



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 573

Pretoria, 28 March
Maart 2013

No. 36302

N.B. The Government Printing Works will not be held responsible for the quality of "Hard Copies" or "Electronic Files" submitted for publication purposes



9771682584003



AIDS HELPLINE: 0800-0123-22 Prevention is the cure

IMPORTANT NOTICE

The Government Printing Works will not be held responsible for faxed documents not received due to errors on the fax machine or faxes received which are unclear or incomplete. Please be advised that an "OK" slip, received from a fax machine, will not be accepted as proof that documents were received by the GPW for printing. If documents are faxed to the GPW it will be the sender's responsibility to phone and confirm that the documents were received in good order.

Furthermore the Government Printing Works will also not be held responsible for cancellations and amendments which have not been done on original documents received from clients.

CONTENTS • INHOUD*No.**Page
No. Gazette
 No.***GENERAL NOTICE****Agriculture, Forestry and Fisheries, Department of***General Notice*

282	Agricultural Produce Marketing Agencies Bill, 2013: Invitation for Public Comments.....	3	36302
-----	---	---	-------

GENERAL NOTICE

NOTICE 282 OF 2013

DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES

INVITATION FOR PUBLIC COMMENTS

AGRICULTURAL PRODUCE MARKETING AGENCIES BILL 2013

I, Tina Joemat-Pettersson, Minister for Agriculture, Forestry and Fisheries, hereby:

- (a) Issue for public comment, the AGRICULTURAL PRODUCE MARKETING AGENCIES BILL 2013; and
- (b) Invite interested persons and the public to submit comments on the Bill within 60 days of this publication.

The purpose of the Bill is to:

- Provide for the continued existence and name change of Agricultural Produce Agents Council to Agricultural Produce Marketing Agency;
- Provide for the continued existence and name change of the Fresh Produce Agents Fidelity Fund to Agricultural Produce Marketing Agency Fidelity Fund;
- Provide for the constitution of the Board of the Agricultural Produce Marketing Agency;
- Provide for broader objects and functions of the Agricultural Produce Marketing Agency;
- Make certain provisions applicable to all or certain categories of agricultural produce agents, auctioneers, brokers and wholesalers;
- Provide for the regulation of the occupations of auctioneers, brokers and wholesalers;
- Provide for the regulation of fresh produce markets;
- Provide for compulsory training, registration and accreditation of all agricultural produce agents, auctioneers, brokers, wholesalers, sales persons and booking clerks;
- Repeal the Agricultural Produce Agents Act, 1992; and
- Provide for matters connected therewith.

Interested parties are requested to forward their comments in writing for the attention of **Mr. H.M Mamabolo** at the following address:

Sefala Building, Office 710, 503 Belvedere Street, ARCADIA, Pretoria or Private Bag X15, ARCADIA, 0007

Comments can also be faxed to 012 319 8131 or emailed to MogalaM@daff.gov.za or PA.DM@daff.gov.za

Copies of the Bill may be obtained from the Directorate Marketing using the contact details provided above or from the DAFF website www.daff.gov.za by following the following steps:

- Step one: Open DAFF website www.daff.gov.za
- Step two: Click on Legislation
- Step three: Click on Bills
- Step four: Click on Agricultural Produce Marketing Agencies Bill 2013

Enquiries: (012) 319 8455 or (012) 319 8456

Please note that comments received after the closing date will not be taken into consideration.

REPUBLIC OF SOUTH AFRICA

AGRICULTURAL PRODUCE MARKETING AGENCIES BILL

*(As introduced in the National Assembly (proposed section 75); explanatory
summary of Bill published in Government Gazette No. of) (The English text
is the official text of the Bill)*

(MINISTER FOR AGRICULTURE, FORESTRY AND FISHERIES)

040311ca

BILL

To provide for the continued existence and name change of Agricultural Produce Agents Council to Agricultural Produce Marketing Agency; to provide for the continued existence and name change of the Fresh Produce Agents Fidelity Fund to Agricultural Produce Marketing Agency Fidelity Fund; to provide for the constitution of the Board of the Agricultural Produce Marketing Agency; to make certain provisions applicable to all or certain categories of agricultural produce agents, auctioneers, brokers and wholesalers; to provide for the regulation of the occupations of auctioneers, brokers and wholesalers; to provide for additional objects and functions of the Agricultural Produce Marketing Agency; to provide for the regulation of fresh produce markets; to provide for compulsory training for all new and existing agricultural produce agents, auctioneers, brokers, wholesalers, sales persons and booking clerks; and to provide for compulsory registration and accreditation of all agricultural produce agents, auctioneers, brokers, wholesalers, sales persons and booking clerks; to repeal Agricultural Produce Agents Act, 1992; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

CHAPTER 1

Definitions

1. (1) In this Act unless the context indicates otherwise—

"**Agency**" means the Agricultural Produce Marketing Agency contemplated in section 2;

"**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, sells agricultural produce or negotiates in connection therewith or canvasses or undertakes or offers to canvass a seller therefor;

"**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;

"**auctioneer**" means any person who sells by auction or offers for sale by auction with regard to any agricultural product specified in Parts A and B 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(2)(b), includes any director of a company, member of a close corporation or trustee of a trust who acts as an auctioneer as aforesaid;

(b) for the purposes of sections 11(4), 12(3)(b), 12(3)(c), 12(3)(d), 12(4), 13(5)(a), 14(4)(e), 14(5), 20, 21, 22, 23, 24, 25 and 27, includes—

(i) any director of a company, member of a close corporation or trustee of a trust who acts as an auctioneer as aforesaid; and

- (ii) any person who is employed by an auctioneer and who acts as an auctioneer as aforesaid for the employer;

"**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;

"**auditor-general**" means the Auditor-General appointed in terms of section 193 of the Constitution of the Republic of South Africa, 1996;

"**Bank**" means a bank defined in section 1 of the Banks Act, 1990 (Act No. 94 of 1990)

"**Board**" means the Board of the Agency contemplated in section 3;

"**broker**" means any person who acts as an intermediary between a buyer and seller and usually charges commission with regard to any agricultural product specified in Parts A and B 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(2)(a) and (b), includes any director of a company, member of a close corporation or trustee of a trust who acts as a broker as aforesaid;

(b) for the purposes of sections 11(4), 12(3)(b), 12(3)(c), 12(3)(d), 12(4), 13(5)(a), 14(4)(e), 14(5), 20, 21, 22, 23, 24, 25 and 27, includes—

- (i) any director of a company, member of a close corporation or trustee of a trust who acts as a broker as aforesaid; and
- (ii) any person who is employed by a broker and who acts as a broker as aforesaid for the employer;

"**close corporation**" means a close corporation defined in the Companies Act, 2008 (Act No.71 of 2008);

"**code**" means the code contemplated in section 20(4);

"**consumer**" means a consumer of an agricultural product;

"**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 25 (5) also includes a magistrate as defined in the Magistrates' Courts Act, 1944 (Act No.32 of 1944);

"**department**" means the Department of Agriculture, Forestry and Fisheries in the national government;

