-General, and any person assisting him in the audit of the accounts of the Bank, has full access to all books and any other documents of the Bank that he may consider necessary for the purpose of the audit. He may also request the Board and any officer of the Bank to supply any information relevant to this purpose. Upon examination of the accounts of the Bank, the Auditor-General prepares and transmits to the Board his report stating whether he has obtained all the information required by him and whether the accounts are properly drawn up so as to present a fair view of the affairs of the Bank. He also draws attention to any item in the accounts which, in his opinion, may be of interest to the Senate and the House of Representatives during the examination of these accounts 4/.

The Board is required, on receipt of the report, to forward copies of it together with copies of the balance sheet and of its own report on the work of the Bank to the Minister in charge of the affairs of the Bank and the Minister of Finance. Copies of these same documents are then submitted by the former Minister to the Senate and the House of Representatives for information.

At the same time, the Chairman of the Board is required to convene a meeting of the general body of the Bank and submit for discussion the report of the Auditor-General, together with the balance sheet and the report of the Board 5/.

The accounts of registered cooperative societies are audited at least once every year, by the Registrar or a person authorized by him. The audit includes an examination of overdue debts, if any, and a valuation and verification of the assets and liabilities of the society 6/.

b) State participation in the share capital of agricultural credit institutions

The share capital of the People's Bank is 6,000,000 rupees made up of 120,000 shares of fifty rupees each. It can be increased from time to time by an amount determined by resolution of the House of Representatives. Under the provisions of the Act, the State,

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1/ The Act, Sec. 24(1).

2/ Cooperative Societies (Special Provisions) Act No. 35, Secs. 2 and 3.

3/ The Act, Sec. 33.

4/ Ibid., Sec. 34.

5/ Ibid., Sec. 35.

6/ Cooperative Societies Law, Sec. 44.



through the Secretary to the Treasury, was to hold 60,000 fully paid up shares, and the balance was open to subscription "by cooperative societies. The value of the shares taken by the State was covered partly by the sum due to the Government from the Cooperative Federal Bank of Ceylon Ltd., and the balance (3,000,000 rupees, which was the actual value of these shares) was paid out of the Consolidated Fund of Ceylon 1/.

The sale of shares is permitted only between cooperative societies and the Secretary to the Treasury in his official capacity. For the purchase of any shares, the Secretary to the Treasury needs the prior approval of the Minister of Finance 2/.

In 1971, the share capital of the Bank was 6,330,000 rupees of which 3,000,000 rupees were subscribed by the Government and the balance by cooperative societies.

The share capital of the Bank of Ceylon when established in 1938 was of 4,500,000 rupees, of which 3,000,000 were contributed by the Government, the balance being contributed by the private sector. In 1961 the Bank was nationalized and the Government, by buying the freely subscribed shares, became the sole shareholder of the Bank 3/.

c) Financial aid granted by the State to the People's Bank

Besides an initial sum of 500,000 rupees for its preliminary expenses, the Government has granted to the Bank out of the Consolidated Fund of Ceylon the following amounts of money:

- 1,000,000 rupees, to be credited to the general reserve of the Bank 4/; and
- 1,000,000 rupees to be credited to the special reserve for bad and doubtful debts 5/.

The Government may also grant to the Bank out of the same Fund any sums that are authorized by resolution of the House of Representatives, for the settlement of bad and doubtful debts in excess of the assets of any cooperative bank dissolved and by the provisions of the People's Bank Act 6/.

In addition, the Government may lend the Bank any sums authorized by resolution passed by the House of Representatives for its long- and medium-term loan operations. These sums, which are also loaned from the Consolidated Fund, are repaid by the Bank in accordance with the terms and conditions that are determined by the Minister in charge of the affairs of the Bank by agreement with the Minister of Finance 7/.

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1/ The Act, Sec. 12.

2/ Ibid., Sec. 13.

3/ The Finance Act No. 65 of 1961, Secs. 2 ff.

4/ The Act, Secs. 15(1) (a) (ii) and 22 (2).

5/ Ibid., Secs. 15 (1) (a) (ii) and 22 (3) and (5).

6/ Ibid., Sec. 15 (1) (a) (iii).

7/ Ibid., Sec. 15 (1) (b) and (2).

d) Privileges of credit institutions

The People's Bank is exempt from the payment of income tax upon its profits and income. It is also exempt from the payment of stamp duty on instruments executed by it or on its behalf or favour 1/.

