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No. 25971

THE PRESIDENCY

No. 111

4 February 2004

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 47 of 2003: Agricultural Produce Agents Amendment Act, 2003.

DIE PRESIDENSIE

No. 111

4 Februarie 2004

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 47 van 2003: Wysigingswet op Landbouprodukte-agente, 2003.



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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)
(Assented to 28 January 2004.)

ACT

To amend the Agricultural Produce Agents Act, 1992, so as to alter certain definitions and to insert others; to change the constitution of the council; to apply certain provisions to fresh produce agents only; to make certain textual alterations; to provide for the extension of the jurisdiction of the council, to enhance the regulating powers of the council; and to provide for transitional matters; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 12 of 1992

1. Section 1 of the Agricultural Produce Agents Act, 1992 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the substitution for the definition of “agent” of the following definition: 5
- “ ‘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, [or] either directly or indirectly advertises that he or she, on the instructions of or on behalf of any other person, purchases or 10 sells agricultural produce or negotiates in connection therewith or canvasses or undertakes or offers to canvass a purchaser or seller therefor, **but excluding—**
- (a) a control board as defined in section 1 of the Marketing Act, 1968 (Act No. 59 of 1968), which in terms of a scheme likewise 15 defined, purchases and sells an agricultural product to which such scheme relates;
- (b) a person who, in the course of his agency, purchases and sells the agricultural product concerned on behalf of a control board referred to in paragraph (a); and 20
- (c) a local authority as defined in section 84(1)(f) of the Provincial Government Act, 1961 (Act No. 32 of 1961), which sells an agricultural product entrusted to an agent as defined above, on behalf of that agent at an auction];”;
- (b) by the substitution for the definition of “agricultural product” of the following 25 definition:
- “ ‘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;”;

ALGEMENE VERDUIDELIKENDE NOTA:

[] Woorde in vet druk tussen vierkantige hake dui skrappings uit
bestaande verordeninge aan.

_____ Woorde met 'n volstreep daaronder, dui invoegings in
bestaande verordeninge aan.

(Engelse teks deur die President geteken.)
(Goedgekeur op 28 Januarie 2004.)

WET

Tot wysiging van die Wet op Landbouprodukte-agente, 1992, ten einde sekere omskrywings te wysig en ander in te voeg; die samestelling van die raad te verander; sekere bepalinge slegs op varspprodukte-agente van toepassing te maak; sekere tekstuele wysigings aan te bring; vir die uitbreiding van die jurisdiksie van die raad voorsiening te maak; die reguleringsbevoegdheid van die raad uit te brei; en vir oorgangsmaatreëls voorsiening te maak; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika,
soos volg:—

Wysiging van artikel 1 van Wet 12 van 1992

1. Artikel 1 van die Wet op Landbouprodukte-agente, 1992 (hieronder die Hoofwet genoem), word hierby gewysig—

- (a) deur die volgende omskrywing voor die omskrywing van “agent” in te voeg:
“ ‘adjunkregistrator’ die adjunkregistrator van die Raad vir Landbouprodukte-agente ingevolge artikel 8 aangestel;”
- (b) deur die omskrywing van “agent” deur die volgende omskrywing te vervang:
 “ ‘agent’ iemand wat, met die oog op winsbejag vir eie rekening of in ’n vennootskap, hom of haar op enige wyse voordoen as iemand wat, [of] of regstreeks [of] of onregstreeks adverteer dat hy of sy, in opdrag van of namens iemand anders, landbouprodukte koop of verkoop of ten opsigte daarvan onderhandel of ’n koper of verkoper daarvoor werf of onderneem of aanbied om ’n koper of ’n verkoper daarvoor te werf [, maar uitgesonderd—
- (a) ’n beheerraad soos omskryf in artikel 1 van die Bemarkingswet, 1968 (Wet No. 59 van 1968), wat ingevolge ’n skema soos ingelyks omskryf, ’n landbouprodukt waarop so ’n skema van toepassing is, koop en verkoop;
- (b) iemand wat in die loop van sy agentskap die betrokke landbouprodukt namens ’n beheerraad in paragraaf (a) bedoel, koop en verkoop; en
- (c) ’n plaaslike bestuur soos omskryf in artikel 84(1)(f) van die Wet op Provinsiale Bestuur, 1961 (Wet No. 32 van 1961), wat ’n landbouprodukt wat aan ’n agent soos hierbo omskryf, toevertrou is, namens daardie agent by veiling verkoop];”;
- (c) deur die omskrywing van “beampte” te skrap;
- (d) deur die omskrywing van “bouvereniging” te skrap;

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- (c) by the deletion of the definition of "building society";
- (d) by the insertion after the definition of "close corporation" of the following definition:
"'consumer' means a consumer of an agricultural product;";
- (e) by the insertion after the definition of "council" of the following definitions: 5
"'court' means a court of the provincial or local division of the High Court of South Africa having jurisdiction or a judge of any such court and for purposes of section 27(5) also includes a magistrate as defined in the Magistrates' Courts Act, 1944 (Act No. 32 of 1944);
'department' means the Department of Agriculture in the national government;" 10
'deputy registrar' means the deputy registrar of the Agricultural Produce Agents Council appointed in terms of section 8;
- (f) by the insertion after the definition of "deposit-taking institution" of the following definition: 15
"'export agent' means an agent acting as such with regard to any agricultural product specified in Part A of Schedule 1 intended for export;";
- (g) by the substitution for the definition of "fresh produce agent" of the following definition: 20
"'fresh produce agent' means an agent acting as such with regard to any agricultural product specified in Part A of Schedule 1 on the basis that the risk of profit or loss at all times remains with the principal, and—
 (a) for the purposes of section 3(1)(a), includes any director of a company, trustee of a trust or a member of a close corporation who 25
 acts as a fresh produce agent as aforesaid;
 (b) for the purposes of sections 12(5), 13(3)(b), 13(3)(c), 13(3)(d), 13(4), 14(5)(a), 16(6)(f), 16(6A), 22, 23, 24, 25, 26, 27 and 30, includes—
 (i) any director of a company, or a member of a close corporation 30
 or a trustee of a trust who acts as a fresh produce agent as aforesaid; and
 (ii) any person who is employed by a fresh produce agent and who acts as a fresh produce agent as aforesaid for the employer;";
- (h) by the substitution for the definition of "fund" of the following definition: 35
"'fund' [, in relation to—
 (a) **fresh produce agents,** means the **[fidelity fund]** Fresh Produce Agents Fidelity Fund referred to in section 12(2);
 [(b) **livestock agents,** means the **fidelity fund** referred to in section 12 (3);]" 40
- (i) by the substitution for the definition of "livestock agent" of the following definition:
"'livestock agent' means an agent acting as such with regard to any agricultural product specified in Part B of Schedule 1, and for purposes of section 3(1)(b) includes any director of a company, trustee of a trust or a member of a close corporation which acts as a livestock agent as aforesaid;" 45
- (j) by the deletion of the definition of "officer";
- (k) by the substitution for the definition of "registrar" of the following definition: 50
"'registrar' means the registrar of the Agricultural Produce Agents Council appointed in terms of section 8, and for purposes of the application of the provisions of this Act, includes the deputy registrar;";
- (l) by the insertion of the following definition after the definition of "registrar":
"'registration certificate' means a registration certificate issued by the council in terms of section 16;" 55

- (e) deur die volgende omskrywing na die omskrywing van “beslote korporasie” in te voeg:
“ ‘departement’ die Department van Landbou in die nasionale regering;”;
- (f) deur die omskrywing van “fonds” deur die volgende omskrywing te vervang: 5
“ ‘fonds’ [, met betrekking tot—
 (a) varsprodukte-agente, die getrouheidsfonds] die Varsprodukte-agente Getrouheidsfonds in artikel 12(2) bedoel;
 [(b) lewendehawe agente, die getrouheidsfonds in artikel 12(3) bedoel;]”; 10
- (g) deur die volgende omskrywing na die omskrywing van “getrouheidsfondssertifikaat” in te voeg:
“ ‘hof’ ’n hof van die provinsiale of plaaslike afdeling van die Hoë Hof van Suid-Afrika wat jurisdiksie het of ’n regter van enige sodanige hof en, by die toepassing van artikel 27(5), ook ’n landdros soos omskryf in die Wet op Landdroshowe, 1944 (Wet No. 32 van 1944);”; 15
- (h) deur die omskrywing van “landbouproduk” deur die volgende omskrywing te vervang:
“ ‘landbouproduk’ ’n artikel in Deel A of B van Bylae 1 genoem of ’n artikel kragtens subartikel (2) van hierdie artikel daarin bygevoeg;”; 20
- (i) deur die omskrywing van “lewendehawe-agent” deur die volgende omskrywing te vervang:
“ ‘lewendehawe-agent’ ’n agent wat as sodanig met betrekking tot ’n landbouproduk in Deel B van Bylae 1 vermeld, optree, en, by die toepassing van artikel 3(1)(b), ook ’n direkteur van ’n maatskappy, ’n trustee van ’n trust of ’n lid van ’n beslote korporasie wat optree as ’n lewendehawe-agent soos voormeld;”; 25
- (j) deur die volgende omskrywing voor die omskrywing van “registrateur” in te voeg:
“ ‘registrasiesertifikaat’ ’n registrasiesertifikaat deur die raad uitgereik ingevolge artikel 16;”; 30
- (k) deur die omskrywing van “registrateur” deur die volgende omskrywing te vervang:
“ ‘registrateur’ die registrateur van die Raad vir Landbouprodukte-agente ingevolge artikel 8 aangestel, en vir die doeleindes van die toepassing van die bepalings van hierdie Wet, ook die adjunkregistrateur;”; 35
- (l) deur die volgende omskrywing na die omskrywing van “trustrekening” in te voeg:
“ ‘uitvoeragent’ ’n agent wat as sodanig optree met betrekking tot enige landbouproduk in Deel A van Bylae 1 vermeld wat vir uitvoer bestem is;”; 40
- (m) deur die omskrywing van “varsprodukte-agent” deur die volgende omskrywing te vervang:
“ ‘varsprodukte-agent’ ’n agent wat as sodanig optree met betrekking tot ’n landbouproduk in Deel A van Bylae 1 vermeld [, optree.] op die grondslag dat die risiko van wins of verlies te alle tye op die prinsipaal rus, en— 45
 (a) by die toepassing van artikel 3(1)(a), ook ’n direkteur van ’n maatskappy, ’n trustee van ’n trust of ’n lid van ’n beslote korporasie wat optree as ’n varsprodukte-agent soos voormeld; 50
 (b) by die toepassing van artikels 12(5), 13(3)(b), 13(3)(c), 13(3)(d), 13(4), 14(5)(a), 16(6)(f), 16(6A), 22, 23, 24, 25, 26, 27 en 30, ook—
 (i) ’n direkteur van ’n maatskappy, ’n lid van ’n beslote korporasie of ’n trustee van ’n trust wat optree as ’n varsprodukte-agent soos voormeld; en 55
 (ii) enige persoon wat in diens is van ’n varsprodukte-agent en vir die werkgewer as ’n varsprodukte-agent optree soos voormeld;”; en
 (n) deur die volgende omskrywing by te voeg: 60
“ ‘verbruiker’ ’n verbruiker van ’n landbouproduk.”.

Substitution of section 3 of Act 12 of 1992

2. The following section is hereby substituted for section 3 of the principal Act:

“Constitution of council

3. (1) The Minister shall appoint as members of the council for a maximum period of three years— 5
- (a) two persons who in his or her opinion represent producers of the agricultural products set out in Part A of Schedule 1;
 - (b) two persons who in his or her opinion represent producers of the agricultural products set out in Part B of Schedule 1;
 - (c) three persons who in his or her opinion represent fresh produce agents; 10
 - (d) three persons who in his or her opinion represent livestock agents;
 - (e) three persons who in his or her opinion represent export agents;
 - (f) two persons designated by him or her;
 - (g) two persons who in his or her opinion represent consumers; and
 - (h) one person representing the Department. 15
- (2) The registrar and deputy registrar shall *ex officio* be members of the council.
- (3) A member may not serve more than two consecutive terms unless the Minister is of the opinion that the appointment for a further term will be beneficial to the council. 20
- (4) Whenever members or a member of the council has to be appointed in terms of subsection (1), the Minister shall call for nominations of suitable persons in the national media.
- (5) (a) If a member of a council ceases to hold office for any reason and vacates office, the Minister may appoint a person in his or her place for the unexpired part of the term of office of the vacating member. 25
- (b) If, upon the expiration of the term of office of the members of the council, the Minister has not yet appointed new members to take their place, the existing members shall continue in office until new members have been appointed to replace them. 30
- (6) A member of the council other than the registrar, deputy registrar and a member referred to in subsection (1)(h) shall be paid such remuneration or allowances from the funds of the council, as the council may determine.
- (7) No person may be appointed as a member of the council, who— 35
- (a) is not a South African citizen resident in South Africa;
 - (b) is an unrehabilitated insolvent in respect of whom the trustee of the insolvent estate has not certified that the insolvent is a fit and proper person to serve as a member of the council;
 - (c) has failed or is unable to comply in full with a judgment or order, including an order as to costs, given against him or her by a court of law in civil proceedings; 40
 - (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.”. 45

Substitution of section 4 of Act 12 of 1992

3. The following section is hereby substituted for section 4 of the principal Act—

“Vacating of office by members of council

4. A member of the council shall vacate his or her office if— 50
- (a) he or she becomes subject to any disqualification referred to in section 3(6);

Vervanging van artikel 3 van Wet 12 van 1992

2. Artikel 3 van die Hoofwet word hierby deur die volgende artikel vervang:

“Samestelling van raad

3. (1) Die Minister stel, vir 'n maksimum tydperk van drie jaar, as lede van die raad aan— 5
- (a) twee persone wat na sy of haar mening produsente verteenwoordig van die landbouprodukte in Deel A van Bylae 1 vermeld;
 - (b) twee persone wat na sy of haar mening produsente verteenwoordig van die landbouprodukte in Deel B van Bylae 1 vermeld;
 - (c) drie persone wat na sy of haar mening varsprodukte-agente verteenwoordig; 10
 - (d) drie persone wat na sy of haar mening lewendehawe-agente verteenwoordig;
 - (e) drie persone wat na sy of haar mening uitvoeragente verteenwoordig;
 - (f) twee persone deur hom of haar aangewys; 15
 - (g) twee persone wat na sy of haar mening verbruikers verteenwoordig; en
 - (h) een persoon wat die Departement verteenwoordig.
- (2) Die registrateur en adjunkregistrateur is *ex officio* lede van die raad.
- (3) 'n Lid mag nie vir meer as twee opeenvolgende termyne dien nie tensy die Minister van mening is dat die aanstelling vir 'n verdere termyn tot die raad se voordeel sal strek. 20
- (4) Wanneer lede of 'n lid van die raad ingevolge subartikel (1) aangestel moet word, moet die Minister benoemings van geskikte persone in die nasionale media versoek.
- (5) (a) Indien 'n lid van die raad om enige rede ophou om die amp te beklee en die amp ontruim, kan die Minister iemand in sy of haar plek aanstel vir die onverstreke gedeelte van die ampstermyn van die lid wat die amp ontruim. 25
- (b) Indien die Minister by die verstryking van die ampstermyn van die lede van die raad nog nie nuwe lede aangestel het om hul plek in te neem nie, gaan die bestaande lede voort om die amp te beklee totdat nuwe lede aangestel is om hulle te vervang. 30
- (6) 'n Lid van die raad, behalwe die registrateur, adjunkregistrateur en 'n lid in subartikel (1)(h) bedoel, word die besoldiging of toelaes uit die fondse van die raad betaal wat die raad bepaal. 35
- (7) Niemand mag as 'n lid van die raad aangestel word nie wat—
- (a) nie 'n Suid-Afrikaanse burger is wat in Suid-Afrika woonagtig is nie;
 - (b) 'n ongerehabiliteerde insolvent is ten opsigte van wie die trustee van die insolvente boedel nie verklaar het dat die insolvent 'n geskikte en gepaste persoon is om as lid van die raad te dien nie; 40
 - (c) in gebreke gebly het of nie in staat is nie om ten volle te voldoen aan 'n uitspraak of bevel, met inbegrip van 'n bevel met betrekking tot koste, wat teen hom of haar gegee is deur 'n geregshof in 'n sivilregtelike geding;
 - (d) skuldig bevind is aan 'n misdryf wat 'n element van oneerlikheid bevat of wat weens 'n ander misdryf tot 'n tydperk van gevangenisstraf gevonnis is; 45
 - (e) geestelik versteurd is; of
 - (f) artikel 7 van die 'Promotion of Equality and Prevention of Unfair Discrimination Act, 2000' (Wet No. 6 van 2000), oortree het en dit aldus deur 'n gelykheidshof bevind is.”. 50

Vervanging van artikel 4 van Wet 12 van 1992

3. Artikel 4 van die Hoofwet word hierby deur die volgende artikel vervang:

“Ontruiming van amp deur lede van raad

4. 'n Lid van die raad ontruim sy of haar amp indien— 55
- (a) hy of sy onbevoeg word soos in artikel 3(6) bedoel;

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

Substitution of section 5 of Act 12 of 1992

4. The following section is hereby substituted for section 5 of the principal Act:

“Chairperson of council

5. (1) The Minister shall designate a chairperson for the council from the members contemplated in section 3(1).

