

AGRICULTURAL PRODUCE AGENTS ACT 12 OF 1992

(English text signed by the State President)

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as amended by:

Government Notice R1819 / GG 15144 / 19931001
Agricultural Produce Agents Amendment Act 47 of 2003

ACT

To provide for the establishment of an Agricultural Produce Agents Council and fidelity funds in respect of agricultural produce agents; for the control of certain activities of agricultural produce agents; and for matters connected therewith.

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1. Definitions

(1) In this Act, unless the context otherwise indicates -

“agent” means a person who, for the acquisition of gain on his or her own account or in a partnership, in any manner holds himself or herself out as a person who, either directly or indirectly advertises that he or she, on the instructions of or on behalf of any other person, purchases or sells agricultural produce or negotiates in connection therewith or canvasses or undertakes or offers to canvass a purchaser or seller therefor;

[Definition of “agent” substituted by s. 1 of Act 47/2003]

“agricultural product” means an article specified in Part A or B of Schedule 1 or any article added thereto under subsection (2) of this section;

[Definition of “agricultural product” substituted by s. 1 of Act 47/2003]

“auditor” means a person registered in terms of section 15 of the Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991), as an accountant or auditor, and engaged in public practice as such;

“building society”

[Definition of “building society” deleted by s. 1 of Act 47/2003]

“close corporation” means a close corporation referred to in the Close Corporations Act, 1984 (Act No. 69 of 1984);

“consumer” means a consumer of an agricultural product;

[Definition of “consumer” inserted by s. 1 of Act 47/2003]

“council” means the Agricultural Produce Agents Council established by section 2;

“court” means a court of the provincial or local division of the High Court of South Africa having jurisdiction or a judge of any such court and for purposes of section 27(5) also includes a magistrate as defined in the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944);

[Definition of “court” inserted by s. 1 of Act 47/2003]

“department” means the Department of Agriculture in the national government;

[Definition of “department” inserted by s. 1 of Act 47/2003]

“deposit-taking institution” means an institution registered finally as a deposit-taking institution in terms of the Deposit-taking Institutions Act, 1990 (Act No. 94 of 1990);

“deputy registrar” means the deputy registrar of the Agricultural Produce Agents Council appointed in terms of section 8;

[Definition of “deputy registrar” inserted by s. 1 of Act 47/2003]

“export agent” means an agent acting as such with regard to any agricultural product specified in Part A of Schedule 1 intended for export;

[Definition of “export agent” inserted by s. 1 of Act 47/2003]

“fidelity fund certificate” means a fidelity fund certificate issued in terms of section 16 or deemed to have been issued in terms of that section;

“fresh produce agent” means an agent acting as such with regard to any agricultural product specified in Part A of Schedule 1 on the basis that the risk of profit or loss at all times remains with the principal, and-

- (a) for the purposes of section 3(1)(a), includes any director of a company, trustee of a trust or a member of a close corporation who acts as a fresh produce agent as aforesaid;
- (b) for the purposes of sections 12(5), 13(3)(b), 13(3)(c), 13(3)(d), 13(4), 14(5)(a), 16(6)(f), 16(6A), 22, 23, 24, 25, 26, 27 and 30, includes-
 - (i) any director of a company, or a member of a close corporation or a trustee of a trust who acts as a fresh produce agent as aforesaid; and
 - (ii) any person who is employed by a fresh produce agent and who acts as a fresh produce agent as aforesaid for the employer;

[Definition of “fresh produce agent” substituted by s. 1 of Act 47/2003]

“fund” means the Fresh Produce Agents Fidelity Fund referred to in section 12 (2);
 [Definition of “fund” substituted by s. 1 of Act 47/2003]

“inspector” means an inspector referred to in section 27;

“livestock agent” means an agent acting as such with regard to any agricultural product specified in Part B of Schedule 1, and for purposes of section 3(1)(b) includes any director of a company, trustee of a trust or a member of a close corporation which acts as a livestock agent as aforesaid;
 [Definition of “livestock agent” substituted by s. 1 of Act 47/2003]

“Minister” means the Minister of Agriculture;

“officer”
 [Definition of “officer” deleted by s. 1 of Act 47/2003]

“registrar” means the registrar of the Agricultural Produce Agents Council appointed in terms of section 8, and for purposes of the application of the provisions of this Act, includes the deputy registrar;
 [Definition of “registrar” substituted by s. 1 of Act 47/2003]

“registration certificate” means a registration certificate issued by the council in terms of section 16;
 [Definition of “registration certificate” inserted by s. 1 of Act 47/2003]

“rules” means rules made under section 22;

“trust account” means a trust account referred to in section 19.

- (2) The Minister may amend Schedule 1 by notice in the *Gazette*.
 (Commencement date of s. 1: 4 January 1993)

2. Establishment of Agricultural Produce Agents Council

There is hereby established a juristic person to be known as the Agricultural Produce Agents Council.
 (Commencement date of s. 2: 4 January 1993)

3. Constitution of council

- (1) The Minister shall appoint as members of the council for a maximum period of three years-
 - (a) two persons who in his or her opinion represent producers of the agricultural products set out in Part A of Schedule 1;
 - (b) two persons who in his or her opinion represent producers of the agricultural products set out in Part B of Schedule 1;
 - (c) three persons who in his or her opinion represent fresh produce agents;
 - (d) three persons who in his or her opinion represent livestock agents;
 - (e) three persons who in his or her opinion represent export agents;
 - (f) two persons designated by him or her;
 - (g) two persons who in his or her opinion represent consumers; and
 - (h) one person representing the Department.
- (2) The registrar and deputy registrar shall *ex officio* be members of the council.
- (3) A member may not serve more than two consecutive terms unless the Minister is of the opinion that the appointment for a further term will be beneficial to the council.
- (4) Whenever members or a member of the council has to be appointed in terms of subsection (1), the Minister shall call for nominations of suitable persons in the national media.
- (5)
 - (a) If a member of a council ceases to hold office for any reason and vacates office, the Minister may appoint a person in his or her place for the unexpired part of the term of office of the vacating member.
 - (b) If, upon the expiration of the term of office of the members of the council, the Minister has not yet appointed new members to take their place, the existing members shall continue in office until new members have been appointed to replace them.
- (6) A member of the council other than the registrar, deputy registrar and a member referred to in subsection (1)(h) shall be paid such remuneration or allowances from the funds of the council, as the council may determine.
- (7) No person may be appointed as a member of the council, who-
 - (a) is not a South African citizen resident in South Africa;
 - (b) is an unrehabilitated insolvent in respect of whom the trustee of the insolvent estate has not certified that the insolvent is a fit and proper person to serve as a member of the council;
 - (c) has failed or is unable to comply in full with a judgment or order, including an order as to costs, given against him or her by a court of law in civil proceedings;
 - (d) has been convicted of an offence involving an element of dishonesty or has been sentenced for another offence to a period of imprisonment;

- (e) is of unsound mind; or
- (f) has contravened section 7 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 6 of 2000), and it has been so determined by an equality court.

[S. 3 substituted by s. 2 of Act 47/2003]
(Commencement date of s. 3: 4 January 1993)

4. Vacating of office by members of council

A member of the council shall vacate his or her office if-

- (a) he or she becomes subject to any disqualification referred to in section 3(6);
- (b) he or she has been absent from more than two consecutive meetings of the council without the leave of the council;
- (c) he or she resigns as a member of the council and has notified the registrar in writing of his or her resignation;
- (d) he or she is no longer fit to serve on the council; or
- (e) in the case of the registrar, he or she is no longer employed by the council.

[S. 4 substituted by s. 3 of Act 47/2003]
(Commencement date of s. 4: 4 January 1993)

5. Chairperson of council

- (1) The Minister shall designate a chairperson for the council from the members contemplated in section 3(1).
- (2) When the chairperson is absent or is unable to perform his or her duties, the members of the council shall from among their number elect a person to act as chairperson until the chairperson is able to resume his or her duties or until a new chairperson is designated by the Minister.
- (3) A person whose term of office as chairperson has expired through effluxion of time shall be eligible for re-election to that office: Provided that no person shall serve as chairperson for more than six consecutive years.

