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|  | **RESPONDENT**  **(NAME/ INSTITUTION/**  **DEPARTMENT** | **COMMENT BY RESPONDENT ON PROPOSED AMENDMENT AND PROPOSAL ON CLAUSE** | **POLICY DECISION BY DALRRD (TO BE SIGNED OFF BY DDG)** |
| **PART A: Response to specific clauses.** | | | |
| **SECTION 1: DEFINITIONS** | | | |
| 1 | Creation fruits/ The South African Table Grape Industry (SATI)/ In Season Marketing/ Bo-Radyn Bdy (Edms)/ Stems Fruit (Pty) Ltd/ Cape Five Export SA (Pty) Ltd/ FreshWorld Pty) Ltd/ Market Demand Fruit (Pty) Ltd/ Xtreme International/ Green Marketing International/ In2stone/ Unifruit/ AM fresh South Africa/ Core fruit/ Fruit Farm Group South Africa (TFFGSA)/ Kromco (Pty) Ltd/ Bordeaux Plantasie BK/ Fruitworks (Pty) Ltd/ Westfalia Marketing (Pty) Ltd/ Mahela Boerdery/Fruit SA/ Everseason Pty Ltd/ WP Fresh Distributors (PTY) LTD/The Grape Co/ Angon Fruit (Pty) Ltd/ UniChoice Produce Direct (Pty) Ltd/ Jo-Rie Products cc/Vintage Distributors (Pty) Ltd/United Exports/Southern Cross Marketing and Management/ *FRUITWAYS MARKETING (PTY) LTD*, SAMAPRO TRADING CC/ Ele Trading/ HORTGRO/ HORTGRO Pome/ HORTGRO Stone/ FreshGold SA exporter (Pty) Ltd/ Venganix (Pty) Ltd/ Suiderland Plase (Pty) Ltd/ Niche Fruit (Pty) Ltd/ In2Fruit/ FPEF/ Dole South Africa/United Exports/ Anton van Zyl  Chairperson Export Agents Sub-committee of APAC/ Delecta/ Mouton Citrus/Lona Citrus/APAC/ CERES CASCADE FARMS | **Subsection 1, definition of “agent”:**   1. “Acquisition of gain” must be expanded on. Specifically, in the context of producer owned exporters, and packhouses. (see comments above) It is recommended that the word “seller” also be deleted since an “agent’s” function is not to procure “sellers”, and to include a “seller” in this part of the definition may cause an inconsistency. | 1. Recommendation not accepted. An agent is someone who holds and sells agricultural produce on behalf of another. |
| 1. What is regarded as “for the acquisition of gain”? Only commission or also margin realised in the selling (grower) entity apart from the producing entity. | 1. Recommendation not accepted. The definition of an agent does not include grower exporter. |
| **Definition of “local market”.**   1. The Act was originally intended to regulate sales on local municipal markets. 2. Now intended to include local retailers and other avenues of sale? 3. Many export agents also sell some products locally. Either because producers supplying them choose to do so, or it is strategic/profitable to include certain local retail programs, or because some products intended for export are rejected for export due to non-compliance with export specifications and have to be sold locally. Would all these essentially export agents be required to register also as fresh produce agents, and also comply with all rules applicable to (local) fresh produce agents, regardless of the percentage of products sold locally vs exported? | 1. Recommendation not accepted. “Local market” is not defined in the Bill. 2. Recommendation not accepted. There is no intention to regulate local retailers. 3. Yes, any agent who sells produce on behalf of the producer, needs to register with APAC. An export agent shall not be entitled to sell the fresh produce of his principal in the fresh produce markets unless he has complied with the provisions of Section 16 of the Agricultural Produce Agents Act, Act 12 of 1992 to the extent that they apply to the occupation of fresh produce agents [Rule 2(1)]. |
| **Definition of “agent”, “fresh produce agent”, “export agent”.**  Definition of “agent”, “fresh produce agent”, “export agent”.   1. The definitions should distinguish clearly between agents acting on the local market and export agents by adding a provision to the definition of “fresh produce agent” that such agent deals with products intended for sale on the local market. Further, the definition should be “local market agent” instead of “fresh produce agent” since an export agent also deals with fresh produce. 2. Definition of “local market”. The Act was originally intended to regulate sales on local municipal markets. Now intended to include local retailers and other avenues of sale? 3. Many export agents also sell some products locally. Either because producers supplying them choose to do so, or it is strategic/profitable to include certain local retail programs, or because some products intended for export are rejected for export due to non-compliance with export specifications and have to be sold locally. Would all these essentially export agents be required to register also as fresh produce agents, and also comply with all rules applicable to (local) fresh produce agents, regardless of the percentage of products sold locally vs exported? 4. Consider also grower exporters. In many instances producers export (or sell locally) their own products, through separate legal entities registered for that particular purpose. Would such an entity fall within the definition of an “agent” because the selling entity is another entity in addition to the producing entity? Could a minimum shareholding be required or a definition for related parties included? 5. What is regarded as “for the acquisition of gain”? Only commission or also margin realised in the selling (grower) entity apart from the producing entity. | 1. Recommendation not accepted. The terms used are current industry terminology. 2. Recommendation not accepted. “Local market” is not defined in the Bill. The Bill is not intended to regulate local retailers as by definition they are not agents 3. Recommendation not accepted. Any agent who sells produce on behalf of the producer, needs to register with APAC. An export agent shall not be entitled to sell the fresh produce of his principal in the Republic of South Africa unless he has complied with the provisions of section 16 of the Agricultural Produce Agents Act, Act 12 of 1992 to the extent that they apply to the occupation of fresh produce agents [Rule 2(1)]. 4. Recommendation not accepted. An agent is someone who holds and sells agricultural produce on behalf of another. 5. Recommendation not accepted. The definition of an agent does not include grower exporter. |
| 1. The proposed amendment to the definition of “export agent” fails to take into consideration the various forms that transactions and business arrangements may take, such as consignment, fixed price and minimum guaranteed price. The risks associated with these various forms of transactions vary in nature. If all risk of profit and loss is to remain with the producer, this would effectively exclude consignment transactions. | 1. Recommendation not accepted. The Bill intends to regulate the conduct of agents in order to protect producers. The Bill does not intend to prescribe various methods of transactions. |
| 1. As it stands the definition is still confusing. It appears to be so all-encompassing that it will include almost every person in the country that handles fruit which will mean any enforcement would be impossible to implement and will result in enormous “double” costs being incurred where fruit is handled or sold between different agents. | 1. Recommendation not accepted. An agent is someone who holds and sells agricultural produce on behalf of another. |
| 1. The proposed amendments to the definitions of “export agent” at clause 1(e), to “fresh produce agent “at clause 1 (f) and to “livestock agent” at clause 1(g) providing that “the risk of profit or loss at all times remains with the principal”, requires clarity. It is critical that the extent of passing of risk of profit or loss should be clarified. | 1. Recommendation not accepted. The comment is unclear. The risk of profit or loss is at all times with the principal. |
| 1. We therefore propose that a clarifying provision be provided on the extent of passing of risk of profit or loss in relation to the above provisions. The following wording could be considered in reference to the definition of an export agent for instance - “For the sake of clarity it is recorded that where all risk of profit or loss pass to the exporter (save for risk of inherent quality/hidden/dormant defect) the exporter shall not be regarded as an agent for the purpose of such sale”. | 1. Recommendation is not accepted. The Bill is specific in stating an export agent or agent will be a person acting on behalf of a principal in which the risk of profit or loss remains with the principal. |
| 1. Furthermore, in relation to the definition of “export agent” at clause 1(e) we propose the insertion of the words “of sales proceeds realised on consignment” after the word “loss” and before the words “at all time”. | (i)Response same as above |
| **Who qualifies as an agent?**   1. The definition is in fact too wide, that it means that any entity that trades in a 3rd party fruit will be required to register, from small packages, small grower/ exporters that consolidate volumes, to retailers. It will become so wide ranging that APAC will never have the capacity to manage/ audit the industry. | 1. Recommendation not accepted. Any grower trading on his/her own is not regarded as an agent. |
| 1. We believe it to be impractical and unreasonable to require all members and directors of an export agent to acquire a registration certificate. This overly encumbers produce agents and drives up administration costs that the producers will ultimately have to absorb. We therefore suggest that trading directors and members be issued with certificates of good standing. This comment is applicable to the proposed amendment to “fresh produce agent” and “livestock agent” as well. Please also see further comments under paragraph 4.3 in this regard. | 1. Recommendation is not accepted. The section is amended to provide that a director of a company, a member of a close corporation and a trustee of a trust who acts as a fresh produce agent must also be registered as a fresh produce agent. This is intended to provide a mechsanism to deal with wrongful behaviour of individuals without prejudicing the entire agency. For purposes of other sections in the Act, this provision will strengthen the protection of producers. |
| 1. For purposes of consistency, ease of reference, and avoiding unnecessary duplication, it is suggested that where reference is made to “export agents, fresh produce agents and livestock agents” as a group, these references should be consolidated in the definition of “agent”. | Recommendation is not accepted. The current amendment provides clarity that the Bill regulates all three categories. |
| Reference to “holds himself or herself out”   1. The reference “holds himself or herself out” burdens the definition with an unnecessary requirement and should be deleted. The purpose of the Act is to regulate persons who act as agents (i.e. performing any of the acts listed in the definition) and not merely persons who represent that they intend to act as agents. The effect of the way in which the definition is currently framed, is that the person who merely does one of the acts listed, does not thereby bring himself within the definition of an "agent" unless he also holds out or advertises, for the acquisition of gain, that he is a person who does any of these acts. The proposed new definition focuses on the conduct of the agent so that any person who does any of the listed acts is automatically regarded an "agent". | The recommendation is accepted. |
| **Deletion of the phrase “purchases or**”   1. It is proposed that the word “purchases” should not be deleted. The definition should include agents who act on behalf of purchasers, a failure to do so will allow agents who only act for purchasers to circumvent the provisions of the Act. By introducing persons that act on behalf of purchasers, as “agents”, one will not create a situation where an agent will have a choice between two opposing principals because, in terms of the common law an agent owes a fiduciary duty to his principal which will not allow him, in the same transaction, to act on behalf of two principals where, in doing so, will amount to a conflict of interest. | 1. The recommendation is accepted. |
| **Reference to “means”**   1. The usage of the word “means” in the context of “agent means a person who”; this word indicates that what follows is in the nature of precise definition. It is proposed to amend the word to “includes,” which is more expansive. | 1. The recommendation is not accepted. The word “means” is commonly used in Bills, no material difference. |
| **References to other sections and sub-sections in the definition of “agent”.**   1. For the purposes of the definition of “agent”, an agent should in certain circumstances include:  * Any director of a company, member of a close corporation, or trustee of a trust, which is registered as act as such; and * Persons employed by the agent. | 1. Recommendation is accepted. The definition should also allow for disciplinary action to be taken against an individual. |
| **Inclusion of references to sections and subsections -in relation to any director, member, or trustee**   1. It is proposed that the lists of sections and subsections that are separately referred to in each of the definitions of “Fresh Produce” –, “Export” – and “Livestock” -agents be combined and included under the definition of “agent”. This will avoid unnecessary repetition where the said lists are repeated for each of the definitions of “fresh produce agents”, “export agents”, and “livestock agents”. It is proposed that the references to certain sections and subsections (not previously listed in the Act or the Bill in relation to directors, members, and trustees) be included in the newly proposed definition of “agent”, | 1. Recommendation is not accepted. The current amendment provides clarity that the Bill regulates all three categories. References to sections remains as in the Bill. |
| **Inclusion of references to sections and subsections -in relation to any person who is employed by an agent or assists in the performance of acts done by an agent.**   1. It is proposed that the references to certain sections and subsections (not previously listed in the Act or the Bill in relation to employees of an agent) be included in the newly proposed definition of “agent”, and that such a definition is also extended to include persons who are not necessarily employees but who assessed in the performance of the listed acts done by agents | 1. The recommendation is not accepted. The current amendment provides clarity that the Bill regulates all three categories. References to sections remains as in the Bill. |
| **Insertion of certain sections and subsections pertaining to unregistered agents**   1. It is proposed that sections 23, 24, 26, and 27 also apply to persons who acted as agents but who are not registered in terms of the Act. This will allow the disciplinary tribunal to take action against these persons under section 26. | 1. The recommendation is accepted |
| **Certain exclusions of references to sections and subsections of the Act, previously referenced in the definitions of “fresh produce agents”, “export agents”, and “livestock agents”.**   1. The definitions of “Fresh Produce” –, “Export” – and “Livestock” -agents in the Bill make reference to various other sections and subsections of the Act, which are irrelevant or superfluous. It is therefore Proposed that the references to subsections 16(1)(b), 16(6)(f), and 16(6A)(a) are deleted, as these referenced sections and subsections apply to any person. | 1. The recommendation is not accepted. The current amendment provides clarity that the Bill regulates all three categories. References to sections remains as in the Bill. |
