Code of Conduct: Annexure A – Checklist for Agency

It is in the area of agency or consignment business that there has been misunderstandings, lack of knowledge and unscrupulous behaviour in the fruit export industry. The worst-case scenario in agency business is the liquidation of an exporter that is in possession of agency monies belonging to his producer(s). In practice such monies can be entirely lost by the producer.

It is incumbent on the FPEF to recommend to its members that reasonable and responsible steps be taken to avoid bringing the export fraternity into disrepute, particularly over agency business.

The APAC Act, established for local produce trading, does not practically afford the export industry the protection it seeks in agency business. It is also considered that the implementation of the APAC Act would hinder rather than streamline the export of fresh fruits. So the industry's best option is to self-govern rather than be regulated by a restrictive APAC Act.

For this reason, the FPEF took the initiative to advise its members – through section 4.1.2 of this Code of Conduct - to set up a separate, non-statutory, banking account using the wording "producer trust account" after their company's name. Furthermore, exporters have been advised to channel all monies related to agency business through this account, on which the exporters' auditors must verify that a clear audit trail exists. This audit trail would then enable the exporter (or liquidator) to accurately account for monies clearly belonging to particular producers.

On top of this, legal opinion has strongly suggested that the exporters make mention of this producer trust account in their written marketing agreement with their producers. Any reference or arrangement regarding agency monies transacted with the exporter is then confirmed in this agreement (Annexure B to the Code of Conduct provides best-practice guidelines for agreements concerning agency business).

The FPEF requires the use of the producer trust account and the associated written marketing agreement as laid out in this addendum. Circumstances may prevail that both producer and exporter choose to operate agency monies in a different manner (to that recommended here) in their written marketing agreement. The legal tender that will stand in court in this regard is that which is reduced to writing between an exporter and his producer. The FPEF is neither willing nor entitled to interfere with the manner in which an exporter member and his producer decide to conduct their agency business - as long as the matter is comprehensively covered in their written marketing agreement. Where the producer and his exporter exclude the producer trust account in their business arrangement, this must be specifically stated in writing.

In the event of a dispute arising over ‘alleged misappropriation of agency monies’ between an FPEF member and his producer, the FPEF Board will determine the degree to which the exporter member adopted the recommendations laid out in this and other addenda. Neglect on behalf of the exporter member in taking proper care of this aspect of the business with his producer may lead to an exporter’s membership to the FPEF being suspended or terminated.