

REPUBLIC OF SOUTH AFRICA

**AGRICULTURAL PRODUCE
AGENTS AMENDMENT
BILL**

*(As introduced in the National Assembly (proposed section 76);
explanatory summary of Bill and prior notice of its introduction published in
Government Gazette No. 43723 of 18 September 2020))
(The English text is the official text of the Bill)*

(MINISTER OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT)

[B 33—2020]

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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.

BILL

To amend the Agricultural Produce Agents Act, 1992, so as to refine certain definitions; provide for certain provisions of the Agricultural Produce Agents Act, 1992, to apply to all categories of agents; clarify the appointment and responsibilities of the registrar; provide for financial statements of the council to be audited by the Auditor General; provide for insurance of the fidelity fund; further clarify the conditions for acting as an agent; provide for trust accounts for export agents; provide for insurance by export and fresh produce agents; 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, as amended by section 1 of Act 47 of 2003

1. Section 1 of the Agricultural Produce Agents Act, 1992 (Act No. 12 of 1992) (hereinafter referred to as the “principal Act”), is hereby amended— 5

(a) by the substitution in subsection (1) for the definition of “agent” of the following definition:

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

(b) by the substitution in subsection (1) for the definition of “auditor” of the following definition: 15

“**‘auditor’** means a person registered in terms of section **[15 of the Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991)] 37** of the Auditing Profession Act, 2005 (Act No. 26 of 2005), as **[an accountant or]** registered auditor, **[and engaged in public practice as such] who provides professional services;”;** 20

(c) by the insertion in subsection (1) after the definition of “auditor” of the following definitions, respectively:

“**‘Auditor-General’** means the institution contemplated in section 181(1)(e) of the Constitution of the Republic of South Africa, 1996; 25
‘bank’ means a bank as defined in section 1 of the Banks Act, 1990 (Act No. 94 of 1990);”;

- (d) by the deletion in subsection (1) of the definition of “deposit-taking institution”;
- (e) by the substitution in subsection (1) for the definition of “export agent” of the following definition:
- “**‘export agent’** means an agent acting as such with regard to any agricultural product specified in Part A of Schedule 1 intended for export on the basis that the risk of profit or loss at all times remains with the principal, and—
- (a) for the purposes of section 3(1)(e), includes any director of the company, member of a close corporation or trustee of a trust which is registered as and acts as an export agent as aforesaid and provided that such director, member or trustee is in possession of a registration certificate; and
- (b) for the purposes of sections 16(1)(b), 16(6)(f), 16(6A)(a), 19A(1), 23, 24(1), 24(1B), 24(1C), 25, 26 and 27, includes—
- (i) any director of the company, member of a close corporation or trustee of a trust which is registered as and acts as an export agent; and
- (ii) any person who is employed as an export agent and who acts as an export agent as aforesaid on behalf of his or her employer;”;
- (f) by the substitution in subsection (1) for the definition of “fresh produce agent” of the following definition:
- “**‘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)] 3(1)(c), includes any director of a company, trustee of a trust or a member of a close corporation [who] which acts as a fresh produce agent as aforesaid: Provided and provided that such director, trustee or member is in possession of a fidelity fund certificate; and
- (b) for the purposes of sections [12(5)] 12(4), 13(3)(b), 13(3)(c), 13(3)(d), 13(4), 14(3)(a), 14(4), 14(5)(a), 16(1), 16(6)(f), 16(6A), 22, 23, 24, 25, 26, 27 and 30, includes—
- (i) any director of a company, or a member of a close corporation or a trustee of a trust [who] which 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;”;
- (g) by the substitution in subsection (1) 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, on the basis that the risk of profit or loss at all times remains with the principal and—
- (a) for purposes of section [3(1)(b)] 3(1)(d) includes any director of a company, trustee of a trust or a member of a close corporation which is registered as and acts as a livestock agent as aforesaid: Provided that such director, trustee or member is in possession of a registration certificate; and
- (b) for the purposes of sections 16(1)(b), 16(6)(f), 16(6A)(a), 23, 24(1), 24(1B), 24(1C), 25, 26 and 27, includes—
- (i) any director of the company, member of a close corporation or trustee of a trust which is registered as and acts as a livestock agent; and
- (ii) any person who is employed as a livestock agent and who acts as a livestock agent as aforesaid on behalf of his or her employer;”;

(h) by the insertion after subsection (1) of the following subsection:

“(1A) For purposes of this Act, a company shall include any voluntary association with legal personality which acts as an agent, and the members of such a voluntary association who hold executive powers shall, for purposes hereof, be deemed to be the directors of that voluntary association.”. 5

