

Legislation, Policies and Other Regulatory Instruments – Macadamia Growers, Processors and Nurseries in South Africa

Executive Summary

The following Table of Legislation, Policies and Other Regulatory Instruments (**“the Table”**) has been drafted to provide an overview and analysis of the various South African legislative principles, policies and regulatory provisions which may be applicable to macadamia farmers and their related operations in the country. The Table provides a list of generally applicable South African environmental and associated laws and provisions for SAMAC growers to consider for their operations. The applicable legislative provisions have been listed together with an overview and analysis of the most relevant aspects for growers. Hyperlinks to relevant Acts and Regulations as contained in the Table have been provided where possible. A summative list of Key Legislative Areas is provided below to assist readers, and a Practical Checklist for Compliance Recommendations for Macadamia Growers is at the end of the Table.

Key Area of Legislation and Regulations Covered in the Table

1. Environmental & Water Legislation

- **National Water Act** – Regulates water use for irrigation, storage, and wastewater discharge. To ensure sustainable water resource management, growers must comply with licensing requirements for boreholes, dams, and streamflow activities.
- **National Environmental Management Act** – Establishes the "duty of care" principle, requiring growers to prevent environmental pollution and comply with Environmental Impact Assessment requirements before clearing land or expanding orchards.
- **Conservation of Agricultural Resources Act** – Mandates soil conservation, the prevention of invasive species, and responsible land-use practices to protect biodiversity and agricultural productivity.
- **National Environmental Management: Waste Act** – Regulates agricultural waste disposal, including pesticide containers and organic waste management, ensuring environmentally sound farming practices.
- **National Veld and Forest Fire Act 101 of 1998** – Assists farm owners in preventing potential financial and infrastructure losses due to fire and provides for establishing and participating in Fire Protection Associations. It regulates firefighting and the creation of firebreaks.

2. Agricultural & Phytosanitary Regulations

- **Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act** – Governs the use, registration, and disposal of pesticides, fertilizers, and animal remedies.

- **Plant Health Act** – Establishes phytosanitary measures for plant imports, pest control, and biosecurity, ensuring compliance with international export standards.
- **Agricultural Pests Act & Control Measures** – Regulates the management of plant diseases and pest infestations, including measures to prevent the spread of pests like Macadamia Felted Coccid.

3. Occupational Health & Safety Regulations

- **Occupational Health and Safety Act** – Requires growers to ensure a safe working environment for farmworkers, including protective equipment, chemical handling protocols, and workplace safety audits.
- **Compensation for Occupational Injuries and Diseases Act** – Requires farmers to register employees for workplace injury compensation.

4. Food Safety, Consumer Protection & Market Regulations

- **Agricultural Product Standards Act** – Establishes grading, packaging, and quality control standards for macadamia nuts in both domestic and export markets.
- **Marketing of Agricultural Products Act** – Mandates registration of macadamia growers, processors, and exporters under the SAMAC statutory measure to ensure industry-wide data collection and regulatory compliance.
- **Consumer Protection Act** – Protects consumers by ensuring accurate labelling, food safety, and liability regulations for non-compliant agricultural products.
- **Foodstuffs, Cosmetics and Disinfectants Act** – Provides for food safety and hygiene and sets out the standards for food hygiene and safety during processing and packaging.

5. Atmospheric Emissions & Waste Disposal Regulations

- **National Environmental Management: Air Quality Act** – Regulates air emissions from drying, roasting, and biomass burning operations. Growers must comply with dust control and emissions licensing requirements.
- **Pesticide Extended Producer Responsibility Scheme** – Requires farmers to return empty pesticide containers and dispose of hazardous substances in line with circular economy principles.

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Table of Legislation, Policies and Other Regulatory Instruments – Macadamia Growers and Processors in South Africa

No.	Name	Overview	Comments / Analysis
Environmental and Water Legislation / Regulations			
1	National Water Act, 36 of 1998 (“ NWA ”)	South Africa’s freshwater resources are controlled by the Department of Water and Sanitation (“DWS”) acting as the custodian of all freshwater resources on behalf of the State. The purpose of the NWA is to ensure that the nation’s water resources are protected, used, developed, conserved, managed and controlled for the benefit of all, while also protecting the environment, managing floods and drought, and meeting international obligations. The NWA sets out licensing requirements for water use (for example, irrigation, dams and boreholes), and regulates discharge of wastewater and watercourse management. For the purposes of controlling and managing the country’s freshwater resources and to ensure that water is not over allocated or over-used in a catchment area, South Africa is divided into catchment areas and water use depends on the availability of water in that catchment. Regulated water uses require a water use entitlement under the NWA. There are various categories of water use entitlements. • Existing lawful water use. • Schedule 1 use (small-scale domestic water use). • General Authorisation (“GA”) (amount of water which a property owner may use due to their ownership rights. Usually apply to medium size water users). • Water Use Licence (Section 21 use, generally for a large water user such as agriculture).	The NWA is crucial for growers as it regulates water use in the country, ensuring sustainable and equitable management of water resources. The most important aspects of the NWA for growers to consider include the requirement to obtain a legal entitlement for various agricultural activities. The legal entitlement required depends on the type and scale of use, from, at the one end a Schedule 1 use (small-scale domestic use) to, at the other end, a full water use licence. Growers may be obliged, either in terms of the NWA, their water use entitlement terms and conditions or industry best practice to adopt water-efficient practices to avoid penalties and comply with

		General authorisations, water-use licence applications and the registration of an existing lawful use are applications and processes under the auspices of the regulatory authority, the Department of Water & Sanitation (“DWS”). The DWS exercises regulatory oversight over all water use entitlements on behalf of the State, in its capacity as custodian of the nation’s water resources. An existing lawful water use is one that was undertaken in the 2 years preceding the promulgation of the NWA, which came into effect on 1 October 1998. To qualify, the water use must have been exercised within two years before the NWA came into effect. This concept includes various forms of water use such as abstracting water from a water resource, storing water, impeding or diverting the flow of water in a watercourse, engaging in stream flow reduction activities, and discharging waste or water containing waste into a water resource. Users with existing lawful water use rights are required to register their use with the DWS. A GA is necessary for activities with a limited impact on water resources while a water-use licence application is generally required for activities that have a significant potential impact on water resources. The registration of an existing lawful water use entails the verification of the existing water use permitted under previous legislation prior to 1998. A Schedule 1 use entails the reasonable use of water for domestic and non-commercial purposes and doesn’t require authorisation. In terms of Section 21 of the NWA, the main agriculture-related water uses that must be authorised by means of a GA or water-use licence are as follows: • Taking ground or surface water from a water resource, such as a river, borehole or dam; • Storing water in dams, reservoirs and similar, as is required for commercial agriculture; • Impeding or diverting the flow of water or altering the bed, banks, courses or characteristics of a watercourse; • Engaging in a stream-flow reduction activity, as is the case with forestry;	water quality standards to prevent pollution of water resources. Additionally, the NWA emphasises sustainable water management and encourages farmers to engage with regional Catchment Management Agencies (“CMAs”) to stay informed about local water management plans. Farmers have the right to appeal decisions regarding water use rights, ensuring their interests are considered in water allocation policies. Various agricultural organisations are actively campaigning for the establishment of CMAs as part of its overall water strategy for the South African agricultural sector. As the largest user of South Africa’s water resources (approximately 60%), the agricultural sector has a vested interest in the sound management of South Africa’s freshwater resources.
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		• Engaging in a controlled activity, such as irrigating with wastewater that may have an impact on ground and/or surface water, as is the case with wastewater generated from a feedlot; • Discharging waste or wastewater into a water resource through a pipe, canal, sewer, or other conduit; and • Disposing of waste in a manner that may have a detrimental effect on ground and/or surface water, such as septic tanks, oxidation ponds or any containerised wastewater facilities. Whether the volume of water abstracted or stored is subject to licensing or a GA depends on the actual volumes and the rules in that catchment area. It should be noted that successful water-use registration is not proof of legal water use, but rather proof that the DWS is aware of the water use. For example, if the abstraction of water from a borehole is registered, it does not necessarily make this abstraction legal. If no existing lawful water use can be linked to the registration, a GA or water-use licence may still be required. The purpose of water-use registration is to systematically gather and record water-user data for the optimal management of the country's water resources. It is also aimed at ensuring the equitable allocation of water, protecting the environment, and enabling the DWS to charge for the use of water. This process involves users having to answer questions about how much water is being used, by whom, for what purpose and where. The next step would be to launch a water-use licence application or a GA process. In this way, the registration process can, by default, be completed at the same time as the water-use licence application process, instead of going through two separate processes. Catchment Management Agencies CMAs are another important consideration for growers under Chapter 8 of the NWA. CMAs are intended to decentralise water resources management away from national government and are specifically constituted to be more responsive to water user needs and speedy decision-making around water	
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		resources management. They are therefore fundamental to the proper application of the NWA. CMAs are responsible for the protection, use, development, conservation, management, and control of all the water resources in that particular water management area (“WMA”). All spheres of government, water users, and communities in the WMA have to participate with CMAs as partners. Offences under the NWA In terms of the unlawful use of water in South Africa, any person who contravenes any provision of Section 151(1) of the NWA is considered guilty of an offence and, upon first conviction, is liable to either a fine or imprisonment for up to five years, or both. In the case of a subsequent conviction, he or she is liable to a fine or imprisonment for up to 10 years, or both.	
1.1	<u>Regulations Requiring that a Water Use be Registered, 1999 under the NWA (“the Regulations”)</u>	The Minister of Water and Sanitation is responsible for the protection, use, development, conservation, management and control of the water resources of South Africa on a sustainable basis. These regulations will contribute to this responsibility. Section 26(1)(c) of the NWA allows for the registration of all water uses, including existing lawful water uses in terms of section 34(2). Section 29(1)(b)(vi) also states that in the case of a GA, the responsible authority may attach a condition requiring the registration of such water use. The Regulations provide for water uses which are exempt from registration under section 10(a)-(c): a) any water use under Schedule 1 to the Act; b) where registration is not required in terms of a general authorisation promulgated in terms of section 39 of the NWA; and c) a person who obtains water from a bulk water supplier, a water management institution or from a communal scheme.	
1.2	<u>Regulations Requiring that the Taking of</u>	The Regulations prescribe the requirements and procedures to be followed to measure the water take from water resources, including in-stream dams, by	

