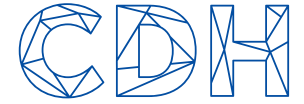


# Agriculture, Aquaculture & Fishing

ALERT | 26 March 2025



## In this issue

### SOUTH AFRICA

- The ripple effects of South Africa's cannabis food ban: Implications for agriculture and beyond
- Farmers beware: Legal liability and export risks in the wake of bud rot

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## The ripple effects of South Africa's cannabis food ban: Implications for agriculture and beyond

On 28 May 2024, the President signed the Cannabis for Private Purposes Act 7 of 2024 (Cannabis Act) into law. The Cannabis Act establishes a legal framework for the private use, possession and cultivation of cannabis in South Africa. However, the act still imposes significant restrictions on the legal cultivation and commercial trade of cannabis. Conversely, hemp, as defined below, has been extensively cultivated for commercial purposes in South Africa and other African countries for several years now. To read more about the Cannabis Act and the commercial cultivation of hemp in South Africa and other African countries, see our previous alert [here](#). However, recent changes to South Africa's cannabis and hemp regulatory framework have caused much controversy in the agricultural sector.

First, it is important to note the legal difference between cannabis, and hemp. The Cannabis Act provides an amended definition of cannabis, as:

*"[T]he flowering or fruiting tops of a cannabis plant and includes products made therefrom, but excludes any seed, seedling, the stalk, leaves and branches without any fruit or flower, and the roots of a cannabis plant, including products made therefrom."*

Hemp, therefore, generally constitutes the seed, seedling, stalk, leaves and branches without any fruit or flower, and the roots of a cannabis plant. While cannabis and hemp are from the same plant, the difference lies in the

chemical composition. Hemp contains less than 0,2% THC, while cannabis contains more than 0,2% THC. THC is the cannabinoid which causes the euphoria associated with cannabis.

Until recently, the legal position in South Africa was as follows:

- The use, possession, cultivation and consumption of cannabis and hemp for private purposes is legal.
- The private use, possession, cultivation and consumption of cannabis is also exempted by the Minister of Health in terms of Schedule 6 of the Medicines and Substances Act 101 of 1965 (MSA).
- Cultivation and commercial trade of medicinal cannabis is legal to those in possession of the relevant license issued by the South African Health Products Regulatory Authority (SAHPRA), under the provisions of section 22C(1)(b) of the MSA.
- The use of cannabis in a public space, as well as the distribution of cannabis for commercial and recreational purposes, is illegal and constitutes a criminal offence.
- The Plant Improvement Act 11 of 2018 further legalised the commercial cultivation, import and export of hemp with the relevant permits.

Our prior alert, linked above, highlighted that South Africa's decision to expand its hemp cultivation laws within the agricultural industry is a significant step closer to harnessing the economic and environmental benefits of this versatile plant.



# The ripple effects of South Africa's cannabis food ban: Implications for agriculture and beyond

CONTINUED

## The cannabis master plan

The development also raised the hope that similar progressive measures would be taken regarding cannabis cultivation. In fact, in the 2025 State of the Nation Address on 6 February 2025 President Cyril Ramaphosa stated that "we want South Africa to be leading in the commercial production of hemp." The next day, Government issued the following statement on its official website:

*"The cannabis master plan aims to increase the quality and variety of cannabis being produced for local and international markets. We are moving to create the enabling conditions for the sector to grow.*

*The Department of Agriculture Land Reform and Rural Development and the Department of Health will address existing conditions for the cultivation of hemp and cannabis to allow outdoor cultivation and collection of harvests from traditional farmers."*

*"Government will also be implementing changes to the policy and regulatory framework to drive investment and jobs in this sector", concluded the statement.*

## The Department of Health's ban on food products

Despite this, in a landmark regulatory shift, the Department of Health has imposed a sweeping ban on the production, sale and import of cannabis- and hemp-infused food products in South Africa. Published in the *Government Gazette* under the Foodstuffs, Cosmetics and Disinfectants Act 54 of 1972 (FCD Act), this regulation came into effect on 7 March 2025, and provides as follows (in Regulations 2 and 3):

**"2 Prohibition of sale, importation and manufacture of foodstuffs containing any part of the plant or component derived from the genus *cannabis sativa* L, hemp, hemp seed oil or hemp seed flour**

*No one may sell, manufacture or import, processed or unprocessed, foodstuff containing:*

- (a) any part of the plant or component from the genus *Cannabis* which include *C. sativa*, *C. indica* and *C. ruderalis*; or*
- (b) hemp seed oil or powder from any component derived from the genus *Cannabis sativa* L, and various species or subspecies in the genus *Cannabis sativa*.*