| **Definition of “agricultural product”**   1. The definition requires a more encompassing description of agricultural products which are to be included in the definition namely agricultural products which present as and are intended for the same general use as the articles currently listed in Part A and B of Schedule 1. | 1. The recommendation is not accepted. Section 1 (2) provides for the Minister to amend the Schedule and publish in the Government Gazette. |
| **Definition of “auditor”**   1. Consider retaining the phrase “and engaged in public practice” as this is the wording used in section 41 of the Auditing Profession Act. | 1. The recommendation is accepted |
| **Definition of “Auditor General”**   1. The full title of the Constitution should be included | 1. Recommendation is accepted |
| **Definition of “Business day”**   1. By the inclusion of a definition of “business day”. | 1. The recommendation is accepted |
| **F. Definition of “Consumer”**   1. It is proposed to amend the definition of consumer to include any person to whom agricultural products are marketed. (Consumer is referenced only once in the Act - see section 3 (1) (g).) | 1. The recommendation is not accepted. The word consumer appears once in the Bill and does not need to be defined. |
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| **Definition of “Deputy registrar”**   1. It is proposed that this definition be deleted because section 8 does not provide for the appointment of a Deputy registrar. | 1. The recommendation is accepted. |
| **Definition of “trust account”**   1. A new definition is inserted to define “trust account” as a trust account to be kept by fresh produce agents, export agents and livestock agents. | 1. The recommendation is accepted; defines both trust account and producer account differently. |
| **Risk of profit and loss**   1. The requirement that the risk of profit and loss should at all times remain with the principal is restrictive and unnecessarily creates a situation where it might be difficult to establish whether the risk did not pass by agreement or by law. 2. With the current wording, it is possible to exclude (from the definition) a person acting as an agent by contractually excluding the risk of profit or loss or shifting such risk to another party. 3. It is proposed that the requirement of risk should be “at any time” with the principal and not necessarily “at all time”. | 1. The recommendation is not accepted. The risk of profit or loss is at all times with the principal. |
| IMASA National/ IMASA Joburg/ CITIFRESH Market agents/ DW FRESH MARKET AGENTS/ SUBTROPICO MARKET AGENTS/ Gjalt Hooghiemstra | **Page 3, 1. Section 1 (a)**  “…purchases or…” - It is recommended that the word “seller” also be deleted since an “agent’s” function is not to procure “sellers” but purchasers and to include a “seller” in this part of the definition may cause an inconsistency. | The recommendation is accepted. |
| **Page 4, 1. Section 1 (e) (b) (i)**  .”…corporation…” - It is suggested that instead of the requirement of a registration certificate, a director or member be issued by APAC with a certificate of good standing on an annual basis, provided that the relevant company or close corporation be in possession of a valid registration certificate.  *Suggestion Comment for change: B (i) a director or member be issued by APAC with a certificate of good standing on an annual basis, provided that the relevant company or close corporation be in possession of a valid registration certificate.* | The recommendation is not accepted. The section is amended to provide that a director of a company, a member of a close corporation and a trustee of a trust who acts as a fresh produce agent must also be registered as a fresh produce agent. This is intended to hold such an agent accountable on a personal basis for any wrongdoing on his/her part. For purposes of other sections in the Act, this provision will strengthen the protection of producers. |
| **Page 5, 1. Section 1 (f) (a) (i)**   |  | | --- | | “…corporation…”- It is suggested that instead of the requirement of a fidelity fund certificate, a director or member be issued by APAC with a certificate of good standing on an annual basis, provided that the relevant company or close corporation be in possession of a valid fidelity fund certificate.  Suggestion Comment for change: B(i) a director or member be issued by APAC with a certificate of good standing on an annual basis, provided that the relevant company or close corporation be in possession of a valid fidelity fund certificate. | | The recommendation is not accepted. The section is amended to provide that a director of a company, a member of a close corporation and a trustee of a trust who acts as a fresh produce agent must also be registered as a fresh produce agent. This is intended to hold such an agent accountable on a personal basis for any wrongdoing on his/her part. For purposes of other sections in the Act, this provision will strengthen the protection of producers. |
| **Page 5, 1. Section 1 (f) (a) (i)**   |  | | --- | | “…corporation…”- It is suggested that instead of the requirement of a fidelity fund certificate, a director or member be issued by APAC with a certificate of good standing on an annual basis, provided that the relevant company or close corporation be in possession of a valid fidelity fund certificate.  Suggestion Comment for change: B(i) a director or member be issued by APAC with a certificate of good standing on an annual basis, provided that the relevant company or close corporation be in possession of a valid fidelity fund certificate. | | The recommendation is not accepted. The section is amended to provide that a director of a company, a member of a close corporation and a trustee of a trust who acts as a fresh produce agent must also be registered as a fresh produce agent. This is intended to hold such an agent accountable on a personal basis for any wrongdoing on his/her part. For purposes of other sections in the Act, this provision will strengthen the protection of producers. |
| **Section 3: Constitution of council** | | | |
| 2 | IMASA National/ IMASA Joburg/ CITIFRESH Market agents/ DW FRESH MARKET AGENTS/ SUBTROPICO MARKET AGENTS/ Gjalt Hooghiemstra /FPEF/ Dole South Africa/United Exports/ In2Fruit/ CERES CASCADE FARMS | **Section 3 (a) (c)**   1. Fidelity fund certificate…” - It is suggested that if such representatives are a director of a company or member of a close corporation, such director or member rather be in possession of a certificate of good standing issued by APAC, provided the director’s company or member’s close corporation is in possession of a fidelity fund certificate. This comment is mutatis mutandis applicable on the representatives of livestock and export agents.   Suggestion Comment for change: 2(a), if such representatives are a director of a company or member of a close corporation, such director or member rather be in possession of a certificate of good standing issued by APAC, provided the director’s company or member’s close corporation is in possession of a fidelity fund certificate. | 1. The recommendation is not accepted. The section is amended to provide that a director of a company, a member of a close corporation and a trustee of a trust who acts as a fresh produce agent must also be registered as a fresh produce agent. This is intended to hold such an agent accountable on a personal basis for any wrong doing on his/her part. For purposes of other sections in the Act, this provision will strengthen the protection of producers.. |
| **Section 3 (g)**   1. The exclusion of a juristic person may postulate a practical problem where a representative is de facto linked to a company or close corporation, which in most instances will be the case. It is suggested that a juristic person be allowed to be a member of council, provided that such juristic person must be represented by a specific nominated director or member who either holds a fidelity fund certificate or a letter of good standing.   Suggestion Comment for change: (g) that a juristic person be allowed to be a member of council, provided that such juristic person must be represented by a specific nominated director or member who either holds a fidelity fund certificate or a letter of good standing. | 1. The recommendation is not accepted. The current provision to exclude a juristic person from appointment as a member of the council is necessary to ensure that the principal Act is brought into sync with other legislation, i.e. Companies Act, 2008 (Act No. 71 of 2008). |
| **Section 3**   1. Provision should also be made that council has the authority to issue certificates of good standing as per the previous comments. | 1. The recommendation is not accepted. The section is amended to provide that a director of a company, a member of a close corporation and a trustee of a trust who acts as a fresh produce agent must also be registered as a fresh produce agent. This is intended to hold such an agent accountable on a personal basis for any wrongdoing on his/her part. For purposes of other sections in the Act, this provision will strengthen the protection of producers. |
| **Section 3**   1. Amendment of section 3: requirement that individuals appointed to council must be holders of fidelity fund certificates or registration certificates in personal capacity to be reconsidered in line with previous comments. It is suggested that if such representatives are a director of a company or member of a close corporation, such director or member rather be in possession of a certificate of good standing issued by APAC, provided the director’s company or member’s close corporation is in possession of a fidelity fund certificate. | 1. The recommendation is not accepted. All appointed council members must be holders of fidelity fund certificates or registration certificates. |
| **Section 3 (2)**   1. The definition of “deputy registrar” in section 1 should be deleted because the Bill does not provide for the appointment of a “deputy registrar”. Consequently, all references to “deputy registrar” in sections 1 and 3 should be removed | 1. The recommendation is accepted. |
| **Section 3(7)**   1. The phrase “and a permanent resident” should be deleted. A person cannot simultaneously be a South African citizen and have a permit to reside permanently in South Africa - it is the one or the other. | 1. The recommendation is accepted. |
| **Section 3(8) – 3(11)**  Removal of a council member   1. There is currently no mechanism for the removal of a council member. It is proposed that in certain circumstances, the Minister may remove a member of the council from office. | 1. The recommendation is accepted. The Department will reconsider. |
| **Section 6: Meetings and decisions of council** | | | |
| 4 | APAC | **Section 6(6)**   1. Replacing the word publication with communication, as the word communication seems better suited in the context. | 1. The recommendation is accepted. |
| **Section 6**   1. This amendment is supported and in line with the Companies Act. | 1. The comment is noted. |
| **Section 7: Committees of council** | | | |
| 5 | APAC/ In2Fruit | **Section 7(2)(c)**   1. Deletion of the reference to “section 3(5)”, as committee members are appointed by the council and not by the Minister. 2. By the redrafting of the subsection to incorporate an overseeing/supervision procedure for council over a decision taken by any committee. 3. Allowing that any decision taken by any committee may be withdrawn or amended by the council within a specified period of time. 4. Allowing that the decisions of a committee are to be ratified by council but until such a ratification takes place, the decision of the committee will have full force and effect until set aside. | 1. The recommendation is accepted. 2. The recommendation is accepted. 3. The recommendation is accepted 4. The recommendation is accepted. |
| **Section 7**   1. This amendment refutes any misinterpretation who may be committee members and is supported. | 1. The comment is noted. |
| **Section 8: Staff of Council** | | | |
| 6 | APAC/ In2Fruit/ IMASA National/ IMASA Joburg/ CITIFRESH Market agents/ DW FRESH MARKET AGENTS/ SUBTROPICO MARKET AGENTS/ Gjalt Hooghiemstra | **Section 8**   1. A renewable term is supported in order to enhance continuity. It is unclear if “a renewable term of five years” is a once-off? It is suggested that the wording be amplified as: “…. one renewable term of five years.” This provision is supported in order to foster good governance. | 1. The recommendation is accepted. |
| **Section 8**   1. To avoid any misunderstandings, it is suggested that this approval be in writing, containing the detail of such appointments. | 1. The recommendation is accepted. |
| **Section 8**   1. The above description of the registrar’s duties is an improvement from the previous stipulations contained in section 8(2) and is supported. | 1. The comment is noted. |
| **Section 8(1)(h)**   1. Staff members should be under the registrar’s authority and control instead of “must be under the control of the registrar”. | 1. The recommendation is accepted. Appropriate terminology will be considered. |
| **Section 3(7)**   1. The phrase “and a permanent resident” should be deleted. A person cannot simultaneously be a South African citizen and have a permit to reside permanently in South Africa - it is the one or the other. | 1. The recommendation is accepted. |
| **Section 8(3)(1)(b) and (c)**   1. Section 8 of the Bill no longer provides for the appointment of a Deputy Registrar, thereby rendering the reference to the deputy registrar in section 3(1)(b) and (c) superfluous. | 1. The recommendation is accepted. |
| **Section 8(2)(b)(iii)**   1. The subsection refers to a “strategic plan” where the correct reference is seemingly to a “business plan” as referred to in Section 11(5A)(a) (which will include a strategic plan). | The recommendation is not accepted. Reference to a strategic plan is current terminology. |
| **Section 8(2)(b)(iv)**   1. The burden to compile annual reports and financial statements should not be placed on the council, - it should rather be a burden to procure such reports’ compilation. | The recommendation is not accepted. The council is obliged to compile annual reports and financial statements, whether it does so by itself or procures such compilation is immaterial. |
| **Section 8. 8 (1) (g)**   1. “…may grant…” - To avoid any misunderstandings, it is suggested that this approval be in writing, containing the detail of such appointments. Suggestion Comment for change: (g) this approval be in writing, containing the detail of such appointments. | 1. The recommendation is accepted. The suggestion will be incorporated into the Bill. |
| **Section 9: Objects of council** | | | |
|  | APAC | **Section 9**   1. It is proposed to broaden the objects of the Council to include the oversight and promotion of the standard of conduct of agents and to regulate their activities. | 1. The recommendation is not accepted. The addition does not add any material change to the current provision. |
| **Section 10:** **Functions of council** | | | |