(2) When the chairperson is absent or is unable to perform his or her duties, the members of the council shall from among their number elect a person to act as chairperson until the chairperson is able to resume his or her duties or until a new chairperson is designated by the Minister.

(3) A person whose term of office as chairperson has expired through effluxion of time shall be eligible for re-election to that office: Provided that no person shall serve as chairperson for more than six consecutive years.”

Substitution of section 6 of Act 12 of 1992

5. The following section is hereby substituted for section 6 of the principal Act:

“Meetings and decisions of council

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

(2) The chairperson of the council may at any time convene an extraordinary meeting of the council to be held at a time and place determined by him or her and shall, upon a written request signed by not less than three members of the council, convene an extraordinary meeting thereof to be held within two weeks after the date of receipt of such request, at a time and place determined by him or her.

(3) The person presiding at a meeting of the council shall determine the procedure at that meeting.

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

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

(c) In the event of an equality of votes on any matter the person presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

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

Amendment of section 7 of Act 12 of 1992

6. Section 7 of the principal Act is hereby amended by—

- (a) the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs, respectively:

- (b) hy of sy sonder verlof van die raad van meer as twee opeenvolgende vergaderings van die raad afwesig was;
- (c) hy of sy as lid van die raad bedank en die registrateur skriftelik daarvan in kennis gestel het;
- (d) hy of sy nie langer 'n bevoegde persoon is om in die raad te dien nie; of
- (e) in die geval van die registrateur, hy of sy nie meer in die raad se diens is nie.”.

Vervanging van artikel 5 van Wet 12 van 1992

4. Artikel 5 van die Hoofwet word hierby deur die volgende artikel vervang: 10

“Voorsitter van raad

5. (1) Die Minister wys 'n voorsitter vir die raad aan vanuit die lede in artikel 3(1) beoog.
- (2) Wanneer die voorsitter afwesig is of nie in staat is om sy of haar pligte uit te voer nie, kies die lede van die raad uit hul eie geledere 'n persoon om as voorsitter waar te neem totdat die voorsitter in staat is om sy of haar pligte te hervat of totdat die Minister 'n nuwe voorsitter aanwys.
- (3) Iemand wie se ampstermyn as voorsitter weens tydverloop verstryk het, kan tot die amp herkies word: Met dien verstande dat niemand vir meer as ses opeenvolgende jare as voorsitter mag dien nie.”.

Vervanging van artikel 6 van Wet 12 van 1992

5. Artikel 6 van die Hoofwet word hierby deur die volgende artikel vervang:

“Vergaderings en besluite van raad

6. (1) Die raad vergader op die tye en plekke wat die voorsitter van tyd tot tyd bepaal.
- (2) Die voorsitter van die raad kan te eniger tyd 'n buitengewone vergadering van die raad belê wat gehou moet word op 'n tyd en plek deur hom of haar bepaal, en moet op skriftelike versoek deur minstens drie lede van die raad onderteken, 'n buitengewone vergadering van die raad belê wat binne twee weke vanaf die datum van ontvangs van sodanige versoek gehou moet word op 'n tyd en plek deur hom of haar bepaal.
- (3) Die persoon wat by 'n vergadering van die raad voorsit, bepaal die prosedure by daardie vergadering.
- (4) (a) Die meerderheid van al die lede van die raad vorm 'n kworum vir 'n vergadering van die raad.
- (b) Die beslissing van 'n meerderheid van die lede van die raad wat op 'n vergadering van die raad aanwesig is, maak 'n besluit van die raad uit.
- (c) By 'n staking van stemme oor 'n aangeleentheid het die persoon wat by die vergadering voorsit, benewens sy of haar beraadslagende stem, ook 'n beslissende stem.
- (5) Geen besluit deur die raad geneem of handeling op gesag van die raad verrig, is ongeldig nie bloot vanweë 'n toevallige vakature in die raad of omdat iemand wat nie geregtig was om as lid van die raad sitting te neem nie, as so 'n lid sitting geneem het op die tydstip waarop die besluit geneem of die handeling gemagtig is, indien die besluit geneem of handeling gemagtig is deur die meerderheid van die lede van die raad wat toe aanwesig was en geregtig was om as lede van die raad sitting te neem.”.

Wysiging van artikel 7 van Wet 12 van 1992

6. Artikel 7 van die Hoofwet word hierby gewysig deur—

- (a) paragrawe (a) en (b) van subartikel (1) deur onderskeidelik die volgende paragrawe te vervang: 50

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“(a) There shall be **[two]** three executive committees of the council which shall deal with matters relating to the occupations of export agent, fresh produce agent and livestock agent, respectively.

(b) The executive committees shall consist of the members of the council referred to in paragraphs **[(b)(i) and (c), and paragraphs (b)(ii) and (d), respectively, of section 3(1).]** (c) to (e) of section 3(1), respectively.”; and 5

(b) the deletion in subsection (1) of paragraph (d).

Substitution of section 8 of Act 12 of 1992

7. The following section is hereby substituted for section 8 of the principal Act: 10

“Registrar and deputy registrar

8. (1) The work incidental to the performance of the functions of the council and its committees shall be performed by the registrar and deputy registrar, who shall be appointed by the council in consultation with the Minister. 15

(2) The registrar—

(a) may delegate or assign to a person appointed or designated by him or her any power or duty conferred or imposed upon him or her by or under this Act;

(b) is accountable to the council and responsible for— 20

(i) the implementation of policy, rules and the codes of conduct determined by the council in accordance with this Act;

(ii) the day-to-day administrative functioning of the council, including the registration of agents with the council, the keeping of records of account, inspections and investigations into the affairs of agents and the institution and conducting of disciplinary or other proceedings against agents; and 25

(iii) reporting to the council on his or her activities in terms of subparagraphs (i) and (ii);

(c) shall be appointed on such terms and conditions as the council may decide.” 30

Substitution of section 9 of Act 12 of 1992

8. The following section is hereby substituted for section 9 of the principal Act:

“Objects of council

9. The objects of the council shall be to regulate the occupations of fresh produce, export and livestock agents and to maintain and enhance the status and dignity of those occupations and the integrity of persons practising those occupations.” 35

Amendment of section 10 of Act 12 of 1992

9. Section 10 of the principal Act is hereby amended by the substitution for paragraphs (a), (b) and (c) of the following paragraphs, respectively: 40

“(a) to **[perform any functions in connection with agents entrusted to the council by this Act or any other law]** formulate policy;

(b) to **[gather information in connection with agents and persons applying for the issue of fidelity fund certificates]** establish rules and codes of conduct; 45

(c) to hire, purchase or otherwise acquire such movable or immovable property or such interest in movable or immovable property as the council may deem necessary for the effective performance of its functions, and to let, encumber, sell or otherwise dispose of property so purchased or acquired; and”.

- “(a) Daar is [twee] drie uitvoerende komitees van die raad wat met aangeleenthede betreffende onderskeidelik die beroepe van uitvoeragent, varsprodukte-agent en lewendehawe-agent handel.
- (b) Die uitvoerende komitees bestaan [onderskeidelik] uit die lede van die raad in paragrawe [(b)(i) en (c), en paragrawe (b)(ii) en (d)], (c) tot (e) onderskeidelik van artikel 3(1) bedoel.”; en
- (b) deur paragraaf (d) van subartikel (1) te skrap.

Vervanging van artikel 8 van Wet 12 van 1992

7. Artikel 8 van die Hoofwet word hierby deur die volgende artikel vervang:

“Registrateur en adjunkregistrateur

8. (1) Die werk verbonde aan die verrigting van die werksaamhede van die raad en sy komitees word verrig deur die registrateur en adjunkregistrateur, wat deur die raad in oorleg met die Minister aangestel word.

(2) Die registrateur—

- (a) kan 'n bevoegdheid of plig wat aan hom of haar by of kragtens hierdie Wet verleen of opgelê is, aan 'n persoon deur hom of haar aangestel of aangewys, delegeer of opdra;
- (b) is aanspreeklik teenoor die raad en verantwoordelik vir—
- (i) die implementering van beleid, reëls en gedragskodes deur die raad in ooreenstemming met hierdie Wet bepaal;
 - (ii) die dag-tot-dag administratiewe funksionering van die raad, met inbegrip van die registrasie van agente by die raad, die hou van rekeningkundige rekords, inspeksies en ondersoeke na die bedrywighede van agente, en die instelling en uitvoering van dissiplinêre of ander verrigtinge teen agente; en
 - (iii) rapportering aan die raad betreffende sy of haar bedrywighede ingevolge subparagrawe (i) en (ii);
- (c) word aangestel op die bedinge en voorwaardes wat die raad bepaal.”.

Vervanging van artikel 9 van Wet 12 van 1992

8. Artikel 9 van die Hoofwet word hierby deur die volgende artikel vervang:

“Oogmerke van raad

9. Die oogmerke van die raad is om die beroepe van varsprodukte-, uitvoer- en lewendehawe-agente te reël en om die status en waardigheid van daardie beroepe en die integriteit van persone wat daardie beroepe beoefen, te handhaaf en te bevorder.”.

Wysiging van artikel 10 van Wet 12 van 1992

9. Artikel 10 van die Hoofwet word hierby gewysig deur paragrawe (a), (b) en (c) deur onderskeidelik die volgende paragrawe te vervang:

- “(a) [enige werksaamhede in verband met agente wat by hierdie Wet of enige ander wet aan die raad opgedra is, te verrig] beleid te formuleer;
- (b) [inligting in te win in verband met agente en persone wat om die uitreiking van getrouheidsfondssertifikate aansoek doen] reëls en gedragskodes in te stel;
- (c) [die] roerende of onroerende goed of die belang in roerende of onroerende goed wat die raad vir die doeltreffende verrigting van sy werksaamhede nodig ag, te huur, te koop of andersins te verkry, en goed wat aldus gekoop of verkry is, te verhuur, [of] te beswaar, te verkoop of andersins daaroor te beskik; en”.

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Amendment of section 11 of Act 12 of 1992

10. Section 11 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) all other **[money]** moneys which may accrue to the council from any other source.”;

- (b) by the addition of the following subsections after subsection (2):

“(2A) The council may, subject to such terms and conditions as it may deem fit—

- (a) make grants with regard to—

(i) research in fields of activity relevant to the business of agents in general;

(ii) the maintenance and promotion of the standard of conduct of agents in general;

(iii) the maintenance and promotion of the training standards of agents in general;

- (b) pay an honorarium or remuneration to any person or institution for services with the object of enhancing the standard of conduct of agents in general, rendered at the request of the council; and

- (c) utilize such amount as it may determine for the purposes of—

(i) advertising and promoting the services and facilities offered by agents in general; or

(ii) promoting public awareness in respect of matters relating to the purchase of agricultural products referred to in Part A or B of Schedule 1.

(2B) The council may at any time revoke any grant referred to in subsection (3)(a).”;

- (c) by the substitution for subsection (5) of the following subsection:

“(5) The financial year of the council shall end **[in each year upon the date determined by the council from time to time]** on 31 March in each year and the council shall report annually on its activities to the Minister.”;

- (d) by the insertion after subsection (5) of the following subsection:

“(5A) The council shall, at least three months prior to the start of its financial year, provide to the Minister for his or her information a business plan of the forthcoming financial year containing at least—

- (a) the budget of the council for that forthcoming year;

(b) particulars about any training, promotional or other activities that the council plans to undertake during that year;

(c) such other particulars as the Minister may request.”; and

- (e) by the substitution for subsection (10) of the following subsection:

“(10) The functions of the council in terms of this section may be performed separately in respect of fresh produce agents, export agents and livestock agents.”.

Substitution of section 12 of Act 12 of 1992

11. The following section is hereby substituted for section 12 of the principal Act:

“Establishment and control of fidelity [funds] fund

12. (1) There **[are]** is hereby established **[two funds]** a fund to be known as the Fresh Produce Agents Fidelity Fund **[and the Livestock Agents Fidelity Fund, respectively]**.

(2) The **[Fresh Produce Agents Fidelity Fund]** fund shall consist of—

- (a) money in the fidelity guarantee fund established under section 27 of the Agricultural Produce Agency Sales Act, 1975 (Act No. 12 of 1975);

(b) each amount which is immediately prior to the commencement of this section payable to or on the account of the fund referred to in paragraph (a), and is paid on or after such date of commencement;

Wysiging van artikel 11 van Wet 12 van 1992

10. Artikel 11 van die Hoofwet word hierby gewysig—

- (a) deur paragraaf (b) van subartikel (1) deur die volgende paragraaf te vervang:
 “(b) enige ander [geld] gelde wat die raad uit ’n ander bron toeval.”;
- (b) deur die volgende subartikels na subartikel (2) by te voeg: 5
 “(2A) Die raad kan, behoudens die bedinge en voorwaardes wat hy goeddink—
 (a) toekennings doen met betrekking tot—
 (i) navorsing in bedryfsvelde wat betrekking het op die besigheid van agente in die algemeen; 10
 (ii) die handhawing en bevordering van die gedragstandaarde van agente in die algemeen;
 (iii) die handhawing en bevordering van die opleidingstandaarde van agente in die algemeen;
 (b) ’n honorarium of vergoeding betaal aan enige persoon of instansie vir dienste met die doel om die standaard van gedrag van agente in die algemeen te bevorder, gelewer op versoek van die raad; en
 (c) die bedrag wat dit bepaal, te gebruik vir doeleindes van—
 (i) die advertering en bevordering van die dienste en fasiliteite in die algemeen deur agente gebied; 20
 (ii) bevordering van die openbare bewussyn met betrekking tot die koop van landbouprodukte in Deel A of B van Bylae 1 bedoel.
 (2B) Die raad kan te eniger tyd ’n toekenning in subartikel (3)(a) bedoel, herroep.”;
- (c) deur subartikel (5) deur die volgende subartikel te vervang: 25
 “(5) Die boekjaar van die raad eindig in elke jaar op [die datum wat die raad van tyd tot tyd bepaal] 31 Maart van daardie jaar en die raad moet jaarliks oor sy werksaamhede aan die Minister verslag doen.”;
- (d) deur die volgende subartikel na subartikel (5) in te voeg: 30
 “(5A) Die raad moet, minstens drie maande voor die aanvang van sy boekjaar, aan die Minister vir sy of haar inligting ’n besigheidsplan vir die daaropvolgende boekjaar voorsien, wat ten minste—
 (a) die begroting van die raad vir daardie komende boekjaar bevat;
 (b) besonderhede omtrent enige opleiding, promosie of ander aktiwiteite bevat wat die raad beplan om gedurende daardie jaar te 35
 onderneem;
 (c) die ander besonderhede bevat wat die Minister versoek.”; en
- (e) deur subartikel (10) deur die volgende subartikel te vervang: 40
 “(10) Die werksaamhede van die raad ingevolge hierdie artikel kan afsonderlik ten opsigte van varsprodukte-agente, uitvoeragente en lewendehawe-agente verrig word.”.

Vervanging van artikel 12 van Wet 12 van 1992

11. Artikel 12 van die Hoofwet word hierby deur die volgende artikel vervang:

“Instelling en beheer van [getrouheidsfondse] getrouheidsfonds

12. (1) Daar word hierby [twee fondse] ’n fonds ingestel [met onderskeidelik die name] wat die [Varsprodukte-agente-getrouheidsfonds] Varsprodukte-agente Getrouheidsfonds heet [en die Lewendehawe-agente-getrouheidsfonds]. 45

(2) Die [Varsprodukte-agente-getrouheidsfonds] Varsprodukte-agente Getrouheidsfonds bestaan uit— 50

- (a) die bedrag geld in die getrouheidswaARBorgfonds ingestel kragtens artikel 27 van die Wet op die Agentskapsverkoop van Landbouprodukte, 1975 (Wet No. 12 van 1975);
 (b) elke bedrag wat onmiddellik voor die inwerkingtreding van hierdie artikel aan of vir die rekening van die die fonds in paragraaf (a) 55
 bedoel, betaalbaar is, en op of na sodanige datum van inwerkingtreding betaal word;

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- (c) money paid to or on account of the [said] fund in terms of subsection (4) by fresh produce agents;
- (d) money recovered by or on behalf of the [said] fund in terms of this Act;
- [(e) money received by the said fund by virtue of a contract of insurance referred to in section 15;]
- [(f)](e) income derived from the investment of money in the [said] fund; and
- [(g)](f) any other money accruing to the [said] fund from any other source.
- [(3) The Livestock Agents Fidelity fund shall consist of—]
- (a) money paid to or on account of the said fund in terms of subsection (4) by livestock agents;
- (b) money recovered by or on behalf of the said fund in terms of this Act;
- (c) money received by the said fund by virtue of a contract of insurance referred to in section 15;
- (d) income derived from the investment of money in the said fund; and
- (e) any other money accruing to the said fund from any other source.]
- [(4)] (3) (a) Each fresh produce agent other than a person employed by such an agent [who is the holder of a fidelity fund certificate] shall annually before or on a date determined by the council [for this purpose,] pay to the council for the account of the [applicable] fund an amount calculated on such basis or in such manner as the council may determine.
- (b) A determination by the council in terms of paragraph (a) shall be made with due regard to the purpose for which the fund [concerned] has been established, as well as the present assets and future obligations of [that] the fund.
- [(5)] (4) (a) Subject to the provisions of this Act, [The funds are] the fund is established to [compensate persons in accordance with the provisions of this Act] reimburse producers for [monetary] direct losses suffered by them as a result of [the failure of]—
- (i) [commission agents as defined in section 1 of the Agricultural Produce Agency Sales Act, 1975, who were members of the fidelity guarantee fund referred to in subsection (2)(a) of this section prior to the commencement of this section, to comply with the provisions of the said Act and the regulations made thereunder; and] theft, committed by a fresh produce agent, of any money or agricultural produce entrusted by or on behalf of the producers thereof to him or her as a fresh produce agent; and
- (ii) [agents who are in possession of valid fidelity fund certificates, to comply with the provisions of this Act and the rules] dishonest conduct by a fresh produce agent in so far as such conduct relates to agricultural produce.
- [(b) Compensation in terms of paragraph (a) shall—]
- (i) only be payable from the fund referred to in subsection (2) if it relates to an agricultural product specified in Part A of Schedule 1; and
- (ii) only be payable from the fund referred to in subsection (3) if it relates to an agricultural product specified in Part B of Schedule 1.]
- [(c)] (b) Notwithstanding the provisions of paragraph (a), the Minister may, if he or she is of the opinion that the balance of [a particular] the fund is sufficient to meet the obligations contemplated in that paragraph, approve that such portion of the income referred to in [subsections] subsection (2) [(f)](e) [and 3(d)] as may be determined by him or her, be made available to the council for utilization as contemplated in section 11(2).
- [(6)] (5) The [funds] fund shall be controlled and administered by the council in accordance with the provisions of this Act.
- [(7) The council shall open separate accounts with a deposit-taking institution or building society in which the money in the funds is to be kept.]