### 3 Offences and penalties

*Any person who sells, imports or manufactures foodstuff containing the prohibited substances as contemplated in regulation 2 is guilty of an offence, and is liable on conviction to a fine or to imprisonment as prescribed in section 18 of the act."*



## The ripple effects of South Africa's cannabis food ban: Implications for agriculture and beyond

CONTINUED



In other words, the regulation has criminalised the sale, importation and manufacture of any food or beverage containing ingredients derived from the cannabis sativa L plant, including hemp seeds, hemp seed oil, hemp seed flour and cannabis-infused drinks.

This regulatory shift has far-reaching consequences for South Africa's agricultural sector, particularly for businesses involved in hemp cultivation, processing and food production. Companies specialising in hemp-based nutritional supplements, plant-based foods and seed oil production now face significant disruption, as their core product lines are no longer permissible in the local retail market.

The Department of Health said its primary objective was to protect consumers by ensuring that cannabis-infused foods meet safety and quality standards. This is apparently meant to be a temporary solution, as the department works on a "grand plan" to involve SAHPRA, ensuring stringent quality and safety measures. In highlighting the

risk in the consumption of food or products containing cannabis, the Health Deputy Director-General, Dr Anban Pillay, referenced the case of the 90 learners who were hospitalised because they consumed cannabis (in muffins), stating that one has to appreciate the risk of consuming foods that contain high THC or CBD (which is also a cannabinoid found in the cannabis plant, but which generally causes calmness as opposed to euphoria) are significant for children.



## The ripple effects of South Africa's cannabis food ban: Implications for agriculture and beyond

CONTINUED



### Conclusion

Given the focus on the risk and public safety, it is interesting that the ban encompasses both cannabis and hemp, taking into consideration that hemp contains minimal levels of THC. Hemp-derived food and other products are generally considered safe for human consumption globally, as they have no psychoactive effects. While the risk with products such as cannabis edibles is understandable, the commercial production and sale of these products were in any event criminalised by the Cannabis Act. It is therefore the hemp industry which will be hardest hit by this new regulation. Farmers and businesses focused on hemp as a nutritional product will have to rethink their strategies.

On the other hand, the pharmaceutical industry seems to emerge as the primary beneficiary from the Minister of Health's decision. Cannabis and hemp-derived substances will now be channelled into medicinal applications, particularly in treatments for cancer, Parkinson's, Alzheimer's, arthritis and other neurological conditions. South Africa accordingly remains a key player in the global medicinal cannabis market. SAHPRA oversees a regulated framework that permits the cultivation, manufacturing and export of medicinal cannabis to Europe, ensuring the country remains competitive in the rapidly expanding global cannabis economy.

With the ongoing changes in cannabis and hemp laws and regulations in South Africa, it will be fascinating to observe what developments unfold next. As the landscape continues to evolve, stakeholders will need to stay adaptable and informed to navigate the future of this emerging industry. The shifting legal environment presents both challenges and opportunities, and how policymakers, businesses and consumers respond will shape the industry's outcome. It's clear that South Africa is at a pivotal point, and the coming years will likely reveal new trends, innovations and potential hurdles that could redefine the market entirely.

**Alex de Wet, Everton Muberekwa and Claudia Grobler**



## Farmers beware: Legal liability and export risks in the wake of bud rot

On 22 January 2025, the Department of Agriculture, Land Reform and Rural Development (Department) issued an alert on the detection of "bud rot" of palms (*Phytophthora palmivora*) in certain parts of the country.

Bud rot, also known as "grey mould", is a type of fungus that thrives in environments with high humidity and poor air circulation and usually affects cannabis plants during the flowering stage (hence its colloquial name). Once the mould has developed, it obstructs the proper transportation of water and nutrients through the leaves and flowers, thereby killing the plant. Ingestion of plants or plant products infected with bud rot is harmful to humans.

The discovery of bud rot continues to pose a particular challenge to South Africa's agriculture sector, as the National Plant Protection Organisation of South Africa confirmed the detection of bud rot in commercial papaya orchards in Mpumalanga and Limpopo as early as August 2024.