"**export agent**" means an agent acting as such with regard to any agricultural product specified in Part A of Schedule 1 intended for export 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(2)(a), includes any director of a company, member of a close corporation or trustee of a trust who acts as an export agent as aforesaid;
- (b) for the purposes of sections 11(4), 12(3)(b), 12(3)(c), 12(3)(d), 12(4), 13(5)(a), 14(4)(e), 14(5), 20, 21, 22, 23, 24, 25 and 27, includes—
 - (i) any director of a company, member of a close corporation or trustee of a trust who acts as an export agent as aforesaid; and
 - (ii) any person who is employed by an export agent and who acts as an export agent as aforesaid for the employer;

"**fidelity fund certificate**" means a fidelity fund certificate issued in terms of section 14 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 (2)(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 section 11(4), 12(3)(b), 12(3)(c), 12(3)(d), 12(4), 13(5)(a), 14(4)(e), 14(5), 20, 21, 22, 23, 24, 25 and 27, includes—
- (i) any director of a company, member of a close corporation or trustee of a trust who acts as a livestock agent as aforesaid; and
- (ii) any person who is employed by a livestock agent and who acts as a livestock agent as aforesaid for the employer;

"**fund**" means the Agricultural Produce Marketing Agency Fidelity Fund referred to in section 11(1);

"**inspector**" means an inspector referred to in section 25;

"**livestock agent**" means an agent acting as such with regard to any agricultural product specified in Part B 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(2)(b), includes any director of a company, member of a close corporation or trustee of a trust who acts as a livestock agent as aforesaid;
- (b) for the purposes of sections 11(4), 12(3)(b), 12(3)(c), 12(3)(d), 12(4), 13(5)(a), 14(4)(e), 14(5), 20, 21, 22, 23, 24, 25 and 27, includes—
- (i) any director of a company, member of a close corporation or trustee of a trust who acts as a livestock agent as aforesaid; and
- (ii) any person who is employed by a livestock agent and who acts as a livestock agent as aforesaid for the employer;

"**Mutual Bank**" means a mutual bank defined in section 1 of the Mutual Banks Act, 1993 (Act No. 124 of 1993);

"**Minister**" means the Minister of Agriculture, Forestry and Fisheries;"

"**Registrar**" means the Registrar of the Agency appointed in terms of section 7(1)(b);

"**registration certificate**" means a registration certificate issued by the agency in terms of section 14;

"**rules**" means rules made under section 20;

"**trust account**" means a trust account referred to in section 17;

"**wholesaler**" means any person who resells any agricultural product specified in Parts A and B of Schedule 1 without transforming such product at a national fresh produce market to any consumer or retailer, to any industrial, commercial, institutional or professional user or to any other wholesaler.

(2) The Minister may amend Schedule 1 by notice in the *Gazette*.

Continued existence of Agricultural Produce Agents Council as Agricultural Produce Marketing Agency

2. (1) The juristic person that immediately before the date of commencement of this Act, existed as the Agricultural Produce Agents Council continues to exist as a juristic person under the name of the Agricultural Produce Marketing Agency.

(2) Any reference to the Agricultural Produce Agents Council in any law or document must be construed as a reference to the Agricultural Produce Marketing Agency.

Board of Agency

3. (1) The Agency acts through its Board.

(2) The Minister must appoint as members of the Board 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) one person who in his or her opinion represent fresh produce agents;
- (d) one person who in his or her opinion represent livestock agents;
- (e) one person who in his or her opinion represent export agents;
- (f) one person who in his or her opinion represent consumers;
- (g) three persons who in his or her opinion represent market managers;
- (h) one person who is knowledgeable in agricultural marketing representing the department;
- (i) one person who in his or her opinion represent wholesalers
- (k) one person who in his or her opinion represent brokers.

(3) The Registrar is a member of the board by virtue of his or her office but does not have voting rights.

(4) 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 Board.

(5) (a) The Minister must, by notice in the *Gazette* and in the national media, invite nominations for members of the Board referred to in subsection (2).

(b) The members contemplated in paragraph (a) must be appointed by the Minister from nominations received from producers of the agricultural products set out in Part A of Schedule 1, producers of the agricultural products set out in Part B of Schedule 1, fresh produce agents, livestock agents, export agents, auctioneers, wholesalers, market managers, consumers and any other person involved in the marketing of fresh agricultural produce throughout the Republic.

(c) Subject to subsection (8), the Minister may appoint a person that has not been nominated—

- (i) if not enough persons who meet the criteria are nominated; or
- (ii) if not enough nominations are lodged within the period specified in the notice.

(6) (a) If a member of a Board 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 expiration of the term of office of the members of the Board, the Minister has not yet appointed new members to take their place, the existing members must continue in office until new members have been appointed to replace them.

(7) A member of the Board other than the Registrar and the member referred to in subsection (2)(h) must be paid such remuneration or allowances from the funds of the Board, as the Board may determine.

(8) No person may be appointed as a member of the Board, who—

- (a) is not a South African citizen and a permanent resident, and is not ordinarily resident in the Republic of South Africa;
- (b) is an unrehabilitated insolvent;
- (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.

Vacating of office by members of Board

4. A member of the Board must vacate his or her office if—

- (a) he or she becomes subject to any disqualification referred to in section 3(8);
- (b) he or she has been absent from more than two consecutive meetings of the Board without the leave of the Board;
- (c) he or she resigns as a member of the Board and has notified the Registrar in writing of his or her resignation;
- (d) he or she is no longer fit to serve on the Board; or
- (e) in the case of the Registrar, he or she is no longer employed by the Agency.

Chairperson of Board

5 (1) The Minister must designate a chairperson for the Board from the members contemplated in section 3(2).

(2) When the chairperson is absent or is unable to perform his or her duties, the members of the Board must 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 is eligible for re-appointment to that office: Provided that no person may serve as chairperson for more than six consecutive years.

Meetings and decisions of Board

6. (1) The Board must meet at such times and places as the chairperson may from time to time determine.

(2) The chairperson of the Board may at any time convene an extraordinary meeting of the Board to be held at a time and place determined by him or her and must, upon a written request signed by not less than three members of the Board, 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 Board must determine the procedure at that meeting.

(4) (a) The quorum for a meeting of the Board must be a majority of all its members.

(b) The decision of a majority of the members of the Board present at a meeting thereof must constitute a decision of the Board.

(5) No decision taken by the Board or act performed under authority of the Board must be invalid by reason only of a casual vacancy on the Board or of the fact that any person not entitled to sit as a member of the Board sat as such a member at the time the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the majority of the members of the Board who were present at the time and entitled to sit as members of the Board.

Personnel of Agency

7. (1) (a) Work incidental to the performance of the functions of the Agency must be performed by the Registrar.

(b) The Registrar must be appointed by the Board in consultation with the Minister.

(c) The Registrar must be appointed on such terms and conditions as the Board may decide.

(d) The appointment of the Registrar is subject to the conclusion of a written performance agreement entered into between that person and the Board.

(e) The Board and the Registrar may, in writing and by agreement, amend the performance agreement.

(f) The Board may terminate the Registrar's employment in accordance with applicable labour law.

(g) The Registrar may, subject to subsection (3), appoint members of the staff of the Agency on a full-time or part-time basis, after consultation with the Board.

(h) The personnel contemplated in paragraph (g) must be under the control of the Registrar.