Registered cooperative societies and their members are exempt from payment of stamp duty in respect of instruments executed by them in favour of a registered society and relating to its business. Registered societies are also exempt from payment of fees on the registration of documents 2/.

3. Agricultural credit institutions and other institutions

a) Agricultural credit institutions and the Central Bank

The Central Bank is responsible for carrying out the national monetary policy by regulating the supply, availability, cost and character of credit and by providing the banks with ready money in times of need. The body specifically in charge of this policy is the Bank's Monetary Board 3/.

Inside this framework, the Central Bank may execute credit transactions with commercial banks. It may discount, rediscount, buy and sell bills, acceptances, promissory notes and other credit instruments having maturities of not more than 270 days from the date of their discount, rediscount or acquisition by the Bank. These documents may result from transactions related to the production, manufacture or processing of agricultural, animal, mineral or industrial products. The Central Bank may also grant loans or advances for a period not exceeding 270 days and secured by the pledge of any credit instrument referred to above 4/.

If, in its opinion, a deflationary situation exists requiring special relaxation of normal maturities, the Monetary Board may determine that credit may be granted by the Bank on the above instruments having a longer maturity period though not exceeding one year. The Board may, in these circumstances, also authorize loans or advances secured by such credit instruments, to be granted for any period not exceeding one year 5/.

In 1963, a fund called the Medium and Long Term Credit Fund was established in the Central Bank, and the Monetary Board was authorized to transfer to it out of the Bank's reserves any sums of money as appropriate.

The fund is used by the Central Bank to grant loans and advances to credit institutions in respect of lending operations for productive purposes connected with or related to the promotion and development of agriculture, industry, trade, etc. Such loans and advances are made against promissory notes issued by the receiving institution and stating the conditions under which they are given.

Loans and advances are repayable within a period, not exceeding fifteen years, determined by the Bank. They are secured by the assignment to the Bank, by way of pledge, of debts owing to institutions by their borrowers. The rate of interest and any other conditions relevant to these loans and advances are determined by the Monetary Board.

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1/ The Act, Sec. 41.

2/ Cooperative Societies Law, Sec. 35.

3/ Monetary Law Act, Sec. 81.

4/ Ibid., Sec. 82 (1) (b) and (c).

5/ Ibid., Sec. 83.

The Central Bank, on the execution of an assignment by way of pledge, has a first charge on the debts thus assigned 1/.

In particular, the People's Bank may, with the approval of the Minister in charge of the affairs of the Bank and the Minister of Finance, request the Monetary Board to raise on its behalf any sums necessary for its operation by the issue of debentures. The People's Bank may itself issue such debentures with the approval of the two Ministers given after consultation with the Monetary Board 2/.

b) The People's Bank and farmers' cooperatives

The links between the People's Bank and farmers' cooperatives appear to be particularly close. According to the Act establishing the Bank, one of the purposes of the latter is "to develop the cooperative movement of Ceylon" 3/. These links are underlined by the fact that the Commissioner of Cooperative Development is ex officio member of the Board of the Bank's Directors and that cooperative societies are allowed to hold 50 percent of the Bank's shares (in point of fact they currently hold the majority of these shares).

Cooperative societies must deal exclusively with the People's Bank, as far as financial and credit transactions are concerned. This means that they have to deposit their funds with the Bank and maintain with it any current or deposit accounts they wish to open. They must also obtain their medium- and long-term loans through the People's Bank. Exceptions to these rules allowing transactions with other commercial banks can be granted only by the Commissioner of Cooperative Development in writing 4/.

Cooperative societies' applications to the Bank for loans receive preferential treatment together with approved societies and cultivation activities. Thus, although loans and other credit facilities are normally granted to persons considered creditworthy and able to provide adequate security, cooperative societies, approved societies and cultivation committees may be granted such services even if they are unable to satisfy these requirements. This is possible if the loan etc., is approved by the Minister in charge of the affairs of the Bank in consultation with the Minister of Finance and if the latter guarantees the Bank the repayment of the loan 5/. Any sums required for the fulfilment of a guarantee provided as above, are paid, with the approval of the House of Representatives, out of the Consolidated Fund of the country 6/.

The Bank has, on the other hand, the power to examine, through its General Manager, or any other officer authorized by him, the books and accounts, as well as any officer of any cooperative society to which it has granted a loan, overdraft or any other credit facility. The reason for such an examination is to ascertain the true condition of the affairs of the society. Officers of cooperative societies must furnish any information needed and produce any books or other records requested 7/.