	<u>Water for Irrigation Purposes be Measured, Recorded and Reported, 2017 under the NWA</u> (“ the Regulations ”)	water users who are required to measure the water that they take for irrigation purposes. The Regulations apply to all taking of water from a water resource for the purposes of irrigation where the water user is required to measure such water. Such water users, under these Regulations, are required to install and operate a water measuring device to measure the amount of water taken from a water resource. Records of the readings taken from the measuring device must be taken and records kept for at least 5 years.	
1.3	<u>Water Use Licence Application and Appeals Regulations, 2017 under the NWA</u> (“ the Regulations ”)	The purpose of the Regulations is to prescribe the procedure and requirements for water use licence applications as contemplated in section 41 of the NWA, as well as an appeal in terms of section 41(6) of the NWA. These Regulations provide for various aspects, including: - Application for water use licences; - Application for integrated water use licences; - Pre-application enquiry meeting with the responsible authority; - Submission of the application; - Multiple water use licence application; - Evaluation of application; - Site inspection; - Submission and assessment of technical report on water use licence application; and - Procedure for public participation.	
2	<u>National Environmental Management Act, 107 of 1998</u> (“ NEMA ”) and <u>the Constitution</u>	NEMA is South Africa’s overarching environmental legislation and provides the foundation for the State’s responsibility in ensuring the protection of the environment while pursuing sustainable development. This emanates from Section 24 of the Constitution, which provides that everyone has the right to an environment that is not harmful to their health or well-being and to have that right protected by reasonable legislative and other means. The Minister of the Department of Forestry, Fisheries and the Environment (“DFFE”) is responsible for the oversight of NEMA. There are also provincial Departments that carry out a NEMA oversight role. Whether it is the DFFE or a	

		Provincial Department that will have responsibility for NEMA related activities, depends on the nature and extent of the activity. NEMA also contains Section 28, which is the so-called “duty of care” provision relating to environmental protection. Section 28(1) states that “[e]very person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or, in so far as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation of the environment.” This section applies to an owner of land or premises, a person in control of land or premises or a person who has the right to use the land or premises on which or in which any activity or process is or was performed or undertaken, or any other situation exists which causes, has caused or is likely to cause significant pollution or degradation of the environment. Section 28 therefore applies broadly and complements the cradle-to-grave¹ and polluter-pays² principles in their application. In the context of macadamia farmers, complying with the duty of care applies to any measure which needs to be taken to prevent pollution of the environment and could include responsible disposal of agricultural waste and pesticide containers, preventing soil erosion, preventing water pollution, disposal of hydrocarbon waste and so forth. Section 30 of NEMA deals with emergency incidents and may require the reporting and remediation of a hazardous substance spillage, such as pesticides. Emergency environmental response protocols are mandated in such instances.	
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¹ The cradle-to-grave principle is encapsulated in section 2(4)(e) of NEMA and states that the “responsibility for environmental health and safety consequences of a policy, programme, project, product, process, service or activity exists throughout its life cycle.”

² Section 2(4)(p) of NEMA states that “the costs of remedying pollution, environmental degradation and consequent adverse health effects and of preventing, controlling or minimising further pollution, environmental damage or adverse health effects must be paid for by those responsible for harming the environment.” The polluter-pays principle thus places an obligation on the person responsible for causing pollution or environment degradation to pay for the remediation and rehabilitation of such pollution or environmental degradation.

		Under NEMA, macadamia farmers are required to assess and manage the environmental impact of their farming activities, for example in terms of the NEMA EIA Regulations which set thresholds for when an authorisation is needed to undertake a specific activity. This is further examined below.	
2.1	Environmental Impact Assessment Regulations under NEMA (“ EIA Regulations ”)	Environmental Impact Assessment (“EIA”) regulations promulgated under the NEMA apply to certain developments if thresholds are triggered. Farmers must conduct an environmental impact assessment (“EIA”) if the thresholds of the NEMA EIA Regulations are triggered. For example, before undertaking clearing of natural vegetation, the expansion of orchards or constructing processing facilities. The type of activity and the level of environmental authorisation required for it is contained in the Environmental Impact Assessment Regulations Listing Notices (“Listing Notices”). The Listing Notices comprise of three lists of environmentally impactful activities for which an Environmental Authorisation (“EA”) must be obtained. These are described below.	Growers are required to conduct EIAs for certain activities, such as land conversion or large-scale farming projects, to assess their potential impact on the environment. Activities that might affect biodiversity, water quality, or ecosystems require approval from the authorities.
2.1.1	Environmental Impact Assessment Regulations Listing Notice 1 (“ Listing Notice 1 ”)	Listing Notice 1 sets out generally ‘less impactful activities’ and prescribes that a basic assessment process be undertaken. The activities listed below are not a complete list but are those which are most likely to be triggered by the operation of farming activities. It is possible that other activities contained in Listing Notice 1 may be applicable. • The development and related operation of hatcheries or agri-industrial facilities outside industrial complexes where the development footprint covers an area of 2 000 square metres or more; • The development of - (i) dams or weirs, where the dam or weir, including infrastructure and water surface area, exceeds 100 square metres; or (ii) infrastructure or structures with a physical footprint of 100 square metres or more, where such development occurs - (a) within a watercourse; (b) in front of a development setback; or (c) if no development setback exists, within 32 metres of a watercourse, measured from the edge of a watercourse;	The summary of listed activities in the adjacent column provides some of the most common types of activities relevant to growers that require EA applications. However, it is not exhaustive and other developments, operations and activities may also require an EA depending on the exact scope and project requirements. It is also important to note that certain thresholds, capacities, geographical areas, and footprints are associated with these activities and may need

		• The development of facilities or infrastructure for the off-stream storage of water, including dams and reservoirs, with a combined capacity of 50 000 cubic metres or more, unless such storage falls within the ambit of activity 16 in Listing Notice 2 of 2014; • The development of facilities or infrastructure for the off-stream storage of water, including dams and reservoirs, with a combined capacity of 50 000 cubic metres or more, unless such storage falls within the ambit of activity 16 in Listing Notice 2 of 2014. • The development and related operation of facilities or infrastructure, for the storage, or for the storage and handling, of a dangerous good, where such storage occurs in containers with a combined capacity of 80 cubic metres or more but not exceeding 500 cubic metres; • The clearance of an area of 1 hectare or more, but less than 20 hectares of indigenous vegetation, except where such clearance of indigenous vegetation is required for - (i) the undertaking of a linear activity; or (ii) maintenance purposes undertaken in accordance with a maintenance management plan; • The expansion of- (i) infrastructure or structures where the physical footprint is expanded by 100 square metres or more; or (ii) dams or weirs, where the dam or weir, including infrastructure and water surface area, is expanded by 100 square metres or more; where such expansion occurs- (a) within a watercourse; (b) in front of a development setback; or (c) if no development setback exists, within 32 metres of a watercourse, measured from the edge of a watercourse; and • The expansion of facilities or infrastructure for the off-stream storage of water, including dams and reservoirs, where the combined capacity will be increased by 50 000 cubic metres or more.	to be applicable before the activity would be included as part of an EA application and considered a 'trigger listed activity'. For example, an activity may require EA if it involves the clearing of a certain extent of vegetation (more than 1 hectare) or the construction of structures of a certain footprint size, for example the construction of a road more than 8 metres wide. The specific thresholds, capacities, geographical areas, and footprints that trigger the requirement for EA will vary depending on the geographical sensitivity. When planning a new project, purchasing or renting a piece of property, it is important to determine the listed activities that may trigger EIA Regulations, 2014 as well as other legislative requirements that need to be complied with. Section 49A of NEMA provides that offences are committed in certain instances if NEMA is contravened. For example, it is
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2.1.2	Environmental Impact Assessment Regulations Listing Notice 2 (“ Listing Notice 2 ”)	Listing Notice 2 sets out ‘more impactful activities’ which require that a scoping and full EIA process be undertaken. Some of the Listing Notice 2 activities that may be triggered are: • The clearance of an area of 20 hectares or more of indigenous vegetation, excluding where such clearance of indigenous vegetation is required for - (i) the undertaking of a linear activity; or (ii) maintenance purposes undertaken in accordance with a maintenance management plan; and • The development of a dam where the highest part of the dam wall, as measured from the outside toe of the wall to the highest part of the wall, is 5 metres or higher or where the highwater mark of the dam covers an area of 10 hectares or more.	an offence to undertake a Listed Activity without an Environmental Authorisation. It is an offence to contravene the Section 28 duty of Care and to allow environmental pollution or degradation to take place. A NEMA offence is punishable by a fine not exceeding R10 million or to a maximum of 10 years in jail or both.
2.1.3	Environmental Impact Assessment Regulations Listing Notice 3 (“ Listing Notice 3 ”)	Listing Notice 3 sets out activities based on which particular Province the activity is to be conducted in and provides for the basic assessment process where an activity falls within a geographically sensitive area, such as a development within or near a protected area, world heritage site, environmentally sensitive area and critical biodiversity area. • The development of reservoirs, excluding dams, with a capacity of more than 250 cubic metres; • The clearance of an area of 300 square metres or more of indigenous vegetation except where such clearance of indigenous vegetation is required for maintenance purposes undertaken in accordance with a maintenance management plan; • The development of - (i) dams or weirs, where the dam or weir, including infrastructure and water surface area exceeds 10 square metres; or (ii) infrastructure or structures with a physical footprint of 10 square metres or more where such development occurs - (a) within a watercourse; (b) in front of a development setback; or (c) if no development setback has been adopted, within 32 metres of a watercourse, measured from the edge of a watercourse; and • The expansion of reservoirs, excluding dams, where the capacity will be increased by more than 250 cubic metres.	