(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 Board and responsible for—
 - (i) the management of the agency, subject to the direction of the Board;
 - (ii) the day to day administrative functioning of the Agency to ensure the realisation of the functions of the Agency as contemplated in section 9;
 - (iii) the compilation of a business and financial plan and reports in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999), for approval by the Minister; and
 - (iv) reporting to the Board on his or her activities in terms of subparagraphs (i), (ii) and (iii); and

(c) may, with the approval of the Board, enter into agreements with persons for the performance of specific functions or the provision of specific services.

(3) The Board—

- (a) must determine a human resources policy for the Agency;
- (b) must determine the remuneration and conditions of service of the Registrar and the other members of staff of the Agency; and
- (c) may determine non-pensionable allowances for the Registrar and the other members of staff of the Agency.

Objects of Agency

8. The objects of the Agency are—

- (a) to regulate the occupations of auctioneers, brokers, fresh produce agents, export agents, livestock agents and wholesalers and to maintain and enhance the status and dignity of those occupations and the integrity of persons practising those occupations;
- (b) to reposition the agricultural produce sector and align it to the current commercial environment;
- (c) to coordinate the marketing of agricultural produce both domestically and internationally;
- (d) to streamline the marketing, regulatory and developmental activities within the broader agricultural produce industry; and
- (e) to coordinate and ensure the enforcement of rules and regulations made in terms of this Act.

Functions of Agency

9. (1) In order to achieve its objects, the Agency
- (a) must—
- (i) initiate programmes to bring about transformation within the agricultural produce industry and monitor such;
 - (ii) establish rules, regulations and codes of conduct in respect of fresh produce markets, agents, auctioneers, brokers and wholesalers;
 - (iii) ensure that food safety requirements, regulations and quality standards are implemented and enforced in collaboration with other regulatory bodies;
 - (iv) coordinate the rationalisation of market by-laws in respect of fresh produce markets;
 - (v) assist the fresh produce markets in sourcing funding from available resources to modernise and refurbish the market infrastructure;
 - (vi) approve the development of any new fresh produce markets to be established in the Republic, taking into consideration how it will affect the existing markets and ensure that its operations will meet appropriate standards;
 - (vii) serve as a point of information exchange and expertise among various players in the industry and with outside parties, in order to share experiences and expertise in specific technical areas;
 - (viii) facilitate the development and implementation of programmes aimed at providing training of people involved in the agricultural produce

- industry, attracting investments for market expansion and developing new distribution channels;
- (ix) provide an integrated marketing function nationally to stimulate the demand of agricultural produce locally and internationally; and
 - (x) coordinate and enforce the compulsory registration and accreditation of all new and existing agricultural produce agents, auctioneers, brokers and wholesalers; and
- (b) may—
- (i) facilitate the separation of ownership from the management of fresh produce markets, where appropriate; and
 - (ii) hire, purchase or otherwise acquire such movable or immovable property or such interest in movable or immovable property as may be necessary for the effective performance of the functions of the Agency, and let, encumber, sell or otherwise dispose of property so purchased or acquired.

Funds of Agency

10. (1) The funds of the Agency consist of—
- (a) money paid to the Agency in terms of this Act;
 - (b) grants, donations and bequests made to the Agency;
 - (c) money lawfully obtained by the Agency from any other source, but loans raised by the Agency are subject to approval of both the Minister and the Minister of Finance;

(d) interest earned in the trust accounts of agents, auctioneers and brokers and payable to the Agency after all reasonable costs have been deducted by the agents, auctioneers or brokers, as the case may be.

(2) The Minister must approve the budget of the Agency.

(3) The Agency must utilise its funds to defray expenses incurred by the Agency in the performance of its functions and the exercise of its powers under this Act.

(4) The Agency may, subject to such terms and conditions as it may deem fit make funds available to—

(a) undertake market research in order to enhance the positioning of the fresh produce industry in local and international markets;

(b) enforce codes of conduct of agents, auctioneers, brokers and wholesalers, and the promotion and marketing of fresh produce and fresh produce markets in general;

(c) maintain and promote training standards of agents, auctioneers, brokers and wholesalers;

(5) The agency may utilise such amount as it may determine for the purposes of advertising and promoting the services and facilities offered at agricultural markets in general;

(6) The Board must open a banking account in the name of the Agency with a bank established under the Banks Act, 1990 (Act No. 94 of 1990), or a mutual bank established under the Mutual Banks Act, 1993 (Act No. 124 of 1993), and must deposit all money referred to in subsection (1) in that banking account.

(7) The Agency may invest any moneys deposited by it in an account in terms of subsection (6) and which are not required for immediate use.

(8) The financial year of the Agency must end on 31 March in each year and the Agency must report annually on its activities to the Minister.

(9) The Agency must, at least three months prior to the start of its financial year, provide to the Minister for his or her approval a business plan of the forthcoming financial year containing at least—

- (a) the budget of the Agency for that forthcoming year;
- (b) particulars about any training, promotional or other activities that the Agency plans to undertake during that year;
- (c) such other particulars as the Minister may request.

(10) The Agency must—

- (a) cause accounting records to be kept of all moneys received or expended by it, and of all its assets, liabilities and financial transactions, which records must be audited by the Auditor-General; and
- (b) as soon as possible, but not later than three months after 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.

(11) The Agency must 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 (10)(b), together with a report on the activities of the Agency during that financial year.

(12) Copies of the annual financial statements and of the report referred to in subsection (10) must

- (a) be open to public inspection at the office of the Agency during office hours;
- and

- (b) be obtainable from the Agency against payment of the amount determined therefore by the Agency.

Continued existence and control of fidelity fund

11. (1) The fund that immediately before the date of commencement of this Act existed as the Fresh Produce Agents Fidelity Fund continues to exist under the name of the Agricultural Produce Marketing Agency Fidelity Fund.

(2) The fund consists of—

- (a) money in the Fresh Produce Agents Fidelity Fund established by section 12 of the Agricultural Produce Agents Act, 1992 (Act No. 12 of 1992), as it existed immediately before the commencement of this Act;
- (b) each amount which is immediately prior to the commencement of section 11 of this Act 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 (3) by export agents, fresh produce agents, auctioneers, brokers and livestock 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) money accruing to the fund from any other source.

(3) (a) Each export agent, fresh produce agent, auctioneer, broker and livestock agent, other than a person employed by such an agent, auctioneer or broker, as the case may be, must annually before or on a date determined by the Agency pay to the Agency for the account of the fund an amount calculated on such basis or in such manner as the Agency may determine.

(b) A determination by the Agency in terms of paragraph (a) must 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.

(c) The payment referred to in paragraph (a) of this subsection must be determined separately in respect of export agents, fresh produce agents, auctioneers, brokers and livestock agents.

(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 either by an export agent, fresh produce agent, auctioneer, broker or livestock agent, of any money or agricultural produce entrusted by or on behalf of the producers thereof to him or her as an export agent, fresh produce agent, auctioneer, broker or livestock agent, as the case may be; and
- (ii) dishonest conduct by an export agent, fresh produce agent, auctioneer, broker or livestock agent in so far as such conduct relates to an 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 Agency for utilisation in terms of section 10(3),(4) and (5).

(5) The fund must be controlled and administered by the Agency in accordance with the provisions of this Act.

(6) The Agency may invest any money in the fund not required for immediate use at a bank.

(7) The financial year of the fund must terminate on such date in each year as the Agency may determine.

(8) No provision of any law relating to insurance applies in respect of the fund.