[S. 5 substituted by s. 4 of Act 47/2003]
(Commencement date of s. 5: 4 January 1993)

6. Meetings and decisions of council

- (1) The council shall meet at such times and places as the chairperson may from time to time determine.
- (2) The chairperson of the council may at any time convene an extraordinary meeting of the council to be held at a time and place determined by him or her and shall, upon a written request signed by not less than three members of the council, convene an extraordinary meeting thereof to be held within two weeks after the date of receipt of such request, at a time and place determined by him or her.
- (3) The person presiding at a meeting of the council shall determine the procedure at that meeting.
- (4) (a) The quorum for a meeting of the council shall be a majority of all its members.

- (b) The decision of a majority of the members of the council present at a meeting thereof shall constitute a decision of the council.
 - (c) In the event of an equality of votes on any matter the person presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.
- (5) No decision taken by the council or act performed under the authority of the council shall be invalid by reason only of a casual vacancy on the council or of the fact that any person not entitled to sit as a member of the council sat as such a member at the time the decision was taken or the act was authorized, if the decision was taken or the act was authorized by the majority of the members of the council who were present at the time and entitled to sit as members of the council.

[S. 6 substituted by s. 5 of Act 47/2003]
 (Commencement date of s. 6: 4 January 1993)

7. Committees of council

- (1) (a) There shall be three executive committees of the council which shall deal with matters relating to the occupations of export agent, fresh produce agent and livestock agent, respectively.
 [Para. (a) substituted by s. 6 of Act 47/2003]
 - (b) The executive committees shall consist of the members of the council referred to in paragraphs (c) to (e) of section 3 (1), respectively.
 [Para. (b) substituted by s. 6 of Act 47/2003]
 - (c) Subject to the provisions of this Act and the directives of the council, the respective executive committees may during periods between meetings of the council exercise all the powers and perform all the functions of the council with regard to the respective said occupations.
 - (d)
 [Para. (d) deleted by s. 6 of Act 47/2003]
 - (e) The provisions of section 6 (3), (4) and (5) shall *mutatis mutandis* apply to the executive committee.
- (2) (a) The council may at its discretion appoint one or more other committees consisting of so many members of the council and other persons as the council may deem necessary, to perform, subject to the directives of the council, such functions of the council as the council may determine, or to advise the council on any matter assigned to the council by or under this Act, and the council may at any time dissolve or reconstitute such a committee.
 - (b) The chairman of any such committee shall be a member of the council designated by the council.
 - (c) The provisions of sections 3 (5) and 6 (3), (4) and (5) shall *mutatis mutandis* apply to any such committee.
- (3) Subject to the provisions of subsection (4), the council shall not be divested of or exempted from any function referred to in subsection (1) (c) or (2) (a).
 - (4) Any decision of any said committee may be withdrawn or amended by the council or referred back to such committee and shall, until it has been so withdrawn or amended, be deemed to be a decision of the council: Provided that a decision of any said executive committee may be

withdrawn or amended only if the decision for such withdrawal or amendment was passed by at least two thirds of the members of the council present at a meeting thereof.

(Commencement date of s. 7: 4 January 1993)

8. Registrar and deputy registrar

- (1) The work incidental to the performance of the functions of the council and its committees shall be performed by the registrar and deputy registrar, who shall be appointed by the council in consultation with the Minister.
- (2) The registrar-
 - (a) may delegate or assign to a person appointed or designated by him or her any power or duty conferred or imposed upon him or her by or under this Act;
 - (b) is accountable to the council and responsible for-
 - (i) the implementation of policy, rules and the codes of conduct determined by the council in accordance with this Act;
 - (ii) the day-to-day administrative functioning of the council, including the registration of agents with the council, the keeping of records of account, inspections and investigations into the affairs of agents and the institution and conducting of disciplinary or other proceedings against agents; and
 - (iii) reporting to the council on his or her activities in terms of subparagraphs (i) and (ii);
 - (c) shall be appointed on such terms and conditions as the council may decide.

[S. 8 substituted by s. 7 of Act 47/2003]

(Commencement date of s. 8: 4 January 1993)

9. Objects of council

The objects of the council shall be to regulate the occupations of fresh produce, export and livestock agents and to maintain and enhance the status and dignity of those occupations and the integrity of persons practising those occupations.

[S. 9 substituted by s. 8 of Act 47/2003]

(Commencement date of s. 9: 4 January 1993)

10. Functions of council

The functions of the council are -

- (a) to formulate policy;
[Para. (a) substituted by s. 9 of Act 47/2003]
- (b) to establish rules and codes of conduct;
[Para. (b) substituted by s. 9 of Act 47/2003]
- (c) to hire, purchase or otherwise acquire such movable or immovable property or such interest in movable or immovable property as the council may deem necessary for the effective performance of its functions, and to let, encumber, sell or otherwise dispose of property so purchased or acquired; and
[Para. (c) substituted by s. 9 of Act 47/2003]
- (d) generally, to take such steps as it may deem necessary to achieve its objects.

(Commencement date of s. 10: 4 January 1993)

11. Funds of council

- (1) The funds of the council shall consist of -
 - (a) money paid to the council in terms of this Act; and
 - (b) all other moneys which may accrue to the council from any other source.
[Para. (b) substituted by s. 10 of Act 47/2003]
- (2) The council shall utilize its funds to defray expenses incurred by the council in the performance of its functions and the exercise of its powers under this Act.
- (2A) The council may, subject to such terms and conditions as it may deem fit-
 - (a) make grants with regard to-
 - (i) research in fields of activity relevant to the business of agents in general;
 - (ii) the maintenance and promotion of the standard of conduct of agents in general;
 - (iii) the maintenance and promotion of the training standards of agents in general;
 - (b) pay an honorarium or remuneration to any person or institution for services with the object of enhancing the standard of conduct of agents in general, rendered at the request of the council; and
 - (c) utilize such amount as it may determine for the purposes of-
 - (i) advertising and promoting the services and facilities offered by agents in general; or
 - (ii) promoting public awareness in respect of matters relating to the purchase of agricultural products referred to in Part A or B of Schedule 1.
[Sub-s. (2A) inserted by s. 10 of Act 47/2003]
- (2B) The council may at any time revoke any grant referred to in subsection (3)(a).
[Sub-s. (2B) inserted by s. 10 of Act 47/2003]
- (3) The council shall open an account at a deposit-taking institution or building society, and shall deposit all moneys referred to in subsection (1) therein.
- (4) The council may invest any moneys deposited by it in an account in terms of subsection (3) and which are not required for immediate use.
- (5) The financial year of the council shall end on 31 March in each year and the council shall report annually on its activities to the Minister.
[Sub-s. (5) substituted by s. 10 of Act 47/2003]
- (5A) The council shall, at least three months prior to the start of its financial year, provide to the Minister for his or her information a business plan of the forthcoming financial year containing at least-
 - (a) the budget of the council for that forthcoming year;

- (b) particulars about any training, promotional or other activities that the council plans to undertake during that year;
 - (c) such other particulars as the Minister may request.
[Sub-s. (5A) inserted by s. 10 of Act 47/2003]
- (6) The council shall -
- (a) cause accounting records to be kept of all moneys received or expended by it, and of all its assets, liabilities and financial transactions; and
 - (b) as soon as possible, but not later than three months after the end of each financial year, cause annual financial statements to be prepared showing, with all the appropriate particulars, the money received and the expenditure incurred by it during, and its assets and liabilities at the end of, that financial year.
- (7) The records and annual financial statements referred to in subsection (6) shall be audited by an auditor appointed by the council.
- (8) The council shall within six months of the end of each financial year submit to the Minister a copy of the audited annual financial statements referred to in subsection (6) (b), together with a report on the activities of the council during that financial year.
- (9) Copies of the annual financial statements and of the report referred to in subsection (8) shall -
- (a) be open to public inspection at the office of the council during office hours; and
 - (b) be obtainable from the council against payment of the amount determined therefor by the council.
- (10) The functions of the council in terms of this section may be performed separately in respect of fresh produce agents, export agents and livestock agents.
[Sub-s. (10) substituted by s. 10 of Act 47/2003]

12. Establishment and control of fidelity fund

- (1) There is hereby established a fund to be known as the Fresh Produce Agents Fidelity Fund.
- (2) The fund shall consist of-
 - (a) money in the fidelity guarantee fund established under section 27 of the Agricultural Produce Agency Sales Act, 1975 (Act No. 12 of 1975);
 - (b) each amount which is immediately prior to the commencement of this section payable to or on the account of the fund referred to in paragraph (a), and is paid on or after such date of commencement;
 - (c) money paid to or on account of the fund in terms of subsection (4) by fresh produce agents;
 - (d) money recovered by or on behalf of the fund in terms of this Act;
 - (e) income derived from the investment of money in the fund; and
 - (f) any other money accruing to the fund from any other source.