Agricultural & Hazardous Substances Legislation			
3	Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act 36 of 1947 (“ Farm Feeds Act ”)	The Farm Feeds Act deals with the registration and use of fertilizers, pesticides, and herbicides. All agricultural remedies, including pesticides, must be registered and used according to the label instructions. Pesticides must be used strictly as directed on their respective labels, while records of pesticide usage must be maintained. Safety Data Sheets for all chemicals stored on a farm must be kept. The Farm Feeds Act makes provision for the control of the trade in and placing on the market and use of fertilizers, pesticides and biological control agents for use in agriculture, including macadamia farming. The Act provides for the registration of fertilisers, farm feeds, agricultural remedies, stock remedies, sterilising plants and pest control operators with the aim of regulating or prohibiting the importation, sale, acquisition, disposal or use of fertilisers, farm feeds, agricultural remedies, and stock remedies. Furthermore, it governs the use of antimicrobials for growth promotion and prophylaxis/metaphylaxis and the purchase of over-the-counter antimicrobials by the public, including farmers. All pesticides must be registered under the Farm Feeds Act by the Registrar (of the Department of Agriculture). Pesticides that are not registered in South Africa may not be utilised in the country. Pesticides may not be used for any purposes or in any manner other than what is indicated on their labels. Pesticides may not be decanted into containers other than their original containers that are labelled with their original labels. It is unlawful to be in possession of pesticides that are not in their original containers with their original labels and such pesticides may not be used for any purposes and may not be acquired, sold, or disposed of by handing it to anyone else for any purposes whatsoever.	Growers must take care when taking decisions to use any fertilisers or plant protection products, as set out in the Farm Feeds Act. It is an offence commercially to use or recommend the use of any remedy for a purpose other than is specified on its label. It is also an offence commercially to use an agricultural remedy if you are not registered as a pest-control operator (or are using it under the supervision of a pest-control operator). It is an offence to import any agricultural product unless it is registered, complies with all its properties as listed in the application for registration, and is packed in a sealed container which is labelled as required by regulation.
Plant Preservation and Protection Legislation and Regulations			
4	Plant Improvement Act 11 of 2018 (“ PIA ”)	The PIA regulates the certification and use of plant materials (for example, macadamia seedlings). The PIA applies to, amongst other plants, macadamias and aims to provide for the following:	Growers and nurseries who are involved in the sale and cultivation of certain declared

		• Registration of premises from which the sale of certain plants or the cleansing, packing and sale of certain propagating material may be undertaken; • The conditions subject to which such plants or propagating material may be sold for the purposes of cultivation; • The recognition of certain varieties of plants; • A system of certification of plants and propagating material with the object of maintaining the quality of certain plants and propagating material, and ensuring the usefulness of the products thereof for agricultural and industrial purposes; and • Control of the import and export of certain plants and propagating material. Any person who desires to have a type of plant declared must submit an application with the Registrar in the prescribed manner. The types of business relating to plants or propagating material for cultivation or sale that must be registered and must comply with the prescribed requirements, unless exempt, are: • The cleaning and conditioning of seed; • The pre-packing of seed; • The selling of seed; • The running of a nursery or any other type of multiplication facility; • The running of a laboratory; • The importation of plants or propagating material; and • The export of plants or propagating material.	plants and propagating material, including macadamias, must be aware that while the State has the primary oversight and responsibility to ensure that plant improvement is regulated, it is ultimately the responsibility of all role-players to ensure that the regulations are adhered to so that individual growers, agricultural bodies, and the agricultural sector at large benefit from a robust industry built on high-quality crops, continued innovation, and improved varieties.
5	Agricultural Pests Act 36 of 1983 (“ Pests Act ”)	In South Africa, the legislative mandate of the now, Department of Agriculture, on the control and management of plant quarantine pests and diseases is the Pests Act and its associated regulations. The Pests Act sets out measures to prevent and manage pest outbreaks. The purpose of the Pests Act is to provide for measures by which agricultural pests may be prevented and combated. The Pests Act also mandates the Directorate: Plant Health to regulate plants, plant products and other	It is vital that growers are able to identify pests to ensure early and effective management of such pests. A critical part of pest management for growers is ensuring that imported plants and plant materials containing pests which have the potential

		regulated articles when imported into South Africa. Plants, plant products and related materials are capable of harbouring quarantine pests, which if they enter South Africa with imported commodities and establish, may endanger the South African agricultural, horticultural or forestry sectors. Similarly, pests that occur in South Africa may endanger countries to which we export and as a result South Africa may lose its export markets. The purpose of the Pests Act with regard to phytosanitary matters is to provide for measures by which quarantine pests of plants, plant products and associated regulated articles may be prevented from entering, establishing and spreading in South Africa. The Pests Act compels imported controlled goods to be declared and presented at ports of entry to the executive officer and/or authorised inspector who then inspects or samples the controlled goods as necessary. The inspection and sampling are done to determine the presence of regulated pests in a commodity. Regulated pests include both quarantine and non-quarantine pests. The inspectors from DALRRD ensure that imported controlled goods are free from non-indigenous organisms, including phytophagous insects, mites, molluscs, nematodes, plant pathogens and invasive weed species. The Pests Act requires that illegally imported plant products should be subject to confiscation and destruction, and offenders should be subject to Section 13 of the Pests Act, which deals with offences and penalties.	of spreading are not brought into South Africa. Illegal importation of plant commodities may lead to the introduction, establishment and spread of pests that are of quarantine significance to South Africa and could result in undesirable impacts on the ecosystem, agriculture, biodiversity and economy of the country. Similarly, access to new export markets of plant commodities could be threatened as importing countries may impose stringent phytosanitary measures to limit the chances of introduction and establishment of these quarantine pests into their territories.
5.1	<u>Pests Act: Agricultural Control Measures, 1984</u> (“Control Measures”), as amended.	The Minister of Agriculture, acting under section 6 of the Pests Act, prescribes control measures to prevent and combat the spreading of pathogens, insects and exotic animals. The measures, among other things, place restrictions on the keeping of plant pathogens by breeders and the keeping, planting or cultivation of certain plants, controlled goods, restrictions on the importation of packed fruit, and compulsory notification by users of land of the occurrence or suspected occurrence of prohibited insects and pathogens in the Control Measures. The Control Measures have been amended several times since they were initially published in 1984. Due to an outbreak of the Macadamia Felted Coccid in 2017, amendments to the Control Measures were published under the Pests Act in April 2022 which	The Control Measures provide important guidance in order to ensure that growers do not cause the spread of invasive and destructive pests within the South African macadamia industry. A recent example of the relevance of the Control Measures relates to an incident

		added the macadamia felted coccid pest to Table 1 – Regulated Pests: Under Official Control, as set out in the Control Measures. Pests listed in Table 1 are subject to the following provisions under the Control Measures: No user of land who is the owner or occupier of a nursery shall: • keep any regulated pests specified in Table 1 on the premises of such nursery; • keep, plant or cultivate any plant on the premises of such nursery unless such plant is visually examined for the regulated pests specified in Table 1 and tested free from the regulated pests specified in Table 1; • keep any infectious thing on the premises of such nursery unless such infectious thing is free from the regulated pests specified in Table 1; • remove any plant from any land within South Africa to any other land within South Africa unless such plant is visually examined, tested free and or found to be free from the regulated pests specified in Table 1; • remove any infectious thing from any land within South Africa to any other land within the Republic unless such infectious thing is free from the regulated pests specified in Table 1; • remove any plant or plant product that is infested or infected by the regulated pests specified in Table 1 from any land where the regulated pests specified in Table 1 occur, unless the movement is authorised by means of a permit by the authority to certify free from the regulated pests specified in Table 1.	that resulted in a particularly harmful and invasive pest affecting the macadamia industry across the world, including South Africa, and was introduced into South Africa. In 2017, the Macadamia Felted Coccid was accidentally introduced to regions in the Mpumalanga Province and was able to spread rapidly. One aspect of relevance to the Control Measures and the Pests Act is the importance of ensuring that the importation of the biological control agent and the concomitant development of appropriate biological insect management techniques is regarded as a high research priority. <u>Regulated pests: macadamia felted coccid.</u>
5.2	<u>Agricultural Pests Act: Control Measures Relating to the Polyphagous Shot Hole Borer, 2021</u> (“Polyphagous Shot Hole Borer Control Measures”), as amended.	A new set of Control Measures relating to the Polyphagous Shot Hole Borer was published in Government Notice 725, dated 13 August 2021. These have been recently amended as per Government Notice 5908 dated 28 February 2025. The Polyphagous Shot Hole Bore Control Measures provide for the safe and effective phytosanitary management of the insects listed in Table 1 of the Polyphagous Shot Hole Borer Control Measures, as amended. The Polyphagous Shot Hole Bore Control Measures require that every user of land	