| 7 | APAC | **Section 10**   1. The heading of the subsection should be amended to also refer to the powers of the council – Functions “and Powers” of Council. It is proposed that section 10 distinguishes between “functions” and “powers”. 2. The council should have the power to establish rules and codes of conduct for agents. (Subject to the approval of the Minister.) 3. With the new proposed definition of “agent” the references to fresh produce agents, livestock agents and export agents may be deleted and replaced with “agents”. | 1. The recommendation is not accepted. The addition does make reference to the powers to subpoena 2. The recommendation is not accepted. The current Act provides for these powers. 3. The recommendation is not accepted. The current amendment provides clarity that the Bill regulates all three categories. |
|  |  | **Section 10(2) Newly inserted and dealing with the powers of Council**.   1. To insert a new subsection, conferring greater powers on the council for the furtherance and management of its business. 2. The expansion of powers are to enable the council to further its objectives and in furtherance of the purpose of the fund. 3. iii. Such powers to give a wider berth of commercial powers, wherein the council is empowered to enter transactions and agreements pertaining to the effective running and management of the council’s business. 4. 10(2)(f) - Special provision inserted for council to make arrangements with any bank for the keeping of trust accounts and payment of interest on the fund held with the bank, to the fund. This will assist in strengthening the fund by providing for alternative sources of income. | 1. The recommendation is accepted but it will be incorporated in future amendments. |
| **Section 11: Funds of council** | | | |
| 8 | APAC | **Section 11(2A)(c)(ii)**   1. The reference made to Part A or B of Schedule 1 is unnecessary as the term “agricultural products” is properly defined to include Schedule 1. | 1. The recommendation is accepted.   . |
| **Section 11(7) and (8)**   1. It is proposed to insert a new Section 12(6A) (discussed hereinafter) pertaining to the Council’s record-keeping and accounting records. If such proposed amendment is accepted, reference to the new subsection (12(6A)) should be inserted. | 1. The recommendation is accepted |
| **Section 12: Establishment and control of fidelity fund** | | | |
| 9 | APAC | **Section 12(2)(c)**   1. The reference to “subsection 12(4)” is incorrect; it should be to “subsection (3)(a)”. | The recommendation is not accepted. The reference is correct. |
| **Section 12(2)(f)**   1. It is proposed to insert a new paragraph (f) and renumber the current (f) to (g). The new paragraph (f) to state that interest paid to the fund in terms of the Act will form part of the fund. | The recommendation is accepted. |
| **Section 12(4)**   1. The word “producer” is too limiting and should be replaced with “principal”. An agent’s principle is not limited to that of a producer. | The recommendation is accepted. |
| **Section 12(4)(a)(i) and (ii)**   1. The word producer is too limiting and should be replaced with “claimant”. 2. By qualifying the reference to “fresh produce agent” with:  * the requirement that he must be a registered fresh produce agent; and * The proviso that such an agent must not have been suspended. (A suspended agent is not allowed to trade and act as an agent and therefore a claimant should not be entitled to claim from the fund when he utilises the services of an unregistered fresh produce agent or a fresh produce agent whose fidelity fund certificate has been suspended.)  1. The fund should not only be liable for theft committed by a fresh produce agent and his/her employees but also persons (although not employees) who are supervised by the fresh produce agent concerned and also theft committed by directors, members or trustees of a fresh produce agent (in this regard see the amended definition of “agent” which now also applies to section 12(4)(a). 2. The second ground for the liability of the fund should be restricted to “fraud” (as opposed to “dishonest conduct”” committed by an “agent” (in its extended definition). | The recommendations are accepted. |
| **Section 12(6A)**   1. The Act should regulate the manner in which the council should keep accounting records pertaining to the fund and report to the Minister. | The recommendation is accepted. |
| **Section 12(7)**   1. Proposes that the financial year-end should be 31 March of each year. | The recommendation is accepted. |
| **Section 12(8)**  ii. The current exclusion of a provision of any law relating to insurance is too broad and should be narrowed by including the words “other than a law relating to the compulsory insurance of employees”.  . | The recommendation is accepted. |
| **Section 12(10)**  i. In safeguarding the fund, and to ensure the fund is not burdened by other taxes, it is proposed that the revenue of the fund be exempted from the payment of income tax, or any other tax or levy by the state | The recommendation is accepted. |
| **Section 12A: Insurance of fund** | | | |
| 10 | APAC | **Section 12A**  Certain references require amending and a proposal is made as to the appropriation of funds received from an insurer. | The recommendation is accepted. |
| **Section 12A (1)**  The reference to an insurer registered under the Long Term Insurance Act is incorrect. The correct Act is “The Insurance Act, 2017 (Act no 18 of 2017)”. | The recommendation is accepted. |
| **Section 12A**  The reference should be to an insurer “licensed” under the act, as the Insurance Act refers to licenced insurers, not registered insurers. | The recommendation is accepted. |
| **Section 12A**  b. Liability to producers  i. An agent is not only defined by its actions on behalf of a producer but by the acts on behalf of its principals, which may be producers, other sellers who employ the agent, or purchasers. The word “producer” is therefore too restrictive.  ii. The word “claimants” is proposed instead of “producers”. | The recommendation is accepted. |
|  |  | **Section 12A(3)**  i. It is proposed to insert a section dealing with any money which may be paid by an insurer to the fund in terms of this section. It is proposed that the payment should be for appropriation by the council in terms of section 13 (i.e. the money should be utilised for the benefit of the fidelity fund). | Further consultations by the Department are necessary to determine the implications of the recommendation before a determination can be made, whether to accept the recommendation or not. |
| **Section 13: Payments out of the Fund** | | | |
| 11 |  | **Section 13(1)(g)**  i. To allow a wider scope of expenditure out of the fund to assist the council with it’s funding, specifically in relation to inspections and investigations relating to the misconduct of agents. | The recommendation is accepted. |
|  |  | **Section 13(2)(b)**  i. Interest on claims payable to claimants should be calculated at an interest rate not exceeding the prevailing rate of interest determined by the Prescribed Rate of Interest Act, 1975.  ii. Unless:-  a. the Minister by notice determines a lower amount.  iii. This is to allow for a mechanism, if needed, to alleviate stress on the fund by lowering the interest payable to a claimant. | Further consultations by the Department with stakeholders such as the National Treasury are required and necessary in order to interrogate the recommendation further for a determination to be made, on whether to accept the recommendation or reject. |
|  |  | **Section 13(3)**  i. It is proposed that section 13 (3) be split into 2 types of exclusions (i.e. where a claimant will be excluded (prohibited) from claiming from the fidelity fund), i.e. a category that deals with the claimant himself/herself and a second category that excludes the liability of the fund under certain circumstances. The reference to “no person shall have any claim” should be a new introductory paragraph to be numbered 13(3)(a), with new subparagraphs inserted under the new section 13(3)(a). Section 13(3)(b) will then deal with those instances where the fidelity fund escapes liability as more fully outlined in subparagraphs (i) and(ii) | Further consultations by the Department are required and necessary in order to interrogate the recommendation further for a determination to be made, on whether to accept the recommendation or reject. |
|  |  | **Section 13(3)(a)**  i. The reference to a “family member” in subsection 3(a(ii)) is introduced to further exclude the possibility of collusion.  ii. It is proposed that a new section is drafted in furtherance of the purpose of the current section.  iii. More specifically, claimants should be excluded in instances:  a. Where the registrar has forewarned a producer;  b. Where the agent is not the holder of a valid fidelity fund certificate;  c. As a result of theft of money which an agent had been instructed to invest on behalf of the claimant otherwise than envisioned in terms of the Act (because it increases the risk of the fund).  iv. The proposed section is inserted as section 13(3)(a)(iii) – (v). | The recommendation is not accepted Section 13 (3) (a) does not make reference to a family member. The Department will further look at the recommendation to determine validity and respond accordingly based on the results of such consultation. |
|  |  | **Section 13(3)(b)**  i. It is also required to exclude certain claims against the fund, i.e. where a claimant directly or indirectly caused or contributed to a loss. A rearrangement of Section 13(3)(b) is proposed, and consequently those instances where the fund will escape liability are outlined in section 13(3)(b)(i) and (ii).  ii. The reference made to “transaction” in section 13(3)(b)(i) is confusing. It is proposed to replace “transaction” with “loss for which a claim is made against the fund”.  iii. It is proposed that the current section 13(3)(c) be renumbered as subparagraphs under section 1 (3)(b).  iv. The proposed draft is included as section 13(3)(b).  f. 13(3)(f)  i. The proposed section 13 (3) (f) in the Bill is inconsistent with section 12(4) in the sense that section 12 (4) outlines the instances where the fund will be liable but section 13(3)(f) in the Bill then proceed to exclude such liability.  ii. Section 13(3)(f) should therefore be deleted | The Department will further look at the recommendation to determine validity and respond accordingly after consultations |
|  |  | **Section 13(4)**  i. The manner in which the amount payable to the claimant is calculated should be revised.  ii. It is proposed that the interest component should be excluded because it does not become payable unless the council so directs.  iii. It is furthermore suggested that the manner in which the claim amount is calculated be amended to make use of statistical data of the specific fresh produce market where the claim originates.  iv. The markets in the Republic are not directly comparable with one another in relation to the selling prices of agricultural produce. More specifically, the size, area and demand of the market may greatly differ, causing a disparity in sale prices from market to market.  v. In instances where such statistical data for the specific market is however not available, the registrar should be given the discretion to determine the amount of the claim.  vi. The proposed amendment is inserted as Section 13(4)(b).  h. 13(5)  i. Ifthe proposed amendments regarding section 13(3) are accepted, the reference to subsection (3) should be amended to subsection (3)(a)(iii)  i. 13(9)  Newly added  i. It is proposed to exclude certain claimants who are family members of the person who has caused the loss to which the claimant seeks to claim.  ii. A definition of “family member” is required. The proposed definition is inserted in Section 13(9).  j. 13(10)  Newly added  i. It is proposed that the council is given the discretion to extend any time period referred to in 13(3).  k. 13(11)  Newly added  i. To further limit the liability of the fund, it is proposed that the fund is not obliged to pay any portion of a claim which is reasonably recoverable from another party  l. 13(12)  Newly added  i. More flexibility should be given to allow for interim payments from the fund to claimants, i.e. where a certain portion of the claim is not in dispute. | The Department will further look into the merits of the recommendation and provide an informed view/response to the recommendation. |
| **Section 14: Claims against fund and actions against council** | | | |
| 12 | APAC | **Section 14(1)**  i. The person submitting the claim must do so under oath and the affidavit should be deposed by a person with personal knowledge of the facts and who is therefore capable of swearing positively to the facts. | The recommendation is not accepted. It should be considered in the amendment of rules. |
|  |  | **Section 14(2)**  i. Currently the reference is to the “limitations” outlined in section 13(4). If the proposal to amend section 13(4) is accepted (as proposed), the reference should not be to the “limitations”, but rather to the “calculations” referred to in section 13(4). | The recommendation is not accepted. It should be considered in the amendment of rules. |
|  |  | **Section 14(3)**  i. Upon the rejection of a claim, the only recourse available to a claimant is to pursue legal action in a court of law.  ii. The proposed amendment of this section is to incorporate a mechanism wherein the council may agree to arbitration as an alternative mechanism to settle the dispute. | The recommendation is not accepted. It should be considered in the amendment of rules. |
|  |  | **Section 14(3) & (4)**  i. If the proposed definition of “agent” hereinabove is accepted, all references to “fresh produce agent” should be replaced with a reference to “agent”. | The recommendation is not accepted. The definition of agent to remain as it is in the Bill. |
|  |  | **Section 14(5)**  i. If the definition of “agent” hereinabove is accepted, all references to “fresh produce agent” should be replaced with “agent”.  ii. It is required to define the agent, as “the agent concerned”, thereby linking the agent with the action.  iii. In further protection of the council’s rights to pursue a claim for compensation, specific reference is to be made to section 156 of the Insolvency Act, which will allow the council to pursue a claim directly against the insurer of an insolvent defendant. | The recommendation is not accepted. The definition of agent to remain as it is in the Bill. |
| **Section 16: Prohibition on acting as agent under certain circumstances** | | | |
| 13 | APAC | **S. Prohibition to act as Agent**  **Summary**  A new procedure is introduced for the renewal of certificates. A proposal is made regarding disqualifications applicable to applicants and current holders of certificates.  Section 16(1)(a)  i. The proposed new definition of agent requires that a cross-reference to that section of the definition be made. | The recommendation is not accepted. The amendments will be included in the rules. |
| **Section 16(1)**  i. If the definition of “agent” hereinabove is accepted, all references to fresh produce agents should be replaced with a reference to “agent”. | The recommendation is not accepted. The definition of agent to remain as it is in the Bill.  . |