(9) Section 10(10), (11) and (12) applies to the fund with the changes required by the context,

Payment out of fund

12. (1) Subject to the provisions of this Act, the fund must be utilised for—

- (a) all claims against the fund referred to in section 13 and paid by the Agency or allowed or established against the fund;
- (b) in the discretion of the Agency, 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;
- (d) the costs incidental to the control and administration of the fund, including allowances and remuneration paid for this purpose to members of the Board, the Registrar and the persons referred to in section 7 (2); and
- (e) 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 Agency 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 may not run from a date earlier than the date on which the claim was lodged in writing with the Agency in terms of subsection (3)(a)(i); and
- (b) the rate of interest may 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 has any claim against the fund—

- (a) unless the claimant—
 - (i) has lodged it in writing with the Agency within three months after he or she became aware of the loss, or by the exercise of reasonable care could have been aware thereof; and
 - (ii) has within one month after having been requested thereto in writing by the Agency, furnished the Agency with such proof of that loss as the Agency may reasonably require; and
- (b) if the claimant is a partner, manager, representative, agent, employee or member of the household of the auctioneer, broker, export agent, fresh produce agent or livestock agent, as the case may be, whose conduct referred to in section 11(4) has caused the loss;
- (c) if the loss occurred as a result of the conduct, referred to in section 11(4), of an auctioneer, broker, export agent, fresh produce agent or livestock agent, as the case may be, 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 11(4), of an auctioneer, broker, export agent, fresh produce agent or livestock agent,

as the case may be, after such claimant received a written notification from the Agency warning him or her against the employment or continued employment of such auctioneer, broker, export agent, fresh produce agent or livestock agent.

(4) A claim for reimbursement contemplated in section 11(4) must be limited, in the case of agricultural produce entrusted to an auctioneer, broker, export agent, fresh produce agent or livestock agent, as the case may be, to the amount equal to the average market value of the specific cultivar of such produce or specific livestock breed on the date when the produce was first received by the auctioneer, broker, export agent, fresh produce agent or livestock agent, as the case may be, or if there is no average market value on the market in question, then the average national market value as at the date when the produce was received by either an auctioneer, broker, export agent, fresh produce agent or livestock agent, as the case may be, without interest.

Claims against fund and actions against agency

13. (1) A claim for the reimbursement from the fund of a monetary loss that arose under the circumstances set out in section 11(4) must, subject to the provisions of section 12(3), be lodged with the Agency.

(2) If the Agency admits such a claim, a payment must be made to the claimant in accordance with the provisions of section 12(1): Provided that the amount of such payment is 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 Agency rejects a claim, an action in respect of that claim may be instituted against the Agency in the court within whose jurisdiction the principal place of business of the Agency is situated—

- (a) if the claimant has exhausted all legal remedies against the auctioneer, broker, export agent, fresh produce agent or livestock agent, as the case may be; or
- (b) with leave of the Agency, before all legal remedies against the auctioneer, broker, export agent, fresh produce agent or livestock agent, as the case may be, have been exhausted.

(4) In any action against the Agency all defences which would have been available to the auctioneer, broker, export agent, fresh produce agent or livestock agent in respect of whom the claim arose, are available to the Agency.

(5) When the Agency settles in full or in part any claim under this Act—

- (a) there must pass to the Agency, to the extent of such settlement, all the rights and remedies of the claimant in respect of such claim against the auctioneer, broker, export agent, fresh produce agent or livestock agent, as the case may be, or, if applicable, in the case of the death, insolvency or other legal incapacity of such auctioneer, broker, export agent, fresh produce agent or livestock agent, against the estate of the said auctioneer, broker, export agent, fresh produce agent or livestock agent; and
- (b) the Agency may use any security furnished by or on behalf of an auctioneer, broker, export agent, fresh produce agent or livestock agent in terms of

section 15, to reimburse the fund for the amount for which the claim was settled.

(6) (a) The Agency may in its discretion decide on the order in which claims admitted by the Agency or awarded by the court must 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 Agency may determine the order in which claims in terms of subsection (1) must 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 Agency it must, 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 Agency, as the case may be.

(d) A proportional payment under paragraph (b) must be deemed to be full and final payment in respect of the claim.

Prohibition on acting as agent, auctioneer, broker or wholesaler under certain circumstances

14. (1) (a) Subject to the provisions of subsection (2), no person may perform any act as an auctioneer, broker, export agent, fresh produce agent or livestock 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 definitions of 'auctioneer', 'broker', 'export agent', 'fresh produce agent' and 'livestock 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, auctioneer or broker on behalf of that company, close corporation or trust contemplated in the definitions of 'auctioneer', 'broker', 'export agent', 'fresh produce agent' and 'livestock agent' in section 1.

(b) Subject to the provisions of subsection (2), no person may perform any act as a wholesaler unless a registration certificate has been issued to him or her.

(2) No agent, auctioneer, broker or wholesaler may receive remuneration for the performance of an act as an agent, auctioneer, broker or wholesaler, unless—

- (a) in the case of an agent, auctioneer or broker, the act has been performed by the holder of a fidelity fund certificate which has not lapsed; or

(b) in the case of a wholesaler, the act has been performed by the holder of a registration certificate which has not lapsed.

(3) (a) Every prospective auctioneer, broker, export agent, fresh produce agent or livestock agent must, within the prescribed period and in the prescribed manner, apply to the Agency for a fidelity fund certificate, and such application must be accompanied by the security referred to in section 15(1) and the application fee determined by the Agency.

(b) Every prospective wholesaler must, within the prescribed period and in the prescribed manner, apply to the Agency for a registration certificate, and such application must be accompanied by the application fee determined by the Agency.

(c) If the Agency, upon receipt of any application referred to in paragraph (a) or (b) and the security (where applicable) and application fee referred to in those paragraphs, is satisfied that the applicant is not disqualified in terms of subsection (4) from being issued with a fidelity fund or registration certificate, the Agency must in the prescribed form issue to the applicant a fidelity fund certificate or 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 is null and void and must on demand be returned to the Agency.

(e) The certificates referred to in paragraphs (a) and (b) is valid for a period of two years from the date of issue, after which an application for renewal must have to be made to the agency.

(4) No fidelity fund certificate or registration certificate, as the case may be, may 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;
- (d) who has, after an investigation in terms of section 22, been found guilty of improper conduct;
- (e) 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;
- (f) 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;
- (g) who has failed to discharge all his or her liabilities to the Agency;
- (h) who has failed to comply with any lawful requirement of the Agency;
- (i) in the case of an auctioneer, broker, export agent, fresh produce agent or livestock agent, as the case may be, who has failed to comply with the provisions of section 17(1)(a);
- (j) in the case of an auctioneer, broker, export agent, fresh produce agent or livestock agent, who carries on or intends to carry on business as an auctioneer, broker, export agent, fresh produce agent or livestock agent under a trade name which is identical or confusingly similar to a trade name of an auctioneer, broker, export agent, fresh produce agent or livestock agent, as the case may be—

- (i) already issued with fidelity fund certificate; or
 - (ii) whose fidelity fund certificate is suspended or has lapsed or been withdrawn in terms of this Act;
- (k) in the case of a wholesaler, who carries on or intends to carry on business as a wholesaler under a trade name which is identical or similar to a trade name of a wholesaler—
- (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 Agency 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 Agency may issue, on such conditions as the Agency may determine, a fidelity fund certificate or registration certificate, as the case may be, to such person when he or she applies therefor.