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1/ Monetary Law Act, Secs. 88A to 88F added by the Finance Act No. 11 of 1963, Sec. 67 and amended by the Monetary Law (Amendment) Act No. 21 of 1968, Sec. 2.

2/ The Act, Sec. 20.

3/ Ibid., Sec. 4.

4/ Ibid., Sec. 25.

5/ Ibid., Sec. 26.

6/ Ibid., Sec. 21(1) and (2).

7/ Ibid., Sec. 36.

If the General Manager of the Bank, after having examined the affairs of a cooperative society, is of the opinion that it is insolvent or that it will be come insolvent if it continues in business, he may recommend its dissolution and liquidation to the Board of the Bank. If the Board agrees that such a measure is necessary it recommends the dissolution and liquidation to the Commissioner of Cooperative Development, who then recommends to the Minister the action to be taken 1/.

#### 4. Relationships between agricultural credit institutions and individual borrowers

a) Application for loans

No information available.

b) Terms and conditions of loans

The People's Bank grants short-, medium- and long-term loans. Short-term loans are granted for a period not exceeding five years, medium-term loans for a period between five and ten years, and long-term loans for periods exceeding ten years 2/.

Loans, overdrafts and other credit facilities are granted by the Bank to any person who, to the satisfaction of the Board of Directors, is worthy of credit up to the amount applied for or who offers adequate security. A second essential condition for granting the credit facilities requested is that the project or scheme to which such amount is to be applied is financially sound. As seen above, these conditions are not considered as prerequisites for the granting of loans to cooperative societies and similar bodies 3/.

Registered cooperatives can make loans only to their members or, with the consent of the Registrar, to another registered society 4/.

#### Securities

Loans and other credit facilities granted by the People's Bank are mainly guaranteed by real securities. In order to decide whether any immovable property offered as security should or should not be accepted, the Board of the Bank has full access to the valuation roll of local rating or taxing authorities without fee or charge. The officers of such authorities must, upon application, supply the Board with full particulars as to any valuation of property on which the authority in question has power to levy taxes 5/.

Any person to whom credit facility has been granted by the Bank must register with the latter an address to which all notices to him can be sent. This same obligation applies to anybody who has any right, title or interest whatsoever in any immovable property mortgaged to the Bank as a loan security either voluntarily or by the operation of the law 6/.

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1/ The Act, Sec. 37.

2/ Ibid., Sec. 48.

3/ Ibid., Sec. 26.

4/ Cooperative Societies Law, Sec. 39(1).

5/ The Act, Sec. 27.

6/ Ibid., Sec. 28(1).

Save where the Registrar permits otherwise, registered cooperative societies may not lend money on the security of any movable property other than agricultural produce 1/. Loans, however, can be secured by a bond which stipulates inter alia that, in the event of default in repayment, the borrower must surrender on demand his rice ration book as well as those of the members of his family. The form of the bond is determined by the cooperative society to which it relates 2/•

Registered societies have in addition a first charge upon agricultural products, cattle, agricultural or industrial implements etc., of their members or past members that have been raised or purchased with a loan taken from the society, but claims of bona fide purchasers or transferees of such products, cattle, implements etc., must not thereby be affected. Societies have also a first charge upon any sum of money, due from them to a member-borrower, in respect of the purchase of any scheduled agricultural product under the Agricultural Products (Guaranteed Prices and Control of Hulling and Milling) Act No. 33 of 1961. The first charge of societies on all the above is subject only to any prior claim of the Republic and to the claim of a landlord in respect of rent or sums recoverable as rent 3/.

For loans received, registered societies may pledge as security any securities held by them and authorize the creditor, in the event of default of payment, to sell any or all of these securities, without recourse to the courts, and to credit the proceeds to the account related to the loan 4/.

c) Recovery of loans

In case of default on any instalment in repayment of principal or interest of loans or other credit facilities granted by the People's Bank, such default is deemed to have been made in respect of the whole of such portion of the amount not yet repaid 5/.

In the case of default in the repayment of a loan granted by a cooperative society on the security of a bond which contains the clause referred to above, the society, by notice in writing, may require the defaulter to surrender all or any of the rice ration books of his family. The society may retain possession of the surrendered books and dispose of them in accordance with the directions that the Food Controller may issue from time to time.