- (3) (a) Each fresh produce agent other than a person employed by such an agent shall annually before or on a date determined by the council pay to the council for the account of the fund an amount calculated on such basis or in such manner as the council may determine.
- (b) A determination by the council in terms of paragraph (a) shall be made with due regard to the purpose for which the fund has been established, as well as the present assets and future obligations of the fund.
- (4) (a) Subject to the provisions of this Act, the fund is established to reimburse producers for direct losses suffered by them as a result of -
- (i) theft, committed by a fresh produce agent, of any money or agricultural produce entrusted by or on behalf of the producers thereof to him or her as a fresh produce agent; and
- (ii) dishonest conduct by a fresh produce agent in so far as such conduct relates to agricultural produce.
- (b) Notwithstanding the provisions of paragraph (a), the Minister may, if he or she is of the opinion that the balance of the fund is sufficient to meet the obligations contemplated in that paragraph, approve that such portion of the income referred to in subsection (2)(e) as may be determined by him or her, be made available to the council for utilization as contemplated in section 11(2).
- (5) The fund shall be controlled and administered by the council in accordance with the provisions of this Act.
- (6) The council may invest any money in the fund not required for immediate use at a deposit-taking institution.
- (7) The financial year of the fund shall terminate on such date in each year as the council may determine.
- (8) No provision of any law relating to insurance shall apply in respect of the fund.
- (9) The provisions of section 11 (6), (7), (8) and (9) shall *mutatis mutandis* apply to the fund.
[S. 12 substituted by s. 11 of Act 47/2003]

13. Payments out of fund

- (1) Subject to the provisions of this Act, the fund shall be utilized for-
- (a) all claims against the fund referred to in section 14 and paid by the council or allowed or established against the fund;
- (b) in the discretion of the council, a contribution towards expenses incurred by a claimant for establishing his or her claim;
- (c) legal and accounting costs incurred in, and other expenses arising from, the investigation and defence of a claim made against the fund;
- (e) the costs incidental to the control and administration of the fund, including allowances and remuneration paid for this purpose to members of the council and a committee of the council, the registrar and the persons referred to in section 8(2); and

- (f) other payments required or permitted to be made out of the fund in terms of this Act.
- (2) Notwithstanding anything to the contrary in any other Act, the council may in its discretion pay an amount out of the fund as interest on the amount of any claim admitted against the fund: Provided that-
 - (a) the interest shall not run from a date earlier than the date on which the claim was lodged in writing with the council in terms of subsection (3)(a)(i); and
 - (b) the rate of interest shall not exceed the prevailing rate of interest prescribed under section 1(2) of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975).
- (3) Notwithstanding any other provision, no person shall have any claim against the fund-
 - (a) unless the claimant-
 - (i) has lodged it in writing with the council within six months after he or she became aware of the loss, or by the exercise of reasonable care could have become aware thereof; and
 - (ii) has within three months after having been requested thereto in writing by the council, furnished the council with such proof of that loss as the council may reasonably require; and
 - (b) if the claimant is a partner, manager, representative, agent, employee or member of the household of the fresh produce agent whose conduct referred to in section 12(5) has caused the loss;
 - (c) if the loss occurred as a result of the conduct, referred to in section 12(5), of a fresh produce agent whose fidelity has been guaranteed by any person, either in general or in respect of the particular transaction, to the extent to which the transaction is covered by the guarantee; and
 - (d) if the loss occurred as a result of the conduct, referred to in section 12(5), of a fresh produce agent after such claimant received a written notification from the registrar warning him or her against the employment or continued employment of such fresh produce agent.
- (4) A claim for reimbursement contemplated in section 12(5) shall be limited, in the case of money entrusted to a fresh produce agent, to the amount actually handed over, without interest, and, in the case of agricultural produce, to an amount equal to the average market value of such produce on the date when written demand was first made for its delivery, or if there is no average market value, the fair market value as at that date, without interest.

[S. 13 substituted by s. 12 of Act 47/2003]

14. Claims against fund and actions against council

- (1) A claim for the reimbursement from the fund of a monetary loss that arose under the circumstances set out in section 12(5) shall, subject to the provisions of section 13(3), be lodged with the council.
- (2) If the council admits such a claim, a payment shall be made to the claimant in accordance with the provisions of section 13(1): Provided that the amount of such payment shall not be more than the difference between the amount of the loss suffered by the claimant, and the amount or value

of all moneys or other benefits received or entitled to be received by that claimant, whether gratuitously or otherwise, from any other source.

- (3) If the council rejects a claim, an action in respect of that claim may be instituted against the council in the court within whose jurisdiction the principal place of business of the council is situated -
 - (a) if the claimant has exhausted all legal remedies against the fresh produce agent in respect of whom the claim arose; or
 - (b) with leave of the council, before all legal remedies against the said agent have been exhausted.
- (4) In any action against the council all defences which would have been available to the fresh produce agent in respect of whom the claim arose, shall be available to the council.
- (5) When the council settles in full or in part any claim under this Act-
 - (a) there shall pass to the council, to the extent of such settlement, all the rights and remedies of the claimant in respect of such claim against the fresh produce agent or, if applicable, in the case of the death, insolvency or other legal incapacity of such fresh produce agent, against the estate of the said fresh produce agent; and
 - (b) the council may use any security furnished by or on behalf of a fresh produce agent in terms of section 17, to reimburse the fund for the amount for which the claim was settled.
- (6)
 - (a) The council may in its discretion decide on the order in which claims admitted by the council or awarded by the court shall be paid out of the fund.
 - (b) If, at any time the amount to the credit of the fund is insufficient to pay all such claims, the council may determine the order in which claims in terms of subsection (1) shall be settled, and may, if the revenue of the fund is not sufficient to settle all claims in full, settle any claim in whole or in part.
 - (c) Without limiting the discretion of the council it shall, in applying the fund towards such settlement of claims, consider-
 - (i) the relative degrees of hardship suffered or likely to be suffered by the various claimants should their claims against the fund not be settled in whole or in part;
 - (ii) subject to subparagraph (i), the full settlement of claims not exceeding the amount prescribed by the Minister by notice in the *Gazette*, except in special circumstances, before claims for amounts exceeding such amounts are settled to a greater extent than such prescribed amounts;
 - (iii) in equal circumstances, the priority of claimants according to the dates when the claims were admitted by the council, as the case may be.
 - (d) A proportional payment under paragraph (b) shall be deemed to be full and final payment in respect of the claim concerned.

[S. 14 substituted by s. 13 of Act 47/2003]

15.