		in South Africa must immediately notify the relevant authority/executive officer if the land user suspects that the that the insects listed in Table 1 have occurred anywhere. Furthermore, the Polyphagous Shot Hole Borer Control Measures provide that plants as listed in Table 2 and 3 under the measures (including Macadamias), are prohibited from being removed, kept, planted or cultivated by a land user. The reporting procedures to be followed when a new pest or regulated pest of plants has been detected in South Africa, are specified in Appendix 1 of the Polyphagous Shot Hole Borer Control Measures.	
Plant Health Legislation and Regulations			
6	<u>Plant Health (Phytosanitary) Act 35 of 2024</u> ("Plant Health Act") <i>(repeals parts of the Agricultural Pests Act 36 of 1983)</i>	The Plant Health Act was assented to by President Cyril Ramaphosa on 13 February 2025. The Plant Health Act repeals certain parts of the Pests Act. The Act provides for phytosanitary measures to prevent the introduction, establishment, and spread of regulated pests in South Africa and to control regulated pests. It also regulates the movement of plants, plant products, and other regulated articles into, within, and out of the country. The Plant Health Act aims to address challenges in the current phytosanitary system, including constitutional issues, alignment with international requirements, and export regulations, in light of the needs of South Africa's major trading partners and its commitments under international agreements. Among the notable changes in the Plant Health Act is the designation of an Executive Officer responsible for phytosanitary measures, the establishment of the National Plant Protection Organisation of South Africa ("NPPOZA"), which will oversee the development of regulations to facilitate exports, in transit and re-export of plants and plant products, as well as the creation of pest-free areas and areas of low pest prevalence. These measures align with South Africa's obligations under the International Plant Protection Convention ("IPPC"). The Plant Health Act also emphasises the importance of	Any growers who wish to import and/or export any plants, plant products and other regulated articles will need to monitor relevant Regulations and Notices to be published under the Plant Health Act, which will provide clarity on what may or may not be imported without a permit and will govern how the permit process is managed. The current lack of relevant Regulations and Notices under the Plant Health Act means that it is too early to say what the precise effects of the Act will be going forward. However, it is clear that the Plant Health Act provides a robust framework for controlling the import, export

		collaboration between all spheres of government in managing pests and diseases within the country. The Plant Health Act gives the Executive Officer numerous powers, including the power to block or redirect the import of regulated articles or order their treatment or destruction, request information, issue permits or orders, amend or withdraw those same permits or orders, declare quarantine areas, issue written orders in respect of quarantine or regulated areas (the procedure for designation is not yet specified), enter, search, inspect and seize goods under warrant, prescribe specific phytosanitary measures, prohibit import of specific items, implement emergency and provisional measures in respect of imports, declare pests and issue phytosanitary certificates to exporters and re-exporters. In support of the Executive Officer, the NPPOSA performs a variety of functions in terms of the Plant Health Act including issuing phytosanitary certificates, as well as developing and enforcing phytosanitary measures, inspecting goods, and providing plant health services. Under the Plant Health Act, any land users who know or suspect that the land in question harbours a regulated pest must notify the executive officer or other relevant authority and must take reasonable measures to prevent its spread. Various offences and penalties are applicable should contravention of any of the provisions occur, including fines and/or imprisonment of escalating severity for consecutive violations. The Plant Health Act replaces parts of the Pests Act directed to plant pests, namely Section 3(1) (Importation of controlled goods) to the extent that it relates to plants and Section 6 (Prescribing of control measures by Minister) entirely.	and management of plant pests, and has the potential to contribute meaningfully to safeguarding South Africa's agricultural sector and biological diversity.
Marketing of Agricultural Products Legislation and Regulations			
7	<u>Marketing of Agricultural Products Act, 47 of 1996</u> ("MAPA")	MAPA sets out the framework for marketing <i>inter alia</i> macadamia nuts both locally and internationally and authorises the establishment and enforcement of regulatory measures to intervene in the marketing of agricultural products, including the introduction of levies on agricultural products and the establishment of a National Agricultural Marketing Council.	

		In terms of MAPA, the Minister of Agriculture can issue a wide variety of declarations in respect of any products, including restrictions on their importation or export, the introduction of levies, and the like. These can be broadly referred to as ‘statutory measures’ and, of course, are designed in the public interest. However, the Minister may not establish a statutory measure, or implement any prohibition, which ‘is likely to be substantially detrimental to food security, the number of employment opportunities within the economy, or to fair labour practice.’	
7.1	<u>Establishment of Statutory Measure: Registration of Macadamia Growers, Processors, Consolidators, Importers, Exporters of Macadamia Nuts and Nurseries in terms of MAPA</u> (“Statutory Measure”)	The purpose and aim of the Statutory Measure is to compel the parties, as listed in the Schedule, to register with SAMAC. These parties include growers, processors, consolidators, importers and exporters. Registration is necessary to assist the South African macadamia industry in ensuring that continuous, timely and accurate information relating to the macadamia industry is available to all macadamia industry stakeholders. Such information is essential for assisting macadamia industry stakeholders in making informed decisions concerning the macadamia industry. The Statutory Measure is intended to promote the efficiency of the production and marketing of macadamias and must be implemented and administered by SAMAC. All growers, nurseries, processors, consolidators, importers and exporters of macadamias shall register with SAMAC in the manner prescribed in clause 6 of the MAPA. New growers, nurseries, processors, consolidators, importers and exporters of macadamias must register with SAMAC within 30 days. Persons whose activities are classified under more than one of the categories mentioned in clauses 5(1) and 5(2) shall register as such in each category within which its activities fall. By way of example, a grower that dries and packages his macadamias for sale to a trader, shall register both as a grower and a consolidator.	

		Persons that are not members of SAMAC shall re-register annually on or before 31 January in each year.	
Agricultural Standards Legislation and Regulations			
8	<u>Agricultural Product Standards Act, 119 of 1990</u> (“ APSA ”)	The APSA establishes standards for grading, classifying and certifying agricultural products, ensuring that these products meet specified safety, hygiene and quality standards. It regulates how these products are packaged and labelled and ensures that product labels provide accurate product information (including origin, grade and content). The APSA also mandates inspections to verify compliance with quality and safety regulations and grants inspectors the authority to conduct farm inspections. It sets quality standards for agricultural products destined for export, including macadamia nuts through the Regulations Regarding Control of the Export of Tree Nuts, 2023. There are also penalties for the sale of substandard, misbranded or non-compliant products. Penalties include fines or restrictions on the sale of a farmer’s goods.	
8.1	<u>Agricultural Product Standards Act: Regulations Regarding Control of the Export of Tree Nuts, 2023</u> (“ Tree Nut Regulations ”)	The Tree Nut Regulations define macadamia nuts as “unshelled edible seeds of the genus <i>Macadamia</i>” and are included in the broader definition of “tree nut”, which also includes cashew nuts, hazelnuts, pecan nuts and walnuts. The Regulations establish minimum quality requirements for macadamias and other tree nuts intended for export, ensuring they meet specified standards to maintain South Africa's reputation in international markets. The Tree Nut Regulations apply to consignments of more than 20kg. The application process for approval for export of tree nuts (including macadamias) must be directed in writing to the Executive Officer or Assignee and must be made at least three days before the intended date of export. Details to be included in the application include the grade and class of the tree nuts, the number of containers and the mass of tree nuts in the consignment concerned, details for the date and place of export, and the destination. Following the completed application process, the assigned inspector may inspect the concerned consignment by opening containers and examining the contents as they see fit. The applicable fees for inspection and analysis of a	Growers who export their macadamia crop in excess of 20kg per consignment should consider the Tree Nut Regulations, which provide guidance on various aspects surrounding the export of tree nuts. A strict application process must be followed before any tree nut may be exported.