- (c) geld wat ingevolge subartikel (4) aan of vir die rekening van [genoemde] die fonds deur varsprodukte-agente betaal is;
- (d) geld wat deur of namens [genoemde] die fonds ingevolge hierdie Wet verhaal word;
- [(e) **geld wat genoemde fonds uit hoofde van 'n versekeringskontrak in artikel 15 bedoel, ontvang;**]
- [(f)](e) inkomste verkry uit die belegging van geld in [genoemde] die fonds; en
- [(g)](f) enige ander geld wat [genoemde] die fonds uit 'n ander bron toeval.
- 10
- [(3) **Die Lewendehawe-agente-getrouheidsfonds bestaan uit—**
- (a) **geld wat ingevolge subartikel (4) aan of vir die rekening van genoemde fonds deur lewendehawe-agente betaal is;**
- (b) **geld wat deur of namens genoemde fonds ingevolge hierdie Wet verhaal word;**
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- (c) **geld wat genoemde fonds uit hoofde van 'n versekeringskontrak in artikel 15 bedoel, ontvang;**
- (d) **inkomste verkry uit die belegging van geld in genoemde fonds; en**
- (e) **enige ander geld wat genoemde fonds uit 'n ander bron toeval.]**
- 20
- [(4)] (3) (a) Elke [agent wat die houer is van 'n getrouheidsfondsertifikaat] varsprodukte-agent buiten 'n persoon in diens van so 'n agent moet jaarliks voor of op 'n datum [vir dié doel] deur die raad bepaal, 'n bedrag wat bereken is op die grondslag of op die wyse deur die raad bepaal, aan die raad vir die rekening van die [betrokke] fonds betaal.
- (b) 'n Bepaling deur die raad ingevolge paragraaf (a) word gemaak met 25
- behoorlike inagneming van die doel waarvoor die [betrokke] fonds ingestel is, asook die huidige bates en toekomstige verpligtinge van [daardie] die fonds.
- [(5)] (4) (a) Behoudens die bepalings van hierdie Wet, [Die fondse] word 30
- die fonds ingestel om produsente [persone ooreenkomstig die bepalings van hierdie Wet] te vergoed vir [geldelike] regstreekse verliese deur hulle gely vanweë [die versuim van]—
- (i) [kommissie-agente soos omskryf in artikel 1 van die Wet op die 35
- Agentskapverkoping van Landbouprodukte, 1975, wat voor die inwerkingtreding van hierdie artikel lede van die getrouheidswaarborgfonds in subartikel (2)(a) van hierdie artikel 40
- bedoel, was, om die bepalings van genoemde Wet en die regulasies daarkragtens uitgevaardig, na te kom; en] diefstal, gepleeg deur 'n varsprodukte-agent, van enige geld of landbouproduk wat aan hom of haar as varsprodukte-agent deur of ten behoeve van die produsente daarvan toevertrou is; en
- (ii) [agente wat in besit van geldige getrouheidsfondsertifikate is, om 45
- die bepalings van hierdie Wet en die reëls na te kom.] oneerlike gedrag deur 'n varsprodukte-agent in soverre daardie gedrag op landbouprodukte van toepassing is.
- [(b) Vergoeding ingevolge paragraaf (a)—
- (i) is slegs uit die fonds in subartikel (2) bedoel betaalbaar indien dit 50
- op 'n landbouproduk in Deel A van Bylae 1 vermeld, betrekking het; en
- (ii) is slegs uit die fonds in subartikel (3) bedoel betaalbaar indien dit 50
- op 'n landbouproduk in Deel B van Bylae 1 vermeld, betrekking het.]
- [(c)] (b) Ondanks die bepalings van paragraaf (a) kan die Minister, indien hy of sy van oordeel is dat die saldo [in 'n bepaalde] van die fonds 55
- voldoende is om die verpligtinge in daardie paragraaf beoog, na te kom, goedkeur dat die gedeelte van die inkomste in [subartikels] subartikel (2) [(f)] (e) [en (3)(d)] bedoel wat hy of sy bepaal, aan die raad beskikbaar gestel word vir aanwending soos in artikel 11(2) beoog.
- [(6)] (5) Die [fondse] fonds word ooreenkomstig die bepalings van 60
- hierdie Wet deur die raad beheer en bestuur.
- [(7) **Die raad moet by 'n depositonemende instelling of bouvereniging afsonderlike rekeninge open waarin die geld in die onderskeie fondse gehou moet word.]**

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- (c) if the loss occurred as a result of the conduct, referred to in section 12(5), of a fresh produce agent whose fidelity has been guaranteed by any person, either in general or in respect of the particular transaction, to the extent to which the transaction is covered by the guarantee; and
- (d) if the loss occurred as a result of the conduct, referred to in section 12(5), of a fresh produce agent after such claimant received a written notification from the registrar warning him or her against the employment or continued employment of such fresh produce agent.
- (4) A claim for reimbursement contemplated in section 12(5) shall be limited, in the case of money entrusted to a fresh produce agent, to the amount actually handed over, without interest, and, in the case of agricultural produce, to an amount equal to the average market value of such produce on the date when written demand was first made for its delivery, or if there is no average market value, the fair market value as at that date, without interest.”.

Substitution of section 14 of Act 12 of 1992

13. The following section is hereby substituted for section 14 of the principal Act:

“Claims against [funds] fund and actions against council

14. (1) A claim for the reimbursement from [a] the fund of a monetary loss that arose under the circumstances set out in section 12(5) shall, subject to the provisions of section 13(3), be lodged with the council.

(2) If the council admits such a claim, a payment shall be made to the claimant [concerned] in accordance with the provisions of section 13(1): Provided that the amount of such payment shall not be more than the difference between the amount of the loss suffered by the claimant [concerned], and the amount or value of all moneys or other benefits received or entitled to be received by that claimant, whether gratuitously or otherwise, from any other source.

(3) If the council rejects a claim, an action in respect of that claim may be instituted against the council in the court within whose jurisdiction the [cause of the claim arose,] principal place of business of the council is situated [provided]—

- (a) if the claimant has [, in the opinion of the council,] exhausted all legal remedies against the fresh produce agent in respect of whom the claim arose; or
- (b) with leave of the council, before all legal remedies against the said agent have been exhausted.

(4) In any action against the council [in respect of a fund,] all defences which would have been available to the fresh produce agent in respect of whom the claim arose, shall be available to the council.

- (5) When the council settles in full or in part any claim under this Act—
- (a) there shall pass to the council, to the extent of such settlement, all the rights and remedies of the claimant in respect of such claim against the fresh produce agent [concerned or any other person] or, if applicable, in the case of the death, insolvency or other legal incapacity of such fresh produce agent [or other person], against the estate of the said fresh produce agent [or other person]; and
- (b) the council may use any security furnished by or on behalf of [an] a fresh produce agent in terms of section 17, to reimburse the fund [concerned] for the amount for which the claim [concerned] was settled.

(6) (a) The council may in its discretion decide on the order in which claims admitted by the council or awarded by the court shall be paid out of the [applicable] fund.

- (c) indien die eis voorkom as gevolg van die gedrag, bedoel in artikel 12(5), van 'n varsprodukte-agent wie se getrouheid gewaarborg word deur enige persoon, hetsy in die algemeen of ten opsigte van die bepaalde transaksie, in die mate waarin dit deur die waarborg gedek word; en 5
- (d) indien die eis voorkom as gevolg van die gedrag, bedoel in artikel 12(5), van 'n varsprodukte-agent, nadat sodanige eiser skriftelike kennisgewing ontvang het vanaf die registrateur wat hom of haar waarsku teen die aanstelling of voortgesette aanstelling van sodanige varsprodukte-agent. 10
- (4) 'n Eis om vergoeding in artikel 12(5) beoog, word beperk, in die geval van geld aan 'n varsprodukte-agent toevertrou, tot die bedrag inderdaad oorbetaal, sonder rente, en, in die geval van landbouprodukte, tot 'n bedrag gelykstaande aan die gemiddelde markwaarde van sodanige produkte op die datum waarop lewering daarvan vir die eerste keer skriftelik versoek is, of indien daar geen gemiddelde markwaarde is nie, die redelike markwaarde soos op daardie datum, sonder rente.”. 15

Vervanging van artikel 14 van Wet 12 van 1992

13. Artikel 14 van die Hoofwet word hierby deur die volgende artikel vervang:

“Eise teen [fondse] fonds en aksies teen raad 20

14. (1) 'n Eis vir die vergoeding uit [**n**] die fonds van 'n geldelike verlies wat onder die omstandighede in artikel 12(5) uiteengesit, ontstaan het, moet, behoudens die bepalinge van artikel 13(3), by die raad ingedien word.
- (2) Indien die raad so 'n eis erken, word 'n betaling ooreenkomstig die bepalinge van artikel 13(1) aan die [**betrokke**] eiser gedoen: Met dien verstande dat die bedrag van sodanige betaling nie groter mag wees nie as die verskil tussen die bedrag van die verlies deur die [**betrokke**] eiser gely, en die bedrag of waarde van alle geld of ander voordele wat daardie eiser uit 'n ander bron ontvang het of geregtig is om te ontvang, hetsy by wyse van gratifikasie of andersins. 25
- (3) Indien die raad 'n eis verwerp, kan 'n aksie teen die raad ten opsigte van daardie eis ingestel word in die hof binne wie se jurisdiksie die [**skuldoorsaak ontstaan het**] hoofplek van besigheid van die raad geleë is, [**mits**]— 30
- (a) indien die eiser [**volgens die oordeel van die raad**] alle beskikbare regsmiddels aangewend het teen die [**agent**] varsprodukte-agent ten aansien van wie die eis ontstaan het; of 35
- (b) met toestemming van die raad, voor alle beskikbare regsmiddels teen die genoemde agent aangewend is. 40
- (4) In 'n aksie teen die raad [**ten opsigte van 'n fonds**] is alle verwer wat beskikbaar sou gewees het vir die [**agent**] varsprodukte-agent ten aansien van wie die eis ontstaan het, vir die raad beskikbaar. 45
- (5) Wanneer die raad enige eis kragtens hierdie Wet ten volle of gedeeltelik vereffen—
- (a) gaan daar op die raad, tot die omvang van sodanige vereffening, alle regte en regsmiddele oor wat die eiser ten opsigte van daardie eis teen die [**betrokke agent of iemand anders**] varsprodukte-agent of, indien toepaslik, in die geval van die dood, insolvensie of ander regsonbevoegdheid van daardie [**agent of ander persoon**] varsprodukte-agent, teen die boedel van bedoelde [**agent of ander persoon**] varsprodukte-agent het; en 50
- (b) kan die raad sekuriteit wat ingevolge artikel 17 deur of ten behoeve van 'n [**agent**] varsprodukte-agent verstrekk is, gebruik om die [**betrokke**] fonds te vergoed vir die bedrag waarvoor die [**betrokke**] eis vereffen is. 55
- (6) (a) Die raad kan na goeë dunnke beslis oor die volgorde waarin eise wat deur die raad erken of deur die hof toegeken is, uit die [**toepaslike**] fonds betaal word.

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(b) If, at any time the amount to the credit of [a] the fund is insufficient to pay all such claims, the council [shall pay those claims proportionally to the amount available in the fund concerned at that time.] may determine the order in which claims in terms of subsection (1) shall be settled, and may, if the revenue of the fund is not sufficient to settle all claims in full, settle any claim in whole or in part. 5

(c) Without limiting the discretion of the council it shall, in applying the fund towards such settlement of claims, consider—

- (i) the relative degrees of hardship suffered or likely to be suffered by the various claimants should their claims against the fund not be settled in whole or in part; 10
- (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; 15
- (iii) in equal circumstances, the priority of claimants according to the dates when the claims were admitted by the council, as the case may be.

[(c)](d) A proportional payment under paragraph (b) shall be deemed to be full and final payment in respect of the claim [concerned].”

Repeal of section 15 of Act 12 of 1992

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14. Section 15 of the principal Act is hereby repealed.

Substitution of section 16 of Act 12 of 1992

15. The following section is hereby substituted for section 16 of the principal Act:

“Prohibition on acting as agent under certain circumstances

16. (1) (a) Subject to the provisions of subsection (2), no person shall perform any act as [an] a fresh produce agent unless he or she is the holder of a [valid] fidelity fund certificate issued to him or her and to every employee contemplated in the definition of ‘fresh produce agent’ in section 1 and, if such person is— 25

- (i) a company, to every director of that company; 30
 - (ii) a close corporation, to every member of that corporation; or
 - (iii) a trust, to every trustee of that trust,
- who acts as an agent on behalf of that company, close corporation or trust contemplated in the definition of ‘fresh produce agent’ in section 1.

(b) [The provisions of paragraph (a) shall, in the case of a partnership, apply to each member of that partnership] Subject to the provisions of subsection (2), no person shall perform any act as an export agent or a livestock agent unless a registration certificate has been issued to him or her. 35

(2) No [person] agent shall receive remuneration for the performance of an act as an agent, unless— 40

- (a) in the case of a fresh produce agent, the act has been performed by the holder of a [valid] fidelity fund certificate which has not been suspended; or
- (b) [the council has under subsection (3) exempted such person from complying with the provisions of subsection (1)] in the case of an export or livestock agent, the act has been performed by the holder of a registration certificate. 45

(3) [(a) The council may on application grant written exemption from the provisions of subsection (1) to a person— 50

- (i) who only occasionally acts as an agent; and

(b) Indien die bedrag tot krediet van [’n] die fonds te eniger tyd onvoldoende is om al sodanige eise te betaal, kan die raad [die betrokke eise betaal na verhouding van die bedrag wat op daardie tydstip in die betrokke fonds beskikbaar is.] die volgorde bepaal waarin eise inge- 5
volge subartikel (1) vereffen word en kan, indien die inkomste van die
fonds nie voldoende is om alle eise ten volle te vereffen nie, ’n eis ten volle
of gedeeltelik vereffen.

(c) Sonder om die diskresie van die raad te beperk, moet die raad, by die aanwending van die fonds tot sodanige vereffening van eise—

- (i) die relatiewe grade van ontbering wat gely word of waarskynlik gely 10
 sal word deur die onderskeie eisers sou hul eise teen die fonds nie ten volle of gedeeltelik vereffen word nie;
- (ii) behoudens subparagraaf (i), die volle vereffening van eise wat nie die 15
 bedrag wat die Minister by kennisgewing in die *Staatskoerant* voorskryf, te bowe gaan nie, behalwe in spesiale omstandighede, voordat eise vir bedrae wat sodanige bedrae oorskry vereffen word in ’n groter mate as sodanige voorgeskrewe bedrae;
- (iii) in dieselfde omstandighede, die voorrang van eisers na gelang van die 20
 datums wanneer die eise deur die raad erken is, na gelang van die geval,

in oorweging neem.

[(c)] (d) ’n [Gedeeltelike] Proporsionele betaling kragtens paragraaf (b) word geag volle en afdoende betaling ten opsigte van die [betrokke] eis te wees.”.

Herroeping van artikel 15 van Wet 12 van 1992

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14. Artikel 15 van die Hoofwet word hierby herroep.