If the creditor fails to surrender the rice ration books in compliance with the notice, the cooperative society must report to the Food Controller. The latter then issues written directions to the authorized rice distributor to stop the issue of rations on these books.

In order to render practical the repayment of loans through the surrender of rice ration books, the Food Controller may, by notice published in the Gazette, assign a value to a weekly rice ration. Different values may be assigned for different weeks. The settlement of the loan by means of the withholding of rations, whether by the surrender of

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1/ Cooperative Societies Law, Sec. 39 (2).

2/ Cooperative Societies Loans (Special Provisions) Act, Sec. 2.

3/ Cooperative Societies Law, Sec. 24.

4/ Ibid., Sec. 32.

5/ The Act, Sec. 29.

the books or otherwise, is effected in a manner determined by the Food Controller through directions which he may issue for the purpose 1/.

d) Sanctions

Any person who contravenes or fails to comply with any of the provisions of the People's Bank Act is guilty of an offence, and liable on conviction after summary trial before a magistrate to either a fine not exceeding 500 rupees or to imprisonment for a term not exceeding one month or both these penalties 2/.

Every registered society or person who contravenes any of the provisions of the Cooperative Societies Law or who neglects or refuses to do any act related to or necessary for its application is guilty of an offence and is liable, on conviction after summary trial before a magistrate, to a fine not exceeding 500 rupees 3/.

In particular, that person is guilty of an offence and liable to a fine not exceeding 1,000 rupees, who solicits or persuades a third person to violate a contract or an order in respect of sale or delivery of a produce through a cooperative society 4/.

e) Cooperative societies and their members

A registered society which has among its objects the disposal of crop, animal, etc., products may provide in its by-laws or contract with its members that the whole or a specified amount of such products produced by its members must be sold through it. Such a contract creates in favour of the society a first charge upon the product concerned, whether already produced or to be produced. Members guilty of a breach of the by—laws or contract are liable to pay to the society as liquidated damages a sum ascertained in a manner prescribed by the by-laws or by rules 5/.

This provision, in connection with the provision declaring guilty of an offence any person that solicits the violation of a contract or an order in respect of sale through a cooperative (see above under d)), tends to link credit and marketing and facilitate loan recovery through the proceeds of sales. The Government has recently taken a step further by declaring the Paddy Marketing Board, which has monopoly powers of purchase through authorized agents 6/, a multipurpose cooperative benefiting from the above provisions.

The liability of past members, and of the estates of deceased members, for the debts of a registered society continues for a period of two years calculated from the date of the separation or death 7/.

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1/ Cooperative Societies Loans (Special Provisions) Act, Sec. 3.

2/ The Act, Secs 38 and 39.

3/ Cooperative Societies Law, Sec. 72.

4/ Ibid., Sec. 23(1).

5/ Ibid., Sec. 21 (1) and (2).

6/ Paddy Marketing Board Act, No. 14 of 1971.

7/ Cooperative Societies Law, Sec. 29 (1) and (2).

## VIII. TUNISIA

### Sources of regulations

- Act No. 63-17 providing for State encouragement of agricultural development. - 27 May 1963. - Journal Officiel de la République Tunisienne No. 26, 31 May 1963; and the decrees providing for its implementation, namely:
- Decrees Nos. 70-522, 523 and 524. - 6 October 1970. - J.O. No. 46, 9 October 1970.
- Decree No. 72-171. - 10 May 1972. - J.O. No. 19, 16 May 1972; together with the respective ministerial orders.
- Statutes of the National Agricultural Bank. - Pamphlet, undated.
- Act No. 63-19 relating to agricultural cooperation. - 27 May 1963. - J.O. No. 26, 31 May 1963.
- Act No. 58-90 setting up the Central Bank of Tunisia. - J.O. 23-26 September 1958. (Note: this Act includes the Bank's Statutes.)

### Introduction

Prior to 1959, Tunisia's agriculture obtained the credit it needed for current operations and expansion purposes through three institutions: the Agricultural Mutual Credit Fund, the Land Bank of Tunisia, and the various provident societies. The first-mentioned did business almost exclusively with the big European landowners holding registered titles to their land, the second with Tunisians who were registered owners of the land they worked, and the third group with small farmers. In that year, agricultural credit was brought into a single system under the National Agricultural Bank (BNA), which was set up on 1 June 1959 by Government decision. The mutual credit funds were voluntarily dissolved and their functions transferred to the BNA by Decree of 15 June 1959. The functions of the Land Bank of Tunisia, dissolved by the Act of 21 July 1959, were likewise transferred to the BNA by the same decree. By the Decree-Law of 3 April 1962, the Government dissolved the provident societies, and their functions were taken over by the BNA by an agreement made on 15 October 1962.