		consignment for export are to be determined when the tree nuts are presented for inspection and may include a fee for testing and analysis of samples by the laboratory concerned. Once approved by an inspector, the inspector will mark each container in a consignment with an approval mark, endorse the consignment note and issue a certificate of approval.	
8.2	Good Agricultural Practice (“ GAP ”) in South Africa	GAP is a certification system for agriculture, specifying procedures (and attendant documentation) that must be implemented to create food for consumers or further processing that is safe and wholesome, using sustainable methods. While there are numerous competing definitions of what methods constitute “good agricultural practice”, there are several broadly accepted schemes that producers can adhere too. The introduction of GAP is particularly desirable when there is chronic overuse and misuse of agricultural pesticides. Governments seek to reduce the use of pesticides by promoting alternative methods of pest management, while at the same time ensuring a steady production of safe and wholesome food. GAP has developed a set of guidelines designed to help smallholder farmers adopt responsible farming methods covering aspects such as plant protection, hygiene, use of fertilizer, waste management, record keeping, and other related agricultural related matters. These guidelines are included in the Primary Farm Assurance (“PFA”) standard which covers 4 separate categories, namely: Food Safety, Traceability, Environment, and Workers’ Occupational Health and Safety. The PFA standard can be implemented on 3 different levels, namely: Entry, Foundation, and Intermediate. The levels are used as building blocks to comply with local requirements.	
8.3	Food Business Operator (“ FBO ”)	A FBO refers to the person or persons responsible for ensuring that the prescribed requirements of the export standards and requirements are met within the food business under his or her control and includes both the management of the food business as well as the person with overall authority	

		on-site or in the specific establishment. All persons involved in the business as an agricultural production unit, pack house on/off farm, commercial cold store, processing plant, container depot, transport operator, exporter, dry storage facility, municipal market facility, retailer, grain storage facility on/off farm, airport terminal/forwarder or seaport terminal are required to register with the DFFE as an FBO. Each type of FBO is allocated a specific code. This code is registered with the Executive Officer under the APSA. All containers destined for export markets must be marked with an FBO code, in addition to the name and address of the producer, exporter/ dispatcher or owner of the container. The registration of an FBO code is to facilitate the traceability process of tracing and tracking of regulated plant products or products of plant origin one step up and one step down in the supply chain. No person shall export products without FBO codes from the Republic of South Africa. Failure to comply with FBO registration before export will result in the product not being certified for export by the DFFE, and the Perishable Product Export Control Board.	
8.4	<u>APSA: Standards Regarding Food Safety and Food Hygiene of Regulated Agricultural Food Products of Plant Origin destined for Export</u>	The APSA provides for various standards relating to food safety and food hygiene of regulated agricultural food products intended to be exported. A FBO checklist (Version 3 – August 2011) has been developed which can assist Growers, Processors and Nurseries with ensuring that activities of production harvesting, on-farm packing operations and associated cold storage facilities, for agricultural products of plant origin destined for export. <u>FBO registration essentials: what you need to know and how to register</u>	
9	<u>Hazardous Substances Act, 15 of 1973 (“HSA”)</u>	The HSA is one of the primary pieces of legislation regulating chemicals in South Africa. It controls the production, import, use, handling and disposal of hazardous substances. Under the HSA, hazardous substances are defined as	A critical component for growers to ensure compliance with the HAS, is the ability to

		substances that are toxic, corrosive, irritant, strongly sensitising, and flammable and pressure generating under certain circumstances and which may injure, cause ill-health or even death in humans. The HSA regulates the control of hazardous substances that may be classified or categorized as hazardous to human health or the environment, including certain pesticides and chemicals used in agriculture. The HSA is enforced at different levels of government (national, provincial and local). Most of the powers of the HSA are delegated to the local government level, meaning municipal health inspectors that are registered with the Health Professionals Council of South Africa are responsible for the enforcement of the HSA and its regulations. Hazardous substances are classified into 4 groups. Anyone who intends to sell or distribute group I hazardous substances must apply for a license from the health authority first. The groups are as follows: • Group I: industrial chemicals (Group 1 Category A) and pesticides (Group 1 Category B); • Group II: 9 classes of wastes, excluding Class 1: explosives and class 7: radioactive substances; • Group III: electronic products; and • Group IV: radioactive substances. Group 1 hazardous substances are the substances which growers will most likely deal with during their typical farming operations, particularly Group 1 Category B hazardous substances. Group 1 Category A substances, such as technical-grade aluminium phosphide and zinc phosphide, are only generally only relevant to processors, manufacturers and formulators. In contrast, Group 1 Category B substances, which are formulated pesticide products, typically fall under the scope of the HSA for farmers. In both instances, a licence under the HAS is only required for persons who wish to import, manufacture, distribute and trade/sell in the hazardous substances listed in Group 1.	correctly and accurately identify the relevant pesticides and other hazardous substances under Group 1 Category B. Recent changes have introduced a new layer of complexity. The globally harmonised system of classification and labelling of chemicals (“GHS”) (discussed further below) has replaced the traditional WHO colour band system. This shift has caused confusion within the industry. Agricultural industry experts also advise that, while growers are not required to possess a license to purchase a Group 1 Category B substance, such substances are legally required to be stored safely and securely. Additionally, it is advised that while a licence may not be required, growers must still maintain stock registers and ensure the availability of safety data sheets for all pesticides stored on the farm. Maintaining these records is not only a legal requirement under the Occupational Health and Safety Act 85 of 1993, but is also good business practice. In the
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		In particular, growers using Group I Category B substances (formulated pesticide products) are required to securely store such pesticides in lockable facilities to prevent unauthorised access. A licence under section 4 of the HSA is required to supply Group I hazardous substances, to sell, let, use, operate or apply any Group III hazardous substance, and to install a Group III hazardous substance on any premises mentioned in such licence. Growers using such substances for crop protection do not require such a licence but must ensure proper storage and handling. Group I Category A licences are usually only relevant to manufacturers and formulators of these substances, rather than end-users (such as growers). Group 1 Category B substances are listed and specified under Appendices E and F of the South African Bureau of Standards Code of Practice 0228: the identification and classification of dangerous substances and goods.	event of theft, having accurate stock records could assist the police in their investigations, as stolen pesticides can be used for illegal activities by criminals. Growers using Group 1 Category B pesticides for crop protection must ensure that such pesticides are purchased only from licensed, reputable dealers and stored behind lock and key, with stock registers and safety data sheets readily available.
Occupational Health & Safety Legislation and Regulations			
10	<u>Occupational Health and Safety Act, 85 of 1993</u> (“ OHSA ”)	The OHSA deals with ensuring a safe working environment for farm workers and sets out the requirements for handling hazardous substances like pesticides. It is the responsibility of employers to ensure that: • A working environment is provided that is safe and without risk to the health and safety of employees. • The working environment is managed and operated in a safe manner all year round. • Equipment, machinery and systems of work is provided and maintained in order to limit exposure to health & safety risks. • Hazards or potential hazards to the safety of employees is eliminated or mitigated before resorting to personal protective equipment. Arrangements (related to production, processing, use, handling,	The OHSA is based on the principle that dangers in the workplace must be addressed by communication and cooperation between the workers and the employer. The workers and the employer must share the responsibility for health and safety in the workplace. Both parties must proactively identify dangers and develop control measures to make the workplace safe. Legal obligations fall onto employers to ensure a safe and

		storage or transport of articles or substances) are made, which will ensure the health and safety of employees. Similarly, employees also have the responsibility to ensure that they: • Take care of his/her own health and safety, as well as that of other people who may be affected by his/her actions. • Carry out any lawful and reasonable instruction regarding health and safety issued by the employer. • Comply with the employer's workplace procedures. • Use the prescribed personal protective clothing and equipment when required. • Report any potential hazard to the employer as soon as possible. • Report any incident that can influence his/her health or cause an injury to the employer as soon as possible, but no later than end of the shift. All hazardous chemicals must be properly labelled in accordance with the GHS, and Safety Data Sheets for hazardous chemicals must be provided to emergency responders and employers. Training programmes for workers on the safe handling, storage and disposal of hazardous substances must be conducted. This is primarily regulated by the Regulations for Hazardous Chemical Agents, 2021. Personal Protective Equipment ("PPE") The OHS Act is the main legislation covering workplace health and safety in South Africa. Under this Act, employers are required to ensure that employees are protected from health and safety risks while performing their duties. This includes providing adequate PPE for workers. The OHS Act has highly specific regulations on how chemicals (such as pesticides) used in the workplace must be handled. Together with training on the safe and correct handling of hazardous chemicals, the provision and use of the appropriate PPE is critical to ensuring the safety of both employers and employees. Before personal protective equipment may be used, the employer must first try to remove or	healthy workplace for employees and for anyone else who may visit the workplace. The law furthermore establishes significant rights for employees, as well as responsibilities to engage in appropriate behaviour to protect their wellbeing. The right of employees to work in a safe and healthy environment is enshrined in law. As such, it cannot be withdrawn or diluted by an employer. Employers must also enforce measures that are necessary to protect the health and safety of workers, while employees must take reasonable care to protect the safety of themselves and others who may be affected by their work activities. They must also report any situation which may be unsafe or unhealthy. Employees must do their part in ensuring that safe working conditions are maintained and must cooperate with the employer and carry out/obey any lawful order or health and safety rules given to him/her by the employer.
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		reduce any danger to the health and safety of his workers. Only when this is not practicable, should personal protective equipment be used. However, even when these measures have been applied, hazards still remain in the workplace and PPE is ultimately used to minimize the risk of injury. Risk in the workplace can include injuries to the lungs (from breathing in contaminated air), the head and feet (from falling materials), the eyes (from flying particles or splashes of corrosive liquids) and the skin (from contact with corrosive materials and the body (from extremes of heat or cold). There are many other examples of hazards in the workplace, such as slipping on a wet floor or cutting your hands on sharp edges. PPE is clothing or equipment worn by persons to reduce exposure to a variety of hazards. The type and amount of PPE required by a worker will depend on the type of chemical being used. It is the employer's responsibility to provide their employees with suitable protective equipment and clothing. Prior to purchasing PPE, safe work methods and procedures and available risk assessments and exposure assessments should be conducted and reviewed to determine the most appropriate PPE for purchase. The types of PPE most commonly used when handling pesticides and other hazardous substances include air purifying respirators, face shields/safety goggles, specialised gloves and overalls. Health and Safety Representatives These are full-time workers nominated or elected and designated in writing by the employer after the employer and workers consulted one another and reached an agreement about who will be health and safety representatives. They must at least be familiar with the circumstances and conditions at that part of the workplace for which they are designated. Agreement must also be reached on the period of office and functions of the health and safety representative and must be settled amongst the employer and the workers. One health and safety representative must be designated for every workplace consisting of more than 20 workers. Therefore, where less than 20 workers are employed, it is not necessary to designate a health and safety representative. The typical duties of a health and safety representative include:	
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		• Conducting health and safety audits; • Identification of potential dangers in the workplace and reporting of these potential dangers to their employer; • Together with the employer, investigate incidents or complaints from workers regarding health and safety matters; • Make representations regarding the safety of the workplace to the employer; and • Engage with health and safety inspectors. Should an injury occur, and the employer is found to be negligent, there could be serious repercussions for the employer. Employers could be fined a substantial amount and/or face imprisonment and be ordered to rectify the matter. On 3 October 2024, the Department of Employment and Labour published a critical guide entitled: <i>What every worker and employer should know about health and safety in the workplace</i>. This document outlines the key roles, obligations and rights that both employers and employees must understand to ensure compliance with occupational health and safety laws. This guide is an indispensable tool for promoting a safe and compliant workplace.	
10.1	<u>Occupational Health and Safety Act: Regulations for Hazardous Chemical Agents, 2021</u> (“ Chemical Agents Regulations ”)	For purposes of macadamia growers, the Chemical Agents Regulations apply to employers who carry out work at a workplace which may expose any person to a hazardous chemical agent (“HCA”) at such workplace. Regulation 3(1) requires an employer to provide employees with suitable and sufficient information, instruction and training before they are exposed to any HCA. Ongoing training must be conducted at the advice of the health and safety committee. Persons exposed to HCAs (employees) must obey a lawful instruction given by an employer regarding HCA release prevention, the wearing of PPE, the wearing of monitoring equipment, reporting for health evaluations, cleaning up and disposing of materials containing an HCA, housekeeping at the	The Chemical Agent Regulations prioritise the safe storage, safe application, proper cleaning and disposal of empty containers, and safe disposal of obsolete or redundant pesticides in order to ensure that injuries are avoided as far as possible when being exposed to HCAs. Safety data sheets and labels on HCAs provide important