| **Section 16(2)**  i. The word payment (which suggests that money is the only form of payment for services rendered) is too restrictive and should be amended to “consideration” (which includes any other form of compensation given for services rendered).  ii. The reference to an agent in 16(2)(i) should include a further reference to the employee, as it is often an employee who concludes the sale of agricultural produce. | The recommendation is accepted.  The recommendation is not accepted. The definition of agent includes employees who act in that capacity. |
| **Section 16(3)(a) and (b)**  i. The references to “Every prospective fresh produce agent” and “Every prospective export agent and livestock agent” must be changed to “Every person” (which will include not only the fresh produce, export and livestock agent concerned but also his/her employees, directors, members and trustees).  ii. It is also proposed that the agents concerned should re-apply to the council for a certificate every two years, twenty days before the lapsing of such certificate, together with the required security and application fee. The effect of this proposed amendment is that a certificate lapses every 2 years (similar to lawyers where a fidelity fund certificate is issued for only one year at a time). | The recommendation is not accepted. The amendments will be included in the rules. |
| **Section 16(3)(c)**  i. The phrase “where applicable” in reference to “security” is superfluous and should be deleted because in paragraphs (a) and (b) of subsection (3) reference is already made to “to the extent necessary”.  ii. It is proposed that in addition to an applicant not being disqualified in terms of 16(6), a further determining factor should be included; that the applicant “substantially complies” with the requirements of 16(3)(f) (see the proposed amendments to section 16(3)(c) of the Bill.) | The recommendations are not accepted. The amendments will be included in the rules. |
| **Section 16(3)(e)**  Newly added  i. In instances where an agent applies within the prescribed time periods for renewal of its certificate, it must be stipulated that the certificate shall remain valid pending the decision of the council. This is to ensure that an agent applying for renewal is not prejudiced by any delay the council may experience in issuing the certificate. | The recommendations are not accepted. The amendments will be included in the rules. |
| **Section 16(3)(e) of the Bill, amended to 16(3)(f) in proposal**  i. The reading of personal character qualities could be further and better defined by the insertion of the word “and” between “character” and “qualities”. Thereby defining the character and qualities of an applicant separately.  ii. Specific reference should also be made in subparagraph (ii) of section 16(3)(f) to the responsibilities imposed by the rules (and not only the Act). | The recommendations are not accepted. The amendments will be included in the rules.. |
| **Section 16(6)**  i. Apart from disqualifying a person from being issued with a certificate, this section should also disqualify a person from being the holder of such certificate. | The recommendations are not accepted. The amendments will be included in the rules. |
| **Section 16(6)(a), (b) and (f)**  i. The words “involving dishonesty” in paragraph (a) is a serious limiting factor, and it is proposed that it be deleted from sections 16(6)(a). If a person is dismissed from a position of trust for whatever reason (e.g. gender and race related transgressions), he/she should also be disqualified. The references in section 16 (6)(b) to certain listed offences and to “imprisonment without the option of a fine, or fined more than the prescribed amount” is also a limiting factor. On the one hand certain serious offences such as gender/race related offences are not mentioned and on the other hand it could be that an offence like theft could be shown in the circumstances to be nothing more than shoplifting which was committed at the time when the applicant was still at school and which should not per se disqualify him from becoming an agent - it is therefore proposed that paragraph (b) of section 16 (6) be deleted. It would be better to allow council to consider his/her criminal record and all circumstances relating to it when deciding whether a person should be issued with or disqualified from holding a certificate.ms to be unreasonable. In certain instances a person is declared insolvent because he/she may have signed a suretyship on behalf of a family member and no dishonest intent can be attributed to him/her). It would be unfair under those circumstances to immediately disqualify that person from being issued with or holding a certificate. It would be better to allow council to consider his/her insolvency and all circumstances relating to it when deciding whether a person should be issued with or disqualified from holding a certificate. It is therefore proposed that paragraph (f) be deleted.  ii. A proposed redraft of (6)(a) with the removal of paragraph (6)(b) is provided | The recommendation is not accepted. The proposals should be considered in future amendments. |
| **Section 16(6)(g)**  I. It is proposed that the reference to a provisionally wound-up company be removed from the wording.  ii. Circumstances may arise where a company is placed under provisional winding-up, however never finally liquidated, as the provisional order may be discharged.  iii. With the current wording, such a company may not be issued with or allowed to be the holder of a certificate between the period of provisional winding up and discharge of the provisional order. There is seemingly no good reason for such a company not to be issued with or to be the holder of a certificate. | The Department shall seek a legal opinion on the matter and form an informed decision. |
| **Section 16(6)(i)**  i. The reference to “any lawful requirement of the council” is too wide and may lead to absurd results, e.g. where an agent’s certificate is withdrawn because he did not inform council of his new postal address. It is proposed that references to specific (important) sections be included in paragraph (i) namely subsections 17(4), 18(1), 19(1)(a), 19A(1)(a) or 19AB(1)(a), as may be applicable. | The recommendation is accepted. |
| **Section 16(6)(j)**  ii. This paragraph should be deleted because it only deals with fresh produce agents and not with export agents and livestock agents who will (in terms of the Bill) also be required to keep trust accounts. Section 16(6)(j) is now dealt with in paragraph (i) of section 16 (6). | The recommendation is accepted. |
| **Section 16(6)(k) – (l)**  i. It is proposed to delete these sections as non-compliance is not so serious as to justify an agent from being issued with or holding a certificate.  ii. If paragraph (l) is to be retained, the words “livestock agent” must be replaced with “export agent” and provision should also be made for a similar provision which deals with livestock agents. | The recommendations are not accepted. They are substantive amendments that should be considered in future amendments of the Act.. |
| **Section 16(6)(m)**  i. The subsection should distinguish between two categories of agents, namely natural persons and juristic persons (including trusts).  ii. By the addition of subsection (6), paragraph (m) wherein it is established that a person or company (as the case may be) should  a. be a South African citizen or a company incorporated, formed, or registered within the Republic.  b. If a natural person, is ordinary resident in the Republic, or if a juristic person or a trust, has its effective place of management in the Republic.  c. Attended and successfully completed a training course approved by the council;  iii. The purpose is to ensure that agents are at all times situated within the governable territorial jurisdiction (the RSA) of the council. | Amendments are too substantive, to be considered in future amendments. |
| **Section 16(6)(l)(ii)**  i. Rewording the proviso authorising the council to allow the issuance of a certificate or permitting a person to hold a certificate if such person would otherwise be disqualified; if it is [in the interest of justice].  ii. The proposal is to allow such issuance of the certificate or continuation of holding the certificate if it will be just and equitable.  iii. The proposed draft is inserted by substituting the proviso following paragraph (n) of subsection (6). | The recommendations are not accepted. They are substantive amendments that should be considered in future amendments of the Act.. |
| **Section 16(6A)(a)**  i. The current qualifier for the receiver of a certificate is a person who acts as an agent. It is proposed that a further qualifier be inserted; “to a person who is required in terms of section 16(1) to be the holder of a certificate”. | The recommendation is not accepted. It is substantive, and should be considered in future amendments. |
| **Section 16(6A)(b)**  (Act)  i. By the further inclusion that the issuance of a certificate does not exempt the applicant from any criminal or civil prosecution or disciplinary enquiry in terms of section 25 (4). | The recommendation is not accepted. It is substantive, and should be considered in future amendments. |
| **Section 16(9)**  (Act)  i. Reference of “agent” should be amended to “person”. | The recommendation is not accepted. The definition includes an agent as a person. |
| **Section 16(9)(b)(i)**  i. The subsection should be extended to report further particularity of changes in the agent’s (or employee of the agent) email address and mobile telephone number.  ii. “Agent” should be replaced with the word “person”. | The recommendation is not accepted. The definition includes an agent as a person. |
| **Section 16(9)(b)(viii)**  (Act)  i. A specific provision should be inserted to the effect that an agent must report on the circumstances in which an employee’s employment was terminated and if such employee has taken up employment with another agent. (if known). This is necessary to prevent an employee who has been dismissed by an agent (e.g. for theft or a shortfall on his market floor) to start employment with another agent without Council being in a position to consider the matter | The Department will further engage on the recommendation and respond accordingly. |
| **Section 16(10)(a)**  i. By further defining and categorising instances in which the certificate (fidelity or registration certificate) will lapse.  ii. Such categories to be included as subparagraphs to section 16(10). | The Department will further engage on the recommendation and respond accordingly. |
| **Section 16(10(a)**  iii. The impression is created that an agent’s (juristic person including a trust’s) certificate will lapse upon the occurrence that one of the directors/ members/trustees become permanently incapable due to physical or mental injury.  iv. A re-write of section 16(10)(a) is proposed to ensure that in such circumstances, the entity’s/trust’s certificate does not lapse due to the sole occurrence of the mental or physical incapacity of one of its directors/members/trustees. | The Department will further engage on the recommendation to determine if the impression created as suggested is correct in order to make an informed response. |
| **Section 16(10)(a)(i)(bb) and (cc)**  i. By the inclusion that a certificate lapses upon an employee’s termination of employment and when a director/member/trustee ceases to act as such. | The recommendation is not accepted. The proposals are provided for in the rules. |
| **Section 16(10)(b) and (c)**  (Act)  i. By the inclusion of a reference to a “registration certificate” (in addition to a fidelity fund certificate).  ii. The removal of the words “or is suspended”, as the suspension is dealt with in subsection (25). | The Department will further engage on the recommendation to determine if the impression created as suggested is correct in order to make an informed response |
| **Section 16(10)(c)(ii)**  (Act)  i. The paragraph should be deleted, as it places an unnecessary regulatory burden on the registrar, specifically having regard to the fact that the lapsing of the certificate is automatic and requires no further action from the registrar. | The recommendation is not accepted. It is substantive and should be considered in future amendments. |
| **Section 16(11)**  (Act)  ii. By further expanding on the listed disqualifications/prohibitions to also include instances where a certificate has been withdrawn or suspended (in addition to where it has lapsed).  **Section16(13)**  i. Further establishing the manner in which council requests and receive further information from an applicant applying for a certificate. (in writing and allowing a reasonable time to respond.). |  |
| **Section 16(14)(i)**  i. By the inclusion of a reference to an “employee” as the council should also be allowed to impose further conditions on the employees of the successful applicant (agent). | The recommendation is not accepted. It is substantive, and should be considered in future amendments. |
| **Section 16(15)(b)**  i. The reference to certified copy is unclear and seems to imply that a commissioner of oaths should certify that the original certificate that was copied.  ii. The proposal is to remove the wording “certified copy” and replaced it with “duplicate originals” allowing the registrar to issue one or more original duplicates. | The recommendation is among those the Department needs to further engage on to ensure an informed response. |
| **Section 16(16)(a)**  i. By replacing the reference to “clients” with a reference to “principals and customers”, as to more fully incorporate the established term of principals and give certainty to the identity of the parties who should not be prejudiced. | The recommendation is among those the Department needs to further engage on to ensure an informed response. |
| **Section 16(16)(b**)  i. The reference to certified copy is unclear and currently creates the impression that a commissioner of oaths should certify that the original certificate was copied.  ii. The proposal is to remove the wording certified copy with “duplicate originals” allowing the registrar to issue one or more original duplicates. | The recommendation is among those the Department needs to further engage on to ensure an informed response. |
| **Section 16(18)(a)**  I. By the insertion of the word “true” before copy.  **Section 16(19)(a)**  I. Correcting the incorrect reference to “subsection (30)” to “subsection | The recommendation is among those the Department needs to further engage on to ensure an informed response. |
| **Section 16(20)(a)**  ii. Simplifying the paragraph by deleting the characteristics listed and merely referring the subsection (3) where they are listed.  iii. Inserting the disqualifications listed in subsection (6), by reference to subsection (6).  iv. By including a reference to “juristic person” in subsection (20). | The recommendation is among those the Department needs to further engage on to ensure an informed response. |
| **Section 16(21)**  i. By inserting the disqualifications listed in subsection (6), by referencing to subsection (6) and expounding upon the powers of the council to also include the withdrawal of the certificate, and allowing the council to impose conditions on the suspension or withdrawal. | The recommendation is accepted. |
| **Section 16(22)**  ii. Replace the word readmit with the word “reissue” – the Act refers to the issuing of certificates and not the admission/readmission of agents. | The recommendation is accepted. |