Vervanging van artikel 16 van Wet 12 van 1992

15. Artikel 16 van die Hoofwet word hierby deur die volgende artikel vervang:

“Verbod op optrede as agent onder sekere omstandighede

16. (1) (a) Behoudens die bepalings van subartikel (2) mag niemand 30
enige handeling as [agent optree] ’n varsprodukte-agent verrig nie tensy
hy of sy die houer van ’n [geldige] getrouheidsfondssertifikaat is, uitgereik
aan hom of haar en aan elke werknemer beoog in die omskrywing van
‘varsprodukte-agent’ in artikel 1 en, indien sodanige persoon—

- (i) ’n maatskappy is, aan elke direkteur van daardie maatskappy; 35
- (ii) ’n beslote korporasie is, aan elke lid van daardie korporasie; of
- (iii) ’n trust is, aan elke trustee van daardie trust,
 wat as agent optree namens daardie maatskappy, beslote korporasie of trust
 beoog in die omskrywing van ‘varsprodukte-agent’ in artikel 1.

(b) [Die bepalings van paragraaf (a) is in die geval van ’n vennootskap 40
op elke lid van daardie vennootskap van toepassing] Behoudens die
bepalings van subartikel (2) mag niemand enige handeling as ’n
uitvoeragent of lewendehawe-agent verrig nie tensy ’n registrasiesertifikaat
aan hom of haar uitgereik is.

(2) [Niemand] Geen agent mag vergoeding ontvang vir ’n handeling as ’n 45
 agent verrig nie, tensy—

- (a) in die geval van ’n varsprodukte-agent, die handeling verrig is deur die 50
 houer van ’n [geldige] getrouheidsfondssertifikaat wat nie opgeskort
 is nie; of
- (b) [die raad kragtens subartikel (3) sodanige persoon vrygestel het
 van nakoming van die bepalings van subartikel (1)] in die geval
 van ’n uitvoer- of lewendehawe-agent, die handeling verrig is deur die
 houer van ’n registrasiesertifikaat.

(3) [(a) Die raad kan op aansoek skriftelik vrystelling van die 55
 bepalings van subartikel (1) verleen aan iemand—

- (i) wat slegs by geleentheid as agent optree; en

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(ii) whose scope of business as an agent, in the opinion of the council does not justify the issue of a fidelity fund certificate.

(b) Such exemption shall be granted subject to such conditions as the council may in each case determine.

(a) Every prospective fresh produce agent shall, within the prescribed period and in the prescribed manner, apply to the council for a fidelity fund certificate, and such application shall be accompanied by the security referred to in section 17(1) and the application fee determined by the council. 5

(b) Every prospective export agent and livestock agent shall, within the prescribed period and in the prescribed manner, apply to the council for a registration certificate, and such application shall be accompanied by the application fee determined by the council. 10

(c) If the council, upon receipt of any application referred to in subsection (1) or (2) and the security (where applicable) and application fee referred to in those subsections, is satisfied that the applicant is not disqualified in terms of subsection (6) from being issued with a fidelity fund or registration certificate, the council shall in the prescribed form issue to the applicant a fidelity fund certificate or a registration certificate, as the case may be. 15 20

(d) Any document purporting to be a fidelity fund certificate or registration certificate which has been issued contrary to the provisions of this Act shall be null and void and shall on demand be returned to the council.

(4) An application for a fidelity fund certificate shall be made in the manner determined by the council, and shall be accompanied by the applicable amount determined by the council for this purpose.] 25

[(5) After consideration of any such application the council shall, subject to the provisions of subsection (6), issue to the applicant a fidelity fund certificate in the form determined by the council.] 30

(6) [The council may refuse to issue a] No fidelity fund certificate or registration certificate, as the case may be, shall be issued to [a person who] any person—

(a) who has at any time by reason of improper conduct been dismissed from a position of trust; 35

(b) who has at any time been convicted of an offence involving an element of dishonesty;

(c) who is of unsound mind;

[(d) has at any time been convicted of a contravention of the Agricultural Produce Agency Sales Act, 1975 (Act No. 12 of 1975), and whose registration as a commission agent as defined in the said Act, was as a result thereof cancelled in terms of section 6 of that Act;] 40

(e) who has, after an investigation in terms of section 24, been found guilty of improper conduct[, if the council has as a result thereof withdrawn the fidelity fund certificate previously issued to the person concerned]; 45

(f) who is an unrehabilitated insolvent in respect of whom the trustee of the insolvent estate has not certified that the insolvent is a fit and proper person to assume a position of trust and to be issued with a fidelity fund certificate or registration certificate, as the case may be; [or] 50

(g) in the case of a company [or co-operative], close corporation or other juristic person, which is being wound-up, whether provisionally or otherwise, or is deregistered, as the case may be; [has a director or employee, and in the case of a close corporation, has a member or employee, who is subject to a disqualification set out in paragraph (a), (b), (c), (d), (e) or (f).] 55

(h) who has failed to discharge all his or her liabilities to the council;

(i) who has failed to comply with any lawful requirement of the council; 60

(j) in the case of a fresh produce agent, who has failed to comply with the provisions of section 19(1)(a);

- (ii) **wie se omvang van besigheid as agent na die oordeel van die raad nie die uitreiking van 'n getrouheidsfondssertifikaat regverdig nie.**
(b) So 'n vrystelling word verleen op die voorwaardes wat die raad in elke geval bepaal.
- (4) 'n Aansoek om 'n getrouheidsfondssertifikaat word gedoen op die wyse wat die raad bepaal, en gaan vergesel van die toepaslike bedrag wat die raad vir dié doel bepaal.]**
- (a) Elke voornemende varsprodukte-agent moet, binne die voorgeskrewe tydperk en op die voorgeskrewe wyse, by die raad aansoek doen om 'n getrouheidsfondssertifikaat, en sodanige aansoek moet vergesel gaan van die sekuriteit in artikel 17(1) bedoel en die aansoekgelde deur die raad bepaal.
- (b) Elke voornemende uitvoeragent en lewendehawe-agent moet, binne die voorgeskrewe tydperk en op die voorgeskrewe wyse, by die raad aansoek doen om 'n registrasiesertifikaat, en sodanige aansoek moet vergesel gaan van die aansoekgelde deur die raad bepaal.
- (c) Indien die raad, by ontvangs van 'n aansoek bedoel in subartikel (1) of (2) en die sekuriteit (waar toepaslik) en aansoekgelde in daardie subartikels bedoel, tevrede is dat die applikant nie ingevolge subartikel (6) onbevoeg is om met 'n getrouheidsfondssertifikaat of registrasiesertifikaat uitgereik te word nie, moet die raad 'n getrouheidsfondssertifikaat of 'n registrasiesertifikaat, na gelang van die geval, in die voorgeskrewe formaat aan die applikant uitreik.
- (d) 'n Dokument wat voorgee om 'n getrouheidsfondssertifikaat of registrasiesertifikaat te wees wat uitgereik is strydig met die bepalings van hierdie Wet is nietig en moet op versoek aan die raad terugbesorg word.
- [(5) Na oorweging van so 'n aansoek reik die raad, behoudens die bepalings van subartikel (6), 'n getrouheidsfondssertifikaat in die vorm deur die raad bepaal, aan die aansoeker uit.]**
- (6) [Die raad kan weier om 'n] Geen getrouheidsfondssertifikaat of registrasiesertifikaat, na gelang van die geval, word [uit te reik] uitgereik aan iemand nie wat—**
- (a) te eniger tyd weens onbehoorlike gedrag uit 'n vertrouensposisie ontslaan is;
- (b) te eniger tyd skuldig bevind is aan 'n misdryf waarvan oneerlikheid 'n element is;
- (c) geestelik versteurd is;
- [(d) te eniger tyd skuldig bevind is aan 'n oortreding van die Wet op die Agentskapsverkoop van Landbouprodukte, 1975 (Wet No. 12 van 1975), en wie se registrasie as kommissie-agent soos in genoemde Wet omskryf, as gevolg daarvan ingevolge artikel 6 van daardie Wet ingetrek is;]**
- (e) na 'n ondersoek ingevolge artikel 24 aan onbehoorlike gedrag skuldig bevind is[, **indien die raad as gevolg daarvan die getrouheidsfondssertifikaat wat voorheen aan die betrokke persoon uitgereik is, ingetrek het];**
- (f) 'n ongerehabiliteerde insolvent is ten aansien van wie die kurator van die insolvente boedel nie gesertifiseer het dat die insolvent 'n geskikte en gepaste persoon is om 'n posisie van vertroue te aanvaar en aan wie 'n getrouheidsfondssertifikaat of registrasiesertifikaat, na gelang van die geval, uitgereik kan word nie; [of]
- (g) in die geval van 'n maatskappy [**of koöperasie**], beslote korporasie of ander regspersoon, gelikwied word, hetsy voorlopig of andersins, of gederegistreer word, na gelang van die geval; [’n direkteur of werknemer, en in die geval van ’n beslote korporasie, ’n lid of werknemer het wat aan ’n onbevoegdheid in paragraaf (a), (b), (c), (d), (e) of (f) uiteengesit, onderhewig is.]
- (h) versuim het om al sy of haar verpligtinge teenoor die raad na te kom;
- (i) versuim het om aan 'n wettige vereiste van die raad te voldoen;
- (j) in die geval van 'n varsprodukte-agent, versuim het om te voldoen aan die bepalings van artikel 19(1)(a);

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- (k) in the case of a fresh produce agent, who carries on or intends to carry on business as a fresh produce agent under a trade name which is identical or confusingly similar to a trade name of a fresh produce agent—
- (i) already issued with a fidelity fund certificate; or
 - (ii) whose fidelity fund certificate is suspended or has lapsed or been withdrawn in terms of this Act;
- (l) in the case of an export agent, who carries on or intends to carry on business as a livestock agent under a trade name which is identical or similar to a trade name of a livestock agent—
- (i) already issued with a registration certificate; or
 - (ii) whose registration certificate is suspended or has lapsed or been withdrawn in terms of this Act:
- Provided that if in respect of any person who is subject to any disqualification referred to in this subsection, the council is satisfied that, with due regard to all the relevant considerations, the issue of a fidelity fund certificate or registration certificate, as the case may be, to such person will be in the interest of justice, the council may issue, on such conditions as the council may determine, a fidelity fund certificate or registration certificate, as the case may be, to such person when he or she applies therefor.
- (6A) (a) The council may issue a fidelity fund certificate or registration certificate to any person who is acting or intending to act as a fresh produce agent or livestock agent and such a certificate shall be deemed to be a certificate issued on application by such a person.
- (b) The issuing of a fidelity fund certificate or registration certificate under paragraph (a) shall not exempt the person from any prosecution for not complying with or contravening any provision of this Act or the rules prior to the issuing of such a certificate.
- [(7) Any person to whom a fidelity fund certificate has been issued in terms of subsection (5) shall, when requested thereto by the council, pay to the council within the period determined by the council the amount determined by the council.]
- [(8) (a) Subject to the provisions of paragraph (b), each person who immediately prior to the commencement of this section was a member of the fidelity guarantee fund established under section 27 of the Agricultural Produce Agency Sales Act, 1975 (Act No. 12 of 1975), shall be deemed to be the holder of a fidelity fund certificate issued by the council in terms of this Act.
- (b) The validity of a fidelity fund certificate referred to in paragraph (a) shall lapse 90 days after the date of commencement of this section unless the holder thereof has on or before such date paid to the council the applicable amount determined by the council for this purpose.]
- (9) Each agent who is the holder of a fidelity fund or registration certificate shall—
- (a) annually [on or before] before or on a date determined by the council, pay to the council the amount determined by the council for the maintenance of such certificate;
 - (b) forthwith notify the council in writing—
 - (i) of any change of his or her business or postal address;
 - (ii) if the partnership of which he or she is a partner, dissolves;
 - (iii) if he or she becomes a member of a partnership;
 - (iv) if, in the case of a company[, co-operative] or close corporation, a change in the directorship of that company [or co-operative] or the membership of that close corporation has occurred; [and]
 - (v) if, in the case of a trust, a change in the trustees of that trust has occurred;
 - (vi) if he or she has ceased to act as an agent; and

- (k) in die geval van 'n varsprodukte-agent, 'n besigheid bedryf of beoog om 'n besigheid te bedryf as 'n varsprodukte-agent onder 'n handelsnaam wat identies of verwarrend soortgelyk is aan 'n handelsnaam van 'n varsprodukte-agent—
- (i) aan wie daar reeds 'n getrouheidsfondssertifikaat uitgereik is; of
- (ii) wie se getrouheidsfondssertifikaat opgeskort is of verval het of ingetrek is ingevolge hierdie Wet;
- (l) in die geval van 'n uitvoeragent, 'n besigheid bedryf of beoog om 'n besigheid te bedryf as 'n lewende hawe-agent onder 'n handelsnaam wat identies of soortgelyk is aan 'n handelsnaam van 'n lewende hawe-agent—
- (i) aan wie daar reeds 'n registrasiesertifikaat uitgereik is; of
- (ii) wie se registrasiesertifikaat opgeskort is of verval het of ingetrek is ingevolge hierdie Wet;

Met dien verstande dat indien ten aansien van 'n persoon wat onderhewig is aan 'n diskwalifikasie bedoel in hierdie subartikel, die raad tevrede is dat, met behoorlike inagneming van al die tersaaklike oorwegings, die uitreik van 'n getrouheidsfondssertifikaat of registrasiesertifikaat, na gelang van die geval, aan sodanige persoon in die belang van geregtigheid sal wees, kan die raad, op die voorwaardes wat die raad bepaal, 'n getrouheidsfondssertifikaat of registrasiesertifikaat, na gelang van die geval, aan sodanige persoon uitreik wanneer hy of sy daarom aansoek doen.

(6A)(a) Die raad kan 'n getrouheidsfondssertifikaat of registrasiesertifikaat uitreik aan enigeen wat optree of voornemens is om op te tree as 'n varsprodukte-agent of lewende hawe-agent en so 'n sertifikaat word geag 'n sertifikaat te wees op aansoek deur so 'n persoon uitgereik.

(b) Die uitreiking van 'n getrouheidsfondssertifikaat of registrasiesertifikaat kragtens paragraaf (a) vrywaar nie die persoon van enige vervolging vir die nie-nakoming of oortreding van 'n bepaling van hierdie Wet of die reëls voor die uitreiking van so 'n sertifikaat nie.

[(7) Iemand aan wie 'n getrouheidsfondssertifikaat ingevolge subartikel (5) uitgereik is, moet, wanneer deur die raad daartoe versoek, die bedrag wat die raad bepaal, binne die tydperk wat die raad bepaal, aan die raad betaal.

(8)(a) Behoudens die bepalings van paragraaf (b) word elke persoon wat onmiddellik voor die inwerkingtreding van hierdie artikel 'n lid was van die getrouheidswaarborgfonds wat kragtens artikel 27 van die Wet op die Agentskapsverkoop van Landbouprodukte, 1975 (Wet No. 12 van 1975), ingestel is, geag die houer te wees van 'n getrouheidsfondssertifikaat wat ingevolge hierdie Wet deur die raad uitgereik is.

(b) Die geldigheid van 'n getrouheidsfondssertifikaat in paragraaf (a) bedoel, verval 90 dae na die datum van inwerkingtreding van hierdie artikel tensy die houer daarvan voor of op sodanige datum die toepaslike bedrag wat die raad vir dié doel bepaal, aan die raad betaal het.]

(9) Elke agent wat die houer van 'n getrouheidsfondssertifikaat of registrasiesertifikaat is, moet—

- (a) jaarliks voor of op 'n datum wat deur die raad bepaal word, die bedrag wat die raad bepaal, ten opsigte van die instandhouding van [sy getrouheidsfondssertifikaat] sodanige sertifikaat aan die raad betaal;
- (b) die raad onverwyld skriftelik in kennis stel—
- (i) van enige verandering van sy of haar sake- of posadres;
- (ii) indien die vennootskap waarvan hy of sy 'n vennoot is, ontbind;
- (iii) indien hy of sy 'n lid van 'n vennootskap word;
- (iv) indien, in die geval van 'n maatskappy [, koöperasie] of beslote korporasie, 'n verandering van die direkteurskap van daardie maatskappy [of koöperasie] of die lidmaatskap van daardie beslote korporasie plaasgevind het; [en]
- (v) indien, in die geval van 'n trust, daar 'n verandering van die trustees van daardie trust plaasgevind het;
- (vi) indien hy ophou om as agent op te tree; en

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[(v)](vii) of any further particulars requested by the council as a result of a notice in terms of the preceding subparagraphs.

(10) (a) A fidelity fund or registration certificate issued to an agent shall automatically lapse when he or she becomes disqualified as contemplated in subsection (6) or if the agent ceases to act as an agent.

[(b) The council may withdraw the fidelity fund certificate of an agent if—

- (i) he is found guilty of improper conduct under section 26;
- (ii) he fails to pay the amount referred to in subsection (9)(a) within three months after the date of a written request therefor by the registrar, addressed to his last known postal address, as entered in the records of the council;
- (iii) he fails to furnish the registrar with his business address and postal address within three months after the date of a written request therefor by the registrar, addressed to his said postal address;
- (iv) he fails to comply with the provisions of section 18(2) or 19(1).]

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

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

as contemplated in the definition of 'fresh produce agent' in section 1 shall likewise lapse.