		workplace and training/instruction. The following regulations under the Chemical Agents Regulations are important for growers: Regulation 14A – Safety data sheet: The safety data sheet must meet certain requirements, and it must be provided by manufacturers and importers to any suppliers of the HCA to a workplace and to any person who is likely to be affected by an HCA. The safety data sheet must also be obtained by the employer and provided to various affected persons, including any person involved in using, handling or likely to be exposed to the HCA at the workplace. Regulation 14B – Labelling of HCAs: Imposes different obligations on manufacturers and importers, suppliers, retailers and employers regarding the labelling of hazardous chemical agents. An HCA is correctly labelled if the selection and use of label elements are in accordance with the GHS and if the HCA is packed in a container with a label providing certain minimum information, including product identifier and, where applicable, the United Nations proper shipping name and a signal word, hazard statement, precautionary statement and hazard pictogram consistent with the HCA's GHS classification. Regulation 15 – Disposal of HCAs: Employers must, as far as reasonably practicable, comply with certain requirements when disposing of hazardous chemical agents. For example, the employer must – • Recycle HCA waste; • Ensure that all collectable HCA waste is placed in containers that prevent the likelihood of exposure during handling; and • Ensure that if the services of a waste disposal contractor are used, the contractor also complies with the provisions of these regulations.	information on the specific precautionary measures to be taken when handling HCAs.
10.2	<u>Globally Harmonized System of Classification and Labelling of Chemicals (“GHS”)</u>	The GHS is an internationally applicable system that aims to standardise chemical hazard classification and communication. It covers all hazardous chemicals in the workplace in all stages of a product’s life cycle, including production, storage, transport, handling, recycling and disposal.	It is critically important for growers, farmworkers and anyone handling a chemical to understand how GHS works, because the hazards

		Employers should ensure that all chemicals used in the workplace are labelled according to the GHS, as well as inform and train workers about the GHS communication elements and the handling and use of chemicals. The SANS 10234 waste classification system is South Africa's response to the requirement of the GHS for countries to implement such systems. According to the GHS, the nature of a hazard is assigned according to a hazard class, of which there are currently 29. Of these, 17 are physical hazard classes such as oxidizing liquids, 10 are health hazard classes such as skin corrosion/irritation, and 2 are environmental hazard classes, namely hazardous to the aquatic environment or hazardous to the ozone layer. However, not all of these hazard classes will be commonly associated with agricultural remedies. Hazard Statements - are phrases that describe the hazard/s as determined by the hazard classification. These hazard statements appear both on the label as well as the safety data sheet. Precautionary Statements - are linked to the hazard statements and are used to explain how to handle these substances, as well as which precautions to take to ensure any risk associated with handling the product is mitigated. Signal word - is used to describe the hazard based on the hazards identified and the corresponding categories and thus severity thereof. Pictograms - are graphical representations of the hazards associated with the chemical and are associated with a specific hazard class and category.	associated with a particular chemical, their nature and severity, are communicated through a number of elements, such as hazard statements, pictograms and signal words on both the label and the safety data sheet of the product.
Compensation for Workplace Injuries / Diseases Legislation			
11	Compensation for Occupational Injuries and Diseases Act, 130 of 1993 (" COIDA ")	COIDA sets out the compensation mechanisms for workplace injuries or illnesses. The Compensation Fund ("the fund") was established by COIDA to provide for compensation for disablement caused by injuries and diseases sustained or contracted by employees during their employment period as a	Growers, processors, and nurseries should contribute to the Compensation Fund as employers to protect their employees from accidental

		direct result of their occupation. It also compensates for death because of injuries and diseases in the same manner. Employers (growers) must register for COIDA and pay a compulsory amount every year to the fund from which these benefits are paid. It is mandatory insurance coverage for employers in case their employees die, sustain an injury or contract an occupational disease during their employment. The fund is controlled by the Compensation Commissioner, and the administration of reporting, penalties, collections and so forth is handled by the Department of Labour. Employees, including domestic workers, farm workers, and casual workers, are covered by COIDA. However, independent contractors and self-employed individuals are not covered. Employees who are booked off due to an injury on duty for three days or less are not covered. COIDA covers injuries that occur during work hours and on work premises, either at the primary place of employment or external premises. Employees with injuries resulting from accidents, diseases, or occupational exposures are eligible for compensation. Employers must report injuries to the Compensation Commissioner within seven days of the employee sustaining the injury, and employees should ensure that their injuries are reported to their employers promptly.	injury, death, or disease while they are employed by the employer. It is vital that growers, processors and nurseries, as employer, are aware of the correct procedures to be followed when an employee suffers an injury, disease or death in the course of their employment. Payments for injuries on duty are an essential safety net for workers. Understanding the COIDA system is crucial for both employers and employees. By following the guidelines and regulations set out by COIDA, injured workers can receive the support they need to recover and return to work.
Waste Legislation and Regulations			
12	<u>National Environmental Management: Waste Act, 59 of 2008</u> ("NEMWA")	NEMWA sets out the regulatory framework for waste management in South Africa. Macadamia growers must comply with NEMWA to ensure environmentally responsible farming practices. Section 16 contains a duty of care similar to that contained in section 28 of NEMA. It requires farmers to avoid, minimise, reuse, recycle or dispose of waste in an environmentally sound manner. For macadamia growers, this would include the proper disposal of plant material, agricultural waste and empty pesticide containers. Any waste that may cause harm to the environment or human health must be responsibly managed.	

12.1	<u>NEMWA Waste Classification Management Regulations, 2013</u> (“Waste Regulations”)	The Waste Regulations regulate the classification and management of waste in a manner which supports and implements the provisions of NEMWA. The purpose of the Waste Regulations is to prescribe requirements for managing waste and establish a mechanism and procedure for the listing of waste management activities that do not require a Waste Management Licence. Included in the Waste Regulations are the minimum requirements for processing organic waste. The two main requirements are that organic waste cannot be stored for long periods of time and organic waste that has a moisture content of more than 40% cannot be included in the general waste stream that goes to landfill. This leaves many commercial property owners, including growers, with composting as the most viable option to process food and organic waste. All waste generators, including growers, must ensure that their waste is classified in accordance with the Waste Regulations with SANS 10234³ within 180 days of generation, except if it is listed in Annexure 1 (being wastes that do not require classification and assessment). Organic waste is one such waste type that is not listed in Annexure 1 of the Waste Regulations. Therefore, organic waste such as macadamia husks will require classification and assessment. Waste must also be reclassified every 5 years.	Growers should consider the Waste Regulations, especially in the context of the generation of various organic waste. Organic waste is not exempt and must be classified according to the provisions of the Waste Regulations.
12.2	<u>NEMWA National Norms and Standards for Organic Waste Composting, 2021</u> (“Composting Norms and Standards”)	The Composting Norms and Standards provide a national uniform approach to controlling composting of organic waste at a facility that falls within the threshold, in order to prevent or minimise potential negative impacts on the bio-physical and socio-economic environment. The Composting Norms and Standards aim to ensure implementation of the best practicable environmental option in the composting of organic waste. According to the Composting Norms and Standards, all commercial composting activities should be registered with the provincial authority. This is not a waste licence, however, but rather a basic registration exercise.	Our sustainability laws present many opportunities which growers can take advantage of. For example, the Composting Norms and Standards allow for certain composting facilities to by-pass the application process for a waste management license to promote this activity and

³ SANS 10234 is the South African National Standard for the Globally Harmonised System of Classification and Labelling of Chemicals. It ensures that hazardous chemicals are classified, labelled and documented consistently to protect human health and the environment, and helps South Africa comply with international chemical safety regulations. The SANS 10234 covers the harmonized criteria for classification of potentially hazardous substances and mixtures, including wastes, in terms of its intrinsic properties/hazards.

