

October 22, 2019

MEXICO CANNABIS UPDATE #10

Draft of New Cannabis Law Issued



Just before midnight on October 17, 2019, the Senate's Justice Committee issued what would purportedly be the draft of the new Law for Cannabis Regulation (*Ley de Regulación del Cannabis*) to be submitted to general vote this week before the October 23 deadline.

Following is a preliminary overview of what we consider the main provisions:

A. General Purpose.

The purpose of the new law is to regulate the use of cannabis and its derivatives with a main focus on public health, human rights and sustainable development, aimed at improving the lives of Mexican people, fight problematic use and decrease cannabis-related crime.

The law aims to set standards for market regulation and prices, determination of applicable taxes (maybe prone for constitutional challenges), traceability requirements, security, public policy on education against abuse as well as certain grounds for coordination between federal, state and municipal authorities.

Worth noting is a list of guiding principles for the new law and subsequent policy, which includes prioritized attention to vulnerable groups such as minors, women, LGBTTTI+ community, elders, people with disabilities and marginalized communities. Also, it seeks empowering farmers and local communities with respect to licenses for the cultivation of the plant.

B. Legalized Uses and Available Licenses.

The new law would recognize recreational (personal, in cannabis clubs or commercial for adult use), scientific and research, medical or pharmaceutical, therapeutic or palliative; and industrial. Interestingly, cosmetic use is prohibited.

1. Recreational.

Smoking is allowed in private spaces, provided there are no minors or disabled persons around, or other adults who do not consent for such use. Some advocates have already expressed against not allowing persons with disabilities to smoke, claiming they should also have the same constitutional rights acknowledged by the law. Smoking and vaping is prohibited in any commercial establishment with public access as well as any place where smoking tobacco is prohibited or places where a large number of people may attend such as shopping malls, parks, stadiums and sports centers.

Personal use (cultivation and possession) at home or cannabis clubs is capped at four (4) plants per person, or twenty (20) per household. A person cannot belong to more than one (1) club. Cannabis clubs must be incorporated as an *asociacion civil* (a not for profit form of legal entity).

The sale of cannabis products with THC, CBD or a combination thereof that exceeds the limit authorized by the IMC is prohibited – it is not clear what the criteria will be in this regard. The mix with alcohol, nicotine, tobacco, caffeine or any other substance that enhances the psycho-active effects is also prohibited.

Packaging must be in sustainable materials, that is, recyclable, biodegradable and compostable.

2. Scientific and research: allowed through activities “ethically necessary” for scientific and research purposes.
3. Medical or pharmaceutical and therapeutic or palliative: allowed pursuant to the terms and conditions stated on the license granted.
4. Industrial: covers the sale, import and export, and must be compliant with the laws of the destination or origin foreign country.

Hence, there will be four (4) types of licenses available: cultivation, transformation (processing), sale and export or import. They cover complementary activities of transportation and storage. “Permits” are also contemplated for personal use and for hemp transformation, with a less strict requirements, though no formal distinction is made for now.

At least a twenty percent (20%) of cultivation licenses shall be granted preferably to peasants or *ejidos* where previously attempts were made to eradicate cannabis crops.

A single person may only have one (1) type of license, therefore, vertical integration is not legal. The number of licenses of a same type will be determined by the IMC, except for sale licenses which are limited to only three (3) per state. Such licenses will not be transferable.

A restriction on foreign investment is set at a maximum of twenty percent (20%) of stock of license-holder entities.

When the IMC does not resolve within a certain period of time the request for any type of licenses, in no case shall it be understood that said request has been granted.

C. New Cannabis Agency.

The new cannabis government agency would be named *Instituto Mexicano del Cannabis* (Mexican Cannabis Institute, or “IMC”). The IMC would be created as a decentralized government agency affiliated with the Secretariat of the Interior – not the health, agriculture or economy ministries and it must be operating no later than January 1, 2021.



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IMC will be in charge of issuing the law's main secondary regulation (*reglamento*) as well as other rules and guidelines. If the process to prepare and issue such regulations do not start until the IMC is created, then the timeline may be longer as the IMC'S internal rules of operation are to be issued within 90 calendar days after its creation.

D. Compliance Items and Prohibited Activities.

Provisions are introduced to regulate traceability and testing, with the latter leaving some uncertainty about the reach or implications of a "verification" to be performed by the IMC. The IMC shall issue the procedures and mechanisms as well as designate specialized laboratories for such testing.

Specific details and operational terms and conditions of any granted licenses are left to secondary regulation, which poses some uncertainty as to the compliance burdens (i.e. entry barriers) that may be imposed.

For the sale of recreational cannabis products and derivatives at dispensaries, licensees must provide information about the products' uses, effects and risks associated with psycho-active cannabis pursuant to IMC guidelines. They must also comply with other signage requirements.

A specific chapter is dedicated to packaging and labeling of recreational products.

For cultivation, the seeds, plants and plantations must be registered, otherwise will be deemed illicit and subject to seizure and destruction.

Cannabis edibles and beverages are prohibited – with an implied distinction from hemp products.

Self-service sale of psycho-active cannabis products such as online, mail or telephone, or any other means that does not allow personal validation of buyer's identity and access.

The sale of THC-only cannabis products, or those that don't meet the THC/CBD combination determined by the IMC, is also prohibited.

E. Hemp and Cannabis.

Cannabis is defined by the law as *"generic term used designate the seeds, plants or parts thereof, which contain CBD and THC, and may or may not produce psycho-active effects"*. Hemp is defined as *"commonly known as industrial hemp or non-psycho-active Cannabis. Those plants or pieces of a cannabis genre plant, including its derivatives that may produce fibers and does not produce any psycho-active effects"*.

The proposed law's transitory provisions set a one percent (1%) THC standard in order to distinguish hemp and cannabis until the IMC updates or modifies such percentage based on scientific evidence.



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Transformation of hemp (processing) does not require a license, only a permit available to Mexican companies or individuals in good standing with tax authorities and with no more than 20% of foreign ownership. Since this is considered a permit and not a license, it is not clear whether it may be possible for a permit holder to obtain one of the above-mentioned licenses.

Regarding the prohibition of edibles, beverages or cosmetic cannabis products, it can be assumed that they would be allowed if they are made of hemp.

F. Additional Comments.

In our opinion, this draft contains excessive and redundant definitions of activities around cannabis. Furthermore, some advocates and interested groups have already expressed that the law is not only redundant, but also places excessive burdens on the less sophisticated industry participant (such as farmers or communities) that end up favoring private investors. Examples of this are the obligation to register seeds in order to guarantee their lawful origin or the “sustainable development” measure to use sustainable materials.

Also, while it is important to embrace the social justice priority sought by the legislative and executive powers towards those people affected in different ways by the prohibition, it is also important to acknowledge the benefits that private companies and foreign investment can bring to the industry. Such benefits include capital not otherwise available, technology and know-how.

Within the year following the entry into force of this new law, the IMC board will issue an open call to review this legal framework and propose any amendments deemed convenient.

Here is a challenge that legislators can still address to align both social justice and fair rules with private investment and maximization of the industry’s potential.

Stay tuned for our follow up analysis.

If you would like an English translation of the proposed law at a discounted price, please reply to this message.

If you would like to consult our previous Mexico Cannabis Updates, please click [here](#).

If you’re interested in learning more about the Mexican legalization process and what you or your clients can start doing to enter the Mexican market, please contact us at larmendariz@caamlegal.mx.

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