| **Section 16(22)(b)**  i. By the insertion of further qualifications and requirements with references to subsections (3) and (6).  ii. The references to residency and citizenship become superfluous when referring to subsections (3) and (6). | The recommendation is accepted. |
| **Section 16(23)(a)**  i. Upon an application for the re-issuance of a certificate, the applicant must comply with subsection (22), therefore the need to insert a reference to this subsection. | The recommendation is accepted. |
| **Section 16(23)(b)**  i. By the insertion of further qualifications and requirements with references to subsections (3) and (6).  ii. By expounding on the identity of the applicants, by the inclusion of the wording “or other juristic person”. | The recommendation is accepted. |
| **Section 16(24)**  i. The reference to subsection (2) is incorrect; it should be to subsection (25).  Ii. By the inclusion of a reference to directors, members, and trustees.  Iii. By the insertion of further qualifications and requirements with references to subsections (3) and (6). | The recommendation is accepted. |
| **Section 16(24)(c)**  i. This paragraph should be deleted; the power given to the council would be too far-reaching. This is a disciplinary issue to be dealt with by the disciplinary tribunal or a court with jurisdiction.  pp. 16(25) & (26)  i. When referring to an agent in this subsection, references to directors, members and trustees should also be included. | The recommendation is accepted. |
| **Section 16(27)**  I. By the inclusion of a reference to directors, members and trustees.  **Section16(28) Newly inserted**  i. There is a need to clarify the case where an export agent sells produce locally.  ii. Such export agent then conducts the business of a fresh produce agent and should therefore be the holder of a fidelity fund certificate. | The recommendation is accepted. |
| **Section 16(29) Newly inserted**  i. The council should keep a record of agents.  ii. This section determines the detail of the information to be kept.  tt. 16(30 ) Newly inserted  i. The information and detail of (30) should be published and updated by the registrar | The recommendation is among those the Department needs to further engage on to ensure an informed response. |
| **Section 16(31) Newly inserted**  ii. The registrar may need to provide information pertaining to an agent; the proposal is made that any document issued by the registrar is on production thereof prima facie proof of its content. | The recommendation is among those the Department needs to further engage on to ensure an informed response. |
| IMASA National/ IMASA Joburg/ CITIFRESH Market agents/ DW FRESH MARKET AGENTS/ SUBTROPICO MARKET AGENTS/ Gjalt Hooghiemstra/ FreshGold SA exporter (Pty) LtdCreation fruits/ The South African Table Grape Industry (SATI)/ In Season Marketing/ Bo-Radyn Bdy (Edms)/ Stems Fruit (Pty) Ltd/ Cape Five Export SA (Pty) Ltd/ FreshWorld Pty) Ltd/ Market Demand Fruit (Pty) Ltd/ Xtreme International/ Green Marketing International/ In2stone/ Unifruit/ AM fresh South Africa/ Core fruit/ Fruit Farm Group South Africa (TFFGSA)/ Kromco (Pty) Ltd/ Bordeaux Plantasie BK/ Fruitworks (Pty) Ltd/ Westfalia Marketing (Pty) Ltd/ Mahela Boerdery/Fruit SA/ Everseason Pty Ltd/ WP Fresh Distributors (PTY) LTD/The Grape Co/ Angon Fruit (Pty) Ltd/ UniChoice Produce Direct (Pty) Ltd/ Jo-Rie Products cc/Vintage Distributors (Pty) Ltd/United Exports/Southern Cross Marketing and Management/ FRUITWAYS MARKETING (PTY) LTD, SAMAPRO TRADING CC/ Ele Trading/ HORTGRO/ HORTGRO Pome/ HORTGRO Stone | **Section 16 (1)(b).**  This provision requires every employee falling within the definition of “export agent” and every director/member and trustee to be issued with a registration certificate. This means even a non-executive director, or a chairperson is also required to have a registration certificate. It is impractical to prevent company as legal persona to trade if for example one of its ten directors is not in possession of a registration certificate for whatever reason. It is suggested that instead of the requirement of a registration certificate, a director or member be issued with a certificate of good standing on an annual basis, provided that the relevant company or close corporation is in possession of a valid registration certificate. | The recommendation is not accepted. The insertion of this provision is intended to hold such an agent accountable on a personal basis for any wrong doing on his/her part. |
| **Section 16(13) (a )**  Following paragraph (a) (iii);…” - It seems that trusts have been excluded from practicing as fresh produce agents. Note**!!** | The recommendation is not accepted. The deletion seeks to remove the implication that the said director, member or trustee only needs to register if he/she **acts** as an agent, which is not the case. It does not imply that trusts are excluded from practicing as fresh produce agents. |
|  | **Section 16 (b) (b) (iii)**  “… trustee of the trust…” - This additional provision is to bring the requirements to practice as an export or livestock agent in line with fresh produce agents. However, it seems that trusts are not excluded from practising as export or livestock agents.  Comment for change: This seems to be in contradiction with 13 (a | The recommendation is not accepted. The Bill does not provide for the exclusion of trusts. |
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|  | **Section 16 (6)(h)**  “…subsection (6) of paragraph (h)…” - The basis of this deletion (i.e. compliance with liabilities to council” is uncertain and it is proposed to be reconsidered. | The recommendation is not accepted. Section 16 (6) provides for circumstances where a person is prohibited from being issued with a Fidelity Fund certificate. Section 16(6) (h) provides that one is dealing with a person who is already registered with the Council and who has failed to discharge his/her “liabilities” to the Council. Section 16(6) however does not deal with a situation where someone has already been registered with the Council –  It professes to deal with a situation where a person applies for the issue of a (new) certificate, and that certificate is then refused on the basis of any of the prohibitions referred to in section 16(6). It is therefore proposed that section 16 (6) (h) is deleted. |
|  | **Section 16 (6)(m) and (17) (b)**  “…Reasons for the refusal…” - To comply with PAJA it is proposed that an appeal procedure be included in the form and format as prescribed by PAJA. Comment for change: PAJA to be noted in new Act. | The recommendation is accepted. Clause 14.27 is specific in the case where a certificate will lapse after an approved issue-process.  It is understood that the "reasons for refusal" here is based on failure to issue in the first place. It would therefore do no harm to include "providing material reasons for refusal (in line with PAJA processes and as already specified in 17(a) & (b). PAJA may well be referenced (for an appeal process and clarity). |
|  | **, Section 16 (25), (d)**  “… known the reasons…” - In writing. Comment for change:: (d) reasons in writing | The recommendation is accepted. |
| FPEF/ Dole South Africa/United ExportsCreation fruits/ The South African Table Grape Industry (SATI)/ In Season Marketing/ Bo-Radyn Bdy (Edms)/ Stems Fruit (Pty) Ltd/ Cape Five Export SA (Pty) Ltd/ FreshWorld Pty) Ltd/ Market Demand Fruit (Pty) Ltd/ Xtreme International/ Green Marketing International/ In2stone/ Unifruit/ AM fresh South Africa/ Core fruit/ Fruit Farm Group South Africa (TFFGSA)/ Kromco (Pty) Ltd/ Bordeaux Plantasie BK/ Fruitworks (Pty) Ltd/ Westfalia Marketing (Pty) Ltd/ Mahela Boerdery/Fruit SA/ Everseason Pty Ltd/ WP Fresh Distributors (PTY) LTD/The Grape Co/ Angon Fruit (Pty) Ltd/ UniChoice Produce Direct (Pty) Ltd/ Jo-Rie Products cc/Vintage Distributors (Pty) Ltd/United Exports/Southern Cross Marketing and Management/ *FRUITWAYS MARKETING (PTY) LTD*, SAMAPRO TRADING CC/ Ele Trading/ HORTGRO/ HORTGRO Pome/ HORTGRO Stone | **Section 16(13)(m)**  2.3.1 The procedure prescribe by PAJA must be complied with.  2.3.2 Written reasons in compliance with PAJA.  2.3.3 To comply with PAJA it is proposed that an appeal procedure be included in the form and format as prescribed by PAJA.  2.4 Addition to subsection 18 display of certified copy may create a practical challenge.  2.5 Addition to subsection 20. Agent to satisfy itself that every director, member, trustee comply with requirements of personal character qualities of honesty and integrity. Who will be authorised to do such certification on behalf of a company, close corporation or trust? The CEO, CFO or MD? And how does the agent satisfy itself as such? What is the (objective) measure?  2.6 If proposal of certificate of good standing is accepted, then distinguish between registration certificate issued to legal entity and certificate of good standing issued to individual directors/ members/ trustees. Failure by one such individual to comply should not affect legal entity registration certificate. | The recommendation is accepted. All applications are done on the basis of the need to submit relevant documentation. This includes basic documentation such as:  1. ID.  2. CPIC documentation.  3. Financial standing.  4. Criminal check verification.  5. Confirmation of required training that must be completed (as criteria to proof knowledge of the occupation of an agent).  6. Required fees for registration.  Any rejection or disapproval is properly communicated with the applicant/s in writing. It is also the intent of APAC to seek a viable solution if any administrative compliance issue can be addressed that is not significant (but measured against the given criteria) - e.g. BEE candidates are assisted with discounted fees, discounted training and one-to-one assistance if so required.  Criteria for rejection will include a criminal conviction for fraud and or any misconduct that may impede the role of an applicant to become an agent.  The issue of PAJA is addressed above. The APAC processes are aligned to PAJA.  2.4 Statutory requirement and agents must comply.  2.5 The Companies Act, Act 71 of 2008 in Section 69 (8)(a) is specific in terms of delinquency (as a good example). |
| In2Fruit | This provision requires all directors/members and trustees to also be issued with registration certificate. Not only as defined. Meaning even a non-trading director for e.g. chairperson also required to have registration certificate. Unpractical to prevent company as legal persona to trade if for e.g. 1 of 10 | The recommendation is not accepted.  The section is amended to provide that a director of a company, a member of a close corporation and a trustee of a trust who acts as a fresh produce agent must also be registered as a fresh produce agent. For purposes of other sections in the Act, this provision will strengthen the protection of producers. |
| This amendment amplifies the concept “remuneration” and clarifies the date an agent must be in possession of a fidelity or registration certificate | The comment is noted. |
| Directors, members and trustees are also required to be in passion of a fidelity or registration certificate. See comment above in this regard vis-à-vis non-trading directors and members. | The recommendation is not accepted. See response to the same comment above. |
| The administration of this information must be on a confidential basis and in compliance with the POPI Act. | The comment is noted. |
| How will this be verified?  Act/council must stipulate what information will be required. Currently council is asking for police clearance certificates, and all directors/ members/ trustees required to pass online test. Several concerns previously raised with test: why necessary for all directors to write, even directors who have been in industry for 20 years or more; why must each person taking the test pay full costs (expensive, take into account emerging exporters/ BEE); conflict of interest iron law firm producing and administering the test.  See also comments above re requirement for all directors/members to be in possession of registration certificate, specifically non trading directors | The comment is not related to any amendment. |
| The verification and compliance with the information required may in practice be difficult to execute effectively. | The comment is not accepted. APAC is currently undertaking this function. |
| **Section 17: Security by agents** | | | |
| 14 | IMASA National/ IMASA Joburg/ CITIFRESH Market agents/ DW FRESH MARKET AGENTS/ SUBTROPICO MARKET AGENTS/ Gjalt Hooghiemstra/ FPEF/ Dole South Africa/United ExportsCreation fruits/ The South African Table Grape Industry (SATI)/ In Season Marketing/ Bo-Radyn Bdy (Edms)/ Stems Fruit (Pty) Ltd/ Cape Five Export SA (Pty) Ltd/ FreshWorld Pty) Ltd/ Market Demand Fruit (Pty) Ltd/ Xtreme International/ Green Marketing International/ In2stone/ Unifruit/ AM fresh South Africa/ Core fruit/ Fruit Farm Group South Africa (TFFGSA)/ Kromco (Pty) Ltd/ Bordeaux Plantasie BK/ Fruitworks (Pty) Ltd/ Westfalia Marketing (Pty) Ltd/ Mahela Boerdery/Fruit SA/ Everseason Pty Ltd/ WP Fresh Distributors (PTY) LTD/The Grape Co/ Angon Fruit (Pty) Ltd/ UniChoice Produce Direct (Pty) Ltd/ Jo-Rie Products cc/Vintage Distributors (Pty) Ltd/United Exports/Southern Cross Marketing and Management/ *FRUITWAYS MARKETING (PTY) LTD*, SAMAPRO TRADING CC/ Ele Trading/ HORTGRO/ HORTGRO Pome/ HORTGRO Stone | **Page 35, Section 17 (14) (a) (1)**  “ …security in such amount…”- How will this amount be ascertained? It is proposed that some kind of calculation formula be included in the Bill to guarantee uniformity preventing any discrimination or arbitrary calculation. | The recommendation is not accepted.  The correct section is clause 15.1 (1) which amends Section 17.  The calculation formula is provided for in Rule 18.1 In respect of Fresh produce Agents. (Section 22 of the Act). It is foreseen that the Rules in Respect of Fresh Produce Agents published in Government Gazette 27892 on 19 August 2005 be redrafted once the Bill is approved. The reference remains correct. |
|  |  | **Section 17(b)**  “… every export agent…” - Why are livestock agents excluded from this requirement, seeing that livestock agents also trade internationally? | The comment is accepted.  Livestock agents who trade internationally should be included.  This will strengthen the protection of producers that make use of the aggregated services of agents. |
|  |  | **Page 36, Section 17 (b) (3)**  “ …to the council…” - How will this amount be ascertained? It is proposed that some kind of calculation formula be included in the Bill to guarantee uniformity preventing any discrimination or arbitrary calculation. | The recommendation is not accepted.  Formulae are prescribed in the rules.  New Rules for Export Agents were approved and published in the Government Gazette on 18 May 2018. This does not include the formula discussed here.  It is foreseen that the Rules in Respect of Export Agents be redrafted to include amongst others, this aspect once the Bill is approved. |
|  |  | Where an export agent sells produce locally from time to time, will such agent also required to open and keep trust account and also be required to provide security in addition to the producer trust account requirement and required security related to that? Will the security be calculated only on the value of his local sales or also export sales? | Repeated comment. |