[S. 15 repealed by s. 14 of Act 47/2003]

16. **Prohibition on acting as agent under certain circumstances**

- (1) (a) Subject to the provisions of subsection (2), no person shall perform any act as a fresh produce agent unless he or she is the holder of a fidelity fund certificate issued to him or her and to every employee contemplated in the definition of 'fresh produce agent' in section 1 and, if such person is-
 - (i) a company, to every director of that company;
 - (ii) a close corporation, to every member of that corporation; or
 - (iii) a trust, to every trustee of that trust,who acts as an agent on behalf of that company, close corporation or trust contemplated in the definition of 'fresh produce agent' in section 1.
- (b) Subject to the provisions of subsection (2), no person shall perform any act as an export agent or a livestock agent unless a registration certificate has been issued to him or her.
- (2) No agent shall receive remuneration for the performance of an act as an agent, unless-
 - (a) in the case of a fresh produce agent, the act has been performed by the holder of a fidelity fund certificate which has not been suspended; or
 - (b) in the case of an export or livestock agent, the act has been performed by the holder of a registration certificate.
- (3) (a) Every prospective fresh produce agent shall, within the prescribed period and in the prescribed manner, apply to the council for a fidelity fund certificate, and such application shall be accompanied by the security referred to in section 17(1) and the application fee determined by the council.
- (b) Every prospective export agent and livestock agent shall, within the prescribed period and in the prescribed manner, apply to the council for a registration certificate, and such application shall be accompanied by the application fee determined by the council.
- (c) If the council, upon receipt of any application referred to in subsection (1) or (2) and the security (where applicable) and application fee referred to in those subsections, is satisfied that the applicant is not disqualified in terms of subsection (6) from being issued with a fidelity fund or registration certificate, the council shall in the prescribed form issue to the applicant a fidelity fund certificate or a registration certificate, as the case may be.
- (d) Any document purporting to be a fidelity fund certificate or registration certificate which has been issued contrary to the provisions of this Act shall be null and void and shall on demand be returned to the council.
- (6) No fidelity fund certificate or registration certificate, as the case may be, shall be issued to any person-
 - (a) who has at any time by reason of improper conduct been dismissed from a position of trust;
 - (b) who has at any time been convicted of an offence involving an element of dishonesty;
 - (c) who is of unsound mind;

- (e) who has, after an investigation in terms of section 24, been found guilty of improper conduct;
- (f) who is an unrehabilitated insolvent in respect of whom the trustee of the insolvent estate has not certified that the insolvent is a fit and proper person to assume a position of trust and to be issued with a fidelity fund certificate or registration certificate, as the case may be;
- (g) in the case of a company, close corporation or other juristic person, which is being wound-up, whether provisionally or otherwise, or is deregistered, as the case may be;
- (h) who has failed to discharge all his or her liabilities to the council;
- (i) who has failed to comply with any lawful requirement of the council;
- (j) in the case of a fresh produce agent, who has failed to comply with the provisions of section 19(1)(a);
- (k) in the case of a fresh produce agent, who carries on or intends to carry on business as a fresh produce agent under a trade name which is identical or confusingly similar to a trade name of a fresh produce agent-
 - (i) already issued with a fidelity fund certificate; or
 - (ii) whose fidelity fund certificate is suspended or has lapsed or been withdrawn in terms of this Act;
- (l) in the case of an export agent, who carries on or intends to carry on business as a livestock agent under a trade name which is identical or similar to a trade name of a livestock agent-
 - (i) already issued with a registration certificate; or
 - (ii) whose registration certificate is suspended or has lapsed or been withdrawn in terms of this Act;

Provided that if in respect of any person who is subject to any disqualification referred to in this subsection, the council is satisfied that, with due regard to all the relevant considerations, the issue of a fidelity fund certificate or registration certificate, as the case may be, to such person will be in the interest of justice, the council may issue, on such conditions as the council may determine, a fidelity fund certificate or registration certificate, as the case may be, to such person when he or she applies therefor.

- (6A) (a) The council may issue a fidelity fund certificate or registration certificate to any person who is acting or intending to act as a fresh produce agent or livestock agent and such a certificate shall be deemed to be a certificate issued on application by such a person.
 - (b) The issuing of a fidelity fund certificate or registration certificate under paragraph (a) shall not exempt the person from any prosecution for not complying with or contravening any provision of this Act or the rules prior to the issuing of such a certificate.
- (9) Each agent who is the holder of a fidelity fund or registration certificate shall-
- (a) annually before or on a date determined by the council, pay to the council the amount determined by the council for the maintenance of such certificate;

- (b) forthwith notify the council in writing-
 - (i) of any change of his or her business or postal address;
 - (ii) if the partnership of which he or she is a partner, dissolves;
 - (iii) if he or she becomes a member of a partnership;
 - (iv) if, in the case of a company or close corporation, a change in the directorship of that company or the membership of that close corporation has occurred;
 - (v) if, in the case of a trust, a change in the trustees of that trust has occurred;
 - (vi) if he or she has ceased to act as an agent; and
 - (vii) of any further particulars requested by the council as a result of a notice in terms of the preceding subparagraphs.
- (10) (a) A fidelity fund or registration certificate issued to an agent shall automatically lapse when he or she becomes disqualified as contemplated in subsection (6) or if the agent ceases to act as an agent.
- (b) If a fidelity fund certificate which lapsed in terms of subparagraph (a) had been issued to a company, close corporation or trust, then the fidelity fund certificate of-
 - (i) every director, member, or trustee ; and
 - (ii) every employee,as contemplated in the definition of ‘fresh produce agent’ in section 1 shall likewise lapse.
- (c) If a fidelity fund or registration certificate so lapses or is suspended, the registrar shall-
 - (i) by means of a written notice addressed to the said business and postal address of the agent, notify him or her thereof;
 - (ii) in the case of a fresh produce agent who conducts his or her business at a fresh produce market, by means of a written notice addressed to the person in charge of that market, notify him or her thereof; and
 - (iii) cause particulars thereof to be published in a newspaper in at least two official languages, one of which should be English, circulating in the district in which the said agent’s last known business address, as entered in the records of the council, is situated.
- (d) The agent or any person who is in possession of or has under his or her control a fidelity fund or registration certificate which has lapsed under paragraph (a), shall return the certificate to the registrar within 30 days after the last date of publication referred to in paragraph (c)(iii)
- (e) A fidelity fund or registration certificate which has lapsed, shall be void with effect from the date of such lapsing.

- (11) No person whose fidelity fund or registration certificate has lapsed, may directly or indirectly participate in the management of any business carried on by an agent in his or her capacity as such, or participate in the carrying on of such business, or be employed, directly or indirectly, in any capacity in such business, except with the written consent of the council and subject to such conditions as the council may determine from time to time.
- (12) No agent shall directly or indirectly in any capacity whatsoever employ a person referred to in subsection (11), or allow or permit such person directly or indirectly to participate in any capacity in the management or the carrying on of his or her business as an agent, except with the written consent of the council, and subject to such conditions as the council may impose.
[S. 16 substituted by s. 15 of Act 47/2003]

17. Security by agents

- (1) Every fresh produce agent who is responsible to open and keep a trust account in terms of section 19(1), shall before a fidelity fund certificate is issued to him or her furnish the council with security in such amount and in such form as is acceptable to the council, for use by the council to meet any claim arising in terms of section 12(5) or to defray the costs or part of the costs of an inspection and investigation held in terms of section 24 where such fresh produce agent has been disciplined in terms of section 26(1).
- (2) The security referred to in subsection (1) shall be returned to the fresh produce agent within six months after the lapse of the fidelity fund certificate of that fresh produce agent, unless an inspection and investigation under section 24 of an act or omission or alleged act or omission of the fresh produce agent is being held before such expiration, and may until it has been so returned from time to time be altered, increased or decreased by the council.
[S. 17 substituted by s. 16 of Act 47/2003]

18. Account

- (1) Every fresh produce agent contemplated in paragraph (a) of the definition of 'fresh produce agent' in section 1 shall in respect of his or her activities as such, keep, at a place approved by the council, full and correct accounting records of-
- (a) all money received, kept or expended by him or her, including money deposited in a trust account referred to in section 19(1)(a) or invested in a savings or interest-bearing account referred to in section 19(3)(a);
 - (b) all his or her assets and liabilities;
 - (c) all his or her financial transactions; and
 - (d) all agricultural produce received, kept, sold and lawfully destroyed.
- (2) (a) Such fresh produce agent shall cause the said accounting records to be audited at his or her expense by an auditor within four months after the final date of every financial year of the fresh produce agent, which final date shall not be amended by him or her without the prior written approval of the council.
- (b) Notwithstanding the provisions of subsection (2)(a), the council may, on good cause shown, at any time order any fresh produce agent by notice in writing to submit to the council within a period stated in such notice, but not less than 30 days, an audited statement fully setting out the state of affairs in respect of the matters referred to in subsection (1).