(5) (a) The Agency may issue a fidelity fund certificate or registration certificate to any person who is acting or intending to act as an auctioneer, broker, export agent, fresh produce agent, livestock agent or wholesaler and such a certificate is 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) does 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 certificate.

(6) Each auctioneer, agent, broker or wholesaler who is the holder of a fidelity fund or registration certificate must

(a) annually before or on a date determined by the Agency, pay to the Agency the amount determined by the Agency for the maintenance of such certificate; forthwith notify the Agency 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 a 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 auctioneer, agent, broker, or wholesaler; and
- (vii) of any further particulars requested by the Agency as a result of a notice in terms of the preceding subparagraphs.

(7) (a) A fidelity fund or registration certificate issued to an agent, auctioneer, broker or wholesaler lapses automatically when he or she becomes disqualified as contemplated in subsection (4) or if he or she ceases to act as an agent, auctioneer, broker or wholesaler, as the case may be.

(b) If a fidelity fund or registration certificate which lapsed in terms of subparagraph (a) had been issued to a company, close corporation or trust, then the fidelity fund or registration certificate of—

- (i) every director, member, or trustee; and

(ii) every employee, as contemplated in the definitions of 'auctioneer', 'broker', 'export agent', 'fresh produce agent', 'livestock agent' or 'wholesaler' in section 1 lapses likewise.

(c) If a fidelity fund or registration certificate so lapses or is suspended, the Registrar must—

(i) by means of a written notice addressed to the said business and postal address of the agent, auctioneer, broker or wholesaler, notify him or her thereof;

(ii) in the case of a broker, export agent, fresh produce agent or wholesaler 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 the national media in at least two official languages, one of which should be English, circulating in the district in which the said agent's, broker's or wholesaler's last known business address, as entered in the records of the Agency, is situated.

(d) The agent, auctioneer, broker, wholesaler 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), must 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 is void with effect from the date of such lapsing.

(8) 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, auctioneer, broker or wholesaler in his or her capacity as such, or participate in the carrying on of such business, except with the written consent of the Agency and subject to such conditions as the Agency may determine from time to time.

(9) No agent, auctioneer, broker or wholesaler may directly or indirectly in any capacity whatsoever employ a person referred to in subsection (8), 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, auctioneer, broker or wholesaler, except with the written consent of the Agency, and subject to such conditions as the Agency may impose.

Security by agents, auctioneers and brokers

15. (1) Every auctioneer, broker, export agent, fresh produce agent or livestock agent who is responsible to open and keep a trust account in terms of section 17(1), must before a fidelity fund certificate is issued to him or her furnish the Agency with security in such amount and in such form as is acceptable to the Agency, for use by the Agency to meet any claim arising in terms of section 11(4) or to defray the costs or part of the costs of an inspection and investigation held in terms of section 22 where such auctioneer, broker, export agent, fresh produce agent or livestock agent has been disciplined in terms of section 24(1).

(2) The security referred to in subsection (1) must be returned to the auctioneer, broker, export agent, fresh produce agent or livestock agent within six months after the lapse of the fidelity fund certificate of that auctioneer, broker, export agent, fresh produce agent or livestock agent, as the case may be, unless an

inspection and investigation under section 22 of an act of omission or alleged act or omission of the auctioneer, broker, export agent, fresh produce agent or livestock agent, as the case may be, 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 Agency.

Account

16. (1) Every fresh produce agent, auctioneer, broker, export agent or livestock agent contemplated in paragraph (a) of the definitions of 'fresh produce agent', 'auctioneer', 'broker', 'export agent' or 'livestock agent' in section 1 must in respect of his or her activities as such, keep, at a place approved by the Agency, 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 17(1)(a) or invested in a savings or interest-bearing account referred to in section 17 (3)(a) or;
- (b) all his or her financial transactions;
- (c) all agricultural produce received, kept, sold and lawfully destroyed; and
- (d) all his or her assets and liabilities.

(2) (a) Such auctioneer, broker, export agent, fresh produce agent or livestock agent, as the case may be, must 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 auctioneer, broker, export agent, fresh produce agent or livestock agent, as the case may be, which final date must not be amended by him or her without the written approval of the Agency.

(b) Notwithstanding the provisions of subsection 2(a), the Agency may, on good cause shown, at any time order any auctioneer, broker, export agent, fresh produce agent or livestock agent by notice in writing to submit to the Agency 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 Agency or any other competent person, prohibit any auctioneer, broker, export agent, fresh produce agent or livestock agent from operating in any way his or her trust, savings or other interest-bearing account referred to in section 17(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) An auctioneer, broker, export agent, fresh produce agent or livestock agent, as the case may be, must 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 auctioneer, broker, export agent, fresh produce agent or livestock agent is terminated for any reason whatsoever, the auctioneer, broker, export agent, fresh produce agent or livestock agent, as the case may be, must—

(a) balance the accounting records referred to in subsection (1) within 21 days, or such other period as the Agency may determine, of the date on which he or

she performed his or her last activity as an auctioneer, broker, export agent, fresh produce agent or livestock agent, and thereupon have them audited as contemplated in subsection (2)(a) within three month of the said date;

- (b) forthwith notify the Agency 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 auctioneer, broker, export agent, fresh produce agent or livestock agent fails or is in the opinion of the Agency likely to fail to comply with the provisions of subsection (4), the Agency may designate any person to comply with those provisions on behalf of the auctioneer, broker, export agent, fresh produce agent or livestock agent, as the case may be.

(b) When the Agency designates a person under paragraph (a), the Agency may recover the expenditure incurred in connection with the performance of the functions must be recoverable from the auctioneer, broker, export agent, fresh produce agent or livestock agent concerned.

Trust accounts

17. (1) Subject to the provisions of subsection (2), each auctioneer, broker, export agent, fresh produce agent or livestock agent other than an employee

contemplated in the definitions of 'auctioneer', 'broker', 'export agent', 'fresh produce agent' or 'livestock agent' in section 1 must—

- (a) open and keep a trust account at a bank;
- (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 may be kept in respect of the business of an auctioneer, broker, export agent, fresh produce agent, or livestock agent, as the case may be, which is a partnership.

(3) An auctioneer, broker, export agent, fresh produce agent or livestock agent—

- (a) may invest any amount paid into his or her trust account with a view to payment as contemplated in section 18 and which is immediately required for any particular purpose, in a separate savings or other interest-bearing account opened by him or her with any bank;
- (b) must 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 Agency thereof in the manner determined by the Agency;
- (c) must keep separate accounting records referred to in section 16 in respect of his or her trust account and savings or interest-bearing accounts referred to in paragraph(a) of this subsection, and must balance such accounting records within 21 days after the end of each month.

(4) Any agricultural produce received by an auctioneer, broker, export agent, fresh produce agent or livestock agent must, until it is sold or lawfully destroyed, be deemed to form part of his or her trust account.

(5) An auctioneer, broker, export agent, fresh produce agent or livestock agent must cause the auditor referred to in section 16(2), immediately after having completed an audit contemplated in that section, to transmit to the Agency a report in the form determined by the Agency regarding his or her findings, and a copy thereof to the auctioneer, broker, export agent, fresh produce agent or livestock agent, as the case may be.