		The Composting Norms and Standards apply to organic waste composting facilities that have the capacity to process compostable organic waste, in excess of 10 tonnes per day. The owner of such a waste composting facility must register under the Composting Norms and Standards and align with the requirements of applicable integrated waste management by-laws for the municipality in which the grower operates. The Composting Norms and Standards highlight two differences according to the volumes of organic waste being composted. Firstly, all sites that compost less than 10 tonnes per day do not require frequent site visits from the provincial authority. Sites that compost more than 10 tonnes per day require site visits and an environmental management programme to specify the provisions taken to protect the surrounding environment. Once a site has registered with the provincial authority, the following basic composting guidelines apply: • Storage must occur within a unit with impermeable surfaces (concrete, clay, metal, or heavy-duty plastic). • Odours need to be minimised by aerating the organic waste mass inside the unit. • Leachate (liquid waste) needs to be minimised. • Storage needs to be done in a manner that prevents unwanted rodents, flies, and other pests. • Storage should not exceed a period of 90 days. • Maintain designated buffer distances to ecologically sensitive areas (such as waterways) and site boundaries where applicable. • Regular unit monitoring should be done to ensure that the capacity of the composting unit is not exceeded. The Composting Norms and Standards also provide for the application process for the establishment of an organic waste composting facility, the design and construction of the organic waste composting facility, security and access control and requirements for the operating of such a facility.	alleviate pressure on landfill sites.
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12.3	<u>National Environmental Management: Waste Act: Extended Producer Responsibility Scheme for the Pesticide Sector, 2023</u> (“ Pesticide EPR Scheme ”)	The Pesticide EPR Scheme must be read together with the Extended Producer Responsibility Regulations, 2020 (“EPR Regulations”), which provide the overarching framework for EPR schemes across various sectors. The EPR Regulations require producers to register with the DFFE, develop and implement an EPR scheme, and report regularly on the performance of the EPR scheme. The Pesticide EPR Scheme applies to identified, listed products and the resulting waste that arises from the use by a consumer/end user of pesticides and related containers. The listed products are pesticides, pesticide co-formulants and related containers. The Pesticide EPR scheme mandates that producers of pesticides set up procedures, processes and invest resources to implement the extended producer responsibility measures at the post-consumer stage. This includes the management of waste such as pesticide containers, cardboard boxes, paper bags, tubs and buckets, steel drums and aluminium canisters.	Growers are responsible for ensuring that the pesticides used are managed in accordance with the Pesticide EPR Scheme. This includes returning empty pesticide containers to designated collection points and adhering to guidelines for the disposal of obsolete pesticides.
Land Conservation Legislation			
13	<u>Conservation of Agricultural Resources Act, 43 of 1983</u> (“ CARA ”)	CARA provides for control over the utilization of the natural agricultural resources of South Africa to promote the conservation of the soil, the water sources and the vegetation and the combating of weeds and invader plants. In terms of CARA, to achieve the objects of the Act, the Minister may prescribe control measures which shall be complied with by land users to whom they apply, including: • the cultivation of virgin soil; • the utilization and protection of land which is cultivated; • the irrigation of land; • the prevention or control of waterlogging or salination of land; • the utilization and protection of streams, marshes, water sponges, water courses and water sources; • the regulation of the flow pattern of run-off water; • the utilization and protection of the vegetation;	Under CARA, growers must take steps to prevent soil erosion, which can occur from poor land management or improper cultivation. This includes implementing proper soil conservation measures, such as crop rotation. CARA mandates that growers actively manage and control the spread of alien invasive plant species that can disrupt the local ecosystem and agriculture. Invasive plants must be eradicated or controlled, and growers are

		- the grazing capacity of veld, expressed as an area of veld per large stock unit; - the maximum number and the kind of animals which may be kept on veld; - the prevention and control of veld fires; - the utilization and protection of veld which has burned; - the control of weeds and invader plants; - the restoration or reclamation of eroded land or land which is otherwise disturbed or denuded; - the protection of water sources against pollution on account of farming practices; - the construction, maintenance, alteration or removal of soil conservation works or other structures on land; and - any other matter which the Minister may deem necessary or expedient in order that the objects of this Act may be achieved. In terms of weeds and invader plants (both exotic and indigenous), such plants have been identified in Regulations pertaining to CARA and assigned categories (1 – 3) based on their problem status. Specific regulations govern the use and management of these species.	required to ensure their land is free from these species. Growers must also take care to avoid overuse or pollution of water resources, ensuring that they do not damage the water catchment areas or harm aquatic ecosystems. CARA addresses the control of fire on farmland to prevent uncontrolled wildfires. Growers must ensure that they follow firebreak and controlled burning procedures, particularly in areas prone to fires. CARA also regulates the use of pesticides for the combating of weeds and invader plants, ensuring that their application does not harm the environment or public health. Growers must follow proper guidelines and practices to avoid contamination of water supplies and soil degradation.
Atmospheric Emissions Legislation and Regulations			
14	<u>National Environmental Management:</u> Air	The NEM: AQA sets out emission controls for processing facilities and waste management. Macadamia growers may trigger listed activities under the NEM: AQA associated with biomass burning, macadamia processing/drying	Growers and processors should be aware of the provisions in NEM: AQA as they regulate matters of air pollution to

	<u>Quality Act, 39 of 2004</u> (“NEM: AQA”)	facilities and other emission-generating activities. Local municipalities are responsible for issuing atmospheric emissions licences (“AELs”). An AEL is required for any activity listed in section 21 of the NEM: AQA. These listed activities are identified as having the potential to cause significant atmospheric emissions that have the potential to detrimentally affect the environment or human health. People undertaking these activities must obtain an AEL prior to commencing operations. Each listed activity is associated with minimum emission standards that define the maximum permissible emission limits for various pollutants. Macadamia growers may require an AEL if the farm conducts activities that emit significant pollutants as per section 21 of the NEM: AQA. Activities may include: • Nut drying, roasting or processing facilities with associated fuel-burning equipment (such as oil-fired heaters, coal-fired dryers or biomass boilers); • Biomass burning and waste disposal, including the use of incinerators or the burning of macadamia husks, shells or other agricultural waste; • Pesticide and chemical use, where such use releases volatile organic compounds into the air; and • large-scale mechanised farming practices that generate significant amounts of dust. To obtain an AEL, applicants must submit detailed information about their proposed activities, including the nature and quantity of emissions, to the relevant licensing authority (usually the local municipality). The application must demonstrate how the entity will comply with the applicable emission standards and may require an air quality impact assessment.	protect air quality and public health. Growers must comply with air quality standards related to emissions from farming activities, including dust, smoke, and gases from agricultural operations, such as burning waste or field crops. Certain activities, such as the burning of agricultural residues or the operation of equipment that emits pollutants, may require an atmospheric emissions license. This ensures the proper disposal of agricultural waste, like chemicals and pesticides, to avoid air pollution from improper burning or decomposition is crucial. Depending on the scale of operations (and where an AEL listed activity is undertaken such as operating drying or biomass burning facilities), farmers may need to monitor air quality and report any significant emissions or violations of standards.
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		Generally speaking, even where an AEL is not required, growers should implement dust control, waste management and emission-reduction measures to avoid potential regulatory issues, to comply with the NEMA section 28 duty of care and industry best practice.	
14.1	List of activities in terms of section 21 of the NEM: AQA (“the List”)	A list of activities which result in atmospheric emissions which have or may have a significant detrimental effect on the environment, including health, social conditions, economic conditions, ecological conditions or cultural heritage, is published under NEM: AQA. The List provides for various categories which may be applicable to growers. Some of the most generally applicable activities include the following: Category 1: Combustion Installations 1.1: Solid Fuel Combustion Installations 1.2: Liquid Fuel Combustion Installations 1.3: Solid Biomass Combustion Installations 1.4: Gas Combustion Installations Category 3: Carbonization and Coal Gasification 3.1: Combustion Installations Category 8: Thermal Treatment of Hazardous and General Waste 8.1: Thermal Treatment of General and Hazardous Waste Note that the triggers for these installations are intended to apply to large emitters. Exact thresholds would need to be determined based on the specifications of the installation.	Growers are advised to carefully consider the List of activities in terms of section 21 of the NEM: AQA. Depending on the particular extent of the activities which are carried out by growers, an AEL may be required if the thresholds are exceeded.
14.2	National Dust Control Regulations of the NEM: AQA (“the Dust Control Regulations”)	The purpose of the regulations is to prescribe general measures for the control of dust in all areas. A standard for the acceptable dust fall rate is set out in Table 1 of the Dust Control Regulations for residential and non-residential areas. Growers must ensure that their operations conform to the standards as set out in Table 1. The air quality officer may require any person, through a written notice, to undertake a dust fall monitoring programme should the officer suspect that the person is exceeding the limits for acceptable dust fall. Contravention of	The generation of ‘dust’ in terms of the Dust Control Regulations, no matter how insignificant it may appear, must be considered by growers to ensure that they are not in contravention of the law and the incurrance of significant fines or imprisonment.