- (c) The court may, on good cause shown upon application by the council or any other competent person, prohibit any fresh produce agent from operating in any way his or her trust, savings or other interest-bearing account referred to in section 19(3)(a) and may appoint a *curator bonis* to control and administer such trust, savings or other interest-bearing account, with such rights, duties and powers as the court may deem fit.
- (3) A fresh produce agent shall retain the accounting records to be kept in terms of this section, for a period of at least three years after the last entry in respect of any transaction made therein, at the applicable place referred to in subsection (1), together with the vouchers, receipts and other documents relating to those accounting records.
- (4) If the business of such fresh produce agent is terminated for any reason whatsoever, the fresh produce agent shall-
 - (a) balance the accounting records referred to in subsection (1) within 21 days, or such other period as the council may determine, of the date on which he or she performed his or her last activity as a fresh produce agent, and thereupon have them audited as contemplated in subsection (2) (a) within three months of the said date;
 - (b) forthwith notify the council in writing of the place at which such accounting records and the vouchers, receipts and other documents referred to in subsection (3) which relate to those records are retained as contemplated in that subsection; and
 - (c) wind-up his or her trust, savings or other interest-bearing account in the prescribed manner and pay out in the prescribed manner the amount standing to the credit of any such account to the persons entitled to it.
- (5)
 - (a) If such fresh produce agent fails or is in the opinion of the council likely to fail to comply with the provisions of subsection (4), the council may designate any person to comply with those provisions on behalf of the fresh produce agent.
 - (b) When the council designates a person under paragraph (a), the expenditure incurred in connection with the performance of the functions shall be recoverable from the fresh produce agent.

[S. 18 substituted by s. 17 of Act 47/2003]

19. Trust accounts

- (1) Subject to the provisions of subsection (2), each fresh produce agent other than an employee contemplated in the definition of 'fresh produce agent' in section 1 shall-
 - (a) open and keep a trust account at a deposit-taking institution; and
 - (b) forthwith deposit therein the proceeds of the sale of agricultural produce sold by him or her on the instructions of or on behalf of his or her principal.
- (2) Only one trust account shall be kept in respect of the business of a fresh produce agent which is a partnership.
- (3) A fresh produce agent -
 - (a) may invest any amount paid into his or her trust account with a view to payment as contemplated in section 20 and which is not immediately required for any particular purpose, in a separate savings or other interest-bearing account opened by him or her with any deposit-taking institution;

- (b) shall forthwith after opening a trust account or any other account referred to in paragraph (a), or if any change occurs in connection with any such account, notify the council thereof in the manner determined by the council;
 - (c) shall keep separate accounting records referred to in section 18 in respect of his or her trust account and savings or interest-bearing accounts referred to in paragraph (a) of this subsection, and shall balance such accounting records within 21 days after the end of each month.
- (4) Any agricultural produce received by a fresh produce agent shall, until it is sold or lawfully destroyed, be deemed to form part of his or her trust account.
- (5) A fresh produce agent shall cause the auditor referred to in section 18 (2), immediately after having completed an audit contemplated in that section to transmit to the council a report in the form determined by the council regarding his or her findings, and a copy thereof to the fresh produce agent.
- (6) (a) An amount deposited or to be deposited in terms of subsection (1) (b) in the trust account of fresh produce agent-
- (i) shall not be liable to be attached or subjected to any form of execution under a judgment or order of a court of law except such an order issued in pursuance of a claim by the principal; and
 - (ii) shall not form part of the assets of that fresh produce agent or, if he or she is a natural person and has died, or has become insolvent, of his or her deceased or insolvent estate.
- (b) The provisions of paragraph (a) shall not apply to the remainder of the amount after the principal of the fresh produce agent has been paid as contemplated in section 20 (1).
- (7) The court may upon application by the council suspend a fresh produce agent from conducting business if-
- (a) he or she fails to comply with the provisions of subsection (1) within a time specified by the council in a written request addressed to his or her business address or postal address; or
 - (b) it comes to the attention of the council that the total of the balances shown on the trust account in the accounting records of that fresh produce agent exceed the total amount of the funds in his or her banking account.
- (8) (a) Any market authority which receives the proceeds from the sale of agricultural produce shall receive such proceeds for and on behalf of the fresh produce agent who sold such produce and that market authority must forthwith hand over such proceeds less the remuneration to which it is lawfully entitled for services rendered in respect of such sale to that fresh produce agent for depositing in his or her trust account.
- (b) Any proceeds from the sale of agricultural produce paid to a market authority for the benefit of a fresh produce agent shall be administered separately from any other moneys or accounts held or operated by such market authority and such proceeds shall not form part of the assets and liabilities of that market authority: Provided that the market authority shall be entitled to recover for itself the remuneration referred to in paragraph (a).

20. Payment from trust account

- (1) A fresh produce agent shall pay to his or her principal from his or her trust account the proceeds of the sale of an agricultural product after he or she has deducted from such proceeds his or her agreed remuneration and the other reasonable expenses incurred by him or her in connection with the sale of that agricultural product.
- (2) (a) If the amount to be paid by a fresh produce agent to his or her principal in terms of subsection (1) has not been claimed by the principal within 200 days after the sale, that fresh produce agent shall pay the amount from his or her trust account to the council, and furnish the council with the particulars required in the rules in connection therewith.

(b) Money so paid to the council shall be dealt with in the manner set out in section 21.
- (3) Any withdrawal from a trust account for the purposes of a payment or deduction referred to in subsection (1), the withdrawal of interest earned on a trust account or an interest-bearing account referred to in section 19(3) (a), and any payment to the council in terms of subsection (2) of this section, shall be made at the time and in the manner set out in the rules.
- (4) No withdrawals other than those specified in subsection (3) shall be made from a trust account or a savings or interest-bearing account referred to in section 19(3)(a): Provided that any fees charged by the institution at which they are kept shall be debited against the business account of the fresh produce agent.

[S. 20 substituted by s. 19 of Act 47/2003]

21. Disposal of unclaimed moneys

- (1) The council shall keep separate records, in the manner set out in section 11 (6), of unclaimed moneys paid to it in terms of section 20 (2), and of the disposal of such money in terms of the provisions of this section.
- (2) The council shall as soon as practicable after unclaimed money has been so paid to it, by notice in the *Gazette* state -
 - (a) the name of the person entitled to that money;
 - (b) the amount of money to which the said person is so entitled; and
 - (c) the name of the agent who paid that money,and call upon the said person to claim that money from the council within 90 days after the date of the said notice.
- (3) No money shall be paid to any person by virtue of the provisions of subsection (2) unless he satisfies the council that he is entitled to that money.
- (4) If, within the period referred to in subsection (2), no valid claim has been lodged in respect of such money, the council shall deposit that money in the guardian's fund referred to in section 86 of the Administration of Estates Act, 1965 (Act No. 66 of 1965), to be credited in accordance with the provisions of the said Act to the person entitled thereto.
- (5) Before any money is by virtue of the provisions of subsection (2) paid over to the person entitled thereto or deposited in terms of subsection (4), the council may deduct therefrom, for the benefit of the council, an administration fee consisting of 15 per cent of the said amount.

22. Rules

- (1) The council may, in respect of fresh produce agents make rules as to -
 - (a) the procedure to be complied with by an agent in connection with the sale of any agricultural product;
 - (b) the form and manner in which records are to be kept by an agent in connection with agricultural products received for sale and in connection with the sale or other disposal of such agricultural products;
 - (c) the manner in which and period within which account shall be given to agents' principals of the sale or other disposal of agricultural products;
 - (d) the manner in which a trust account shall be kept, the control and administration of such trust account, the disposal of any money in such trust account, and any other matter connected with such trust account;
 - (e) the payment of unclaimed money to the council in terms of section 20 (2);
 - (f) the returns and the information to be furnished by an agent to the council;
 - (g) the code of conduct to be followed in the practising of the occupation of agent; and
 - (h) any matter which the council deems necessary or expedient for the achievement or promotion of its objects or for the exercise of its powers or for the performance of its functions, and the generality of this provision shall not be limited by the preceding paragraphs of this subsection.
 - (i) the regulation, control or prohibition of any practice followed by agents;
[Para. (i) added by s. 20 of Act 47/2003]
 - (j) the period within and the manner in which application shall be made for a fidelity fund or registration certificate, as the case may be;
[Para. (j) added by s. 20 of Act 47/2003]
 - (k) the form of a fidelity fund and registration certificate;
[Para. (k) added by s. 20 of Act 47/2003]
 - (l) the manner in which any account referred to in section 18(4)(c) shall be wound-up and the amount standing to the credit of such account shall be paid out; and
[Para. (l) added by s. 20 of Act 47/2003]
 - (m) the manner in which proceedings at a disciplinary hearing contemplated in section 25 shall be conducted.
[Para. (m) added by s. 20 of Act 47/2003]
[Sub-s. (1) amended by s. 20 of Act 47/2003]
- (2) Different rules may be made under subsection (1) in respect of different categories of agents or in respect of agents according as they deal with different categories of agricultural products, and such different rules may differ in such respects as the council may deem expedient.
- (3) No rule made under subsection (1) or amendment or withdrawal thereof shall be of force and effect until approved by the Minister and published by notice in the *Gazette* by the registrar.