(6) (a) An amount deposited or to be deposited in terms of subsection (1)(b) in the trust account of an auctioneer, broker, export agent, fresh produce agent or livestock agent—

- (i) may 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) does not form part of the assets of that auctioneer, broker, export agent, fresh produce agent or livestock agent, as the case may be, 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) do not apply to the remainder of the amount after the principal of the auctioneer, broker, export agent, fresh produce agent or livestock agent, as the case may be, has been paid as contemplated in section 18(1).

(7) The court may upon application by the Agency suspend an auctioneer, broker, export agent, fresh produce agent or livestock agent from conducting business if—

- (a) he or she fails to comply with the provisions of subsection (1) within a time specified by the Agency in a written request addressed to his or her business address or postal address; or
- (b) it comes to the attention of the Agency that the total of the balances shown on the trust account in the accounting records of that auctioneer, broker, export agent, fresh produce agent or livestock 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 must receive such proceeds for and on behalf of the auctioneer, broker, export agent or fresh produce agent who sold such produce and that market authority must within two working days hand over such proceeds less the remuneration to which it is lawfully entitled for services rendered in respect of such sale to that auctioneer, broker, export agent or 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 an auctioneer, broker, export agent or fresh produce agent must be administered in a separate trust account from any other moneys or accounts held or operated by such market authority and such proceeds must not form part of the assets and liabilities of that market authority: Provided that the market authority is entitled to recover for itself the remuneration referred to in paragraph (a).

Payment from trust account

18. (1) (a) An auctioneer, broker, export agent, fresh produce agent or livestock agent must 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.

(b) An auctioneer, broker, export agent, fresh produce agent or livestock agent must pay to the Agency from his or her trust account interest earned in the trust account or an interest bearing account referred to in section 17(3)(a) after he or she has deducted from such interest any reasonable expenses incurred by him or her in connection with the investment referred to in section 17(3)(a).

(2) (a) If the amount to be paid by an auctioneer, broker, export agent, fresh produce agent or livestock 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 auctioneer, broker, export agent, fresh produce agent or livestock agent must pay the amount from his or her trust account to the Agency, and furnish the Agency with the particulars required in the rules in connection therewith.

(b) Money so paid to the Agency must be dealt with in the manner set out in section 19.

(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 17(3)(a) for

payment to the Agency as funds contemplated in section 10(1)(d), and any payment to the Agency in terms of subsection (2) of this section, must be made at the time and in the manner set out in the rules.

(4) No withdrawals other than those specified in subsection (3) may be made from a trust account or a savings or interest-bearing account referred to in section 17(3)(a): Provided that any fees charged by the institution at which they are kept must be debited against the business account of the auctioneer, broker, export agent, fresh produce agent or livestock agent, as the case may be.

Disposal of unclaimed moneys

19. (1) The Agency must keep separate records, in the manner set out in section 10(10), of unclaimed moneys paid to it in terms of section 18(2), and of the disposal of such money in terms of the provisions of this section.

(2) The Agency must 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, auctioneer or broker who paid that money, and call upon the said person to claim that money from the Agency within 90 days after the date of the said notice.

(3) No money may be paid to any person by virtue of the provisions of subsection (2) unless he or she satisfies the Agency 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 Agency must keep that money for a period of three years, where after that money may be used by the Agency for such purposes as the Agency may determine.

(5) Before any money is by virtue of the provisions of subsection (2) paid over to the person entitled thereto or kept in terms of subsection (4), the Agency may deduct there from, for the benefit of the Agency, an administrative fee consisting of 15 per cent of the said amount.

Rules

- 20.** (1) The Agency may, in respect of auctioneers, brokers, export agents, fresh produce agents, livestock agents and wholesalers, make rules as to—
- (a) the procedure to be complied with by an agent, auctioneer, broker or wholesaler, in connection with the sale of any agricultural product;
 - (b) the form and manner in which records are to be kept by an agent, auctioneer, broker, or wholesaler 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 must be given to agents', auctioneers', brokers' or wholesalers' principals of the sale or other disposal of agricultural products;
 - (d) the manner in which a trust account must 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 Agency in terms of section 18(2) and the payment of interest earned on a trust account or an interest-bearing account to the Agency in terms of section 18(1)(b);
- (f) the returns and the information to be furnished by an agent, auctioneer, broker and wholesaler to the Agency;
- (g) the code of conduct to be followed in the practising of the occupations of agent, auctioneer, broker and wholesaler;
- (h) any matter which the Agency 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 must not be limited by the preceding paragraphs of this subsection;
- (i) the regulation, control or prohibition of any practice followed by agents, auctioneers, brokers, and wholesalers;
- (j) the period within and the manner in which application must be made for a fidelity fund or registration certificate, as the case may be;
- (k) the form of a fidelity fund and registration certificate;
- (l) the manner in which any account referred to in section 16(4)(c) must be wound-up and the amount standing to the credit of such account must be paid out;
- (m) the manner in which proceedings at a disciplinary hearing contemplated in section 23 must be conducted; and
- (n) the period within and the manner in which application for renewal must be made for a fidelity fund or registration certificate, as the case may be.

(2) Different rules may be made under subsection (1) in respect of different categories of agents, auctioneers, brokers or wholesalers, as the case may

be, according as they deal with different categories of agricultural products, and such different rules may differ in such respects as the Agency may deem expedient.

(3) No rule under subsection (1) or amendment or withdrawal thereof is of force and effect until approved by the Minister and published by notice in the *Gazette* by the Minister.

(4) The Agency may draw up a code of instructions relating to any of the following matters:

- (a) The buildings, structures and equipment used at national fresh produce markets and the materials and methods employed in the erection, installation, alteration, repair or improvement of such buildings, structures and equipment;
- (b) the facilities provided at such fresh produce markets;
- (c) the planning, lay-out and construction of such fresh produce markets;
- (d) the management and conduct of such fresh produce markets;
- (e) the use and utilisation of such fresh produce markets; and
- (f) the performance of services at such fresh produce markets.

(5) The agency must submit a code drawn up under subsection (4) to the Minister for his or her approval.

(6) The Minister may approve such code with such amendments as he or she may deem fit or without any amendments.

(7) The Minister must publish the code approved under subsection (6) by notice in the *Gazette*.

(8) The Agency may from time to time draw up amendments to the code published under subsection (7) and submit such amendments to the Minister for his or her approval, and the provisions of subsections (6) and (7) apply with the changes required by the context to any such submission.

(9) The provisions of a code published under subsection (7) must not be binding upon any person except—

- (a) where the compliance with such provisions has been ordered by the Minister; or
- (b) where the Minister has by notice in the *Gazette* ordered compliance with such provisions by persons performing services at a national fresh produce market.

Improper conduct

21. An auctioneer, broker, export agent, fresh produce agent, livestock agent or wholesaler is 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.

Inspection and investigation

22. (1) (a) The Agency may, either on 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 an auctioneer, broker, export agent, fresh produce agent, livestock agent, wholesaler or any person that the Agency has reason to

believe that he or she is acting as an auctioneer, broker, export agent, fresh produce agent, livestock agent or wholesaler, or person in the employ of such auctioneer, broker, export agent, fresh produce agent, livestock agent or wholesaler, as the case may be, or into a contravention of this Act or the rules by such auctioneer, broker, export agent, fresh produce agent, livestock agent, wholesaler or any person that the Agency has reason to believe that he or she is acting as an auctioneer, broker, export agent, fresh produce agent, livestock agent or wholesaler or employee of such auctioneer, broker, export agent, fresh produce agent, livestock agent or wholesaler, as the case may be.

