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THE PATH TOWARDS A LEGAL CANNABIS INDUSTRY IN MEXICO



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Following significant regulatory trends in other countries such as neighbors the United States and Canada, Mexico began taking steps toward allowing use of cannabis. The legislative process to amend certain provisions of the General Health Law (*Ley General de Salud*, or “LGS”) resulted in the June 19, 2017 publication of amendments¹ acknowledging the therapeutic benefits of tetrahydrocannabinol (“THC”), opening the door to the research and academic study of medicinal cannabis and, subject to a permit by the Federal Commission for the Protection of Sanitary Risks (“COFEPRIS”), allowing the importation of medications containing THC. At that time, cannabis products without a sanitary license, self-production, harvest and possession of cannabis was still prohibited.

More recently, on October 30, 2018, COFEPRIS issued the Guidelines for the Sanitary Control of Cannabis and its Derivatives (*Lineamientos en Materia de Control Sanitario de la Cannabis y Derivados de la Misma*²). Such guidelines set forth the agency’s criteria to be used in the evaluation and resolution of the applications filed to authorize medical and scientific use of cannabis and its pharmacological derivatives, as well as the commercialization, exportation and importation of cannabis products with 1% or less THC content for industrial use.

Coincidentally, on the next day (October 31, 2018), the Mexican supreme court issued two separate *amparo*³ protection resolutions in favor of individuals challenging the constitutionality of certain LGS provisions prohibiting marihuana consumption. Based on the human right to self-determine one’s health and personality, these resolutions - the fourth and fifth issued by Mexico’s highest court – derived in mandatory jurisprudence which main effects can be summarized in **(a)** any person who is denied a permit by COFEPRIS for the recreational use of marihuana is entitled to a favorable *amparo* resolution by a federal district court ordering COFEPRIS to issue such permit, and **(b)** Mexican Congress must amend the challenged provisions in order to permit, under certain guidelines, cannabis consumption. This jurisprudence did not imply an authorization or legalization of cannabis commercialization, supply, sale or distribution, or cannabis consumption without previously issued COFEPRIS authorization, or a general de-criminalization of marihuana.

Then, on November 6, 2018, the Mexican Senate admitted a proposal to issue the Federal Law for the Regulation and Control of Cannabis (*Ley General para la Regulación y el Control de Cannabis*⁴). The initiative was filed by Senator Olga Maria Sanchez-Cordero, a former supreme court justice who was designated by incoming President Lopez Obrador as Mexico’s imminent ministry for the interior. The proposed

¹ http://www.dof.gob.mx/nota_detalle.php?codigo=5487335&fecha=19/06/2017

² <http://sipot.cofepris.gob.mx/Archivos/juridico/sol/lineamientoscannabis.pdf>

³ Amparo is a constitutional last-recourse appeal which, if granted, favors the appealing party against, in this case, existing provisions of Mexican law.

⁴ Proposed text can be found at http://infosen.senado.gob.mx/sgsp/gaceta/64/1/2018-11-06-1/assets/documentos/Inic_Morena_LC.pdf



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law aims at regulating the full cannabis chain of value for personal, commercial and scientific use. Below are some of the proposed law's provisions worth mentioning:

- For purposes of this law, "Cannabis" is defined as the vegetal species member of the Cannabaceae family, capable of producing cannabinoids. Three variations are included: cannabis sativa-sativa, cannabis sativa-indica and cannabis sativa ruderalis. A cannabis distinction is also made between psycho-active (with high THC content) and non psycho-active (low THC content).
- For **self-consumption**, adults of legal age may harvest their own plants to produce up to 480 grams a year. A form of producers' association (*cooperativas*, governed by a separate piece of existing legislation) is permitted with up to 150 producer members, who may individually produce up to 480 grams per year subject to certain guidelines and requirements.
- For **commercial** purposes, production and sale of cannabis is permitted subject to obtaining a license, paying the applicable taxes caused, and labeling, advertisement and import restrictions.
- Production, processing, transportation, distribution and sale of cannabis is also permitted for **therapeutic, pharmaceutical, industrial** and **recreational** use, subject to obtaining a license pursuant to this law.
- The creation of the Mexican Institute for the Regulation and Control of Cannabis (*Instituto Mexicano de Regulación y Control de Cannabis* or IMRCC), an agency dependent on the Ministry of Health, in charge of regulating, monitoring, sanctioning and evaluating the regulation system, as well as to manage the producers' official registry.
- The process to obtain one of the 15 types of licenses set forth in the proposed law for growing, producing, transporting and selling cannabis products for the uses permitted by this proposed law. Requirements include not having any criminal records related to organized crime or money laundering, or other crimes with high social impact. Licenses may be granted for a term of up to 10 years.
- Consumers may be authorized to smoke in public, subject to tobacco-like regulations.

There are still important loopholes to be filled in this process – likely through secondary regulations - such as patent of cannabis variations, labeling, taxation, import/export, as well as consumer protection and advertisement rules under public health principles. Considering the ruling political party's majority in Mexican Congress, it is likely that the proposed regulations will be passed, though perhaps modified in order to reflect the input by strong anti-cannabis lobbying groups.

If you're interested in learning more or have any comments or questions regarding these ideas, feel free to email me at larmendariz@caamlegal.mx.

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