|  |  | No provision, as with export agents, is made to top-up the security in the event security funds is utilised as envisaged. | The comment is noted. It is foreseen that the Rules in Respect of Export Agents shall be redrafted to include amongst others, this aspect once the Bill is approved. |
|  |  | **Section 17(b)**  “… Every export agent…” - Why are livestock agents excluded from this requirement, seeing that livestock agents also trade internationally? | We agree that the export of livestock (where agents as contemplated in the Definition of an Agent is concerned) should be included. |
| **Section 17A: .Insurance by export agents and fresh produce agents** | | | |
| 15 | APAC/ Creation fruits/ The South African Table Grape Industry (SATI)/ In Season Marketing/ Bo-Radyn Bdy (Edms)/ Stems Fruit (Pty) Ltd/ Cape Five Export SA (Pty) Ltd/ FreshWorld Pty) Ltd/ Market Demand Fruit (Pty) Ltd/ Xtreme International/ Green Marketing International/ In2stone/ Unifruit/ AM fresh South Africa/ Core fruit/ Fruit Farm Group South Africa (TFFGSA)/ Kromco (Pty) Ltd/ Bordeaux Plantasie BK/ Fruitworks (Pty) Ltd/ Westfalia Marketing (Pty) Ltd/ Mahela Boerdery/Fruit SA/ Everseason Pty Ltd/ WP Fresh Distributors (PTY) LTD/The Grape Co/ Angon Fruit (Pty) Ltd/ UniChoice Produce Direct (Pty) Ltd/ Jo-Rie Products cc/Vintage Distributors (Pty) Ltd/United Exports/Southern Cross Marketing and Management/ *FRUITWAYS MARKETING (PTY) LTD*, SAMAPRO TRADING CC/ Ele Trading/ HORTGRO/ HORTGRO Pome/ HORTGRO Stone | **The Department considered all comments and inputs.** | The recommendation is accepted. Insurance is to be contractually regulated between the parties, (principal and agent) and should not enjoy oversight by the regulatory body.  The rationale was mainly to further enhance protection of producers thereby requesting that export and fresh produce agents to take out insurance that will provide for reimbursement of producers for direct losses suffered by them while such produce was in the care of the agents. |
| **Section 18: Account** | | | |
| 16 |  | **Section 18**  Amendment of section 18. Every fresh produce agent obliged to audit (regardless of requirements in terms of Companies Act) and is obliged to do so within 4 months of financial year end. Suggest council provides list of audit requirements. Entities who are not obliged to audit in terms of Companies Act can ensure compliance with the specific items. If every agent required to audit regardless of size, negative impact in terms of costs and will adversely affect smaller and emerging agents. In addition, does this requirement apply to an export agent who sells only some products locally and, if so, will the audit apply to only the local sales and trust account or to all sales including exports and the producer trust account. | The recommendation to adhere to the provisions of the Companies Act with respect to audits.  Export agents trading in the fresh produce market are required to comply with the Act.  This is not new as the current dispensation deals with it. |
|  |  | **Section 18(1)(a) – (d) Act**  i. By the amendment of (1) to correctly refer to the relevant subparagraph of the new definition of “agent”.  ii. The current categories upon which an agent must report are too wide and seems to implicate the personal estate of an agent.  iii. It is proposed that the section should only be applicable to the agent’s activities as an agent. | The recommendation is not accepted.  The APAC and the department understand that the Bill intends to limit confusion by clearly defining the three categories of agents. |
|  |  | **Section 18(2)(a)**  i. “Final date” to be amended to “ last day”  ii. By including a reference to the business banking account  c. 18(2)(b)  i. A simplification of the wording pertaining to the banking accounts and the trust and business accounting records is proposed. | .  The recommendation is accepted. |
|  |  | **Section 18(6)**  Newly added  i. Allowing the council, on its own account, to inspect the accounting records of any fresh produce agent for compliance with section 18.  ii. If a contravention of section 18 is found, the costs associated with the inspection will be recovered from the agent. | The recommendation is accepted. |
|  |  | **Section 18(7)**  Newly added  i. The council be authorised to request, and the fresh produce agent be compelled to furnish, certain records relating to the trust account. | The recommendation is accepted but it is dealt with in the current act and rules. |
|  |  | **Section 18(8)**  Newly added  i. Import requirement that a fresh produce agent must submit to the council a report received from its auditor after an audit contemplated in terms of section 18(2). | The recommendation is accepted. |
|  |  | **Section 18(9)**  Newly added  i. Defining the accounting records for the purposes of subsections (1) – (4) and (6). | The recommendation is not accepted. Recognised definition of accounting records is implied. |
| **Section 19: Trust accounts** | | | |
|  |  | **W. Section 19**  **Summary**  Procedures are proposed on the manner in which fresh produce agents should deal with trust accounts  a. 19(1)  i. More clearly defining the subject matter of this subsection to be every fresh produce agent  ii. Correcting the reference to product; to produce. | The recommendation is accepted. |
|  |  |  |  |
|  |  | **Section 19(1)(a)**  i. It is proposed that fresh produce agents should only open a single trust account.  ii. The purpose of such requirement is to alleviate the burden on the regulatory body when checking compliances and reconciliations  iii. An enormous amount of transactions occur each day on the fresh produce markets. If a fresh produce agent is allowed to open more than one trust account, the regulatory body would unnecessarily be burdened with further compliance procedures.  iv. As the rules govern the manner in which the fresh produce agents should report on, and reconcile their trust account and submit such reports to the council, allowing more than one such trust account would only stand to frustrate these compliance procedures. | The recommendation is not accepted.  The provision for opening trust accounts for producers is intended to protect such producers. |
|  |  | **Section 19(1)(c) and (d)**  Newly inserted  i. Proceeds/ remuneration received by a fresh produce agent should forthwith be deposited into the trust account. | The recommendation is accepted. |
|  |  | **Section 19(3)(a)**  Act  i. Reference should be bank, not “deposit taking institution | The recommendation is accepted. |
|  |  | **Section 19(5)**  i. Should be deleted, as this subsection should be contained in subsection 18(2) | The recommendation is among those the Department needs to further engage on to ensure an informed response |
|  |  | **Section 19(6)**  ii. Add trust investment account and trust interest-bearing account. | The recommendation is among those the Department needs to further engage on to ensure an informed response |
|  |  | **Section 19(7)**  i. By empowering a disciplinary tribunal to suspend an agent from conducting business. | The recommendation is among those the Department needs to further engage on to ensure an informed response |
|  |  | **Section 19(8)(a)**  i. Provision should be made for sales that occur on a Saturday or public holiday. Deleting the word “forthwith” with “the day immediately following the day on which the produce was sold”. | The recommendation is among those the Department needs to further engage on to ensure an informed response |
|  |  | **Section 19(9)**  Newly added  i. Interest accrued should be paid over to the fund, and such funds shall vest in the fund.  ii. A fresh produce agent has no right to retain interest on trust accounts. | The recommendation is among those the Department needs to further engage on to ensure an informed response |
|  |  | **Section 19(10)**  Newly added  i. An agent is compelled to comply with any agreement (as envisaged in 10(2)(f)) the council might have entered with a bank. | The recommendation is among those the Department needs to further engage on to ensure an informed response |
| **Section 19A: Producer trust accounts for export agents**  *(The Department propose the suspension of the clause in proclamation while APAC conduct workshops with affected stakeholders)* | | | |
|  | IMASA National/ IMASA Joburg/ CITIFRESH Market agents/ DW FRESH MARKET AGENTS/ SUBTROPICO MARKET AGENTS/ Gjalt Hooghiemstra | **Page 42, Section 19A (5)**  “…ten weeks…” - This time limit may cause a problem regarding international transactions. Note: What limit needs to be set, Suggestion: Or as per written agreement with principal. | The recommendation is accepted.  The Bill should be amended to reflect that the period will be determined by the council in the rules. |
| Section 19A.  It is uncertain if an export agent who trades under different companies or entities must open a producer trust account for each company or entity? Furthermore, if an export agent has an offshore trading account, what will the requirements be in such instance? | Yes, they must open different accounts. Rule 40 to 44 published on 18 May 2018, in respect to export agents regulate the handling of bank accounts including offshore bank account. |
| Section 19A(2)  Amounts deposited into the producer trust account do not form part of the assets of the export agent. This does not take into account the fact that in many instances advances are made to producers prior to delivery and many costs paid on behalf of producers prior to the products being sold. The export agent should be able to recover those advances and costs from proceeds realised. | The recommendation is not accepted. It is important to note that the proceeds of sales are monitored and traceable. The department could not find any law that prohibits opening of “Producer Trust Account”. |
| **Sections 19A (5)(6) and (7):**  7.3.1 These requirements will cause a practical problem concerning forex payments. | The recommendation is not accepted, but will further be engaged. However, the principle of transparency is key. Producers need to be informed timeously on how income is calculated and the applicable exchange rate. Agents are still required to open producer trust account for ease of monitoring the proceeds.  Protection of the producer is important. The section further provides that any amount deposited into the producer trust account may not be liable to be attached or subjected to any form of execution under a court order and will not form part of the assets of the export agent or his or her insolvent estate should he or she become insolvent. |
| **X. Section 19A**  **19A**  Section 19A(1)(b)  i. Divide paragraph into subparagraphs and include specific categories of which proceeds should forthwith be deposited. | The recommendation is among those the Department needs to further engage on to ensure an informed response |
| **Section 19A(1)(c)**  i. It is proposed that paragraph (c) (which does not deal with trust accounts) be moved to the end of this subsection. (Now paragraph (f)) | The recommendation is among those the Department needs to further engage on to ensure an informed response |
| **Section 19A(1)(d) –(e)**  i. Proposes a manner in which the export agent must:  Newly Added  a. conduct the producer trust account;  b. keep accounting records; | The recommendation is among those the Department needs to further engage on to ensure an informed response |
| **Section 19A(1)(f)**  Newly Added  i. Requires that a written contract should be entered with every principal alternatively, a standard terms and conditions document should be furnished to the principals  e. 19A(2)(a)  i. Correct the misspelling of judgment. | The recommendation is among those the Department needs to further engage on to ensure an informed response |
| **Section 19A(5)**  i. Amend reference of “agricultural product” to that of “agricultural produce”.  ii. As other time periods pertaining to compliance and reporting are mainly referred to in the rules it is proposed that the time period of 10 weeks, be deleted and dealt with in the rules.  iii. It is proposed to amend the wording to enforce compliance as it may be determined in the rules. | The recommendation is not accepted, The amendment will be included in the rules. |
| Section 19A(6)  i. It is proposed to remove this subsection, as such compliance is compelled in the next subsection (now to be numbered (6) d) read with the rules. | The recommendation is accepted. |
| **Section 19A(7) & (8)**  ii. The subsection is confusing and seemingly out of place.  iii. The references to “full agreed purchase price” is undefined and not suited for the purpose it is referenced, as the agent does not purchase the produce.  iv. The intended purpose of this section is more readily regulated in the rules.  v. It is proposed the content hereof is deleted. | Recommendation is accepted. |
| **Section 19A(7) & (8)**  Newly added  i. A court or a disciplinary tribunal may on application by the council, suspend an export agent should it not comply with subsection (1) or if it becomes apparent that the agent has a trust deficit. | The recommendation is accepted. |
| **Section 19A(9)**  i. It is proposed that a complaint received should be under oath by a person who can swear positively to the facts. | The recommendation is accepted. |
| **Section 19A(9)(c)**  i. The aspect of an appeal to the High Court should be deleted. Our law does not allow for an appeal from a disciplinary hearing to a court of law. The decision of a disciplinary tribunal may only be reviewed. | The recommendation is accepted. |
| **Section 19A(10)**  Newly added  ii. Section 18(1) – (8) should also be made applicable to export agents, as the context may require. | The recommendation is accepted. |
| **Section 20: Payment from trust account** | | | |
|  |  | **Section 20**  a. 20(1) – (4)  i. References to fresh produce agent should be amended to “agent” | The recommendation is not accepted. The references to agents in the current Bill and Act are to be retained. |
|  |  | **Section 20(5)**  Newly added  i. After unclaimed funds have been paid over to council, the owner thereof is not deprived of his right to claim from the fund any amount that he can prove that he is entitled to. | The recommendation is among those the Department needs to further engage on to ensure an informed response |
| **Section 21: Disposal of unclaimed moneys** | | | |
|  |  | This will enhance transparency and will improve the input of all stakeholders. But how does council show that comments were considered? | Comment is noted. APAC follows normal fair consultation process. |
|  |  | Section 21(4)  i. Propose minor changes; by the inclusion of the words “that” and “may”. | The recommendation is accepted. The “must” is restrictive and “may” provides alternatives. |
| **Section 22: Rules** | | | |
| 20 | In2Fruit/ FPEF/ Dole South Africa/United Exports/APAC | Suggest: First follow the procedure to suspend or withdraw the registration certificate. That procedure provides the agent an opportunity to make representations and respond. If the agent fails to satisfy the council and the certificate is withdrawn or suspended the agent is prohibited from acting as such. If the agent then fails to comply, an application can be made to court? Again, PAJA will be applicable. | The recommendation is accepted. |
| 10. RULES. AMENDMENT OF SECTION 22  10.1 Requirement that council must publish rules for public comments and must consider any comments received: | In considering review of rules of agents, APAC opens the process for stakeholders to make inputs and such inputs are considered by APAC. The committee responsible for particular category of agents is assigned to the review process. |