		the Dust Control Regulations could lead to a fine of up to R10 million or imprisonment up to 10 years, or both depending on the particular circumstances of the offence.	
Other Generally Application Legislation and Regulations			
15	<u>Foodstuffs, Cosmetics and Disinfectants Act, 54 of 1972</u> ("Foodstuffs Act")	The Foodstuffs Act makes provision, among other things, for selected matters in the field of food safety and hygiene and sets out the standards for food hygiene and safety during processing and packaging. It places restrictions on the manufacture, importation and placing on the market of articles that are adulterated, are harmful or injurious to human health or that contain a prohibited substance. The Act also prohibits the false description and labelling of foodstuffs, defines the liability of an importer, a manufacturer or a packer, provides for the appointment of inspectors, and provides for the analysis of foodstuffs and the examination, control and disposal of certain imported articles. The Foodstuffs Act controls the sale, manufacture, importation and exportation of Foodstuffs, Cosmetics and Disinfectants. With 'foodstuffs' and 'disinfectants' being of relevance SAMAC growers and processors: • A 'foodstuff' is any article or substance ordinarily eaten or drunk by a person (except a medicine) or purporting to be suitable, or manufactured or sold for human consumption; and • A 'disinfectant' is any article or substance to be used or applied as a germicide, preservative, antiseptic, cleansing material or non-cosmetic deodorant. There are a significant number of regulated provisions promulgated under the Foodstuffs Act which govern matters concerning: • The ingredients, process or method, and the appliances and containers used in the manufacture, packing, labelling, storage and conveyance of any foodstuffs or disinfectant; and • The preparation, serving or administering of any foodstuff.	It is important that growers and processors are aware of the existence of the Foodstuffs Act and the regulations which govern the various aspects associated with the production and sale of the macadamia crop.

16	<u>Consumer Protection Act, 68 of 2008</u> (“CPA”)	The CPA sets out the requirements for the accurate labelling of food products and regulates consumer rights. The CPA may be relevant to growers and processors as the CPA contains provisions which can result in persons involved in the product value chain being liable to be held individually or jointly accountable for any loss a consumer may suffer. This can occur regardless of whether the grower is trading their produce directly to the end consumer. Section 24 of the CPA provides that a person must not knowingly provide or alter a trade description of goods that is likely to mislead the consumer. Additionally, any person who produces, supplies, imports or packages any prescribed goods must display on, or in association with the packaging of those goods, a notice in the prescribed manner and form that discloses the presence of any genetically modified ingredients or components of those goods in accordance with applicable regulations.	Under the CPA, anyone in the value chain, including growers, can be held individually or jointly accountable for any loss a consumer may suffer. Growers must consider the impact of how they do business with the end user or consumer, from the fertilisers and insect repellents used for crops to how growers advertise their crop.
17	<u>National Veld and Forest Fire Act 101 of 1998</u> (recently amended and now called the “National Veldfire Act”) (“Veldfire Act”)	The Veldfire Act is a legislative tool to help farm owners prevent potential financial and infrastructure losses because of fire. The definition of an “owner” in the Act includes a lessee (e.g. a tenant) or other person who controls the land in question. The Veldfire Act prescribes various statutory landowner requirements. Farm owners should also check with their respective local municipality or fire brigade to confirm the rules and regulations for the area. Duty to prepare and maintain firebreaks Every owner on whose land a veld-fire may start or burn or from whose land it may spread must prepare and maintain a firebreak on his or her side of the boundary between his or her land and any adjoining land. • Owners of adjoining land may agree to position a common firebreak away from the boundary. Farm owners should discuss fire breaks with neighbours and plan together – it should be in the right place, cost effective and be practical to implement. It is also advisable to document the particulars of any agreed fire breaks. • If an owner intends to prepare and maintain a firebreak by burning, he or she must determine a mutually agreeable date or dates with the owners of adjoining land for doing so, and inform the fire protection association for the area, if any.	Veld fires in South Africa have a devastating impact on agriculture and can result in millions of rands of damages to property, loss of human life, crops and grass land. Farm owners should carefully consider the provisions of the Veldfire Act, including the duty to prepare and maintain firebreaks and joining an FPA. Farm owners should also ensure that they acquire the necessary equipment and protective clothing as well as ensure that adequate training is provided to personnel. Another important aspect for consideration is that insurance

		• If agreement cannot be reached, such owner must give to the owners of adjoining land and the fire protection association for the area, if any, at least 14 days written notice of the day or days during which he or she intends burning firebreaks, fire danger permitting. • Fire breaks should ideally be wide enough and long enough to have a reasonable chance of preventing a fire from spreading to or from neighbouring land, avoid the causing of soil erosion, be reasonably free of flammable material and should be regularly maintained. • Some natural (or human made) veld conditions e.g. recently burned veld (younger than four years), a natural vleij, a dam or river, old farmlands and floodplains can be regarded as a natural firebreak. The width of firebreaks depends on where it is to be established. Fire Protection Associations (“FPAs”) The Veldfire Act provides for the formation of FPAs by landowners. The duties of an FPA include predicting, preventing, managing and extinguishing veldfires. They do not, however, fulfil the role of the fire brigade services. In order to register an FPA, the applicant must be capable of performing the duties imposed on an FPA and the applicant must be representative of owners in the area. The word “area” is not defined in the Veldfire Act, but the Act states that an FPA may be formed by owners who wish to co-operate in respect of an area which has regular veldfires, a relatively uniform risk of veldfires, relatively uniform climatic conditions, or relatively uniform types of forest or vegetation. Only one FPA may be registered in respect of an area. The municipality and the owners of state land which fall within the area are obliged to become members of an FPA. The Chief Executive Officer of an FPA is the Fire Protection Officer and has the right to enter onto the land of a member of an FPA on reasonable notice, to carry out his duties. The advantages of being a member of an FPA are that various agricultural institutions and insurance companies support, and in some cases require active participation in an FPA. Fire Fighting	companies may require that farm owners comply with certain provisions of the Veldfire Act, such as belonging to and actively engaging with an FPA.
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		The Veldfire Act places a duty on all owners to acquire equipment, protective clothing and train personnel for extinguishing fires that is reasonably required in the circumstances. Duties of an FPA include organising and training its members in firefighting, management and prevention, and informing its members of equipment and technology available for preventing and fighting veldfires. A farm owner who has reason to believe that a fire on his or her land or the land of an adjoining owner may endanger life, property or the environment, must immediately take all reasonable steps to notify the FPA and the owners of adjoining land and do everything in his or her power to stop the spreading of the fire.	
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Practical Checklist for Compliance Recommendations for Macadamia Growers

1. Water Use Compliance:

- Obtain and maintain a valid water use license from the DWS.
- Register all water uses with the DWS.
- Monitor water usage and prevent pollution.

2. Environmental Compliance:

- Dispose of agricultural waste responsibly.
- Comply with NEMA's duty of care provisions.
- Conduct environmental impact assessments for significant activities.

3. Agricultural Practices:

- Ensure all pesticides and fertilizers are registered under the Farm Feeds Act.
- Maintain records of pesticide usage.
- Follow label instructions for pesticide application.

4. Labour Compliance:

- Provide a safe working environment.
- Conduct regular training on health and safety.
- Ensure the availability of PPE for workers handling hazardous substances.

5. Food Safety Compliance:

- Maintain hygiene standards during processing and packaging.
- Ensure the final product is safe for consumption.

Recent Changes and Upcoming Regulations

- **Plant Health Act, 35 of 2024:** Replaces parts of the Agricultural Pests Act 36 of 1983, focusing on phytosanitary measures to prevent the introduction and spread of regulated pests.
- **Extended Producer Responsibility Scheme for the Pesticide Sector, 2023:** Mandates producers to manage waste such as pesticide containers and obsolete pesticides.

Best Practices

- **Water Management:** Implement water-efficient irrigation systems and monitor water usage regularly.
- **Environmental Protection:** Adopt sustainable farming practices to minimize environmental impact.
- **Worker Safety:** Provide comprehensive training on health and safety, including the handling of hazardous chemicals.
- **Food Safety:** Ensure strict hygiene standards during processing and packaging to maintain product quality.

Contact Information

The following contact details are general numbers for the specific South African Government departments, most relevant to SAMAC and its members. It is also advisable to check whether contact information for specific departmental personnel has been provided in the Notices published as in the *Government Gazette*. Notices published in the *Government Gazette* can be searched and downloaded *via* the South African Government Notices website - <https://www.gov.za/documents/notices>

- **Department of Water and Sanitation (DWS):**
 - Main line: 012 336 7500, General enquiries email: customercare@dws.gov.za
 - Registration of Water Use Related Requests/Disputes/Queries/Issues: register@dws.gov.za
 - Water Use Authorisations enquiries: WULAinfo@dws.gov.za
- **Department of Forestry, Fisheries and the Environment (DFFE):**
 - Main line: 012 336 7500, General enquiries email: callcentre@dfpe.gov.za
- **Macadamias South Africa (SAMAC):**

- Main Line: 012 001 4107
- Email: office@samac.org.za

Legal Disclaimer:

The Table and all other content provided herein are for informational purposes only and offer an overview and analysis of various South African legislative principles, policies, and regulatory provisions that may be applicable to macadamia farmers in South Africa. While efforts have been made to ensure the accuracy and relevance of the information, the content should not be construed as legal advice. The information provided is not exhaustive and may not reflect the most current legal standards, regulations, or interpretations. Readers are advised to consult with qualified legal professionals or environmental experts to obtain specific advice regarding their individual circumstances or business activities. The creators and distributors of this document disclaim any liability for any loss, damage, or inconvenience arising from the use or reliance on the information contained herein.