(c) If a fidelity fund or registration certificate so lapses or is [so withdrawn] suspended, the registrar shall—

- (i) by means of a written notice addressed to the said business and postal address of the agent [concerned], notify him or her thereof; [and]
- (ii) in the case of a fresh produce agent who conducts his or her business at a fresh produce market, by means of a written notice addressed to the person in charge of that market, notify him or her thereof; and
- (iii) cause particulars thereof to be published in [an Afrikaans and an English newspaper] a newspaper in at least two official languages, one of which should be English, circulating in the district in which the said agent's last known business address, as entered in the records of the council, is situated.

(d) [A] The agent or any person who is in possession of or has under his or her control a fidelity fund or registration certificate which has lapsed [or has been withdrawn] under paragraph (a) [or (b), as the case may be], shall return the certificate to the registrar within 30 days after the [notice referred to in paragraph (c)] last date of publication referred to in paragraph (c)(iii).

(e) A fidelity fund or registration certificate which has lapsed [or has been withdrawn under this subsection], shall be void with effect from the date of such [lapse or withdrawal] lapsing.

(11) No person whose fidelity fund or registration certificate has lapsed, may directly or indirectly participate in the management of any business carried on by an agent in his or her capacity as such, or participate in the carrying on of such business, or be employed, directly or indirectly, in any capacity in such business, except with the written consent of the council and subject to such conditions as the council may determine from time to time.

(12) No agent shall directly or indirectly in any capacity whatsoever employ a person referred to in subsection (11), or allow or permit such person directly or indirectly to participate in any capacity in the management or the carrying on of his or her business as an agent, except with the written consent of the council, and subject to such conditions as the council may impose.”.

- [(v)] (vii) van enige verdere besonderhede wat die raad na aanleiding van 'n kennisgewing ingevolge die voorafgaande subparagrafe aanvra.
- (10) (a) 'n Getrouheidsfondssertifikaat of registrasiesertifikaat uitgereik aan 'n agent verval outomaties wanneer hy of sy onbevoeg word soos in subartikel (6) beoog of indien die agent ophou om as 'n agent op te tree. 5
- [(b) Die raad kan die getrouheidsfondssertifikaat van 'n agent intrek indien—
- (i) hy kragtens artikel 26 aan onbehoorlike gedrag skuldig bevind word; 10
 - (ii) hy versuim om die bedrag in subartikel (9)(a) bedoel, te betaal binne drie maande na die datum van 'n skriftelike versoek daarom deur die registrateur gerig aan sy jongsbekende posadres, soos in die stukke van die raad aangeteken;
 - (iii) hy versuim om binne drie maande na die datum van 'n skriftelike versoek daarom deur die registrateur gerig aan sy genoemde posadres, sy sake-adres en posadres aan die registrateur te verstrek; 15
 - (iv) hy versuim om aan die bepalinge van artikel 18(2) of 19(1) te voldoen.] 20
- (b) Indien 'n getrouheidsfondssertifikaat wat ingevolge subparagraaf (a) verval het aan 'n maatskappy, beslote korporasie of trust uitgereik is, verval die getrouheidsfondssertifikaat van—
- (i) elke direkteur, lid of trustee; en
 - (ii) elke werknemer, 25
- soos beoog in die omskrywing van 'varsprodukte-agent' in artikel 1, eweneens.
- (c) Indien 'n getrouheidsfondssertifikaat of registrasiesertifikaat aldus verval [of ingetrek word] of opgeskort word, moet die registrateur—
- (i) deur middel van 'n skriftelike kennisgewing, gerig aan die [betrokke] agent se genoemde sake- en posadres, hom of haar daarvan in kennis stel; [en] 30
 - (ii) in die geval van 'n varsprodukte-agent wat sy of haar besigheid by 'n varsproduktemark bedryf, by wyse van 'n skriftelike kennisgewing gerig aan die persoon in beheer van daardie mark, hom of haar daarvan in kennis stel; en 35
 - (ii) besonderhede daarvan laat publiseer in 'n [Afrikaanse en 'n Engelse] koerant in minstens twee amptelike tale, waarvan een Engels moet wees, wat in omloop is in die distrik waarin genoemde agent se jongsbekende sake-adres, soos in die stukke van die raad aangeteken, geleë is. 40
- (d) [Iemand] Die agent of iemand wat in besit is van of beheer het oor 'n getrouheidsfondssertifikaat of registrasiesertifikaat wat kragtens paragraaf (a) [of (b)] verval het [of ingetrek is, na gelang van die geval], moet die sertifikaat aan die registrateur terugbesorg binne 30 dae na die datum van die [kennisgewing in paragraaf (c) bedoel] laaste dag van publikasie in paragraaf (c)(iii) bedoel. 45
- (e) 'n Getrouheidsfondssertifikaat of registrasiesertifikaat wat [kragtens hierdie subartikel] verval het [of ingetrek is], is nietig vanaf die datum van sodanige verval [of intrekking]. 50
- (11) Geen persoon wie se getrouheidsfondssertifikaat of registrasiesertifikaat verval het, mag regstreeks of onregstreeks aan die bestuur van 'n besigheid deur 'n agent bedryf in sy of haar hoedanigheid as sodanig, deelneem nie, of deelneem aan die bedryf van sodanige besigheid, of in diens wees, regstreeks of onregstreeks, in enige hoedanigheid in sodanige besigheid nie, behalwe met die skriftelike toestemming van die raad en behoudens die voorwaardes wat die raad van tyd tot tyd bepaal. 55
- (12) Geen agent mag regstreeks of onregstreeks in enige hoedanigheid hoegenaamd 'n persoon bedoel in subartikel (11) in diens hê nie, of sodanige persoon regstreeks of onregstreeks veroorloof of toelaat om in enige hoedanigheid deel te neem aan die bestuur of die bedryf van sy of haar besigheid as 'n agent nie, behalwe met die skriftelike toestemming van die raad, en behoudens die voorwaardes wat die raad oplaë. 60

Substitution of section 17 of Act 12 of 1992

16. The following section is hereby substituted for section 17 of the principal Act:

“Security by agents

17. (1) [The council may require that an agent who is the holder of a fidelity fund certificate shall furnish to the council within the period determined by the council such security as the council may determine,] Every fresh produce agent who is responsible to open and keep a trust account in terms of section 19(1), shall before a fidelity fund certificate is issued to him or her furnish the council with security in such amount and in such form as is acceptable to the council, for use by the council [as contemplated in section 14(5)(b), in respect of] to meet any claim arising [from an act or omission by that agent, and which has occurred within two years after the fidelity fund certificate was issued to him.] in terms of section 12(5) or to defray the costs or part of the costs of an inspection and investigation held in terms of section 24 where such fresh produce agent has been disciplined in terms of section 26(1). 5 10 15

(2) [Such] The security referred to in subsection (1) shall be returned to the fresh produce agent [concerned] within six months after the lapse of the fidelity fund certificate of that fresh produce agent, [period referred to in subsection (1) has expired,] unless an [inquiry] inspection and investigation under section 24 [into] of an act or omission or alleged act or omission of the fresh produce agent [concerned] is being held before such expiration, and may until it has been so returned from time to time be altered, increased or decreased by the council.”. 20

Substitution of section 18 of Act 12 of 1992

17. The following section is hereby substituted for section 18 of the principal Act:

“Account

18. (1) Every fresh produce agent contemplated in paragraph (a) of the definition of ‘fresh produce agent’ in section 1 [who is the holder of a fidelity fund certificate] shall in respect of his or her activities as such, keep, at a place approved by the council, [in one of the official languages] full and correct accounting records of— 30

- (a) all money received, kept or expended by him or her, including money deposited in a trust account referred to in section 19(1)(a) or invested in a savings or interest-bearing account referred to in section 19(3)(a); 35
- (b) all his or her assets and liabilities; [and]
- (c) all his or her financial transactions[.]; and
- (d) all agricultural produce received, kept, sold and lawfully destroyed.

(2) (a) Such fresh produce agent shall cause the said accounting records to be audited at his or her expense by an auditor within four months after the final date of every financial year of the fresh produce agent, which final date shall not be amended by him or her without the prior written approval of the council. 40

(b) Notwithstanding the provisions of subsection (2)(a), the council may, on good cause shown, at any time order any fresh produce agent by notice in writing to submit to the council within a period stated in such notice, but not less than 30 days, an audited statement fully setting out the state of affairs in respect of the matters referred to in subsection (1). 45

(c) The court may, on good cause shown upon application by the council or any other competent person, prohibit any fresh produce agent from operating in any way his or her trust, savings or other interest-bearing 50

Vervanging van artikel 17 van Wet 12 van 1992

16. Artikel 17 van die Hoofwet word hierby deur die volgende artikel vervang:

“Sekuriteit deur agente

17. (1) Elke varsprodukte-agent wat daarvoor verantwoordelik is om 'n trustrekening te open en te hou ingevolge artikel 19(1), moet, voor 'n getrouheidsfondssertifikaat aan hom of haar uitgereik word, **[Die] die raad van sekuriteit voorsien vir die bedrag en in die formaat wat vir die raad aanvaarbaar is, [kan vereis dat 'n agent wat die houder van 'n getrouheidsfondssertifikaat is, binne die tydperk deur die raad bepaal die sekuriteit wat die raad bepaal, aan die raad moet verstrek]** vir gebruik deur die raad **[soos in artikel 14 (5) (b) beoog, ten opsigte van]** om te voldoen aan 'n eis voortspruitend ingevolge artikel 12(5) of om die kostes of gedeelte van die kostes te dek van 'n inspeksie en ondersoek gehou ingevolge artikel 24 waar sodanige varsprodukte-agent ingevolge artikel 26(1) gedissiplineer is. **[uit 'n handeling of versuim van daardie agent, en wat binne twee jaar nadat die getrouheidsfondssertifikaat aan hom uitgereik is, plaasgevind het.]**

(2) **[So 'n] Die sekuriteit bedoel in subartikel (1) word aan die [betrokke agent] varsprodukte-agent terugbesorg binne ses maande [nadat] na die verstryking van die getrouheidsfondssertifikaat van daardie varsprodukte-agent, [tydperk in subartikel (1) bedoel, verstryk het,] tensy 'n inspeksie en ondersoek kragtens artikel 24 voor bedoelde verstryking na 'n handeling of versuim of beweerde handeling of versuim van die [betrokke agent] varsprodukte-agent gehou word, en kan, totdat dit aldus terugbesorg is, van tyd tot tyd verander, vermeerder of verminder word deur die raad.”**

Vervanging van artikel 18 van Wet 12 van 1992

17. Artikel 18 van die Hoofwet word hierby deur die volgende artikel vervang:

“Rekeninge

18. (1) Elke **[agent] varsprodukte-agent beoog in paragraaf (a) van die omskrywing van 'varsprodukte-agent' in artikel 1 [wat die houder van 'n getrouheidsfondssertifikaat is,]** moet ten opsigte van sy of haar werksaamhede as sodanig, by 'n plek wat die raad goedkeur, **[en in een van die amptelike tale]** volledige en juiste rekeningkundige aantekeninge hou van—

(a) alle geld wat hy of sy ontvang, hou of bestee, met inbegrip van geld **[wat hy]** in 'n trustrekening in artikel 19(1)(a) bedoel, **[stort] gestort** of in 'n spaar- of rentedraende rekening in artikel 19(3)(a) bedoel, belê;

(b) al sy of haar bates en laste; **[en]**

(c) al sy of haar finansiële transaksies; en

(d) alle landbouprodukte ontvang, gehou, verkoop en wettiglik vernietig.

(2) (a) So 'n **[agent] varsprodukte-agent** moet genoemde rekeningkundige aantekeninge op sy of haar koste deur 'n ouditeur laat ouditeer binne vier maande na die einddatum van elke boekjaar van die **[agent] varsprodukte-agent**, welke einddatum nie deur hom of haar sonder die vooraf verkreeë skriftelike goedkeuring van die raad gewysig mag word nie.

(b) Ondanks die bepalings van subartikel (2)(a) kan die raad, na aanvoering van goeie gronde, te eniger tyd by skriftelike kennisgewing 'n varsprodukte-agent gelas om binne 'n tydperk in sodanige kennisgewing bepaal, maar minstens 30 dae, 'n geouditeerde staat wat die stand van sake ten opsigte van die aangeleenthede bedoel in subartikel (1) volledig uiteensit, aan die raad voor te lê.

(c) Die hof kan, na aanvoering van goeie gronde op aansoek by die raad of enige ander bevoegde persoon, 'n varsprodukte-agent verbied om sy of haar trust-, spaar- of ander rentedraende rekening bedoel in artikel 19(3)(a)

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Substitution of section 20 of Act 12 of 1992

19. The following section is hereby substituted for section 20 of the principal Act:

“**[Payments] Payment from trust [accounts] account**

20. (1) **[An] A fresh produce agent [who is the holder of a fidelity fund certificate]** shall pay to his or her principal from his or her trust account the proceeds of the sale of an agricultural product **[sold on the instruction or on behalf of such principal]** after he or she has deducted from such proceeds his or her agreed remuneration **[as an agent]** and the other reasonable expenses incurred by him or her in connection with the sale of that agricultural product.

(2) (a) If the amount to be paid by **[an]** a fresh produce agent to his or her principal in terms of subsection (1) has not been claimed by the principal **[concerned]** within **[180] 200** days after the sale **[concerned]**, that fresh produce agent shall pay the amount **[concerned]** from his or her trust account to the council, and furnish the council with the particulars required in the rules in connection therewith.

(b) Money so paid to the council shall be dealt with in the manner set out in section 21.

(3) Any withdrawal from a trust account for the purposes of a payment or deduction referred to in subsection (1), the withdrawal of interest earned on a trust account or an interest-bearing account referred to in section 19(3) (a), and **[a]** any payment to the council in terms of subsection (2) of this section, shall be made at the time and in the manner set out in the rules.

(4) No withdrawals other than those specified in subsection (3) shall be made from a trust account or a savings or interest-bearing account referred to in section 19(3)(a): Provided that any fees **[deducted from such accounts]** charged by the institution at which they are kept shall be **[deemed to form part of the remuneration referred to in subsection (1) of this section]** debited against the business account of the fresh produce agent **[concerned]**.”

Amendment of section 22 of Act 12 of 1992

20. Section 22 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a), of the following words:

“The council may, in respect of fresh produce agents **[who are the holders of fidelity fund certificates]** make rules as to—”;

(b) by the addition to subsection (1) of the following paragraphs:

- “(i) the regulation, control or prohibition of any practice followed by agents;
- (j) the period within and the manner in which application shall be made for a fidelity fund or registration certificate, as the case may be;
- (k) the form of a fidelity fund and registration certificate;
- (l) the manner in which any account referred to in section 18(4)(c) shall be wound-up and the amount standing to the credit of such account shall be paid out; and
- (m) the manner in which proceedings at a disciplinary hearing contemplated in section 25 shall be conducted.”

Substitution of section 23 of Act 12 of 1992

21. The following section is hereby substituted for section 23 of the principal Act:

“**Improper conduct**

23. **[An]** A fresh produce agent **[who is the holder of a fidelity fund certificate]** shall be guilty of improper conduct if—

Vervanging van artikel 20 van Wet 12 van 1992

19. Artikel 20 van die Hoofwet word hierby deur die volgende artikel vervang:

“[Betalings uit trustrekeninge] Betaling uit trustrekening

20. (1) 'n [Agent] Varsprodukte-agent [wat die houer van 'n getrouheidsfondssertifikaat is,] moet die opbrengs van die verkoping van 'n landbouprodukt [wat in opdrag van of namens sy prinsipaal verkoop is,] uit sy of haar trustrekening aan [sodanige] sy of haar prinsipaal betaal nadat hy of sy van sodanige opbrengs sy of haar ooreengekome vergoeding [as agent] en die ander redelike uitgawes deur hom of haar aangegaan in verband met die verkoping van daardie landbouprodukt afgetrek het.

(2) (a) Indien die bedrag wat 'n [agent] varsprodukte-agent ingevolge subartikel (1) aan sy of haar prinsipaal moet betaal, nie binne [180] 200 dae na die [betrokke] verkoping deur die [betrokke] prinsipaal opgeëis word nie, moet daardie [agent] varsprodukte-agent die [betrokke] bedrag vanuit sy of haar trustrekening aan die raad betaal en die besonderhede wat in die reëls vereis word, in verband daarmee aan die raad verstrek.

(b) Daar word oor geld wat aldus aan die raad betaal is, beskik op die wyse in artikel 21 uiteengesit.

(3) 'n Onttrekking uit 'n trustrekening vir die doeleindes van 'n betaling of aftrekking in subartikel (1) bedoel, die onttrekking van rente verdien op 'n trustrekening of 'n [spaar- of] rentedraende rekening in artikel 19(3)(a) bedoel, en 'n betaling aan die raad ingevolge subartikel (2) van hierdie artikel, word gedoen op die tyd en wyse in die reëls uiteengesit.

(4) Geen ander [Betalings] onttrekkings as dié in subartikel (3) vermeld, mag uit 'n trustrekening of 'n spaar- of rentedraende rekening in artikel 19(3)(a) bedoel, gedoen word nie: Met dien verstande dat enige gelde [wat van sodanige rekeninge afgetrek word] gevra deur die instelling waar dit gehou word, [geag word deel van die vergoeding in subartikel (1) van hierdie artikel bedoel,] teen die besigheidsrekening van die [betrokke agent te wees] varsprodukte-agent gedebiteer word.”