| 10.1.1 Will enhance transparency and will improve the input of all stakeholders. But how does council show that comments were considered? | In considering review of rules of agents, APAC opens the process for stakeholders to make inputs and such inputs are considered by APAC. The committee responsible for particular category of agents is assigned to the review process. |
| **Section 22**  How does this Bill affect the current Rules applicable to Export Agents? | It is foreseen that the Rules in Respect of export agents published in Government Gazette in 2018 will be redrafted once the Bill is approved. The reference remains correct. |
| **Section 22**  Minister to approve Rules with or without amendments as he/she deems fit: will open the possibility for political influences, which may not always be in the best interests of the industry. Furthermore, it may cause a constitutional problem as the line between administrative executive powers will be blurred. | Approval of subordinate legislation is delegated to Ministers. Section 22 (3) gives the Minister powers to approve rules in respect of agents. |
| **Section 22(1)(n) - v)**  Newly added  i. It is proposed to insert a further list of matters to which will be the subject matter of rules made by the council  ii. These categories are proposed to be inserted as (n) – (zF) | The recommendation is among those the Department needs to further engage on to ensure an informed response |
| **Section 22(4)**  i. The rules submitted to the Minister for his/her approval should be accompanied by comments and submissions received from interested parties. | The recommendation is among those the Department needs to further engage on to ensure an informed response |
| **Section 23: Improper conduct** | | | |
| 21 | APAC | **Section 23**  i. Reference to fresh produce agent should be an agent. | Responded to above. |
| **Section 23(a)**  ii. Contraventions of any other Act or law should also be defined as improper conduct. (An example would be a contravention of the Consumer Protection Act, by an auctioneer.) | The recommendation is not accepted.  Subjecting the clause to one piece of legislation will be limiting. |
| **Section 24: Inspection and investigation** | | | |
| 22 | IMASA National/ IMASA Joburg/ CITIFRESH Market agents/ DW FRESH MARKET AGENTS/ SUBTROPICO MARKET AGENTS/ Gjalt Hooghiemstra/ FPEF/ Dole South Africa/United Exports/Stargrow Fruit Marketing (Pty) Ltd/ Kromco (Pty) Ltd/ | **Section 24, 22 (d) (3) (a) (i)**  “… within a specified period…” - Add the word “reasonable”. Comments for change: : Add word “reasonable” | The recommendation is not accepted.  Adding the word “reasonable” will create confusion since “reasonable” will vary from one agent to the other. |
| **Section 24, 22 (d) (3) (b)**  “…to a court…” - Add the words “within a reasonable time”. Comments for change: : Add word “within a reasonable time”. | The recommendation is not accepted. The decision to approach the court by the registrar, is based on the determination of significant prejudice or damage to principal, imminent or actual, and giving reasonable time might expose them to further damage. |
| **Section 24, 22 (d) (3) (c)**  “…with as a complaint…” - Add the words “deemed on behalf”. Comments for change: : Add word “deemed on behalf”. | Comment unclear. |
| **Section 24**  Add the words “written”, “reasonable”, “within a reasonable time”, “deemed on behalf of | The recommendation is not accepted.  By notice, implies that it must be in writing. It is not clear where in the clause the words are required. |
| **Section 24**  First follow the procedure to suspend or withdraw the registration certificate. That procedure provides the agent an opportunity to make representations and respond. If the agent fails to satisfy the council and the certificate is withdrawn or suspended the agent is prohibited from acting as such. If the agent then fails to comply, an application can be made to court? Again, PAJA will be applicable. | The recommendation is among those the Department needs to further engage on to ensure an informed response. However, APAC processes are aligned to PAJA. |
| **Section 24**  i. References to fresh produce agents should be amended to agents  ii. References to fresh produce agents, livestock agents or export agents should be amended to agents. | Responded to in Clause 1. |
| **Section 24(1B)**  i. The council should be allowed to proceed with a charge after a complaint was lodged with it, not only on the receipt of the results of an inspection. | The recommendation is among those the Department needs to further engage on to ensure an informed response |
| **Section 24(1B)(c)**  i. Including a further method of service, it is specifically incorporating service by way of email. This is in line with the similar wording pertaining to service in the Unifrom Rules of Court. | The recommendation is among those the Department needs to further engage on to ensure an informed response |
| **Section 24(1C)(3) and (4)**  ii. Having regard to the newly proposed definition of “agent”, there is no need to further qualify “or persons in his or her employ” and this reference may be deleted | The recommendation is among those the Department needs to further engage on to ensure an informed response |
|  |  | **Section 24**  We submit that clause 22 (d) providing for the insertion of section 24(3) in the current Act might lead to an abuse of power by APAC as the provision “if there is reason to believe” is subjective. We propose stating that if there is “if there is an objective reason to believe supported by evidence” to ensure this relates to objective facts. | The recommendation is among those the Department needs to further engage on to ensure an informed response |
|  |  | **Section 24**  We also submit in relation to clause 22 providing for the insertion of section 24(4) that any contravention by an agent must be supported by evidence and procedural safeguards should be included such as providing that if the Counsel’s information was unsubstantiated and led to the disruption of the agent’s business the agent must be allowed to institute legal action against APAC for damages suffered | The recommendation is among those the Department needs to further engage on to ensure an informed response |
|  |  | **Section 24**  This is a material amendment as the onus of proof is moderated from “beyond a reasonable doubt” to a “balance of probabilities” and should be reconsidered. | The burden of proof on disciplinary processes is on balance of probabilities and this amendment seeks to align therewith. |
| **Section 25: Disciplinary tribunal** | | | |
| 23 | APAC | Section 25  This is a material amendment as the onus of proof is moderated from “beyond a reasonable doubt” to a “balance of probabilities” and should be reconsidered. | The burden of proof on disciplinary processes is on a balance of probabilities and this amendment seeks to align therewith. |
| **Section 25**  i. The Act currently stipulates that at least two members of the tribunal should have five years of experience as practising advocates or attorneys.  ii. This requirement has now been removed and requires only one member to have such experience.  iii. In safeguarding the proceedings, the accused and the prosecution, it is proposed that the chairperson, (who may now be the only member of the tribunal with practical experience as attorney or advocate), should have at least ten years of experience.  iv. It is therefore proposed that the one remaining member as chairperson should have at least ten years’ experience.  i. The proposal is made to avoid a situation where an inexperienced chairperson is required to preside over important matters such as the livelihoods of agents and the administration of trust funds. | The recommendation is among those the Department needs to further engage on to ensure an informed response |
| **Section 25(6)(b)**  ii. It is submitted that the words ‘onus of proof’ should be amended to “standard of proof”. | The recommendation is among those the Department needs to further engage on to ensure an informed response |
| **Section 25(9)**  Newly added  i. To allow a duly authorised person to sign the charge sheet on behalf of the prosecutor. | The recommendation is among those the Department needs to further engage on to ensure an informed response |
| **Section 25(14)**  ii. In view of the new proposal regarding the definition of “agent”, the reference to “or employee” in subsection (14) is unnecessary. | The recommendation is among those the Department needs to further engage on to ensure an informed response |
| **Section 26: Disciplinary powers of tribunal** | | | |
| 24 | IMASA National/ IMASA Joburg/ CITIFRESH Market agents/ DW FRESH MARKET AGENTS/ SUBTROPICO MARKET AGENTS/ Gjalt Hooghiemstra/APAC | **Section 26, (h) (b)**  “…other public Media…” - Add the words “and/or social”. Comments for change: : Add the words “and/or social”. | The recommendation is not accepted.  The word public media is inclusive and not restrictive. |
| **Section 26. (1)**  “ …or export agent…” - What about “livestock agents”? Comments for change: “livestock agents” to be added. | The recommendation is accepted. Trust Accounts for Livestock Agents shall be considered. |
| **Section 26**  Why should legal entity’s certificate be withdrawn if an employee found guilty, and more specifically “any other person”? Again, read together with proposal that individuals be issued with certificates of good standing. | The recommendation is not accepted.  The Bill provides that the tribunal “may” and not “must”. This creates an option for the tribunal to decide based on the merit of the case before it |
| **Section 26(1)(bA)**  i. It is proposed that the fine to be imposed may be imposed per charge. Currently there is ambiguity as to whether the maximum fine is may be levied to all charges inclusive, or individually. | The recommendation is among those the Department needs to further engage on to ensure an informed response |
| **Section 26(1)(c)(i) – (vii)**  ii. Stipulating that the conviction of an agent or an employee does not necessarily mean that the disciplinary tribunal should also withdraw the certificates of all directors or members or trustees. Depending on the circumstances the certificate of only a single director, member or trustee may be withdrawn. | The recommendation is among those the Department needs to further engage on to ensure an informed response |
| **Section 26(5),(6) & (7)**  i. The reference to ‘employee should be deleted, as it is unnecessary to refer to an employee in view of the fact that the definition of agent has been revised. | The recommendation is among those the Department needs to further engage on to ensure an informed response |
| **Section 27: Entry and inspections** | | | |
| *New* | APAC | **Section 27(1)**  i. The registrar should be allowed to appoint a suitable person as an inspector for the purposes of the Act and not only for purposes of determining whether there has been compliance with sections 18 to 21. It is proposed that section 27 (1) be amended to reflect this principle. | The recommendation is among those the Department needs to further engage on to ensure an informed response |
| **Section 29: Offences and penalties** | | | |
| *New* | APAC | **Section 29 (1) (a)**  i. It is proposed that a reference to sections 19A (1) and 19B (1), (referencing export and livestock agents.) also be inserted in section 29 (1) (a). | The recommendation is among those the Department needs to further engage on to ensure an informed response |
| **Section 30: Deficit in trust account** | | | |
| 26 | FPEF/ Dole South Africa/United Exports/APAC | **Section 30**  What about “livestock agents”? | The comment is accepted. Trust Accounts for Livestock Agents shall be considered.. |
| **Section 30**  Member of household reference not clear? | The comment is not accepted.  This is not new. This is not part of the amendment. |
| **Section 30**  i. It is proposed amending this section to allow not only a court but also a disciplinary hearing on conviction, to order the convicted person to make good any trust shortfall.  ii. Such convicted or guilty person may then be ordered to pay an amount equal to such shortfall to the council.  iii. Any payment received in terms of such an order should be paid into the trust account concerned, or if the fidelity fund has already made good such shortfall, to the fidelity fund. | The recommendation is accepted. |
| **Schedule 1** | | | |
| 27 | Creation fruits/ The South African Table Grape Industry (SATI)/ In Season Marketing/ Bo-Radyn Bdy (Edms)/ Stems Fruit (Pty) Ltd/ Cape Five Export SA (Pty) Ltd/ FreshWorld Pty) Ltd/ Market Demand Fruit (Pty) Ltd/ Xtreme International/ Green Marketing International/ In2stone/ Unifruit/ AM fresh South Africa/ Core fruit/ Fruit Farm Group South Africa (TFFGSA)/ Kromco (Pty) Ltd/ Bordeaux Plantasie BK/ Fruitworks (Pty) Ltd/ Westfalia Marketing (Pty) Ltd/ Mahela Boerdery/Fruit SA/ Everseason Pty Ltd/ WP Fresh Distributors (PTY) LTD/The Grape Co/ Angon Fruit (Pty) Ltd/ UniChoice Produce Direct (Pty) Ltd/ Jo-Rie Products cc/Vintage Distributors (Pty) Ltd/United Exports/Southern Cross Marketing and Management/ *FRUITWAYS MARKETING (PTY) LTD*, SAMAPRO TRADING CC/ Ele Trading/ HORTGRO/ HORTGRO Pome/ HORTGRO Stone/APAC | 12. CLASSIFICATION OF PRODUCTS  12.1 Granadillas: rather use passionfruit  12.2 Papaws: correct name/spelling: papayas  12.3 Add the following fruit: Blueberries, Kiwi fruit, dates, papinos, persimmons, watermelon, melons, prunes, soft citrus  12.4 Add the following vegetables: Aubergines, butternut squash and sweet peppers  12.5 Are tomatoes correctly classified? See “tree tomatoes” being classified a “fruit”.  12.6 Melons, must-melons, watermelons are fruit, not vegetables | The comments are accepted. In accordance with Section (2) of the current Act, the schedule can be amended by notice in the Government Gazette. |
|  | Schedules  iv. Part A is to be amended by inserting a reference to “Export Agents” in the heading to clarify that the stipulated agricultural products are listed for purposes of both fresh produce agents and export agents.  v. By the insertion of other fruit which have become more prominent in the industry of fresh produce. The proposal relates to the inclusion of “blue berries”, kiwi fruit” and “ground nuts” in the definition of “fruit”. | The recommendation is accepted.  This provision is allowed for under Section 1 of the Act. |
| **Short title and commencement** | | | |
| 29 | Creation fruits/ The South African Table Grape Industry (SATI)/ In Season Marketing/ Bo-Radyn Bdy (Edms)/ Stems Fruit (Pty) Ltd/ Cape Five Export SA (Pty) Ltd/ FreshWorld Pty) Ltd/ Market Demand Fruit (Pty) Ltd/ Xtreme International/ Green Marketing International/ In2stone/ Unifruit/ AM fresh South Africa/ Core fruit/ Fruit Farm Group South Africa (TFFGSA)/ Kromco (Pty) Ltd/ Bordeaux Plantasie BK/ Fruitworks (Pty) Ltd/ Westfalia Marketing (Pty) Ltd/ Mahela Boerdery/Fruit SA/ Everseason Pty Ltd/ WP Fresh Distributors (PTY) LTD/The Grape Co/ Angon Fruit (Pty) Ltd/ UniChoice Produce Direct (Pty) Ltd/ Jo-Rie Products cc/Vintage Distributors (Pty) Ltd/United Exports/Southern Cross Marketing and Management/ *FRUITWAYS MARKETING (PTY) LTD*, SAMAPRO TRADING CC/ Ele Trading/ HORTGRO/ HORTGRO Pome/ HORTGRO Stone | 13. SHORT TITLE AND COMMENCEMENT  13  13.1 It is recorded for the avoidance of doubt that the 2013 Bill was withdrawn, inter alia, due to constitutional issues. Any commentary given on 2013 Bill has to be disregarded since the 2020 Bill opens a de novo process, independent from the 2013 Bill. | The comment is accepted. |