(b) An inspection and investigation referred to in paragraph (a) must be conducted in accordance with the provisions of section 25(4).

(2) On receipt of the results of an inspection and investigation referred to in subsection (1) the Agency may decide to charge the auctioneer, broker, export agent, fresh produce agent, livestock agent, wholesaler or any person referred to in subsection (1)(a), or employee of such auctioneer, broker, export agent, fresh produce agent, livestock agent or wholesaler, as the case may be, concerned with a contravention of this Act or the rules, and must, on so deciding—

(a) summons the auctioneer, broker, export agent, fresh produce agent, livestock agent, wholesaler or any person referred to in subsection (1)(a), or employee of such auctioneer, broker, export agent, fresh produce agent, livestock agent, or wholesaler as the case may be, on not less than 30 days notice to appear before a disciplinary tribunal contemplated in section 23 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 auctioneer, broker, export agent, fresh produce agent, livestock agent, wholesaler or any person referred to in subsection (1)(a), or employee of such auctioneer, broker, export agent, fresh produce agent, livestock agent, or wholesaler as the case may be, to produce at such hearing any book or other document specified in the summons which the said auctioneer, broker, export agent, fresh produce agent, livestock agent, wholesaler or any person referred to in subsection (1)(a) or employee of such auctioneer, broker, export agent, fresh produce agent, livestock agent, or wholesaler 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.

(3) A summons referred to in subsection (2) must be—

- (a) as nearly as possible in the form specified in the rules;
- (b) signed by the Registrar or his or her duly authorised representative; and
- (c) served on the auctioneer, broker, export agent, fresh produce agent, livestock agent, wholesaler or any person referred to in subsection (1)(a), or employee of such auctioneer, broker, export agent, fresh produce agent, livestock agent, or wholesaler, as the case may be, by delivering or tendering it at the business address of the auctioneer, broker, export agent, fresh produce agent, livestock agent, wholesaler or any person referred to in subsection (1)(a) or by sending it by prepaid registered post to the postal address referred to in section 14(6), or to the business address last known to the Agency.

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

Disciplinary tribunal

23. (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 22.

(2) A disciplinary tribunal must consist of a maximum of three members, who must be appointed by the Agency on account of—

- (a) their independence from the affairs of the Agency, the office of the Registrar and the agent, auctioneer, broker, wholesaler or person investigated;
- (b) their knowledge of the law;
- (c) their knowledge of the conducting of the business of agents, auctioneers, brokers, or wholesalers 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 must 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 must 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 must conduct its proceedings in accordance with rules made for this purpose: Provided that—

- (a) such rules are in accordance with the requirements of this Act and the Constitution; and
- (b) the onus of proof is 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 24(1)(e) 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) must as far as possible be as prescribed in the rules, and must be served in the same manner as subpoena issued by a magistrate's court in civil proceedings.

(b) No person—

- (i) having been duly summoned to be present at the hearing, may without lawful excuse fail so to appear; or
- (ii) having been called as a witness at a hearing, may 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 must pay a witness called and present at a hearing such fees as the Agency 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, applies with the changes required by the context 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, auctioneer, broker, or wholesaler or person in respect of whom the hearing is instituted in terms of this section may 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 must 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, is guilty of an offence and liable on conviction to the penalties which may be lawfully be imposed for the offence of perjury.

(14) The disciplinary tribunal may, if it is of a view that an agent, auctioneer, broker or wholesaler, or employee of such agent, auctioneer, broker or wholesaler, as the case may be, has committed an offence, submit a certified copy of the record of the proceedings at any hearing held in terms of section 22 to the office of the National Director of Public Prosecutions having jurisdiction in the matter.

Disciplinary powers of tribunal

24. (1) If a disciplinary tribunal, after a hearing under section 23, finds an agent, auctioneer, broker or wholesaler, or employee of such agent, auctioneer, broker or wholesaler, as the case may be, guilty of improper conduct, it may—

(a) reprimand or caution him or her;

(b) impose conditions and restrictions subject to which the agent, auctioneer, broker or wholesaler, or employee of such agent, auctioneer, broker or wholesaler, as the case may be, may, for a specific period, practise his or her occupation;

-
- (c) impose on such agent, auctioneer, broker, wholesaler or any person referred to in section 22(1)(a), or employee of such agent, auctioneer, broker or wholesaler, as the case may be, a fine not exceeding such amount as may be prescribed by the Minister by notice in the *Gazette*;
- (d) suspend that agent, auctioneer, broker, wholesaler or any person referred to in section 22(1)(a) from conducting his or her business or from acting as an agent, auctioneer, broker or wholesaler on such conditions and for such period as the tribunal may stipulate in the suspended sentence;
- (e) withdraw the fidelity fund or registration certificate issued to that agent, auctioneer, broker or wholesaler and—
- (i) if such agent, auctioneer, broker or wholesaler is a company, to every director of such company;
 - (ii) if he or she is a director of a company which is an agent, auctioneer, broker or wholesaler, to such company;
 - (iii) if he or she in partnership acts as an agent, auctioneer, broker or wholesaler, to every partner in such partnership;
 - (iv) if such agent, auctioneer, broker or wholesaler is a close corporation, to every member contemplated in the definitions of 'auctioneer', 'broker', 'export agent', 'fresh produce agent', 'livestock agent' or 'wholesaler', as the case may be, of that corporation;
 - (v) if he or she is a member of a close corporation which is an agent, auctioneer, broker or wholesaler, to such corporation;
 - (vi) if such agent, auctioneer, broker or wholesaler 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, auctioneer, broker or wholesaler, to such trust.

(2) The disciplinary tribunal may suspend the execution of its decision taken under subsection (1)(c),(d) or (e), 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)(c) must have the effect of and may be executed as if it were a civil judgment in favour of the Agency.

(b) The Registrar must publish the name and address of the agent, auctioneer, broker, wholesaler or any person referred to in section 22(1)(a), or employee of such agent, auctioneer, broker or wholesaler, as the case may be, 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*.

(4) If an agent, auctioneer, broker, wholesaler or any person referred to in section 22(1)(a), or employee of such agent, auctioneer, broker or wholesaler, as the case may be, fails to comply with any conditions determined under subsection (2), the Registrar must cause the decision taken under subsection (1)(c) or (d) to be executed unless the said agent, auctioneer, broker, wholesaler or any person referred to in section 22(1)(a), or employee of such agent, auctioneer, broker or wholesaler, as the case may be, satisfies the Registrar that the non-compliance with such conditions was due to circumstances beyond his or her control.

(5) In addition to any of the sanctions referred to in subsection (1), the disciplinary tribunal may order that agent, auctioneer, broker, wholesaler or any person referred to in section 22(1)(a), or employee of such agent, auctioneer, broker

or wholesaler, as the case may be, to pay the costs incurred by the Agency in connection with such hearing and—

- (a) such costs must 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 must be empowered to tax such costs.