23. Improper conduct

A fresh produce agent shall be guilty of improper conduct if -

- (a) he or she contravenes or fails to comply with any provision of this Act or the rules;
- (b) he or she is convicted of an offence involving an element of dishonesty; or
- (c) with due regard to his or her occupation, he or she has through any other act or omission conducted himself or herself unprofessionally, improperly or disgracefully.

[S. 23 substituted by s. 21 of Act 47/2003]

24. Inspection and investigation

(1) The council may, either of its own accord or as a result of a complaint, charge or allegation lodged with it, institute an inspection and investigation into the conduct of a fresh produce agent, or person in the employ of such fresh produce agent, or into a contravention of this Act or the rules by such fresh produce agent or employee.

(1A) An inspection and investigation referred to in subsection (1) shall be conducted in accordance with the provisions of section 27(4).

(1B) On receipt of the results of an inspection and investigation referred to in subsection (1) the council may decide to charge the fresh produce agent or employee concerned with a contravention of this Act or the rules, and shall, on so deciding-

- (a) summons the fresh produce agent or employee on not less than 30 days notice to appear before a disciplinary tribunal contemplated in section 25 on the date and at the time and place specified in such summons, to answer to the charges set out in writing in a charge sheet attached to such summons;
- (b) order such fresh produce agent or employee to produce at such hearing any book or other document specified in the summons which the said fresh produce agent or employee has in his or her possession or custody or under his or her control or which is suspected to be in his or her possession or custody or under his or her control and which has a bearing on the matter.

(1C) A summons referred to in subsection (1B), shall be-

- (a) as nearly as possible in the form specified in the rules;
- (b) signed by the registrar or his or her duly authorized representative; and
- (c) served on the fresh produce agent or employee by delivering or tendering it at the business address of the fresh produce agent or employee or by sending it by prepaid registered post to the postal address referred to in section 16(9), or to the address last known to the council.

(2) If such conduct or contravention forms or is likely to form the subject of criminal or civil proceedings in a court of law, the council may postpone the issuing of a summons until such proceedings have been determined.

[S. 24 substituted by s. 22 of Act 47/2003]

25. Disciplinary tribunal

- (1) A disciplinary tribunal may be convened for the purpose of a disciplinary hearing whenever it becomes necessary to do so in terms of section 24.
- (2) A disciplinary tribunal shall consist of a maximum of three members, who shall be appointed by the council on account of-
 - (a) their independence from the affairs of the council, the office of the registrar and the agent or person investigated;
 - (b) their knowledge of the law;
 - (c) their knowledge of the conducting of the business of agents in general;
 - (d) experience in the resolution of disputes; and
 - (e) any other knowledge or experience which renders them suitable for appointment as members of a disciplinary tribunal.
- (3) At least two members of a disciplinary tribunal shall for an uninterrupted period of at least five years have practised as advocates or attorneys or occupied the post of magistrate, or have been involved in the tuition of law or have rendered services as legal advisers or legal consultants.
- (4) A disciplinary tribunal shall have the power to inquire into and decide upon any charge in terms of this Act or the rules.
- (5) The registrar may appoint a competent person to exercise the powers and perform the duties of a prosecutor.
- (6) A disciplinary tribunal shall conduct its proceedings in accordance with rules made for this purpose: Provided that-
 - (a) such rules shall be in accordance with the requirements of this Act and the Constitution; and
 - (b) the onus of proof shall be the same as in criminal proceedings.
- (7) If a vacancy occurs on a disciplinary tribunal after that tribunal has commenced with a hearing, the hearing may be proceeded with before at least two members of the tribunal, but if only two serving members remain they may take any decision referred to in section 26(1)(c) only by unanimous vote.
- (8) The prosecutor may for the purposes of such hearing-
 - (a) subpoena any person to give evidence who is able to furnish information relevant to the hearing, or who the prosecutor has reason to believe has in his or her possession or custody or under his or her control any book, document or record relating to the subject of the inquiry, to appear on a date and at a time and place specified in the subpoena to be examined or to produce such book, document or record, and the prosecutor may retain for examination any book, document or record so produced; and
 - (b) through the person presiding at the hearing, administer an oath to, or accept an affirmation from, any person present at the inquiry, and examine him or her or cause him or her to be

examined by the prosecutor and instruct him or her to produce any book, document or record in his possession or custody or under his or her control.

- (9) (a) A subpoena referred to in subsection (8) shall as far as possible be as prescribed in the rules, shall be signed by the prosecutor and shall be served in the same manner as a subpoena issued by a magistrate's court in civil proceedings.
- (b) No person-
- (i) having been duly summoned to be present at the hearing, shall without lawful excuse fail so to appear; or
- (ii) having been called as a witness at a hearing, shall without lawful excuse refuse to be sworn or to make an affirmation, or to produce any book or other document or to answer any question which he or she may be required to produce or answer.
- (c) The registrar shall pay a witness called and present at a hearing such fees as the council may from time to time determine generally, or in any particular case.
- (10) The law relating to privilege, as applicable to a witness called to give evidence or to produce a book, document or record in a civil trial before a court of law, shall apply *mutatis mutandis* in relation to the examination of or the production of any book, document or record by any person called in terms of this section.
- (11) An agent or person in respect of whom the hearing is instituted in terms of this section shall be entitled to be present at the hearing, to be assisted or represented by another person, and-
- (a) to be heard;
- (b) to call witnesses;
- (c) to cross-examine any person called as a witness in support of the charge; and
- (d) to have access to all documents produced in evidence or relevant to the hearing and which are available.
- (12) The registrar shall keep or cause to be kept a record of the proceedings at the hearing.
- (13) Any person who, having been duly sworn or having made an affirmation, tenders false evidence at the hearing held under this section, knowing such evidence to be false, shall be guilty of an offence and liable on conviction to the penalties which may lawfully be imposed for the offence of perjury.
- (14) The disciplinary tribunal may, if it is of a view that an agent or employee of such agent has committed an offence, submit a certified copy of the record of the proceedings at any hearing held in terms of section 24 to the office of the National Director of Public Prosecutions having jurisdiction in the matter.

[S. 25 substituted by s. 23 of Act 47/2003]

26. Disciplinary powers of tribunal

- (1) If a disciplinary tribunal, after a hearing under section 25, finds an agent or employee of such agent guilty of improper conduct, it may-
- (a) reprimand or caution him or her;

- (b) impose conditions and restrictions subject to which the agent or employee of such agent may, for a specified period, practise his or her occupation;
- (bA) impose on such agent or employee a fine not exceeding such amount as may be prescribed by the Minister by notice in the *Gazette*;
- (bB) suspend that agent from conducting his or her business or from acting as an agent on such conditions and for such period as that tribunal may determine; and
- (c) withdraw the fidelity fund or registration certificate issued to that agent and-
 - (i) if such agent is a company, to every director of such company;
 - (ii) if he or she is a director of a company which is an agent, to such company;
 - (iii) if he or she in partnership acts as an agent, to every partner in such partnership;
 - (iv) if such agent is a close corporation, to every member contemplated in the definition of 'fresh produce agent' or 'livestock agent', as the case may be, of that corporation;
 - (v) if he or she is a member of a close corporation which is an agent, to such corporation;
 - (vi) if such agent is a trust, to every trustee of such trust; or
 - (vii) if he or she is a trustee of a trust which is an agent, to such trust.
- (2) The disciplinary tribunal may suspend the execution of its decision taken under subsection (1) (bA), (bB) or (c), for such period not exceeding three years and subject to such further conditions as it may in each case determine.
- (3) (a) A fine imposed under subsection (1)(bA) shall have the effect of and may be executed as if it were a civil judgment in favour of the council.
(b) The registrar shall publish the name and address of the agent or employee of such agent found guilty in terms of subsection (1), particulars of his or her conviction and the penalty imposed upon him or her, by notice in the *Gazette*.
- (5) If an agent or employee of such agent fails to comply with any conditions determined under subsection (2), the registrar shall cause the decision taken under subsection (1)(bA) or (bB) to be executed unless the said agent or employee of such agent satisfies the registrar that the non-compliance with such conditions was due to circumstances beyond his or her control.
- (6) In addition to any of the sanctions referred to in subsection (1), the disciplinary tribunal may order that agent or employee to pay the costs incurred by the council in connection with such hearing and-
 - (a) such costs shall be calculated in accordance with the High Court tariff applicable to civil litigation; and
 - (b) for the purpose of assessing such costs, the registrar of the High Court having jurisdiction shall be empowered to tax such costs.

