

January 9, 2020

MEXICO CANNABIS UPDATE #12

**2019 Cannabis Year in Review**



Following the 2017 amendments to the General Health Law (*Ley General de Salud*, or “LGS”) to legalize medical and scientific use of cannabis products with up to 1% of tetrahydrocannabinol, and then the 2018 landmark resolutions issued by the Mexican Supreme Court of Justice regarding cannabis recreational use, legalization advocates set great expectations for 2019. Unfortunately, the expectation for full legalization was not met. Not all is lost, however, because significant regulatory and legislative developments occurred in 2019. Following is a 2019 overview.

For industry stakeholders, lobbyists and potential investors, the year started with a close follow-up on the 11 bills (or proposals to amend existing laws) that had been introduced at the Senate. This number does not include a number of bills introduced in the past years at the lower house of Congress. These bills include proposals to amend the LGS and the Federal Criminal Code (*Código Penal Federal*) in differing manners, though most of them introduce in one way or another a distinction between the psycho-active and non-psycho-active varieties of cannabis (i.e. cannabis vs. hemp) and more rigid treatment to adult use plant than industrial use. The bill introduced in November 6, 2018 by then Senator -now Secretary of the Interior- Mrs. Olga Maria Sanchez Cordero, was considered as many as the frontrunner to be voted at the Senate.

The Mexican Supreme Court of Justice (“SCJN”) issued in October of 2018 two separate *amparo* (a constitutional challenge provided by Mexican law which, if granted, results in an injunction-like resolution) protection resolutions in favor of individuals challenging constitutionality of the LGS provisions prohibiting marihuana consumption, whereby the country’s highest court recognized and protected a person’s human rights to self-determination, health and personality, and therefore resulted in jurisprudence. This jurisprudence had the main legal effects of allowing any person who is denied a permit by the Federal Commission for the Protection of Sanitary Risks (“COFEPRIS”) for the recreational use of marihuana to be entitled to a favorable *amparo* resolution by a federal district court ordering COFEPRIS to issue such permit. More importantly, the court ordered the legislative power to amend existing laws or issue a new one that is consistent with its rulings within a calendar year. This (i.e. last day of October 2019) was the deadline that the Senate assumed in order to pass a new cannabis law.

On the executive power front, on March 26, 2019 COFEPRIS, through its director Mr. Jose A. Novelo Baeza, announced the revocation of 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*), issued on October 30, 2018 which set the criteria and licensing requirements to be used for medical and scientific use of cannabis, as well as the commercialization, exportation and importation of such cannabis products. The grounds for such revocation were largely based on omitted legal formalities needed for the issuance of government guidelines of general application. Since then, no new guidelines or regulations have been issued. Therefore, those interested in applying for licenses to import or sell the currently allowed

products are facing legal uncertainty and government inaction. In this regard, in 2019 mid-year (exact date not publicly available), the SCJN unanimously approved a draft new ruling that orders the Health Secretariat and COFEPRIS to issue within 180 business days the regulations that would substitute the revoked guidelines. The ruling was issued after establishing that the Executive Power breached the June 2017 mandate to reform the LGS and gave them 6 months to issue such regulations.

With the October deadline approaching for the Senate, on October 17, 2019, the Senate's Justice Committee issued the draft of the new Law for Cannabis Regulation (*Ley de Regulacion del Cannabis*) to be submitted to general vote. You can click [here](#) to see our Mexico Cannabis Update #10 for a summary of the bill.

Many (including us) were surprised that the draft bill was an entirely different document from the bills mentioned above. Among other areas of opportunity, some of the proposed provisions caused controversy for being considered entry barriers for farming or low-income communities who could grow cannabis, therefore failing to meet the "social justice" purpose sought by Pres. Lopez Obrador through legalization. Examples of this are the seed traceability and testing guidelines in order to avoid cultivation using illicit seeds, and the requirement to use sustainable (biodegradable, compostable and recyclable) materials for the packaging of cultivated plant, of difficult access to communities or farmers with limited access to capital. This and other inconsistencies caused concern among activists and lobbyists. There were also statements by legislators, such as the Senate majority leader, affirming that

After the Senate failed to meet the October deadline to pass "proper legislation", on November 5, 2019 the SCJN granted an extension due to the complexity of the matter and intensified pressure from various interest groups. The new deadline expires on the last day of the first legislative period of the year, that is, April 30, 2020.

2020 will pose a series of challenges to harmonize other pieces of legislation, such as import/export tax classifications, industrial property (patents), taxation and the overall secondary regulation that has to follow and complement this new federal law.

### **Senate to Enter a "Final" Debate for Passage of New Cannabis Law**

On January 5, 2020, the Senate Press Office issued a statement announcing that cannabis regulation is expected to be addressed as a priority in the upcoming legislative period start in February 1, 2020. Sen. Ricardo Monreal Ávila, Chairman of the Political Coordination Board and Senate majority leader, stated that the regulation of the cannabis plant will be one of the main issues to be addressed during this period.

There is, however, a growing skepticism about these statements since last October due to the rhetoric without regulatory action. There is also an impasse caused by COFEPRIS' failure to issue the secondary regulations for what is already legal. The immediate consequence of these omissions by our legislative and executive powers has been a growing market of illegal products, especially in the CBD market.



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## Participation in MJBizCon 2019

Our partner, Luis Armendariz, was invited to speak at last December's edition of the MJ Biz Conference in Las Vegas, Nevada. The conference was titled "[In Limbo: Legalization in Mexico](#)", where Luis gave an insight into the current legal status of cannabis and its derivatives in Mexico.

Notably, a meeting was held by some of the main players in the growing Mexican cannabis industry. Participants include representatives of various national cannabis associations for medical, scientific and industrial use; entrepreneurs and larger business groups in the CBD, accessories and recreational products; conference and simposiums organizers; cultivators and investors; companies who already received permits under the short-lived COFEPRIS regulations and even journalists covering the event. The purpose was to discuss the intention to form a united front to pressure our legislators and government agencies to complete the legalization process. We thought we'd share a picture of what many of us think was a historic meeting:



## MexCannaLaw on Social Media

We are delighted to launch our new Mexican Cannabis Law [Twitter](#) and [Facebook](#) blog accounts, with contributions from our corporate and regulatory attorneys. Please follow us for day to day developments on the Mexican cannabis legalization process.

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](mailto:larmendariz@caamlegal.mx).

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