Amendment of section 3 of Act 12 of 1992, as substituted by section 2 of Act 47 of 2003

2. Section 3 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraphs (c), (d) and (e) of the following paragraphs, respectively: 10

“(c) three persons who in his or her opinion represent fresh produce agents and who are holders of a fidelity fund certificate;

(d) three persons who in his or her opinion represent livestock agents and who are holders of a registration certificate; 15

(e) three persons who in his or her opinion represent export agents and who are holders of a registration certificate;” and

(b) by the substitution for subsection (7) of the following subsection:

“(7) No person may be appointed as a member of the council, who—

(a) is not a South African citizen and a permanent resident and is not ordinarily resident in [South Africa] the Republic; 20

(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 or by a disciplinary tribunal referred to in section 25; 25

(d) has been convicted [of an offence involving an element of dishonesty or has been sentenced for another offence to a period of imprisonment], in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than the amount determined by the applicable Minister for theft, fraud, forgery, perjury, or an offence— 30

(i) involving fraud, misrepresentation or dishonesty; 35

(ii) in connection with the promotion, formation or management of a company; or

(iii) in connection with any act contemplated in section 69(2) or 69(5) of the Companies Act, 2008 (Act No. 71 of 2008), or under this Act, the Insolvency Act, 1936 (Act No. 24 of 1936), the Close Corporations Act, 1984 (Act No. 69 of 1984), the Competition Act, 1998 (Act No. 89 of 1998), the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), or Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004); 40 45

(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. 4 of 2000), and has been so determined by an equality court;

(g) is a juristic person or a trust; 50

(h) is an unemancipated minor;

(i) is prohibited in terms of any law or by a court to be a director of a company;

(j) has been removed from an office of trust on the grounds of misconduct involving dishonesty; 55

(k) has been placed on probation by a court in terms of section 162 of the Companies Act, 2008 (Act No. 71 of 2008), or in terms of section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984); or

(l) has been declared to be delinquent in terms of section 162 of the Companies Act, 2008 (Act No. 71 of 2008).” 60

Amendment of section 4 of Act 12 of 1992, as substituted by section 3 of Act 47 of 2003

3. Section 4 of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) he or she becomes subject to any disqualification referred to in section [3(6)] 5
3(7);”.

Amendment of section 6 of Act 12 of 1992, as substituted by section 5 of Act 47 of 2003

4. Section 6 of the principal Act is hereby amended by the addition of the following subsections: 10

“(6) A decision that could be voted on at the meeting of the council may instead be adopted by written consent of a majority of the members of the council, given in person, or by electronic publication, provided that each member has received notice of the matter to be decided. 15

(7) A decision made in the manner contemplated in subsection (6) is of the same force and effect as if it had been approved by voting at a meeting of the council.”. 15

Amendment of section 7 of Act 12 of 1992, as amended by section 6 of Act 47 of 2003

5. Section 7 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) The council may at its discretion appoint one or more other committees 20
consisting of so many members of the council and other persons who are not members of the council as the council may [deem] consider necessary, to perform, subject to the directives of the council, such functions of the council as the council may determine, or to advise the council on any matter assigned to the council by or under this Act, and the council may at any time dissolve or reconstitute such a 25
committee: Provided that—

- (i) any such member who is not a member of the council, must not be ineligible or disqualified from being a member of the council in terms of section 3(7);
- (ii) a person who is not a member of the council does not have a vote on a matter to be decided by the committee; 30
- (iii) such committee may consult with or receive advice from any person; and
- (iv) such committee has the full authority of the council in respect of the matter referred to it, unless the council’s resolution establishing the committee provides otherwise.”. 30

Substitution of section 8 of Act 12 of 1992, as substituted by section 7 of Act 47 of 2003 35

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

“Staff of council

8. (1) (a) Work incidental to the performance of the functions of the council must be performed by the registrar. 40

(b) The registrar must be appointed by the council.

(c) The registrar must be appointed on such terms and conditions as the council may determine: Provided that such a person will be appointed as registrar for a renewable term of five years.

(d) The appointment of the registrar is subject to the conclusion of a written performance agreement entered into between that person and the council. 45

(e) The council and the registrar may, in writing and by agreement, amend the performance agreement.

(f) The council may terminate the registrar’s employment in accordance with applicable labour law. 50

(g) The registrar must, subject to subsection (3), appoint members of the staff of the council on a full-time or part-time basis, after consultation with