- (7) Without derogating from the generality of any such order for the payment of costs, such costs shall include-
- (a) the costs of recording, transcribing and preparing copies of any record;
 - (b) the costs incurred by the council in respect of the prosecutor and the accountant or other persons appointed to inspect and investigate the agent or his or her employee's books of account and any other documents or records or things relating to the agent or his or her employee's business operation or former business operation; and
 - (c) the costs of procuring the attendance of witnesses and their witness fees, including those of the complainant.
- (8) The order contemplated in subsection (7) for the payment of costs incurred by the council in connection with an inspection and investigation shall have the effect of and may be executed as if it were a civil judgment in favour of the council.
- (9) (a) The disciplinary tribunal may, whenever a fine has been imposed on an agent as contemplated in subsection (1)(bA), order that any portion of that fine, but not exceeding 80% thereof, be applied towards the payment of compensation to any person who suffered a pecuniary loss as a result of the conduct of the agent or employee in question.
- (b) The registrar shall, on receipt of the fine imposed on the agent in question, make the payment contemplated in paragraph (a).
- (c) This subsection shall not preclude any person from pursuing any civil remedy against the agent or employee contemplated in paragraph (a): Provided that if an award is made by a court in favour of a person who has received payment from the council as contemplated in paragraph (b), the court shall take the payment into account in making such award.

[S. 26 substituted by s. 24 of Act 47/2003]

27. Entry and inspections

- (1) The registrar may designate a suitable person (hereinafter referred to as an inspector) to exercise and perform periodic regulatory inspections and investigations at the business premises of any agent with a view to determining whether the provisions of sections 18, 19, 20 and 21 and the rules pertaining thereto have been complied with, and for that purpose an inspector shall be entitled to enter such business premises and to exercise any of the powers referred to and in accordance with subsection (4) insofar as they relate to the aforesaid sections and rules.
- (2) An inspector shall be furnished with a certificate of appointment signed by or on behalf of the council in which it is stated that he or she is an inspector appointed in terms of this Act.
- (3) An inspector shall, when performing any functions in terms of this Act, have his or her certificate of appointment in his or her possession.
- (4) In order to obtain any information required by the registrar in relation to a complaint, charge or allegation lodged, an inspector may be designated who may, subject to this section, enter any premises on or in which any book, document or other object connected with such investigation is or is suspected to be, and may-
- (a) inspect or search those premises, and there make such investigations or inquiries as may be necessary for the purpose of obtaining any such information;

- (b) examine any object found on or in the premises which has or might have a bearing on the investigation in question and request from the owner or person in charge of the premises or from any person in whose possession or charge that object is, information regarding that object;
 - (c) make copies of or extracts from any book or document found on or in the premises which has or might have a bearing on the investigation in question, and request from any person who is suspected of having the necessary information an explanation of any entry therein;
 - (d) seize, against the issue of a receipt, anything on or in the premises which has or might have a bearing on the investigation in question, if the inspector needs to retain it for further examination or for safe custody.
- (5) Unless the owner or person in charge of the premises has consented thereto in writing an inspector shall enter premises and exercise any power contemplated in subsection (4) only under a search warrant, which may only be issued by the court if it appears to that court from information given to the court on oath or solemn affirmation that there are reasonable grounds to suspect-
- (a) that a contravention of this Act or the rules has taken place or is taking place; and
 - (b) that a book, document or other object which may afford evidence of such contravention is on or in those premises.
- (6) A search warrant contemplated in subsection (5) shall-
- (a) authorize an inspector mentioned in the warrant to enter the premises identified in the warrant for the purpose of exercising any power contemplated in subsection (4);
 - (b) be executed by day, unless the court authorizes the execution thereof during the night;
 - (c) be of force until it is executed or cancelled by the court, or a period of one month from the day of its issue expires, whichever occurs first.
- (7) An inspector referred to in subsection (1) or an inspector executing a search warrant under subsection (6) shall, before such execution, upon demand by any person whose rights may be affected-
- (a) show that person his or her certificate of appointment;
 - (b) hand to that person a copy of the warrant if he or she is acting in terms of subsection (5).
- (8) A person from whose possession or charge a book or document has been taken under this section shall, as long as the book or document is in the possession or charge of the inspector or of the council, be allowed on request to make copies thereof or to take extracts therefrom at any reasonable time at his or her own expense and under the supervision of that inspector or a person in the service of the council.
- (9) A person shall be guilty of an offence if-
- (a) he or she obstructs or hinders an inspector in the performance of the inspector's functions in terms of this section;
 - (b) after an inquiry having been made of him or her under subsection (4)(a) or after having been requested for information or an explanation under subsection (4)(b) or (c)-

- (i) he or she refuses to answer, or to answer fully and satisfactorily to the best of his or her knowledge and belief, such inquiry or request for information; or
 - (ii) gives an answer or information or an explanation which is false or misleading, knowing it to be false or misleading.
- (10) Any person from whom information or an explanation has been requested in terms of this section shall not be entitled to refuse to answer any question or to produce any book, document or object on the ground that he or she would thereby be exposed to a criminal or disciplinary charge: Provided that, to the extent that such answer, book, document or article does expose the person to a disciplinary or criminal charge, no evidence thereof shall be admissible in any disciplinary or criminal proceedings against that person except where the person stands trial on a charge contemplated in subsection (9)(b).
- (11) An inspector who is not in the full-time service of the State shall be appointed on such conditions and at such remuneration as the council may determine.
[S. 27 substituted by s. 25 of Act 47/2003]

28. Preservation of secrecy

No person shall, except for the purposes of performing his functions in terms of this Act or for the purpose of legal proceedings under this Act or when required to do so by any court or under any law, disclose to any other person any information obtained by him in the performance of his functions in terms of this Act and relating to the business or affairs of any other person.

29. Offences and penalties

- (1) Any person who -
- (a) contravenes or fails to comply with a provision of section 16(1), 16(11) or (12), 19(1), 19(8), 20(2)(a), 27(9)(a) and (b)(i) or 28;
 - (b) contravenes or fails to comply with a provision of section 16(2), (6)(a) or (7)(d), 18 or 19(3)(b) or (c) or 19(5);
 - (bA) contravenes or fails to comply with the provisions of section 25(9);
 - (e) in any application in terms of this Act, knowingly furnishes information or makes a statement which is false or misleading,

shall be guilty of an offence.

[Sub-s. (1) substituted by s. 26 of Act 47/2003]

- (2) Any person who is convicted of an offence-
- (a) mentioned in subsection (1) (a) shall be liable-
 - (i) on a first conviction, to a fine or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment; and
 - (ii) on a second or subsequent conviction, to a fine or to imprisonment for a period not exceeding four years or to both a fine and such imprisonment;
 - (b) mentioned in subsection (1)(b), shall be liable to a fine or to imprisonment for a period not exceeding one year or to both a fine and such imprisonment; and

- (c) mentioned in subsection (1)(bA), shall be liable to a fine or to imprisonment not exceeding three months or to both a fine and such imprisonment.

[Sub-s. (2) substituted by s. 26 of Act 47/2003]

- (3) Notwithstanding anything to the contrary contained in any law, a magistrate's court is competent to give any judgment or issue any order provided for in this Act.