At the present time, the main provider of agricultural credit is the National Bank of Tunisia (BNT) - renamed thus on 1 October 1962. It is aided in its task by the local mutual loan cooperatives organized and supervised by the Bank itself, which may grant short-term loans to small farmers. The BNT has statutes identical with those of the BNA, save for amendments approved by the Extraordinary General Assembly of 8 August 1969, which had also decided on the change of name.

From the legislative standpoint, agricultural credit in Tunisia has a number of interesting aspects. Few enactments will be found stating the basic principles on which the system must operate. Matters of detail are regulated on the basis of practice, with no written rule to refer to, or by agreements made by the Bank with the institution dealing with specific questions or, again, in directives issued by such institutions.

## 1. Legal structure of agricultural credit institutions

The National Bank of Tunisia (BNT) is a joint stock company governed by the laws 1/ in force (Commercial Code, etc.) and its own statutes. It is established for a duration of 99 years unless wound-up prior to the expiry of that term or extended as provided for in the statutes 2/.

Its main objectives are to promote the development of the Tunisian economy by the granting to individuals and corporate bodies of short-, medium- and long-term loans, with or without security, to set up and develop cooperative credit and, in general, to engage in all banking, financial, industrial, commercial operations, and those affecting both movable and immovable property, whether direct or through third parties 3/.

The Local Mutual Loan Cooperatives (CLCM) are governed, where their constitution is concerned, by the formalities and rules set forth in the Commercial Code for joint stock companies 4/ and by their own statutes - these latter being required conform to model statutes approved by decree. In addition, these CLCMs require approval by the Secretaries of State for Planning and Financial Affairs and for Agriculture 5/.

## 2. Relationship between agricultural credit institutions and the State

### a) State participation in the management of credit institutions

#### (i) Management in general

The BNT is managed by a Board of Governors consisting of not less than six and not more than twelve members, including the representatives of the State appointed pursuant to the Decree of 1 April 1948 providing for the status of representatives of the State in companies in which it is a shareholder, the other members being appointed by the Ordinary General Assembly 6/. At the time of writing, of the above-mentioned maximum number of twelve members, State representatives provide four, in addition to the Director-General 7/.

Each year the Board of Governors appoints from among its members a President Director-General, who may be reelected to office. The Board may decide that the President Director-General shall be vested with these powers for his entire term of office as member 8/.

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1/ Statutes, Art. 1.

2/ Ibid., Art. 6.

3/ Ibid., Art. 3.

4/ Act No. 63-19, Sec. 9.

5/ Ibid., Sec. 10.

6/ Ibid., Art. 19.

7/ Information supplied personally by Mr. El Beji Hamda, Deputy Director-General, BNT, during an interview given in Rome, January 1973.

8/ Statutes, Art. 24.



The President is personally responsible for the management of the Bank. If he so proposes, the Board may appoint a Deputy Director-General to assist him from among the other members or from outside their number. The President may appoint a committee to study specific matters at his choice. Should the President be indisposed, he may delegate, for a specified period of time, some or all of his powers to an administrator of his own choice. Should he be temporarily incapacitated from so delegating the Board is automatically empowered to appoint in his stead. Apart from the President and the Deputy Director-General or the administrator by special delegation, no other person may take on directorial powers within the Bank 1/.

The sovereign body of the Bank is the General Assembly of shareholders. The Statutes provide for ordinary General Assemblies and extraordinary General Assemblies, the latter being convened to decide on amendments to the Statutes.

General Assemblies of shareholders are held once yearly, upon notice of convening by the Board of Governors, within six months of closing the accounts for the trading year 2/. The Statutes provide for the convening, by the Board or by the Auditors (see (ii) below), of extraordinary General Assemblies where necessary. The Board, furthermore, is required to convene a General Assembly whenever requested to do so by shareholders representing at least one-third of the share capital 3/. Concerning General Assemblies, the Statutes also contain detailed provisions which, however, need not be examined in the present context.

The management of the CLCMs, as of all other cooperatives, is the responsibility of a board of governors appointed by the ordinary General Assembly in each case 4/. The CLCMs come under the supervisory authority of the Secretariats of State for Planning and Financial Affairs and for Agriculture in all matters of a financial or technical nature 5/.