(6) Without derogating from the generality of any such order for the payment of costs, such costs must include—

- (a) the costs of recording, transcribing and preparing copies of any record;
- (b) the costs incurred by the Agency in respect of the prosecutor and the accountant or other persons appointed to inspect and investigate the agent, auctioneer, broker, wholesaler or any person referred to in section 22(1)(a), or his or her employee's books of account and any other documents or records or things relating to the agent, auctioneer, broker, wholesaler or any person referred to in section 22(1)(a) 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.

(7) The order contemplated in subsection (6) for the payment of costs incurred by the Agency in connection with an inspection and investigation has the effect of and may be executed as if it were a civil judgment in favour of the Agency.

(8) (a) The disciplinary tribunal may, whenever a fine has been imposed on an agent, auctioneer, broker, wholesaler or any person referred to in section 22(1)(a) in terms of subsection (1)(c), order that any portion of that fine, but

not exceeding 80 per cent 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, auctioneer, broker, wholesaler or any person referred to in section 22(1)(a) or employee in question.

(b) The Registrar must, on receipt of the fine imposed on the agent, auctioneer, broker, wholesaler or any person referred to in section 22(1)(a) or employee in question, make payment contemplated in paragraph (a).

(c) This subsection does not preclude any person from pursuing any civil remedy against the agent, auctioneer, broker, wholesaler or any person referred to in section 22(1)(a) 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 Agency in terms of paragraph (b), the court must take the payment into account in making such award.

Entry and Inspections

25. (1) The Registrar may designate a suitable person (hereunder referred to as an inspector) to exercise and perform periodic regulatory inspections and investigations at the business premises of any agent, auctioneer, broker, wholesaler or any person referred to in section 22(1)(a) with a view to determining whether the provisions of sections 14, 16, 17, 18 and 19 and the rules pertaining thereto have been complied with, and for that purpose an inspector may 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 must be furnished with a certificate of appointment signed by or on behalf of the Agency in which it is stated that he or she is an inspector appointed in terms of this Act.

(3) An inspector must, 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 extract 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 may enter premises and may 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) must—

- (a) authorise 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 authorises 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) must, 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 must, as long as the book or document is in the

possession or charge of the inspector or of the Agency, be allowed on request to make copies thereof or to take extracts there from 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 Agency.

(9) A person is 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 may not 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 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 is be appointed on such conditions and at such remuneration as the Agency may determine.

Offences and penalties

26. (1) Any person who—

- (a) contravenes or fails to comply with a provision of section 14(1), 14(8) or (9), 17(1), 17(8), 18(2)(a), 25(9)(a) and (b)(i) or 30;
- (b) contravenes or fails to comply with a provision of section 14(2), (4)(a), 16 or 17(3)(b) or (c) or 17(5);
- (c) contravenes or fails to comply with the provisions of section 23(9);
- (d) in any application in terms of this Act, knowingly furnishes information or makes a statement which is false or misleading, is guilty of an offence.

(2) Any person who is convicted of an offence—

- (a) referred to in subsection (1)(a) is liable—
 - (i) on a first conviction to a fine or 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 imprisonment for a period not exceeding four years or both a fine and such imprisonment;
- (b) referred to in subsection (1)(b), is liable to a fine or to imprisonment for a period not exceeding four years or to both a fine and such imprisonment; and
- (c) mentioned in subsection (1)(c), is liable to a fine or to imprisonment not exceeding three months or to both a fine and such imprisonment.

(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 this Act.

Deficit in trust account

27. (1) Whenever any auctioneer, broker, export agent, fresh produce agent, livestock agent or wholesaler or his or her manager, representative, employee or member of his or her household owing to the appropriation of money in the trust account of that agent, auctioneer, broker or wholesaler, 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 18, the court must at the request of the prosecutor made on behalf of the Agency, inquire into and determine the amount of the deficit in the trust account and order the auctioneer, broker, export agent, fresh produce agent, livestock agent or wholesaler, as the case may be, to pay an amount equal to the amount so determined to the Agency, and any such order has all the effects of and may be executed as if it were a civil judgement in favour of the Agency.

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

Defects in form

28. 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 does not invalidate any administrative action to which such document, notice or order relates, or to 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.

Restriction of liability

29. 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.

Preservation of secrecy

30. Subject to the provisions of Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), no person may, except for the purposes of performing his or her 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 or her in the performance of his or her functions in terms of this Act and relating to the business or affairs of any other person.

Repeal of laws

31. Subject to the provisions of section 11 (2)(a), the laws specified in Schedule 2 are hereby repealed to the extent indicated in the third column thereof.

Transitional provisions

32. (1) Every fresh produce agent, export agent or livestock agent who was the holder of a fidelity fund or registration certificate, as the case may be, immediately prior to the date of commencement of this Act must within the period determined by the Agency 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 (b) of the definitions of 'export agent', 'fresh produce agent' and 'livestock agent' in section 1, for a certificate, and must furnish the Agency with the information that the Agency 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 this Act—

(a) was the holder of a fidelity fund or registration certificate contemplated in that subsection, must—

- (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 must 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 fidelity fund certificate: Provided that such certificate must lapse if a new fidelity fund certificate is not issued to the agent within the period specified in subsection (1);

(b) carried on business as an export agent, must be deemed to be the holder of a fidelity fund certificate: Provided that such certificate must lapse if a new fidelity fund certificate is not issued to the agent within the period specified in subsection (1).

(3) The provisions of subsection (2) do 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 this Act to apply to the Agency for a fidelity fund certificate and to furnish the Agency 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 this Act, to apply to the Agency for a fidelity fund certificate and to furnish the Agency 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 Agency for a fidelity fund certificate and to furnish the Agency with such information as it may determine; and

(4) Members of the council in office immediately prior to the commencement of this Act must remain in office as members of the board of the Agency until the termination of their term of office: Provided that the Minister must appoint such additional members to the Board as may be required from time to time.

Short title and commencement

33. This Act is the Agricultural Produce Marketing Agencies Bill, 2013, and takes effect on a date fixed by the President by Proclamation in the *Gazette*.

SCHEDULE 1**PART A****AGRICULTURAL PRODUCTS FOR THE PURPOSES OF FRESH PRODUCE****AGENTS, EXPORT AGENTS AND BROKERS**

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****AND AUCTIONEERS**

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 meet thereof, but excluded 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, paw-paws, 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” mean cattle, sheep, goats, pigs, horses, mules, game and donkeys.

“Meat” means those portions of slaughtered cattle, sheep, goats, game 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 or her 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, horse-radishes, 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 2**LAWS REPEALED**

<i>No. And year of law</i>	<i>Short title</i>	<i>Extent of repeal</i>
Act No. 12 of 1992	Agricultural Produce Agents Act, 1992	The whole
Act No.47 of 2003	Agricultural Produce Agents Amendment Act, 2003	The whole

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001
Publications: Tel: (012) 334-4508, 334-4509, 334-4510
Advertisements: Tel: (012) 334-4673, 334-4674, 334-4504
Subscriptions: Tel: (012) 334-4735, 334-4736, 334-4737
Cape Town Branch: Tel: (021) 465-7531

Gedruk deur en verkrygbaar by die Staatsdrukker, Bosmanstraat, Privaatsak X85, Pretoria, 0001
Publikasies: Tel: (012) 334-4508, 334-4509, 334-4510
Advertensies: Tel: (012) 334-4673, 334-4674, 334-4504
Subskripsies: Tel: (012) 334-4735, 334-4736, 334-4737
Kaapstad-tak: Tel: (021) 465-7531