30. Deficit in trust account

- (1) Whenever any fresh produce agent or his or her manager, representative, agent, employee or member of his or her household owing to the appropriation of money in the trust account of that agent, is convicted of an offence involving fraud or dishonesty, and it has been proved that the amount standing to the credit of that trust account is insufficient for the payment of all amounts payable from it in terms of section 20, the court shall at the request of the prosecutor made on behalf of the council, inquire into and determine the amount of the deficit in the trust account and order the fresh produce agent to pay an amount equal to the amount so determined to the council, and any such order shall have all the effects of and may be executed as if it were a civil judgment in favour of the council.

[Sub-s. (1) substituted by s. 27 of Act 47/2003]

- (2) Any amount recovered under a judgment referred to in subsection (1) shall be paid into the trust account concerned.

- (3)

[Sub-s. (3) deleted by s. 27 of Act 47/2003]

31. Presumptions and evidence

- (1) Whenever in any prosecution under this Act or at an inquiry referred to in section 24 it is alleged that it relates to a certain agricultural product of a particular alleged kind, it shall be presumed that the agricultural product concerned was of that kind, until the contrary is proved.

- (2)

[Sub-s. (2) deleted by s. 28 of Act 47/2003]

32.

[S. 32 repealed by s. 29 of Act 47/2003]

33. Defects in form

A defect in the form of any document which is in terms of this Act required to be executed in a particular manner, or in a notice or order in terms of this Act, shall not invalidate any administrative action to which such document, notice or order relates, or be a ground for exception in legal proceedings, provided the requirements for such a document, notice or order are substantially complied with and its meaning is clear.

34. Restriction of liability

No person, including the State, is liable in respect of anything done in good faith in the exercise or performance of a power or duty conferred or imposed by or under this Act.

35. Repeal of laws

Subject to the provisions of sections 12 (2) (a) and (5) (a) (i) and 16 (8), the laws specified in Schedule 2 are hereby repealed to the extent indicated in the third column thereof.

35A. Transitional provisions

- (1) Every fresh produce agent who was the holder of a fidelity fund certificate immediately prior to the date of commencement of the Agricultural Produce Agents Amendment Act, 2003, shall within the period determined by the council by notice in the *Gazette* apply on his or her own behalf and on behalf of every person who acts as an agent on his or her behalf as contemplated in subparagraph (i) of paragraph (a) of the definition of 'fresh produce agent' in section 1, for a fidelity fund certificate, and shall furnish the council with the information that the council may determine relating to himself or herself and such persons.
- (2) Notwithstanding subsection (1), each person who immediately prior to the date of commencement of the Agricultural Produce Agents Amendment Act, 2003-
 - (a) was the holder of a fidelity fund certificate contemplated in that subsection, shall-
 - (i) in the case of a fresh produce agent, be deemed to be the holder of a fidelity fund certificate issued in terms of that section: Provided that such certificate shall lapse if a new certificate is not issued to the agent within the period specified in subsection (1);
 - (ii) in the case of a livestock agent, be deemed to be the holder of a registration certificate;
 - (b) carried on business as an export agent, shall be deemed to be the holder of a registration certificate.
- (3) The provisions of subsection (2) shall not relieve any person who acts or professes to act as-
 - (a) a fresh produce agent and who is not in possession of a fidelity fund certificate at the commencement date of the Agricultural Produce Agents Amendment Act, 2003, to apply to the council for a fidelity fund certificate and to furnish the council with such information as it may determine;
 - (b) a livestock agent and who is not in possession of a registration certificate at the commencement date of that Act, to apply to the council for a registration certificate and to furnish the council with such information as it may determine;
 - (c) an export agent and who is not carrying on business as such at the commencement date of that Act, to apply to the council for a registration certificate and to furnish the council with such information as it may determine.
- (4) Members of the council in office immediately prior to the commencement of the Agricultural Produce Agents Amendment Act, 2003, shall remain in office until the termination of their term of office: Provided that the Minister shall appoint such additional members to the council as may be required from time to time.

[S. 35A inserted by s. 30 of Act 47/2003]

36. Short title and commencement

- (1) This Act shall be called the Agricultural Produce Agents Act, 1992, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.
- (2) Different dates may be fixed under section (1) in respect of different provisions of this Act.

Schedule 1

PART A

AGRICULTURAL PRODUCTS FOR THE PURPOSES OF FRESH PRODUCE AGENTS

Flowers.
Ornamental plants.
Pot plants.
Vegetables, as defined in Part C.
Fruit, as defined in Part C.
Culinary herbs, as defined in Part C.
Miscellaneous market products, as defined in Part C.

PART B

AGRICULTURAL PRODUCTS FOR THE PURPOSES OF LIVESTOCK AGENTS

Livestock, as defined in Part C.
Meat, as defined in Part C.
By-products, as defined in Part C.
Cured hides and cured skins, as defined in Part C.
Ostriches.
Game.

PART C

DEFINITIONS OF OR RELATING TO AGRICULTURAL PRODUCTS

“By-products”, in relation to slaughtered cattle, sheep, goats and pigs, includes all portions of slaughtered cattle, sheep, goats and pigs other than the meat thereof, but excludes karakul pelts.

“Culinary herbs” means coriander, fennel, ginger, marjoram, mint, parsley, sage, and thyme.

“Cured hides” or **“cured skins”** means hides or skins derived from cattle, sheep or goats and which have been treated against decay with a preservative.

“Fruit” means apples, apricots, avocados, bananas, blackberries, Cape gooseberries, cherries, coconuts, custard apples, figs, granadillas, grapefruit, grapes, guavas, jak fruit, kumquats, lemons, limes, litchis, loganberries, loquats, mangos, medlars, mulberries, nectarines, olives, oranges, pawpaws, peaches, pears, pineapples, plums, pomegranates, prickly pears, prunes, quinces, raspberries, sour figs, strawberries, tangelos, tangerines, tree tomatoes and youngberries.

“Karakul pelt” means a flayed karakul lamb skin intended for the pelt trade.

“Livestock” means cattle, sheep, goats, pigs, horses, mules and donkeys.

“Meat” means those portions of slaughtered cattle, sheep, goats and pigs that are ordinarily sold for human consumption.

“Miscellaneous market products” means articles sold or offered for sale with the approval of the owner of a fresh produce market on his market, but does not include vegetables, fruit and culinary herbs.

“Vegetables” means artichokes, asparagus, bamja, beetroot, bell peppers, brinjals, broad beans, broccoli, Brussels sprouts, butter beans, cabbage, calabash, carrots, cauliflower, celery, chayote, chillies, cucumbers,

endives, French endives, garlic, green beans, green mealies, green peas, horseradishes, kaffir melons, kohlrabi, leeks, lettuce, madumbies, marankas, mushrooms, musk-melons, okra, onions, parsnips, pickle onions, potatoes, pumpkins, radishes, rhubarb, shallots, spinach, spring onions, squashes, sugar-cane, sweet cane, sweet potatoes, tomatoes, turnips and watermelons.

[Schedule 1 amended by GN R1819/93]

Schedule 2

LAWS REPEALED (Section 36)

No. and year of law	Short title	Extent of repeal
Act No. 12 of 1975	Agricultural Produce Agency Sales Act, 1975	The whole
Act No. 82 of 1970	Commission for Fresh Produce markets Act, 1970	The whole
Act No. 57 of 1975	General Law Amendment Act, 1975	Sections 34, 35 and 36
Act No. 25 of 1981	Commission for Fresh Produce Markets Amendment Act, 1981	The whole
Act No. 20 of 1982	Agricultural Produce Agency Sales Amendment Act, 1982	The whole
Act No. 97 of 1986	Transfer of Powers and Duties of the State President Act, 1986	The items in the First and Second Schedules relating to the Commission for Fresh Produce Markets Act, 1970 (Act No. 82 of 1970), and the Agricultural Produce Agency Sales Act, 1975 (Act No. 12 of 1975)
Act No. 57 of 1987	Agricultural Produce Agency Sales Amendment Act, 1987	The whole
Act No. 78 of 1987	Commission for Fresh Produce Markets Amendment Act, 1987	The whole