Wysiging van artikel 22 van Wet 12 van 1992

20. Artikel 22 van die Hoofwet word hierby gewysig—

(a) deur in subartikel (1) die woorde wat paragraaf (a) voorafgaan, deur die volgende woorde te vervang:

“Die raad kan ten opsigte van [agente wat die houters van getrouheidsfondssertifikate is] varsprodukte-agente reëls uitvaardig aangaande—”;

(b) deur die volgende paragrawe by subartikel (1) te voeg:

- “(i) die regulering of beheer van of verbod op 'n praktyk deur agente nagevolg;
- (j) die tydperk waarbinne en die wyse waarop aansoek gedoen moet word om 'n getrouheidsfondssertifikaat of registrasiesertifikaat, na gelang van die geval;
- (k) die formaat van 'n getrouheidsfondssertifikaat en registrasiesertifikaat;
- (l) die wyse waarop 'n rekening bedoel in artikel 18 (4) (c) afgesluit en die bedrag wat tot krediet van sodanige rekening staan, uitbetaal moet word; en
- (m) die wyse waarop die verrigtinge by 'n dissiplinêre verhoor in artikel 25 beoog, gevoer moet word.”

Vervanging van artikel 23 van Wet 12 van 1992

21. Artikel 23 van die Hoofwet word hierby deur die volgende artikel vervang:

“Onbehoorlike gedrag

23. 'n [Agent wat die houer is van 'n getrouheidsfondssertifikaat] Varsprodukte-agent is skuldig aan onbehoorlike gedrag indien hy of sy—

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- (a) he or she contravenes or fails to comply with any provision of this Act or the rules **[or of the code of conduct referred to in section 22 (1) (g)]**;
- (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 **[in the opinion of the council]** conducted himself or herself unprofessionally, improperly or disgracefully.”

Substitution of section 24 of Act 12 of 1992

22. The following section is hereby substituted for section 24 of the principal Act:

“[Inquiry by council] Inspection and investigation

24. (1) The council may, either of its own accord or as a result of a complaint, charge or allegation lodged with it, institute an **[inquiry] inspection and investigation** into the conduct of **[an] a fresh produce agent [who is the holder of a fidelity fund certificate], or person in the employ** of such fresh produce agent, or into **[an act or omission or alleged act or omission of such agent in the practising of his occupation, or into]** a contravention **[or alleged contravention]** of this Act or the rules by such fresh produce agent or employee.

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

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

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

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

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

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

[(3) The acquittal or the conviction of an agent or person by a court of law upon a criminal charge shall not be a bar to an inquiry in respect of him in terms of this section, even if the facts being inquired into would, if proved, constitute the offence set forth in the criminal charge on which he was so acquitted or convicted, or any other offence of which he might have been convicted at his trial on the said criminal charge.]”

- (a) enige bepaling van hierdie Wet of die reëls [**of van die gedragskode in artikel 22(1)(g) bedoel,**] oortree of versuim om daaraan te voldoen;
- (b) skuldig bevind word aan 'n misdryf waarvan oneerlikheid 'n element is; of
- (c) met behoorlike inagneming van sy of haar beroep, hom of haar deur enige ander handeling of versuim[, **na die oordeel van die raad,**] onprofessioneel, onbehoorlik of skandelik gedra het.”.

Vervanging van artikel 24 van Wet 12 van 1992

22. Artikel 24 van die Hoofwet word hierby deur die volgende artikel vervang:

“[Ondersoek deur raad] Inspeksie en ondersoek

24. (1) Die raad kan, hetsy uit eie beweging of na aanleiding van 'n klagte, beskuldiging of bewering wat by hom ingedien is, 'n inspeksie doen en ondersoek instel na die gedrag van [sodanige] 'n [agent wat die houer is van 'n getrouheidsfondssertifikaat,] varsprodukte-agent of persoon in diens van sodanige varsprodukte-agent, of na [**'n handeling of versuim of beweerde handeling of versuim van sodanige agent in die beoefening van sy beroep, of na**] 'n oortreding [**of beweerde oortreding**] van hierdie Wet of die reëls deur sodanige [agent] varsprodukte-agent of werknemer.

(1A) 'n Inspeksie en ondersoek bedoel in subartikel (1) moet gedoen word ooreenkomstig die bepalings van artikel 27(4).

(1B) By ontvangs van die uitslag van 'n inspeksie en ondersoek bedoel in subartikel (1) kan die raad besluit om die betrokke varsprodukte-agent of werknemer aan te kla van 'n oortreding van hierdie Wet of die reëls, en moet die raad, wanneer aldus besluit word—

- (a) die varsprodukte-agent of werknemer dagvaar met minstens 30 dae kennisgewing om voor 'n dissiplinêre tribunaal beoog in artikel 25 te verskyn op die datum en die tyd en plek in sodanige dagvaarding vermeld, om op die aanklagte skriftelik uiteengesit in 'n klagstaat by sodanige dagvaarding aangeheg, te antwoord;
- (b) sodanige varsprodukte-agent of werknemer gelas om by sodanige verhoor enige boek of ander dokument in die dagvaarding vermeld wat genoemde varsprodukte-agent of werknemer in sy of haar besit of bewaring of onder sy of haar beheer het of wat vermoed word in sy of haar besit of bewaring of onder sy of haar beheer te wees en wat betrekking het op die aangeleentheid, te toon.

(1C) 'n Dagvaarding bedoel in subartikel (1B) moet—

- (a) so na as moontlik aan die formaat in die reëls vermeld, wees;
- (b) deur die registrateur of sy of haar behoorlik gemagtigde verteenwoordiger onderteken wees; en
- (c) op die varsprodukte-agent of werknemer beteken word deur dit af te lewer of aan te bied by die sake-adres van die varsprodukte-agent of werknemer of deur dit per vooruitbetaalde geregistreerde pos te stuur na die posadres in artikel 16(9) bedoel, of na die jongsbekende adres aan die raad.

(2) Indien sodanige gedrag[, **handeling, versuim**] of oortreding [**of beweerde handeling, versuim of oortreding**] die onderwerp van straf- of sivilregtelike verrigtinge in 'n geregshof uitmaak of [**volgens die oordeel van die raad**] waarskynlik sal uitmaak, kan die raad die [**ondersoek**] uitreik van 'n dagvaarding uitstel totdat daardie verrigtinge afgehandel is.

[(3) Die vryspreking of die skuldigbevinding van 'n agent deur 'n geregshof op 'n strafregtelike aanklag belet nie dat 'n ondersoek ingevolge hierdie artikel ten opsigte van hom ingestel word nie, selfs al sou die feite wat ondersoek word, as hulle bewys sou word, die misdryf uitmaak wat uiteengesit is in die strafregtelike aanklag waarop hy aldus vrygespreek of skuldig bevind is, of 'n ander misdryf uitmaak waaraan hy by sy verhoor op bedoelde strafregtelike aanklag skuldig bevind kon gewees het.]”.

Substitution of section 25 of Act 12 of 1992

23. The following section is hereby substituted for section 25 of the principal Act:

“Disciplinary tribunal

25. (1) A disciplinary tribunal may be convened for the purpose of a disciplinary hearing whenever it becomes necessary to do so in terms of section 24. 5
- (2) A disciplinary tribunal shall consist of a maximum of three members, who shall be appointed by the council on account of—
- (a) their independence from the affairs of the council, the office of the registrar and the agent or person investigated; 10
 - (b) their knowledge of the law;
 - (c) their knowledge of the conducting of the business of agents in general;
 - (d) experience in the resolution of disputes; and
 - (e) any other knowledge or experience which renders them suitable for appointment as members of a disciplinary tribunal. 15
- (3) At least two members of a disciplinary tribunal shall for an uninterrupted period of at least five years have practised as advocates or attorneys or occupied the post of magistrate, or have been involved in the tuition of law or have rendered services as legal advisers or legal consultants. 20
- (4) A disciplinary tribunal shall have the power to inquire into and decide upon any charge in terms of this Act or the rules.
- (5) The registrar may appoint a competent person to exercise the powers and perform the duties of a prosecutor.
- (6) A disciplinary tribunal shall conduct its proceedings in accordance with rules made for this purpose: Provided that— 25
- (a) such rules shall be in accordance with the requirements of this Act and the Constitution; and
 - (b) the onus of proof shall be the same as in criminal proceedings. 30
- (7) If a vacancy occurs on a disciplinary tribunal after that tribunal has commenced with a hearing, the hearing may be proceeded with before at least two members of the tribunal, but if only two serving members remain they may take any decision referred to in section 26(1)(c) only by unanimous vote.
- (8) The prosecutor may for the purposes of such hearing— 35
- (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 40
 - (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. 45
- (9) (a) A subpoena referred to in subsection (8) shall as far as possible be as prescribed in the rules, shall be signed by the prosecutor and shall be served in the same manner as a subpoena issued by a magistrate's court in civil proceedings. 50
- (b) No person—
- (i) having been duly summoned to be present at the hearing, shall without lawful excuse fail so to appear; or 55
 - (ii) having been called as a witness at a hearing, shall without lawful excuse refuse to be sworn or to make an affirmation, or to produce any book or other document or to answer any question which he or she may be required to produce or answer.

Vervanging van artikel 25 van Wet 12 van 1992

23. Artikel 25 van die Hoofwet word hierby deur die volgende artikel vervang:

“Dissiplinêre tribunaal

25. (1) 'n Dissiplinêre tribunaal kan byeengeroep word vir die doel van 'n dissiplinêre verhoor wanneer ook al dit nodig word om dit te doen ingevolge artikel 24. 5
- (2) 'n Dissiplinêre tribunaal moet uit hoogstens drie lede bestaan wat deur die raad aangestel word op grond van—
- (a) hul onafhanklikheid van die sake van die raad, die kantoor van die registrateur en die agent of persoon wat ondersoek word; 10
 - (b) hul kennis van die reg;
 - (c) hul kennis van die bedryf van die sake van agente in die algemeen;
 - (d) ondervinding in die beslegting van geskille; en
 - (e) enige ander kennis of ondervinding wat hulle geskik maak vir aanstelling as lede van 'n dissiplinêre tribunaal. 15
- (3) Minstens twee lede van 'n dissiplinêre tribunaal moes vir 'n ononderbroke tydperk van minstens vyf jaar as advokate of prokureurs gepraktiseer het of die pos van landdros beklee het, of betrokke gewees het by die onderrig van die reg of dienste gelewer het as regsadviseurs of regs konsultante. 20
- (4) 'n Dissiplinêre tribunaal het die bevoegdheid om ondersoek in te stel na en te besluit oor enige aanklag ingevolge hierdie Wet of die reëls.
- (5) Die registrateur kan 'n bevoegde persoon aanstel om die bevoegdhede uit te oefen en die pligte uit te voer van 'n aanklaer.
- (6) 'n Dissiplinêre tribunaal moet sy verrigtinge uitvoer ooreenkomstig reëls vir dié doel uitgevaardig: Met dien verstande dat— 25
- (a) sodanige reëls in ooreenstemming met die vereistes van hierdie Wet en die Grondwet moet wees; en
 - (b) die bewyslas dieselfde is as in 'n strafgeding.
- (7) Indien daar 'n vakature op 'n dissiplinêre tribunaal ontstaan nadat daardie tribunaal met 'n verhoor begin het, kan daar met die verhoor voortgegaan word voor minstens twee lede van die tribunaal, maar indien slegs twee dienende lede oorbly, kan hulle enige besluit bedoel in artikel 26(1)(c) slegs by eenparige stemming neem. 30
- (8) Die aanklaer kan vir doeleindes van sodanige verhoor— 35
- (a) enigeen dagvaar om te getuig wat daartoe in staat is om inligting relevant tot die verhoor te verskaf, of wat die aanklaer rede het om te vermoed in sy of haar besit of bewaring of onder sy of haar beheer 'n boek, dokument of rekord het wat betrekking het op die onderwerp van die ondersoek, om op 'n datum, tyd en plek in die dagvaarding vermeld, te verskyn om ondervra te word of om sodanige boek, dokument of rekord voor te lê, en kan vir ondersoek enige boek, dokument of rekord aldus voorgelê, terughou; en 40
 - (b) deur middel van die persoon wat by die verhoor voorsit, 'n eed afneem of 'n plegtige verklaring aanvaar van enigeen by die ondersoek teenwoordig, of hom of haar ondervra of deur die aanklaer laat ondervra en hom of haar gelas om enige boek, dokument of rekord in sy of haar besit of bewaring of onder sy of haar beheer, voor te lê. 45
- (9)(a) 'n Getuiedagvaarding in subartikel (8) bedoel moet sower as moontlik soos voorgeskryf in die reëls wees, moet onderteken word deur die aanklaer en moet op dieselfde wyse gediën word as 'n dagvaarding deur 'n landdroshof uitgereik in 'n sivilregtelike geding. 50
- (b) Geen persoon—
- (i) wat behoorlik gedagvaar is om by die verhoor teenwoordig te wees, mag sonder 'n wettige rede versuim om aldus te verskyn nie; of 55
 - (ii) wat as 'n getuie by 'n verhoor geroep is, mag sonder 'n wettige rede weier om die eed of 'n plegtige verklaring af te lê of om enige boek of ander dokument voor te lê of om enige vraag te beantwoord wat van hom of haar verlang kan word om voor te lê of te beantwoord nie.

(c) The registrar shall pay a witness called and present at a hearing such fees as the council may from time to time determine generally, or in any particular case.

(10) The law relating to privilege, as applicable to a witness called to give evidence or to produce a book, document or record in a civil trial before a court of law, shall apply *mutatis mutandis* in relation to the examination of or the production of any book, document or record by any person called in terms of this section.

(11) An agent or person in respect of whom the hearing is instituted in terms of this section shall be entitled to be present at the hearing, to be assisted or represented by another person, and—

- (a) to be heard;
- (b) to call witnesses;
- (c) to cross-examine any person called as a witness in support of the charge; and
- (d) to have access to all documents produced in evidence or relevant to the hearing and which are available.

(12) The registrar shall keep or cause to be kept a record of the proceedings at the hearing.

(13) Any person who, having been duly sworn or having made an affirmation, tenders false evidence at the hearing held under this section, knowing such evidence to be false, shall be guilty of an offence and liable on conviction to the penalties which may lawfully be imposed for the offence of perjury.

(14) The disciplinary tribunal may, if it is of a view that an agent or employee of such agent has committed an offence, submit a certified copy of the record of the proceedings at any hearing held in terms of section 24 to the office of the National Director of Public Prosecutions having jurisdiction in the matter.”.

Substitution of section 26 of Act 12 of 1992

24. The following section is hereby substituted for section 26 of the principal Act:

“Disciplinary powers of tribunal

26. (1) If [the council] a disciplinary tribunal, after [an inquiry] a hearing under section [24] 25, finds an agent or employee of such agent guilty of improper conduct, [the council] it may—

- (a) reprimand or caution him or her;
- (b) impose conditions and restrictions subject to which the agent [concerned] or employee of such agent may, for a specified period, practise his or her occupation; [or]
- (bA) impose on such agent or employee a fine not exceeding such amount as may be prescribed by the Minister by notice in the *Gazette*;
- (bB) suspend that agent from conducting his or her business or from acting as an agent on such conditions and for such period as that tribunal may determine; and
- (c) withdraw the fidelity fund or registration certificate issued [or deemed to have been issued] to that agent and—
 - (i) if such agent is a company, to every director of such company;
 - (ii) if he or she is a director of a company which is an agent, to such company;
 - (iii) if he or she in partnership acts as an agent, to every partner in such partnership;
 - (iv) if such agent is a close corporation, to every member contemplated in the definition of ‘fresh produce agent’ or ‘livestock agent’, as the case may be, of that corporation;

(c) Die registrateur moet 'n getuie geroep en teenwoordig by 'n verhoor, die gelde betaal wat die raad van tyd in die algemeen of in 'n bepaalde geval vasstel.

(10) Die reg met betrekking tot privilegie, soos toepaslik op 'n getuie geroep om getuienis te lewer of om 'n boek, dokument of rekord voor te lê in 'n siviële regtelike verhoor voor 'n geregshof, geld *mutatis mutandis* met betrekking tot die ondersoek van of die voorlegging van enige boek, dokument of rekord deur enigiemand geroep ingevolge hierdie artikel.

(11) 'n Agent of persoon ten aansien van wie die ondersoek ingestel is ingevolge hierdie artikel is daarop geregtig om teenwoordig te wees by die ondersoek, om deur iemand anders bygestaan of verteenwoordig te word, en—

(a) om aangehoor te word;

(b) om getuies te roep;

(c) om enigiemand as getuie geroep ter ondersteuning van die aanklag te kruisondervra; en

(d) om toegang te hê tot alle dokumente as getuienis voorgelê of relevant tot die verhoor is en wat beskikbaar is.

(12) Die registrateur moet 'n rekord hou of laat hou van die verrigtinge by die verhoor.

(13) Enigiemand wat, nadat hy of sy behoorlik die eed of 'n plegtige verklaring afgelê het, valse getuienis by die verhoor gehou kragtens hierdie artikel aanbied met die wete dat sodanige getuienis vals is, is skuldig aan 'n misdryf en by skuldigbevinding strafbaar met die strawwe wat regtens vir die misdryf van meened opgelê kan word.

