

July 5, 2021

MEXICO CANNABIS UPDATE

RIGHTS ADVANCE, REGULATION STALLS

Last week we had important news coming out the Mexican Supreme Court of Justice (the "SCJN"), as it ruled on the Action of Unconstitutionality derived from the failure by our Legislative Branch to regulate in accordance with the SCJN's [jurisprudence published on 2018](#).

As we know, after several extensions the deadline for the legislators to legalize adult use expired on April 30, 2021. The Federal Cannabis Legalization Bill (the "Bill") made progress throughout the past couple of years until it was approved by the Senate on November 19, 2020. It was subsequently sent to the Chamber of Deputies, where some substantial changes were made. Said Lower Chamber approved the Bill on March 10, 2021 and returned it to the Senate for review, discussion and final vote.

Once back in the Senate, the law was moving forward at a good pace. Two out of three commissions in charge of approving the law approved the changes made. However, in such final step something happened that brought everything to a halt. When we were about to see the Bill being voted by the Senate before being sending it to the Executive branch for signature and publication, the process stopped. The reasons are not known, at least officially. There are many theories.

Inaction (i.e. non-compliance) by the Legislative Branch legally opened the possibility for the process to continue in the SCJN through a General Declaration of Unconstitutionality (*Declaratoria General de Inconstitucionalidad*; "DGI"). DGI is a figure contemplated in Mexican's Constitutional Control Law (*Ley de Amparo*), by means of which the SCJN disqualifies and disapplies provisions that it previously resolved as unconstitutional.

On June 28, 2021, the SCJN approved with eight votes (out of eleven) the DGI draft resolution to declare the inapplicability of several articles of the General Health Law (the "LGS") in relation to adult use. The main effect of the DGI is to eliminate the absolute prohibition of the consumption of cannabis for adult use, which will be allowed after a permit is requested from the Federal Commission for the Protection against Sanitary Risks (*Comisión Federal para la Protección contra Riesgos Sanitarios*; "COFEPRIS"). Before the DGI, COFEPRIS would deny the application and make a citizen request from a court an order (*amparo*) for the former to grant such permit.

In other words, the DGI does not legalize the indiscriminate use of cannabis, its cultivation, transportation or any of the related activities, since the provisions of the Federal Criminal Code are still in force. Persons intending to use, cultivate, transport and perform any related activities shall request written authorization before COFEPRIS, which shall not be denied without any justified cause. In order for the DGI to have full legal effects, we shall wait for SCJN official ruling to be published in the Federal Official Gazette (*Diario Oficial de la Federación*).

The most important drawback of the DGI is that it does not regulate or establish the basis for a legal commerce in Mexico, so we will have to wait for the Bill (or any other form of rules) for this to be

fully regulated. The upside for many is that the DGI puts pressure on Congress and the Executive Branch to work on rules and regulations that can fill the legal gaps that will likely arise with respect to the activities that will arguably be “protected” by the DGI. While the DGI is a step in the right direction towards decriminalization, it leaves a bittersweet taste since it does not achieve the comprehensive regulation that we expected since the first drafts of the Bill were published.

In the meantime, we continue to see the development of medical use industry with our recent regulatory framework, and the ongoing work to harmonize the existing agricultural and sanitary control rules.



If you would like an English translation of the Medical Rules or the last recreational cannabis legalization bill 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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