(ii) Accounts, audit, etc.

The books, cash position, investments and securities of the Bank are examined by one or more auditors having the qualifications prescribed by law and appointed by the ordinary General Assembly. The auditors also check on the regularity and truthfulness of inventories and balance-sheets as well as of information furnished on the accounts of the company in the President's report. The auditors may carry out examinations and checks at any time of the year and are empowered to convene the General Assembly of shareholders on urgent matters. They may be reelected upon expiry of their term of office 6/.

The Bank is also subject to audit and control as provided for in the Decree of 30 January 1937 on companies, associations, and organizations in receipt of financial contributions from the State. A financial controller is appointed pursuant to the Decree of 1 April 1948, for this purpose. He is invited as a matter of course to attend the meetings of the Board of Governors, whose decisions, however, are valid irrespective of whether he is present or not 7/.

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1/ Statutes, Art. 27.

2/ Ibid., Art. 33.

3/ Ibid.

4/ Act No. 63-19, Sec. 11.

5/ Ibid., Sec. 41 and Sec. 42.

6/ Statutes, Art. 31.

7/ Ibid., Art. 32.

The decisions of the boards of managers of the respective CLCMs regarding their budgets are submitted to the supervising ministry for approval 1/.

b) State participation in the share capital of credit institutions

On 8 August 1969, the capital of the Bank was increased, by resolution of the General Assembly, from an original 400,000 dinars to 1,600,000 dinars, and consists of registered shares of 10 dinars each 2/. State shareholding is limited to 25 percent, the remainder being subscribed by cooperative societies and the CLCMs (59 percent between them) and the private sector (16 percent) 3/.

c) Financial aid granted by the State

While no financial aid is currently granted by the State 4/, the Bank's statutes provide for the possibility of receiving aid from this source or from Government agencies 5/. The BNT has close financial relations, however, with the State, since the latter has entrusted to it the management of several special funds, which constitute the bulk of its resources for medium- and long-term agricultural credit operations (short-term operations are funded from the Bank's own resources). These are:

Special Fund for Agricultural Development (FOSDA). This is a State endowment made to the Bank for use in loans for the following activities:

- (i) tree-crop plantations and the planting of windbreaks;
- (ii) provision of private water-supply points and irrigation schemes;
- (iii) rural building construction;
- (iv) water and soil conservation works;
- (v) purchase and repair of farm equipment and supplies; and
- (vi) development of animal husbandry and fodder production.

Special Fund for Fisheries Production (FOSEP). Again a State-endorsed institution. FOSEP funds are used to finance loans for:

- (i) the purchase of fishing vessels and gear;
- (ii) the overhaul of vessels and gear; and
- (iii) the modernization of vessels and gear.

German Irrigation Fund (FAI). This is constituted by funds made available by the Federal Republic of Germany and assigned by the BNT for financing the provision of surface wells. In this case, as in the two funds mentioned above, the BNT does not share in the risk.

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1/ Act No. 63-19, Sec. 42.

2/ Statutes, Art. 7.

3/ Information supplied by Mr. Hamda.

4/ Ibid.

5/ Statutes, Art. 32.

Special Agricultural Fund (FSA). This is a renewable fund constituted originally with American funds made over to the BNT by the State, and is used chiefly for loans to enable farmers to buy requisites and livestock and, in certain circumstances, to finance capital expenditures such as for plantations and irrigation works. The Bank shares up to 25 percent of any losses that may emerge.

IBRD-AID Fund. This is constituted by a direct loan from the World Bank and AID to the BNT to finance loans for the raising of pedigree milk cattle and for the purchase of farm equipment and other requisites. The BNT accepts the entire risk involved in these operations 1/.

d) Privileges

The BNT has no special privileges, while the CLCMs, being farmers' cooperatives, are exempted from payment of the licence tax and income tax 2/.

3. Agricultural credit institutions and other institutions

a) National Bank of Tunisia and Central Bank of Tunisia

The Central Bank's refinancing activities as far as agricultural credit is concerned can take one or other of the following forms:

- Rediscounting of bills bearing at least two good signatures, if they represent farm working capital credits and fall due in not more than three months, provided that the requesting bank has obtained advance authorization for such rediscounting. These bills may be renewed for up to nine months by decision of the Board of the Central Bank 3/.