(14) Die dissiliniêre tribunaal kan, indien hy van mening is dat 'n agent of werknemer van sodanige agent 'n misdryf gepleeg het, 'n gesertifiseerde afskrif van die rekord van die verrigtinge by 'n verhoor gehou ingevolge artikel 24 aan die kantoor van die Nasionale Direkteur van Openbare Vervolgings wat jurisdiksie het in die aangeleentheid, voorlê.”.

Vervanging van artikel 26 van Wet 12 van 1992

24. Artikel 26 van die Hoofwet word hierby deur die volgende artikel vervang:

“Tugbevoegdhede van [raad] tribunaal

26. (1) Indien [die raad] 'n dissiliniêre tribunaal, na 'n [ondersoek] verhoor kragtens artikel [24] 25, 'n agent of werknemer van sodanige agent skuldig bevind aan onbehoorlike gedrag, kan die [raad] tribunaal—

(a) hom of haar berispe of waarsku;

(b) voorwaardes en beperkings oplê waaronder die [betrokke] agent of werknemer van sodanige agent vir 'n bepaalde tydperk sy of haar beroep mag beoefen; [of]

(bA) 'n boete aan sodanige agent of werknemer oplê van hoogstens die bedrag wat die Minister by kennisgewing in die *Staatskoerant* voorskryf;

(bB) daardie agent skors van die bedryf van sy saak of van optrede as 'n agent op die voorwaardes en vir die tydperk wat daardie tribunaal bepaal; en

(c) die getrouheidsfondssertifikaat of registrasiesertifikaat intrek wat uitgereik is aan daardie agent [uitgereik is of geag word uitgereik te wees, intrek] en—

(i) indien sodanige agent 'n maatskappy is, aan elke direkteur van so 'n maatskappy;

(ii) indien hy of sy 'n direkteur is van 'n maatskappy wat 'n agent is, aan so 'n maatskappy;

(iii) indien hy of sy in vennootskap optree as 'n agent, aan elke vennoot in so 'n vennootskap;

(iv) indien so 'n agent 'n beslote korporasie is, aan elke lid beoog in die omskrywing van 'varsprodukte-agent' of 'lewendehawe-agent', na gelang van die geval, van daardie korporasie;

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- (v) if he or she is a member of a close corporation which is an agent, to such corporation;
 - (vi) if such agent is a trust, to every trustee of such trust; or
 - (vii) if he or she is a trustee of a trust which is an agent, to such trust.
- (2) The [council] disciplinary tribunal may **[postpone the taking of its decision under subsection (1), or]** suspend the execution of its decision taken under subsection (1)(bA), (bB) or (c), for such period not exceeding three years and subject to such further conditions as **[the council]** it may in each case determine.
- (3) (a) A fine imposed under subsection (1)(bA) shall have the effect of and may be executed as if it were a civil judgment in favour of the council.
- (b) The registrar shall [—
- (a) **inform an agent who is so found guilty, in writing of the decision of the council and of the grounds on which it is based;**
 - (b) **except where the execution of a decision has been suspended under subsection (2),]** publish the name and address of the agent or employee of such agent [so] 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) (a) If at the end of the period for which the taking of a decision has been postponed under subsection (2), the council is satisfied that the agent has observed all the relevant conditions, the registrar shall inform the agent concerned that the council will not take a decision under subsection (1).
- (b) If the execution of a decision has been suspended under subsection (2) and the council is satisfied that the agent concerned has observed all the relevant conditions throughout the period of suspension, the registrar shall inform such agent that such decision will not be executed.]
- (5) If an agent or employee of such agent fails to comply with any conditions determined under subsection (2), the [council] registrar shall **[take a decision under subsection (1), or cause the decision taken under subsection (1)(c) to be executed,]** cause the decision taken under subsection (1)(bA) or (bB) to be executed unless the said agent or employee of such agent satisfies the [council] registrar that the non-compliance with such conditions was due to circumstances beyond his or her control.
- [(6) A decision taken under this section by a committee authorized thereto in terms of section 7 shall only come into effect after it has been confirmed by the council.]
- (6) In addition to any of the sanctions referred to in subsection (1), the disciplinary tribunal may order that agent or employee to pay the costs incurred by the council in connection with such hearing and—
- (a) such costs shall be calculated in accordance with the High Court tariff applicable to civil litigation; and
 - (b) for the purpose of assessing such costs, the registrar of the High Court having jurisdiction shall be empowered to tax such costs.
- (7) Without derogating from the generality of any such order for the payment of costs, such costs shall include—
- (a) the costs of recording, transcribing and preparing copies of any record;
 - (b) the costs incurred by the council in respect of the prosecutor and the accountant or other persons appointed to inspect and investigate the agent or his or her employee's books of account and any other documents or records or things relating to the agent or his or her employee's business operation or former business operation; and
 - (c) the costs of procuring the attendance of witnesses and their witness fees, including those of the complainant.

- (v) indien hy of sy 'n lid is van 'n beslote korporasie wat 'n agent is, aan so 'n korporasie;
- (vi) indien so 'n agent 'n trust is, aan elke trustee van die trust; of
- (vii) indien hy of sy 'n trustee is van 'n trust wat 'n agent is, aan so 'n trust.

(2) Die **[raad]** dissiplinêre tribunaal kan **[die neem van sy beslissing kragtens subartikel (1) uitstel, of]** die tenuitvoerlegging van sy besluit geneem kragtens subartikel (1)(bA), (bB) of (c) opskort, vir die tydperk van hoogstens drie jaar en op die verdere voorwaardes wat die **[raad]** tribunaal in elke geval bepaal.

(3) (a) 'n Boete opgelê kragtens subartikel (1)(bA) het die uitwerking en kan ten uitvoer gelê word asof dit 'n siviele uitspraak is in die guns van die raad.

(b) Die registrateur moet [—

(a) 'n agent wat aldus skuldig bevind is, skriftelik in kennis stel van die besluit van die raad en van die gronde waarop dit gebaseer is; en

(b) behalwe waar die tenuitvoerlegging van 'n besluit kragtens subartikel (2) opgeskort is,] die naam en adres van die agent of werknemer van sodanige agent wat **[aldus]** ingevolge subartikel (1) skuldig bevind is, besonderhede van sy of haar skuldigbevinding en die straf wat hom of haar opgelê is, by kennisgewing in die Staatskoerant publiseer.

[(4) (a) Indien die raad na afloop van die tydperk waarvoor die neem van 'n besluit kragtens subartikel (2) uitgestel is, oortuig is dat die betrokke agent al die toepaslike voorwaardes nagekom het, moet die registrateur die betrokke agent meedeel dat die raad nie 'n besluit kragtens subartikel (1) gaan neem nie.

(b) Indien die tenuitvoerlegging van 'n besluit kragtens subartikel (2) opgeskort is en die raad oortuig is dat die betrokke agent gedurende die hele tydperk van die opskorting al die toepaslike voorwaardes nagekom het, moet die registrateur sodanige agent meedeel dat genoemde besluit nie ten uitvoer gelê gaan word nie.]

(5) Indien 'n agent of werknemer van sodanige agent versuim om aan voorwaardes te voldoen wat kragtens subartikel (2) bepaal is, moet die **[raad]** registrateur **['n besluit kragtens subartikel (1) neem, of die besluit wat kragtens subartikel (1)(c) geneem is, ten uitvoer laat lê, die besluit geneem kragtens subartikel (1)(bA) of (bB) ten uitvoer laat lê tensy]** genoemde agent of werknemer van sodanige agent die **[raad]** registrateur oortuig dat die nie-nakoming van sodanige voorwaardes aan omstandighede buite sy of haar beheer te wyte was.

[(6) 'n Besluit kragtens hierdie artikel geneem deur 'n komitee wat ingevolge artikel 7 daartoe gemagtig is, tree slegs in werking nadat dit deur die raad bekragtig is.]

(6) Benewens enige van die strawwe bedoel in subartikel (1), kan die dissiplinêre tribunaal daardie agent of werknemer gelas om die koste deur die raad aangegaan in verband met sodanige verhoor te betaal en—

- (a) sodanige koste moet bereken word in ooreenstemming met die tarief van die Hoë Hof toepaslik op sivilregtelike litigasie; en
- (b) vir doeleindes van die taksasie van sodanige koste, is die registrateur van die Hoë Hof wat jurisdiksie het bevoeg om sodanige koste te takseer.

(7) Sonder om afbreuk te doen aan die algemeenheid van so 'n bevel vir die betaling van koste, sluit sodanige koste in—

- (a) die koste van die maak van 'n opname, transkribering en voorbereiding van kopieë van enige rekord;
- (b) die koste deur die raad aangegaan ten aansien van die aanklaer en die rekenmeester of ander persone aangestel om die agent of sy of haar werknemer se rekeningboeke en enige ander dokumente of rekords of sake met betrekking tot die agent of sy of haar werknemer se sakebedryf of voormalige sakebedryf te inspekteer en te ondersoek; en
- (c) die koste om die bywoning van getuies te bewerkstellig en hulle getuiegeld, met inbegrip van dié van die klaer.

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

(9) (a) The disciplinary tribunal may, whenever a fine has been imposed on an agent as contemplated in subsection (1)(bA), order that any portion of that fine, but not exceeding 80% thereof, be applied towards the payment of compensation to any person who suffered a pecuniary loss as a result of the conduct of the agent or employee in question. 5

(b) The registrar shall, on receipt of the fine imposed on the agent in question, make the payment contemplated in paragraph (a). 10

(c) This subsection shall not preclude any person from pursuing any civil remedy against the agent or employee contemplated in paragraph (a): Provided that if an award is made by a court in favour of a person who has received payment from the council as contemplated in paragraph (b), the court shall take the payment into account in making such award.”. 15

Substitution of section 27 of Act 12 of 1992

25. The following section is hereby substituted for section 27 of the principal Act:

“Entry and inspections

27. (1) The registrar may designate a suitable person (hereinafter referred to as an inspector) to exercise and perform periodic regulatory inspections and investigations at the business premises of any agent with a view to determining whether the provisions of sections 18, 19, 20 and 21 and the rules pertaining thereto have been complied with, and for that purpose an inspector shall be entitled to enter such business premises and to exercise any of the powers referred to and in accordance with subsection (4) insofar as they relate to the aforesaid sections and rules. 20 25

(2) An inspector shall be furnished with a certificate of appointment signed by or on behalf of the council in which it is stated that he or she is an inspector appointed in terms of this Act. 30

(3) An inspector shall, when performing any functions in terms of this Act, have his or her certificate of appointment in his or her possession.

(4) In order to obtain any information required by the registrar in relation to a complaint, charge or allegation lodged, an inspector may be designated who may, subject to this section, enter any premises on or in which any book, document or other object connected with such investigation is or is suspected to be, and may— 35

(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; 40

(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; 45

(c) make copies of or extracts from any book or document found on or in the premises which has or might have a bearing on the investigation in question, and request from any person who is suspected of having the necessary information an explanation of any entry therein;

(d) seize, against the issue of a receipt, anything on or in the premises which has or might have a bearing on the investigation in question, if the inspector needs to retain it for further examination or for safe custody. 50

(5) Unless the owner or person in charge of the premises has consented thereto in writing an inspector shall enter premises and exercise any power contemplated in subsection (4) only under a search warrant, which may 55

(8) Die bevel in subartikel (7) beoog vir die betaling van koste deur die raad aangegaan in verband met 'n inspeksie en ondersoek het die uitwerking van en kan ten uitvoer gelê word asof dit 'n sivilregtelike uitspraak in die guns van die raad is.

(9) (a) Die dissiplinêre tribunaal kan, waar 'n boete aan 'n agent opgelê is soos in subartikel (1)(bA) beoog, gelas dat 'n gedeelte van daardie boete, maar hoogstens 80% daarvan, aangewend word vir die betaling van vergoeding aan 'n persoon wat geldelike verlies gely het weens die optrede van die betrokke agent of werknemer.

(b) Die registrateur moet, by ontvangs van die boete aan die betrokke agent opgelê, die betaling in paragraaf (a) beoog, doen.

(c) Hierdie subartikel verhinder niemand om met enige sivilregtelike remedie teen die agent of werknemer in paragraaf (a) beoog, voort te gaan nie: Met dien verstande dat indien 'n toekenning deur 'n hof gedoen word ten gunste van 'n persoon wat betaling van die raad ontvang het soos in paragraaf (b) beoog, die hof die betaling in ag moet neem by die maak van sodanige toekenning."

Vervanging van artikel 27 van Wet 12 van 1992

25. Artikel 27 van die Hoofwet word hierby deur die volgende artikel vervang:

"Betreding en inspeksies

27. (1) Die registrateur kan 'n geskikte persoon (hierna 'n inspekteur genoem) aanwys om van tyd tot tyd regulatoriese inspeksies en ondersoeke uit te voer en te verrig op die sakeperseel van 'n agent met die oog daarop om vas te stel of die bepalings van artikels 18, 19, 20 en 21 en die reëls wat daarop betrekking het, nagekom is, en vir daardie doel is 'n inspekteur daarop geregtig om sodanige sakeperseel te betree en om enige van die bevoegdhede bedoel in en in ooreenstemming met subartikel (4) uit te oefen in die mate waarop dit betrekking het op die voormelde artikels en reëls.

(2) 'n Inspekteur moet voorsien word van 'n aanstellingsertifikaat onderteken deur of namens die raad waarin dit aangedui word dat hy of sy 'n inspekteur is wat ingevolge hierdie Wet aangestel is.

(3) 'n Inspekteur moet, by die verrigting van enige werksaamhede ingevolge hierdie Wet, sy of haar aanstellingsertifikaat in sy of haar besit hê.

(4) Ten einde inligting te bekom deur die registrateur benodig ten aansien van 'n klage, aanklag of bewering ingedien, kan 'n inspekteur aangewys word wat, behoudens hierdie artikel, enige perseel kan betree waarin of waarop enige boek, dokument of ander voorwerp wat verband hou met sodanige ondersoek is, of vermoed word te wees, en die inspekteur kan—

(a) daardie perseel inspekteer of deursoek, en daar die ondersoeke doen of navrae rig wat nodig is met die oog op die verkryging van enige sodanige inligting;

(b) enige voorwerp ondersoek wat op of in die perseel gevind word en wat verband hou of moontlik verband hou met die betrokke ondersoek, en die eienaar of persoon in beheer van die perseel of 'n persoon in wie se besit of beheer daardie voorwerp is, om inligting aangaande daardie voorwerp versoek;

(c) afskrifte van of uittreksels uit enige boek of dokument maak wat gevind is op of in die perseel wat verband hou of moontlik verband hou met die betrokke ondersoek, en enige persoon wat vermoed word oor die nodige inligting te beskik, 'n verduideliking vra van enige inskrywing daarin;

(d) beslag lê, teen die uitreik van 'n kwitansie, op enigiets op of in die perseel wat verband hou of moontlik verband hou met die betrokke ondersoek, indien die inspekteur dit moet behou vir verdere ondersoek of vir veilige bewaring.

(5) Tensy die eienaar of persoon in beheer van die perseel skriftelik daartoe toegestem het, mag 'n inspekteur 'n perseel betree en 'n bevoegdheid beoog in subartikel (4) uitoefen slegs kragtens 'n lasbrief vir

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only be issued by the court if it appears to that court from information given to the court on oath or solemn affirmation that there are reasonable grounds to suspect—

- (a) that a contravention of this Act or the rules has taken place or is taking place; and
- (b) that a book, document or other object which may afford evidence of such contravention is on or in those premises.

(6) A search warrant contemplated in subsection (5) shall—

- (a) authorize an inspector mentioned in the warrant to enter the premises identified in the warrant for the purpose of exercising any power contemplated in subsection (4);
- (b) be executed by day, unless the court authorizes the execution thereof during the night;
- (c) be of force until it is executed or cancelled by the court, or a period of one month from the day of its issue expires, whichever occurs first.

(7) An inspector referred to in subsection (1) or an inspector executing a search warrant under subsection (6) shall, before such execution, upon demand by any person whose rights may be affected—

- (a) show that person his or her certificate of appointment;
- (b) hand to that person a copy of the warrant if he or she is acting in terms of subsection (5).

(8) A person from whose possession or charge a book or document has been taken under this section shall, as long as the book or document is in the possession or charge of the inspector or of the council, be allowed on request to make copies thereof or to take extracts therefrom at any reasonable time at his or her own expense and under the supervision of that inspector or a person in the service of the council.

(9) A person shall be guilty of an offence if—

- (a) he or she obstructs or hinders an inspector in the performance of the inspector's functions in terms of this section;
- (b) after an inquiry having been made of him or her under subsection (4)(a) or after having been requested for information or an explanation under subsection (4)(b) or (c)—

- (i) he or she refuses to answer, or to answer fully and satisfactorily to the best of his or her knowledge and belief, such inquiry or request for information; or
- (ii) gives an answer or information or an explanation which is false or misleading, knowing it to be false or misleading.