The Department confirmed that hundreds of plant species, including horticultural, ornamental and agricultural crops, have since been infected by bud rot. Agricultural host crops include papaya, pineapple, citrus, black pepper, cocoa and coconut. As the world's second-largest exporter of citrus, farmers' (in)ability to export their produce may have worrying ramifications. For example, if there is a reduction in exports, there will be an excess supply in South Africa, which will likely force down the local prices farmers can fetch for their produce. In fact, the Department has advised that the spread of bud rot through host material to other areas may negatively affect domestic and international trade, as well as the export potential of relevant host

commodities to various countries where it is recognised as a quarantine pest. Thus, farmers and agriculture businesses must understand their responsibilities during the spread, and the precautions which should be followed.

While the Department continues to conduct delimiting surveys in all production areas to determine the extent of the spread, farmers should exercise caution when moving plants in order to stop the spread. Bud rot can be managed by practicing effective cultural control, use of resistant varieties, chemical control, constant monitoring, and regulation of the removal of host material from infested to non-infested areas.

### Legal risks amidst spread of bud rot in commercial farms

Farmers face both legal and regulatory risks during this time. From a regulatory perspective, farmers should be cognisant of their permits to ensure that no actions or omissions regarding the treatment and prevention of bud rot contravenes any of their permit conditions, nor the legislation or regulations thereunder.

Contravention of the relevant legislation, by, for instance, failing to disclose the existence of bud rot to the Department, could lead to the imposition of fines or even imprisonment. This is because the sale, import and export of agricultural products – such as papayas – are heavily legislated. For instance, the Plant Improvement Act 53 of 1976 regulates the sale, certification and import/export of certain plants and propagating material in South Africa, as well as the registration of establishments permitted to sell, cleanse and pack such material. It also provides for the recognition of plant varieties and control of agricultural and industrial products.

## Farmers beware: Legal liability and export risks in the wake of bud rot

CONTINUED

Additionally, the Agricultural Pests Act 36 of 1983, read with Control Measures Regulation 110, provides measures by which agricultural pests may be prevented and combatted, namely by prohibiting/restricting the removal and movement of host material from affected areas to non-affected areas in the rest of the country, to prevent the further spread of the pest to other provinces. Any contravention of this act or its regulations is an offence and farmers may be liable for certain penalties, including fines or imprisonment.

### Potential liability claims against farmers

In addition to being exporters of fruit or plants, farmers often sell to third parties (i.e. retailers or individuals). Thus, there are potential civil liability claims that farmers may face from parties purchasing products infested with bud rot.

There are a number of examples: if a farmer knows that their products have bud rot and fails to disclose that to a purchaser, that omission is a misrepresentation, which could expose the farmer to a damages claim by the purchaser.

Similarly, if a farmer delivers defective/damaged products – as a result of bud rot – such conduct may constitute a breach by the farmer of their sale/supply agreement with third parties, risking (i) termination of the agreement; (ii) contractual penalties, if provided for in the agreement; and (iii) potential damages claims.

If a farmer sells to members of the public, certain provisions of the Consumer Protection Act 68 of 2008 may be applicable, including a consumer's right to safe, good quality goods, and the implied warranty of quality by the seller to the consumer (sections 55 and 56). Section 61 provides that a producer/retailer of any goods is liable for any harm caused wholly or partly as a consequence of supplying any unsafe goods, irrespective of whether the harm resulted from any negligence on the part of the producer/retailer. This is significant as it relieves the consumer of the onerous burden of proving fault, although the consumer must still prove that the product had some kind of flaw that made it unsafe. This would be self-evident in the case of the sale of plants infected with bud rot. Farmers are therefore at risk of complaints being laid against them at the relevant industry ombud, consumer court or the National Consumer Commission.



## Farmers beware: Legal liability and export risks in the wake of bud rot

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### Impact on agricultural trade: Export regulations from key markets

Upon discovery of bud rot, South Africa complied with its obligation as a member of the International Plant Protection Convention (IPCC) by notifying trading partners and the IPCC of the outbreak, and the impact has been felt as Botswana and Namibia have temporarily suspended imports of certain commodities from South Africa. It is anticipated that there will continue to be increased scrutiny by other international markets until the spread is effectively curbed.

Additionally, to export plants and plant products, farmers must have a phytosanitary permit issued by the National Plant Protection Organization of the importing country. Thus, farmers must – in order to ensure the import requirements are met – determine such phytosanitary import conditions of the importing country applicable to the plants/products they export.

In conclusion, farmers are advised to keep abreast of all additional notices and regulations published by the Department during the outbreak, and to ensure they comply fully with all relevant legislation, regulations and directives in order to shield themselves from liability.

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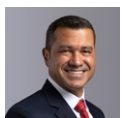
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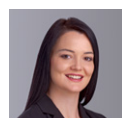
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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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