- Rediscounting of bills representing medium-term loans, of three months' maturity, renewable for up to five years, provided that: a) they bear three good signatures, one of which may be replaced by a Government guarantee; b) they serve to finance capital investment, specified export goods or housing construction; c) the agency applying for rediscounting has obtained advance authorization to rediscount the bills 4/. This form of refinancing is available not only to banks but also to other agencies authorized by the Minister of Financial Affairs, upon recommendation of the Central Bank, for undertaking medium-term credit operations, subject to an overall ceiling fixed from time to time by the Board.

These conditions scarcely facilitate the rediscounting of both short- and medium-term loans granted by the BNT. First, there is the requirement of the two (or three) good signatures on the bill, which is very difficult to meet, at least in the case of loans granted to the great majority of small farmers 5/. Secondly, there is the problem of the

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1/ Documentary information supplied by Mr. Hamda.

2/ Act No. 63-19, Sec. 70.

3/ Act No. 58-90, Statutes of the Central Bank, Art. 42.

4/ Ibid., Art. 43

5/ See Paolo Mottura, The Banking System of Tunisia, 1956-1970. Cassa di Risparmio delle Provincie Lombarde, Milan, 1972, p. 108. Also A.H. Ballendux et J. Haiat (consultants to the BNA), Manuel provisoire de la Banque Nationale Agricole sur l'administration des prêts agricoles et la composition des statistiques. (Undated, mimeographed study, p. 11.)

term of the loan. As already pointed out, instruments representing short- and medium-term loans can be rediscounted if they mature at a date not later than three months, renewable up to nine months in the first case and up to five years in the second. This has two consequences for the BNT. The first is that short-term loans exceeding nine months and medium-term loans exceeding five years cannot be rediscounted. This seriously restricts the agricultural credit operations of the Bank. The second is that the Bank, in order to be able to rediscount its short- and medium-term loans, must each time draw a whole series of three-month maturity instruments covering the entire period for which the loan has been granted, of which only the last one is of real use 1/.

Furthermore, there is the obligation of the Bank to request in advance rediscount facilities of the Central Bank and await the appropriate authorization. Finally, there is the uncertainty as to whether the Central Bank will grant the renewal of the instruments to be rediscounted. Yet it is on just such a basis that the BNT has to work. An amendment of the basic law or the statutes of the Central Bank would greatly facilitate the refinancing operations of the BNT regarding agricultural loans, by simplifying the rediscounting procedure along more modern practices adopted by other countries.

b) The National Bank of Tunisia and the farmers' cooperatives

As mentioned earlier, the cooperatives are numbered among the BNT shareholders and, as such, are represented on the Board of Governors. They have the additional benefit of being able to obtain credit on preferential terms 2/. The percentage of financing for projects carried out by the cooperatives is normally greater than that for projects put up by individual farmers 3/. The interest rate on loans to cooperatives, however, is the same as that generally applied in the case of individual farmers 4/.

#### 4. Relationships between agricultural credit institutions and individual borrowers

a) Applications for loans

The decrees issued for the implementation of Act No. 63-17 provide a restrictive enumeration of persons eligible for the various kinds of agricultural loans granted by the BNT - owner-cultivators and tenant farmers, sharecroppers and those farming under other traditional systems, e.g. mussakhat (the working of land belonging to a big landowner by a farmer under an agreed sharing of costs and proceeds of the harvest) and, within the limits of their respective statutes, the cooperatives or stockbreeders' associations and, in general, any corporate body authorized to engage in farming 5/.

Applications for medium- or long-term loans of the "FOSDA" etc., type, are as a rule lodged with the Bank's local agencies, while Headquarters does no more than give an opinion, stating the reasons therefor, on each application and send the file to the Ministry of Agriculture for technical evaluation and a decision 6/.

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1/ See Ballendux and Haiat, *op. cit.*, pp. 8-10.

2/ See Statutes, Art. 3 and the various decrees implementing Act No. 63-17.

3/ See Tables in the various ministerial orders for the implementation of Act No. 63-17.

4/ See Tables in the decrees for the implementation of Act No. 63-17.

5/ See Art. 2 in each of the ministerial decrees implementing Act No. 63-17.

6/ BNT documentation.

Whether the application is granted or not 1/ depends on the findings of an enquiry by the technical services and specially appointed agents of the Ministry into the feasibility of the operations for which the loan is required. The same enquiry will also determine certain measures that the borrower will be required to respect in such a way that the investments for which State aid is requested will bring in the fullest possible returns 2/.

