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Regulation of Cannabis in Mexico

Several administrative and judicial authorities in Mexico have issued laws and ruled on cases and provisions that directly regulate the use of cannabis, whether for medical purposes or recreational use. Perhaps most notable, however, is the Supreme Court of Justice, which established a historic precedent for the country.

Following is a brief analysis of some of the most significant legal provisions and initiatives relating to the regulation of cannabis in Mexico.

Amendments to the General Health Law

On 19 June 2017, the Ministry of Public Health published several amended provisions of the General Health Law in the Federal Official Gazette (the Decree), including amendments to regulations on the pharmacological derivatives of cannabis, especially the active substance called *Tetrahydrocannabinidiol* (THC) and its isomeric and stereochemical variations.

Following are the key changes in the Decree:

- (i) Article 235 BIS establishes that the “Ministry of Public Health shall design and execute the public policies that regulate the medical use of the pharmacological derivatives of cannabis, Indian and American hemp or marijuana, amongst which Tetrahydrocannabinidiol, its isomeric and stereochemical variations are found...”.

- (ii) THC was eliminated from the list of substances with low or null therapeutic value, referred to in Section I of Article 245, reclassifying it with therapeutic value within the list provided in Section II, when such substance is contained in concentrations higher than one percent.
- (iii) THC was included among the substances with broad therapeutic uses that generate minor health problems, listed in Section IV of Article 245, when contained in concentrations equal to or less than one percent.
- (iv) Those products that contain derivatives of cannabis with concentrations of one percent or less of THC, and that have broad industrial uses, were included in Section V of Article 245 in order for them to be commercialized, imported, and exported, because they lack therapeutic value and are commonly used.

For proper implementation of the Decree, the Executive Power should have published the amendments in the Regulations of the General Health Law in matters of Social Protection in Health within 90 business days of the Decree's effective date, pursuant to the second and third transitory provisions of the Decree. The Executive Power did not do so. Instead, through the Federal Commission for the Protection Against Sanitary Risks (COFEPRIS), the Executive Power published "Guidelines for the Sanitary Control of Cannabis and its Derivatives" (Guidelines) in an attempt to satisfy the second and third transitory provisions of the Decree. Since the amendments to the Regulations of the General Health Law in matters of Social Protection in Health were never published and instead the competent authority issued the Guidelines, the Guidelines may have an origination problem, rendering their validity and legality appealable.

Guidelines on Sanitary Control of Cannabis and Its Derivatives

On 30 October 2018, COFEPRIS published the Guidelines through its website, which establish criteria to be used by COFEPRIS for the evaluation of authorization requests for: (i) the regulation of cannabis for medical and scientific purposes, and (ii) the commercialization, export, and import of products with broad industrial uses that contain cannabis derivatives with THC concentrations of one percent or less.

The Guidelines became effective on the date they were published, and establish, among other things, the following:

- (i) Those individuals, organizations, or institutions of the public, social, or private sector that have the intention of carrying out various activities with respect to cannabis (better known as marijuana) and its derivatives, shall be duly registered before the National Inventory of Investigation in Matter of Cannabis.
- (ii) As to the planting, cultivation, harvest, preparation, conditioning, acquisition, possession, commercialization, transportation, supply, use, and consumption of cannabis, all activities relating to cannabis with "medical and scientific investigation purposes" shall be carried out pursuant to the investigation protocols authorized by COFEPRIS in the Guidelines.
- (iii) As to the preparation, conditioning, acquisition, possession, commercialization, transportation, medical prescription, supply, use, and consumption of cannabis, all activities related to derivatives of cannabis with "**medical purposes**" shall be carried out in accordance with the process of sanitary authorization of medicines, as provided in the General Health Law.
- (iv) As to the planting, cultivation, and harvest of cannabis for medical purposes, in addition to being carried out in accordance with the process of sanitary authorization of medicines, it shall also have

at least (i) favorable opinion from the New Molecules Committee, or the sanitary registry in effect for medicine that contains pharmacological derivatives of cannabis; (ii) a Sanitary License issued by COFEPRIS to manufacture narcotics or psychotropic drugs; and (iii) a certificate of manufacturing good practices.

- (v) Those products, raw materials, or substances, other than medicines that contain cannabis derivatives in concentrations of up to one percent of THC, that have broad industrial uses (pursuant to the Guidelines), may be manufactured, commercialized, exported, and imported upon a prior sanitary evaluation carried out by the Sanitary Authorization of COFEPRIS.
- (vi) The facilities dedicated to obtaining, manufacture, preparation, conservation, blending, conditioning, packaging and manipulation of products, raw materials, or substances other than medicines that contain cannabis derivatives with concentrations of up to one percent of THC, shall file appropriate operation and sanitary official notices before COFEPRIS in accordance with the General Health Law.
- (vii) The import and export of products, raw material, or substances other than medicine that contain cannabis derivatives in concentrations of up to one percent THC shall require a permit issued by COFEPRIS.

Furthermore, there are other legal provisions and initiatives regarding the personal and recreational use of cannabis, which we summarize below.

Position of the Supreme Court of Justice

On 31 October 2018, the Federal Supreme Court of Justice (FSCJ) ruled as unconstitutional several General Health Law articles prohibiting activities related to the personal use of cannabis, especially those relevant to the planting, harvest, preparation, possession, and transportation of the substance for personal use. FSCJ considers the absolute prohibition on the recreational use of cannabis unconstitutional because it violates the right of self-determination and free will.

This was the fifth ruling on this matter, thus establishing precedent (jurisprudence).

Once the FSCJ officially notifies the National Congress of its position on this matter, the National Congress has up to 90 days to initiate the process to create legislation aligned with the FSCJ's ruling.

Petitions for Recreational Use of Cannabis

Given the FSCJ's position, any individual of legal age may request a permit from COFEPRIS to harvest and consume cannabis or marijuana for recreational purposes, and in the event COFEPRIS denies the request, the decision may be appealed through an *Amparo* law suit. Considering the FSCJ's ruling, the denial may be reversed.

As of 5 November 2018, there were 615 petitions to COFEPRIS for the recreational use of cannabis, which will likely be resolved through *Amparos* filed before competent authorities.

General Law Initiative for the Regulation and Control of Cannabis

On 8 November 2018, the Movimiento de Regeneración Nacional (Morena) political party submitted to the Senate of the Republic an initiative for regulating the production, sale, and consumption of cannabis, the principal purposes of which are as follows:

- (i) elimination of the prohibition of activities related to the personal use of cannabis;
- (ii) regulation of the Mexican cannabis market, which likely will also lead to profit for the state; and
- (iii) regulation of the preparation of cannabis for industrial, medical, and therapeutic uses.

The Morena party argues that implementation of this proposal will decrease crime associated with cannabis trafficking.

The proposed legislation is being evaluated in the Senate Chamber by the United Commissions of Health, Public Security and Legislative Studies.

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