| **PART B: Response to general comments** | | | |
| Creation fruits/ The South African Table Grape Industry (SATI)/ In Season Marketing/ Bo-Radyn Bdy (Edms)/ Stems Fruit (Pty) Ltd/ Cape Five Export SA (Pty) Ltd/ FreshWorld Pty) Ltd/ Market Demand Fruit (Pty) Ltd/ Xtreme International/ Green Marketing International/ In2stone/ Unifruit/ AM fresh South Africa/ Core fruit/ Fruit Farm Group South Africa (TFFGSA)/ Kromco (Pty) Ltd/ Bordeaux Plantasie BK/ Fruitworks (Pty) Ltd/ Westfalia Marketing (Pty) Ltd/ Mahela Boerdery/Fruit SA/ Everseason Pty Ltd/ WP Fresh Distributors (PTY) LTD/The Grape Co/ Angon Fruit (Pty) Ltd/ UniChoice Produce Direct (Pty) Ltd/ Jo-Rie Products cc/Vintage Distributors (Pty) Ltd/United Exports/Southern Cross Marketing and Management/ *FRUITWAYS MARKETING (PTY) LTD*, SAMAPRO TRADING CC/ Ele Trading/ HORTGRO/ HORTGRO Pome/ HORTGRO Stone | | The Agricultural Produce Agent’s Act 12/1992 was originally drafted to “provide for the establishment of an Agricultural Produce Agents Council and fidelity funds in respect of agricultural produce agents; for the control of certain activities of agricultural produce agents; and for matters connected therewith”. This Act was not drafted with export agents in mind, nor can any provisions thereof (originally intended to regulate local municipal markets) be applied equally to export agents. The export market differs vastly from the local municipal markets and the proposed Amendment Bill does not take into account the intricacies applicable to and complex nature of the export industry. | The comment is not accepted. The current Act alreadyregulates export agents. All agents are required to register with APAC. So the Act was drafted with export agents in mind. The amendments are added based on the experiences that we have learned with fresh produce agents acting in a dishonest manner including theft of monies that belong to producers. The ability to detect theft by fresh produce agents was mainly due to strict regulation provided for by the Act. Such strict regulation does not apply to export agents and such limitations in the Act expose producers to risks. The Bill also took into account the differences in operation between fresh produce, livestock and export agents. Extensive consultations were conducted. Inputs were considered; however, some inputs were contradictory to objectives of the department. Other inputs were incorporated in the Bill such as the proposal to include PAJA procedures (see beginning of presentation). |
| Of particular concern is the fact that the Bill has resurfaced in substantially the same form as an Amendment Act that was submitted in 2012/3 but did not pass muster and was rejected after undergoing an extensive participation process. Notwithstanding the regular engagement by the FPEF with the Registrar of APAC and the Council over the last few years, on the proposed changes to the Act and also the “Rules in respect of Export Agents” (the “Rules”), which has led to agreement in respect of many of the challenges posed by the proposals, this seems to have been disregarded in the published Rules and the new Bill, and we are now back to square one. The Bill does not recognise any of the major changes agreed to between the stakeholders in the export industry. | The comment is not accepted. The Bill has not just resurfaced, the Bill was subjected to processes of legislative development. In 2013 the Bill was gazetted for public comments. Various public hearings were held between May and June 2015 across the country. All inputs were considered (See Report on Public hearing). |
| The export industry supports regulation and the protection of producers and export agents alike. However, a unique set of rules or a separate Act that applies to export agents only should be developed to ensure practical enforcement and compliance by all stakeholders. The Bill does not consider the already high barriers to entry to the export industry, which are its significant risks and cost. Further, by increasing administrative controls and costs, which will inevitably be passed on to producers, growth and transformation in the export industry will be stunted. | The recommendation is not accepted. The current Act regulates export agents as well; this Bill seeks to strengthen controls. |
| This is exacerbated by the fact that exporters who also sell fresh produce on the local market, regardless of the reason for such sales (for instance rejection for export) or the percentage of such sales relative to their total sales, will be required to register as BOTH fresh produce agents AND export agents and will have to apply for the issue of a fidelity fund certificate AND registration certificates, AND these certificates are required to be issued not only to the actual legal entity, but also to ALL directors, members and employees acting as such. They will have to contribute to the fidelity fund (and it is unclear how such contribution will be calculated and whether that will include the value of export products handled by such an agent too) and they will have to open a statutory trust account PLUS a producer trust account, and have the first audited but not the second. These measures will require additional man power and increase operational costs, limiting the ability of many agents to compete and will in many instances exclude them from the market in total. Many producers who may otherwise have chosen to deal with a smaller exporter, will not have that choice, and will be forced to deal with a large exporter who is able to absorb those costs. Many producers also register their own exporting/sales entities and this is not taken into account in the current Bill at all. | The requirement to register as both fresh produce agents and export agents, in case the agency practices as both, is not new. Agents that operate locally are clearly defined in the current Act. If an Export Agent decides to also market as such, it must be done within the same set of rules.  An export agent shall not be entitled to sell the fresh produce of his principal in the Republic of South Africa unless he has complied with the provisions of section 16 of the Agricultural Produce Agents Act, Act 12 of 1992 to the extent that they apply to the occupation of fresh produce agents [Rule 2(1)].  It is important that traceability remains high especially when it pertains to the producers that make use of Export Agents. Export transactions are complex and in terms of the current Rules in Respect of Export Agents (18 May 2018 - No 41632) specific reference is made to "secrets profits" that are unlawfully made by export agents. The principal of Producer Export Accounts will therefore serve to protect the interest of the producer.  The contribution to the fidelity fund is paid by the agency and not by individuals.  These new measures are introduced to protect the interest of the producer. |
| Products are supplied to exporters on several different bases, depending on the agreement between the principal and agent, and this may include consignment sales, minimum guaranteed prices, fixed prices or a combination thereof. In many instances exporters make certain payments long in advance to producers and pay certain logistical costs on behalf of producers, which costs are then recovered from sales proceeds. This complicates the operation of producer trust accounts and the requirement that funds received in such accounts cannot form part of the estate of the exporters. It is also not possible to stipulate one set of rules applicable to payment terms and producers and exporters should be able to agree the terms applicable to each specific sale. | The recommendation is among those the Department needs to further engage on to ensure an informed response |
| The requirement that fidelity insurance, credit insurance, marine insurance or any other form of insurance acceptable to the council must be taken out in all instances is hugely problematic. There are many markets and/or customers in respect of which it is impossible to obtain credit insurance. The majority of clients in Africa, Middle East, India, Bangladesh, China, SE Asia, and Russia are not insurable. Africa for e.g. has become the single biggest export market for South African apples, based on relationships that have been built slowly over time without ever having credit insurance. Added to this are clients in markets like the United Kingdom and Europe that are captains of industry on which credit insurance cannot be obtained. To implement such a rule would take away up to 40% of export markets which would have catastrophic consequences for farm gate returns and indeed the sustainability of the entire fruit sector. | The recommendation is accepted. The issue of insurance is to be contractually regulated between the parties, (principal and agent) and should not enjoy oversight by the regulatory body. |
| Definition of “agent”, “fresh produce agent”, “export agent”.  The definitions should distinguish clearly between agents acting on the local market and export agents by adding a provision to the definition of “fresh produce agent” that such agent deals with products intended for sale on the local market. Further, the definition should be “local market agent” instead of “fresh produce agent” since an export agent also deals with fresh produce.  Definition of “local market”. The Act was originally intended to regulate sales on local municipal markets. Now intended to include local retailers and other avenues of sale? | The recommendation is not accepted. The definitions of fresh produce agents and export agents have not been amended in the Bill. |
| Many export agents also sell some products locally. Either because producers supplying them choose to do so, or it is strategic/profitable to include certain local retail programs, or because some products intended for export are rejected for export due to non-compliance with export specifications and have to be sold locally. Would all these essentially export agents be required to register also as fresh produce agents, and also comply with all rules applicable to (local) fresh produce agents, regardless of the percentage of products sold locally vs exported? | The recommendation is not accepted. An export agent shall not be entitled to sell the fresh produce of his principal in the Republic of South Africa unless he has complied with the provisions of section 16 of the Agricultural Produce Agents Act, Act 12 of 1992 to the extent that they apply to the occupation of fresh produce agents [Rule 2(1)]. |
| Also consider also grower exporters. In many instances producers export (or sell locally) their own products, through separate legal entities registered for that particular purpose. Would such an entity fall within the definition of an “agent” because the selling entity is another entity in addition to the producing entity? Could a minimum shareholding be required or a definition for related parties included?  What is regarded as “for the acquisition of gain”? Only commission or also margin realised in the selling (grower) entity apart from the producing entity. | The recommendation is not accepted. An export agent shall not be entitled to sell the fresh produce of his principal in the Republic of South Africa unless he has complied with the provisions of section 16 of the Agricultural Produce Agents Act, Act 12 of 1992 to the extent that they apply to the occupation of fresh produce agents [Rule 2(1)]. |
| It is not clear what is driving the need to make these changes. There are not, as far as we are aware, widespread infringement of the rights of producers. The Fresh Produce Exporters Forum is a voluntary industry body and as high as 93% of all volumes exported are done by FPEF members who subscribe and must adhere to the code of conduct. The FPEF provides a mediation procedure to mediate disputes and complaints between producers and exporters and receive on average two complaints from producers per year. | The recommendation is not accepted. A code of conduct is not legally binding. Proposals in the Bill will ensure an increased protection for producers. FPEF in addition is a voluntary entity that does not represent the industry 100%. |
| Furthermore, It is not clear what benefits the Bill hold for producers other than the requirement that certain minimum terms must be agreed in writing between the producer and exporter and that exporters must comply with certain requirements in terms of reporting and managing conflict of interests. These requirements are supported by the export industry. However, most of the other requirements are unenforceable, impractical, and will increase the cost of business to such an extent that it will become totally uncompetitive. This will ultimately result in losses for producers and export agents alike and will lead to loss of employment and many other adverse economic consequences mentioned before. | This will result in increased protection for producers. |
| Other important considerations such as the effects of climate change, transformation, infrastructure development and more efficient movement of goods out of the country, maintenance and development of water infrastructure, education and skills development, research and development capacity and bilateral and multilateral trade agreements should instead be prioritised which will create growth and stimulate development for the country’s fresh produce and export markets. | The general comment is noted. |
|  |  | Consult producers across the country | The comment is accepted. However, producers were consulted. (See Report on public consultation on the Bill). In addition to public participation, APAC informed and sensitized all relevant role players of the intent of the DALRRD (Minister) to amend the APA Act. |
|  |  | The definition does not take into account different methods of transactions: consignment, fixed price, and minimum guaranteed price. In all these transactions the risk is different. Does the definition mean ALL risk of loss and profit to remain with the principal, or only some? | The comment is not accepted. The Bill intends to regulate the conduct of agents in order to protect producers. The Bill does not intend to prescribe various methods of transactions. |
|  |  | Is it necessary that an individual director or member should also be in possession of a registration certificate? Although a trust is in general not a legal persona, a company and close corporation are legal personae. Thus, it makes sense that (trading) trustees should be in possession of a registration certificate. However, in the case of companies or close corporations it is the company or close corporation, as legal personae, that becomes obligated and entitled in terms of any established legal tie and not the directors or members as a general rule, except when the company is registered as an incorporated one. Over and above, a trading director or trading member should be covered by the company’s or close corporation’s registration certificate. (See also comments below under paragraph 2 registration requirements). | The provision intends to provide APAC with powers to discipline individual directors or trustees in instances of misconduct against that individual. |