The technical examination of, and decisions concerning, IBRD-AID loans are the responsibility of the BNT 3/.

b) Terms and conditions of loans

Loans may be made in cash or in kind. Their amount is determined by decision of the Minister of Agriculture in accordance with the joint order of the Ministers of Financial Affairs and of Agriculture governing the type of investment proposed 4/ (the order also prescribes the proportion of the costs which may be covered by the loan, that of the subsidy and that which the applicant must himself provide in respect of each and every operation).

The loan may be granted for the provision of capital assets - even post factum or where the project has already been carried out in part if the project has been recognized as a valid one and has been implemented correctly. In the latter case, the loan is granted only if the purchase has been made during the current year 5/. The term of such loans varies with the type of investment, from one year (e.g., for the laying down of sown pastures) to 25 years (for certain kinds of plantations).

(i) Interest

Interest payable on medium- and long-term agricultural loans granted by the BNT varies usually between 2 and 6 percent, according to the type of works envisaged and whether it is a question of the productive or non-productive period of, say, a plantation. Thus, the rate prescribed by the decrees implementing Act No. 63-17 for loans for the establishment of tree-crop plantations is 3 percent during the period before the trees come into production and 4.5 percent thereafter 6/. No interest accrues on the interest payable in respect of the former period but deferred until the last 5 years of repayment of the loan 7/. Loans for the overhaul of fishing boats and gear bear an interest rate of 5 percent 8/.

The interest rate on loans granted for the purchase of pedigree milk cows or of farm equipment and financed from IBRD-AID sources is 8 percent, of which 2 percent is borne by the State and 6 percent by the borrower 9/. These rates are the same for both private individuals and cooperatives.

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1/ State assistance may also take the form of subsidy or payment of the interest. The conditions governing the application of such a formula are substantially the same as those for the grant of loans. A detailed study of these procedures would go beyond the limits of the present study.

2/ Decrees implementing Act No. 63-17.

3/ BNT documentation.

4/ Decrees implementing Act No. 63-17.

5/ Ibid.

6/ Decree No. 70-524, Art. 9.

7/ Ibid.

8/ Order of the Ministers of Financial Affairs and of Agriculture, 25 April 1970, Art. 2, Table B.

9/ BNT documentation.

(ii) Securities

Loans granted as described are also secured by pledge or mortgage. Thus, short- and medium-term loans are generally secured on the farm equipment, livestock or, more frequently, the material thing purchased with the loan. Long-term loans to private farmers are secured by mortgage.

There remain certain points to note in this connection. Tunisian law does not contemplate pledges of more than one year's duration, while those securing loans granted for longer periods are tacitly renewed until the expiry of the term. On the other hand, since only land titles of non-Tunisian owners are duly entered in a central register ("titres bleus"), only these may be used for mortgage purposes. In order to circumvent this difficulty other titles (referred to as "Arab titles") are used for the purposes of pledging. This is annotated on the title itself and is tantamount to a mortgage 1/.

Long-term loans granted to cooperatives, on the other hand, are not secured in any way. The control maintained by the appropriate Government services over cooperatives and, in particular, where their credit needs investment planning and the use of the monies so granted are concerned, makes security unnecessary. In any event, the present regulations governing cooperative ownership is such that it would be impossible to satisfy the demand for loans to cooperatives if their repayment were to be secured on real property 2/.

c) Recovery of loans

Principal and interest must be recovered either through a credit institution under terms and conditions defined by law 3/. In actual fact the institution is always the BNT, and repayments are made to it or one or other of its correspondents.

d) Sanctions

Beneficiaries must carry out the operations for which loans have been granted, together with the works projects necessary for securing the fullest possible returns on the investment, as prescribed by the inspectors of technical officers of the Ministry of Agriculture. Reports on the completion or otherwise of such works projects are made by the services of the same Ministry. In the event of failure to carry out some or all of the required works or duly established instances of bad workmanship or, again, in the event of sale of the land and its appurtenances before completion of the operations in question, the total of the loan and interest thereon, together with any subsidy that may have been granted, become repayable forthwith if the Ministry of Agriculture so rules. Materials supplied by way of loan or subsidy in kind remain the property of the State until the operations have been completed 4/.

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1/ Information supplied by Mr. Hamda.

2/ Ibid.

3/ Decrees for the implementation of Act No. 63-17, e.g., Decree No 70-523, Art. 24.

4/ Decrees for the implementation of Act No. 63-17, e.g., Decree No. 70-523. Art. 7.

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