(10) Any person from whom information or an explanation has been requested in terms of this section shall not be entitled to refuse to answer any question or to produce any book, document or object on the ground that he or she would thereby be exposed to a criminal or disciplinary charge: Provided that, to the extent that such answer, book, document or article does expose the person to a disciplinary or criminal charge, no evidence thereof shall be admissible in any disciplinary or criminal proceedings against that person except where the person stands trial on a charge contemplated in subsection (9)(b).

(11) An inspector who is not in the full-time service of the State shall be appointed on such conditions and at such remuneration as the council may determine.”.

Amendment of section 29 of Act 12 of 1992

26. Section 29 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections respectively:

“(1) Any person who—

- (a) contravenes or fails to comply with a provision of section [12(4)(a), 16(1) [or (9)(a)], 16(11) or (12), 19(1), 19(8), 20(2)(a), 27(9)(a) and (b)(i) or 28;
- (b) contravenes or fails to comply with a provision of section 16(2), [(7), (9)(b) or (10)(d)], (6)(a) or (7)(d), 18 or 19(3)(b) or (c) or 19(5);

visentering, wat slegs deur die hof uitgereik kan word indien dit aan die hof blyk uit inligting aan die hof gegee onder eed of onder plegtige verklaring dat daar redelike gronde is om te vermoed—

- (a) dat 'n oortreding van hierdie Wet of die reëls plaasgevind het of plaasvind; en 5
- (b) dat 'n boek, dokument of ander voorwerp wat moontlik bewys kan verskaf van sodanige oortreding op of in daardie perseel is.
- (6) 'n Lasbrief vir visentering in subartikel (5) beoog moet—
- (a) 'n inspekteur in die lasbrief genoem magtig om die perseel in die lasbrief bepaal, te betree met die oog op die uitoefening van 'n bevoegdheid in subartikel (4) beoog; 10
- (b) in die dag uitgevoer word, tensy die hof die uitvoering daarvan in die nag magtig;
- (c) van krag bly totdat dit uitgevoer of deur die hof gekanselleer word, of 'n tydperk van een maand vanaf die dag van die uitreiking daarvan verloop het, wat ook al eerste plaasvind. 15
- (7) 'n Inspekteur in subartikel (1) bedoel of 'n inspekteur wat 'n lasbrief vir visentering kragtens subartikel (6) uitvoer, moet, voor sodanige uitvoering op aandrang van 'n persoon wie se regte moontlik aangetas kan word— 20
- (a) sy of haar aanstellingsertifikaat aan daardie persoon toon;
- (b) 'n afskrif van die lasbrief aan daardie persoon oorhandig indien hy of sy ingevolge subartikel (5) optree.
- (8) Iemand uit wie se besit of beheer 'n boek of dokument geneem is kragtens hierdie artikel moet, solank as wat dit in die besit of beheer van die inspekteur of die raad is, op versoek toegelaat word om op sy of haar eie koste afskrifte daarvan of uittreksels daaruit te maak te eniger redelike tyd en onder toesig van daardie inspekteur of 'n persoon in diens van die raad. 25
- (9) Iemand is skuldig aan 'n misdryf indien—
- (a) hy of sy 'n inspekteur dwarsboom of hinder in die verrigting van die inspekteur se werksaamhede ingevolge hierdie artikel; 30
- (b) nadat 'n navraag aan hom of haar gerig is kragtens subartikel (4)(a) of inligting of 'n verduideliking kragtens subartikel (4)(b) of (c) van hom of haar versoek is —
- (i) hy of sy weier om te antwoord, of om volledig en bevredigend na die beste van sy of haar kennis en wete, te antwoord op sodanige navraag of versoek om inligting; of 35
- (ii) 'n antwoord of inligting of 'n verduideliking gee wat vals of misleidend is, wetend dat dit vals of misleidend is.
- (10) Iemand van wie inligting of 'n verduideliking versoek is ingevolge hierdie artikel is nie daarop geregtig om te weier om enige vraag te beantwoord of om enige boek, dokument of voorwerp voor te lê nie op grond daarvan dat hy of sy daardeur aan 'n kriminele of dissiplinêre aanklag blootgestel sal word nie: Met dien verstande dat, in die mate waarin sodanige antwoord, boek, dokument of item die persoon wel blootstel aan 'n dissiplinêre of kriminele aanklag, geen getuienis daarvan toelaatbaar sal wees in enige dissiplinêre of kriminele verrigtinge teen daardie persoon nie, behalwe waar die persoon teregstaan op 'n aanklag beoog in subartikel (9) (b). 40
- (11) 'n Inspekteur wat nie in voltydse diens van die staat staan nie, word aangestel op die voorwaardes en teen die vergoeding wat die raad bepaal. 50

Wysiging van artikel 29 van Wet 12 van 1992

26. Artikel 29 van die Hoofwet word hierby gewysig deur subartikels (1) en (2) deur onderskeidelik die volgende subartikels te vervang:

- “(1) Iemand wat— 55
- (a) 'n bepaling van artikel [12(4)(a),] 16(1) [of (9)(a)], 16(11) of (12), 19(1), 19(8), 20(2)(a), 27(9)(a) en (b)(i) of 28 oortree of versuim om daaraan te voldoen;
- (b) 'n bepaling van artikel 16(2), [(7), (9)(b)] (6)(a) of (7)(d), [(10)(d)], 18 of 19(3)(b) of (c) of 19(5) oortree of versuim om daaraan te voldoen; 60

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- [(c) contravenes or fails to comply with a requirement under section 17(1) or a condition or requirement under section 19 (2) (c);
- (d) (i) hinders or obstructs an inspector in the exercise of his powers or the performance of his duties under section 27;
- (ii) without valid excuse refuses or fails to answer to the best of his ability any question which an inspector in the exercise of his powers or the performance of his duties under the said section has put to him;
- (iii) refuses or fails to comply to the best of his ability with any requirement made by an inspector in the exercise of his powers or the performance of his duties under the said section; or
- (iv) wilfully furnishes to an inspector any information which is false or misleading;]
- (bA) contravenes or fails to comply with the provisions of section 25(9);
- (e) in any application in terms of this Act, knowingly furnishes information or makes a statement which is false or misleading, shall be guilty of an offence.
- (2) Any person who is convicted of an offence—
- (a) mentioned in subsection (1) (a)[,(c) or (d) (i), (ii) or (iii),] shall be liable—
- (i) on a first conviction, to a fine [not exceeding R8 000] or to imprisonment for a period not exceeding two years or to both [that] a fine and [that] such imprisonment; and
- (ii) on a second or subsequent conviction, [whether of the same offence or any other offence mentioned in this paragraph,] to a fine [not exceeding R16 000] or to imprisonment for a period not exceeding four years or to both [the] a fine and [the] such imprisonment;
- (b) mentioned in subsection (1)(b), [(d)(iv) or (e)], shall be liable to a fine [not exceeding R4 000] or to imprisonment for a period not exceeding one year or to both [that] a fine and [that] such imprisonment; and
- (c) mentioned in subsection (1)(bA), shall be liable to a fine or to imprisonment not exceeding three months or to both a fine and such imprisonment.”.

Amendment of section 30 of Act 12 of 1992

27. Section 30 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
- “(1) Whenever any fresh produce agent or his or her manager, representative, agent, employee or [family] member of his or her household owing to the appropriation of money in the trust account of that agent, is convicted of an offence involving fraud or dishonesty, and it has been proved that the amount standing to the credit of that trust account is insufficient for the payment of all amounts payable from it in terms of section 20, the court [concerned] shall at the request of the prosecutor made on behalf of the council, inquire into and determine the amount of the deficit in the trust account and order the fresh produce agent to pay an amount equal to the amount so determined to the council, and any such order shall have all the effects of and may be executed as if it were a civil judgment in favour of the council.”; and
- (b) by the deletion of subsection (3).

Amendment of section 31 Act 12 of 1992

28. Section 31 is hereby amended by the deletion of subsection (2).

- [(c) 'n vereiste kragtens artikel 17(1) of 'n voorwaarde of vereiste kragtens artikel 19(2)(c) oortree of versuim om daaraan te voldoen;
- (d) (i) 'n inspekteur by die uitoefening van sy bevoegdhede of die verrigting van sy pligte kragtens artikel 27 hinder of belemmer; 5
- (ii) sonder geldige verskoning weier of versuim om 'n vraag wat 'n inspekteur by die uitoefening van sy bevoegdhede of die verrigting van sy pligte kragtens genoemde artikel aan hom gestel het, na sy beste vermoë te beantwoord; 10
- (iii) weier of versuim om na sy beste vermoë aan 'n vereiste deur 'n inspekteur by die uitoefening van sy bevoegdhede of die verrigting van sy pligte kragtens genoemde artikel gestel, te voldoen; of
- (iv) opsetlik aan 'n inspekteur inligting verstrek wat vals of misleidend is;] 15
- (bA) die bepalings van artikel 25(9) oortree of versuim om daaraan te voldoen;
- (e) in 'n aansoek ingevolge hierdie Wet wetens inligting verstrek of 'n verklaring doen wat vals of misleidend is, 20
- is aan 'n misdryf skuldig.
- (2) 'n Persoon wat skuldig bevind word aan 'n misdryf—
- (a) in subartikel (1)(a)[, (c) of (d)(i), (ii) of (iii)] vermeld—
- (i) is by 'n eerste skuldigbevinding strafbaar met 'n boete [van hoogstens R8 000] of met gevangenisstraf vir 'n tydperk van hoogstens twee jaar of met [daardie] 'n boete sowel as [daardie] sodanige gevangenisstraf; en 25
- (ii) is by 'n tweede of daaropvolgende skuldigbevinding [, hetsy aan dieselfde misdryf of aan enige ander misdryf in hierdie paragraaf vermeld,] strafbaar met 'n boete [van hoogstens R16 000] of met gevangenisstraf vir 'n tydperk van hoogstens vier jaar of met [daardie] 'n boete sowel as [daardie] sodanige gevangenisstraf; 30
- (b) in subartikel (1)(b), [(d)(iv) of (e)] vermeld, is strafbaar met 'n boete [van hoogstens R4 000] of met gevangenisstraf vir 'n tydperk van hoogstens een jaar of met [daardie] 'n boete sowel as [daardie] sodanige gevangenisstraf; en 35
- (c) in subartikel (1)(bA) vermeld, is strafbaar met 'n boete of met gevangenisstraf van hoogstens drie maande of met 'n boete sowel as sodanige gevangenisstraf.”. 40

Wysiging van artikel 30 van Wet 12 van 1992

27. Artikel 30 van die Hoofwet word hierby gewysig—

- (a) deur subartikel (1) deur die volgende subartikel te vervang:

“(1) Wanneer 'n [agent] varsprodukte-agent of sy of haar bestuurder, verteenwoordiger, agent of werknemer of [gesinslid] 'n lid van sy of haar huishouding weens die aanwending van geld in die trustrekening van daardie agent skuldig bevind word aan 'n misdryf waarby bedrog of oneerlikheid betrokke is, en daar bewys is dat die bedrag in krediet van daardie trustrekening nie voldoende is nie om alle bedrae te betaal wat ingevolge artikel 20 daaruit betaalbaar is, moet die [betrokke] hof, op versoek van die aanklaer ten behoeve van die raad, ondersoek instel na en die bedrag bepaal van die tekort in die trustrekening, en die [agent] varsprodukte-agent beveel om 'n bedrag gelykstaande met die aldus bepaalde bedrag aan die raad te betaal, en so 'n bevel het in alle opsigte die uitwerking van 'n siviele uitspraak ten gunste van die raad en kan uitgevoer word asof dit so 'n uitspraak was.”; en 45

- (b) deur subartikel (3) te skrap. 50

Wysiging van artikel 31 van Wet 12 van 1992

28. Artikel 31 word hierby gewysig deur subartikel (2) te skrap. 55

Repeal of section 32 of Act 12 of 1992

29. Section 32 of the principal Act is hereby repealed.

Insertion of section 35A in Act 12 of 1992

30. The following section is hereby inserted in the principal Act, after section 35:

“Transitional provisions

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35A. (1) Every fresh produce agent who was the holder of a fidelity fund certificate immediately prior to the date of commencement of the Agricultural Produce Agents Amendment Act, 2003, shall within the period determined by the council by notice in the *Gazette* apply on his or her own behalf and on behalf of every person who acts as an agent on his or her behalf as contemplated in subparagraph (i) of paragraph (a) of the definition of ‘fresh produce agent’ in section 1, for a fidelity fund certificate, and shall furnish the council with the information that the council may determine relating to himself or herself and such persons. 10

(2) Notwithstanding subsection (1), each person who immediately prior to the date of commencement of the Agricultural Produce Agents Amendment Act, 2003— 15

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

(i) in the case of a fresh produce agent, be deemed to be the holder of a fidelity fund certificate issued in terms of that section: Provided that such certificate shall lapse if a new certificate is not issued to the agent within the period specified in subsection (1); 20

(ii) in the case of a livestock agent, be deemed to be the holder of a registration certificate; 25

(b) carried on business as an export agent, shall be deemed to be the holder of a registration certificate.

(3) The provisions of subsection (2) shall not relieve any person who acts or professes to act as— 30

(a) a fresh produce agent and who is not in possession of a fidelity fund certificate at the commencement date of the Agricultural Produce Agents Amendment Act, 2003, to apply to the council for a fidelity fund certificate and to furnish the council with such information as it may determine; 35

(b) a livestock agent and who is not in possession of a registration certificate at the commencement date of that Act, to apply to the council for a registration certificate and to furnish the council with such information as it may determine;

(c) an export agent and who is not carrying on business as such at the commencement date of that Act, to apply to the council for a registration certificate and to furnish the council with such information as it may determine. 40

(4) Members of the council in office immediately prior to the commencement of the Agricultural Produce Agents Amendment Act, 2003, shall remain in office until the termination of their term of office: Provided that the Minister shall appoint such additional members to the council as may be required from time to time.”. 45

Short title

31. This Act is called the Agricultural Produce Agents Amendment Act, 2003. 50

Herroeping van artikel 32 van Wet 12 van 1992

29. Artikel 32 van die Hoofwet word hierby herroep.

Invoeging van artikel 35A in Wet 12 van 1992

30. Die volgende artikel word hierby in die Hoofwet ingevoeg na artikel 35:

“Oorgangsbepalings

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35A. (1) Elke varsprodukte-agent wat die houer was van 'n getrouheidsfondssertifikaat onmiddellik voor die datum van inwerking-treding van die Wysigingswet op Landbouprodukte-agente, 2003, moet binne die tydperk deur die raad bepaal by kennisgewing in die *Staatskoerant*, ten behoeve van homself of haarself en ten behoeve van elke ander persoon wat namens hom of haar optree as 'n agent soos beoog in subparagraaf (i) van paragraaf (a) van die omskrywing van 'varsprodukte-agent' in artikel 1, aansoek doen om 'n getrouheids-fondssertifikaat, en moet die raad voorsien van die inligting wat die raad bepaal met betrekking tot homself of haarself en sodanige ander persone. 10 15

(2) Ondanks subartikel (1) moet elkeen wat onmiddellik voor die datum van inwerkingtreding van die Wysigingswet op Landbouprodukte-agente, 2003 —

(a) die houer was van 'n getrouheidsfondssertifikaat in daardie subartikel beoog— 20

(i) in die geval van 'n varsprodukte-agent, geag word die houer te wees van 'n getrouheidsfondssertifikaat uitgereik ingevolge daardie artikel: Met dien verstande dat sodanige sertifikaat verstryk indien 'n nuwe sertifikaat nie aan die agent uitgereik word binne die tydperk in subartikel (1) vermeld nie; 25

(ii) in die geval van 'n lewendehawe-agent, geag word die houer te wees van 'n registrasiesertifikaat;

(b) 'n besigheid bedryf het as 'n uitvoeragent, geag word die houer te wees van 'n registrasiesertifikaat.

(3) Die bepalinge van subartikel (2) vrywaar nie iemand nie wat optree of voorgee om op te tree as— 30

(a) 'n varsprodukte-agent en wat nie in besit is van 'n getrouheids-fondssertifikaat op die inwerkingtredingsdatum van die Wysigingswet op Landbouprodukte-agente, 2003, nie, om by die raad aansoek te doen om 'n getrouheidsfondssertifikaat en om die raad te voorsien van die inligting wat die raad bepaal; 35

(b) 'n lewendehawe-agent en wat nie in besit is van 'n registrasie-sertifikaat op die inwerkingtredingsdatum van daardie Wet nie, om by die raad aansoek te doen om 'n registrasiesertifikaat en om die raad te voorsien van die inligting wat die raad bepaal; 40

(c) 'n uitvoeragent en wat nie as sodanig 'n besigheid bedryf op die inwerkingtredingsdatum van daardie Wet nie, om by die raad aansoek te doen om 'n registrasiesertifikaat en om die raad te voorsien van die inligting wat die raad bepaal. 45

(4) Lede van die raad wat hul amp beklee onmiddellik voor die inwerkingtreding van die Wysigingswet op Landbouprodukte-agente, 2003, bly in hul amp aan tot die verstryking van hul ampstermyn: Met dien verstande dat die Minister die addisionele lede in die raad moet aanstel wat van tyd tot tyd nodig is.”.

Kort titel en inwerkingtreding

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31. Hierdie Wet heet die Wysigingswet op Landbouprodukte-agente, 2003.

