

**Alert | Health Care & FDA Practice**



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## **Update on Cannabis (Marijuana) Regulations in Mexico**

Below are relevant updates with respect to the use of Cannabis in Mexico, as a follow-up to our previous alerts published on [January](#) and [May](#), 2019.

On March 4, 2020, the Second Joint Commissions on Justice, Health, and Legislative Studies of the Federal Senate (Comisiones Unidas de Justicia, Salud y Estudios Legislativos Segunda del Senado de la República) issued a decision to amend the law which regulates Cannabis and amends and supplements several provisions of the General Health Law (Ley General de Salud) and the Federal Criminal Code (Código Penal Federal) (“the Decision”). Below are some key changes of the Decision:

### **1. LAW FOR THE REGULATION OF CANNABIS.**

#### **A. Scope and definitions.**

The Law for the Regulation of Cannabis (Ley para la Regulación del Cannabis, LRC) applies to all Mexican territory. One of its main objectives is to regulate the use of cannabis, psychoactive cannabis, and their derivatives. For the purpose of understanding the above-mentioned concepts, the LRC provides the following definitions:

- Cannabis: Generic term used to designate the seeds, plant or parts thereof, which contain cannabidiol (CBD) and tetrahydrocannabinol (THC) components, which may or may not produce psychoactive effects.
- Psychoactive cannabis: Flowering tops, flowers or fruit, except for seeds and the leaves that are not joined to the flowering tops of the vegetable species member of the cannabaceae family, from which the resin has not been extracted, regardless of the name, and any other compound, derivative, mix, preparation, or resin from the flowering tops.
- Hemp: Commonly known as industrial hemp or non-psychoactive cannabis. These are the cannabis plants or parts of the plant, including their derivatives that may produce fibers and do not produce any psychoactive effect.

### **B. Uses of cannabis and its derivatives.**

The LRC provides that the purposes of the use of cannabis and its derivatives authorized under the LRC are: recreational; scientific and research; medical or pharmaceutical; therapeutic or palliative; and industrial (uses of cannabis). Below is a description of the scope of each of the aforementioned uses permitted under the LRC:

- Recreational: People of legal age and with legal capacity are permitted to use psychoactive cannabis and its derivatives for fun or recreational purposes including to sow, plant, cultivate, harvest, exploit, prepare, carry, smoke, and consume. The enjoyment of the aforementioned rights is limited to four flowering psychoactive cannabis plants, which must remain in the residence of the person that consumes it. In cases where a household has more than five persons of legal age with legal capacity, under no circumstance may there be more than 20 plants.
- Scientific and research: Persons of legal age and with legal capacity, and duly organized legal persons such as universities, research centers, institutes, clusters or any other institution accredited as researchers or research centers are permitted to use cannabis and its derivatives to carry out actions that are ethically necessary for scientific and research purposes.
- Medical, pharmaceutical, therapeutic, and palliative: Persons of legal age and of legal capacity, and persons that are legally organized as companies in accordance with applicable law are permitted to use and produce cannabis for medical or pharmaceutical, therapeutic, or palliative purposes. The foregoing is provided they have the required license. For the purposes described in this subsection, the import and export of cannabis-derived and cannabis-based products is permitted.
- Industrial: Persons of legal age and with legal capacity, and persons that are legally organized as companies in accordance with applicable law, may perform the acts covered under the license for industrial purposes that they hold.

The products of cannabis and its derivatives for industrial use may be sold, exported, and imported in compliance with the requirements set forth in the LRC, the health regulations, and other regulatory and commercial provisions included in international treaties signed by Mexico.

### **C. Mexican Institute of Cannabis.**

The LRC provides for the creation of the Mexican Institute of Cannabis (Instituto Mexicano del Cannabis, IMC), as a sectorial decentralized body of the Ministry of the Interior (Secretaría de Gobernación) with legal capacity and its own property, and with technical and management autonomy.

Below are some of the main responsibilities of the IMC:

- Coordination between the Cabinet Ministries (Secretarías de Estado), and the other entities of the Federal Public Administration (Administración Pública Federal) that have jurisdiction on the different areas impacted by the regulation of the use of cannabis.
- Responsibly assist the health authorities in controlling the following activities regarding psychoactive cannabis and its derivatives, and hemp where applicable, for these legally permitted purposes: to store, exploit, market, consume, harvest, cultivate, distribute, package, label, export, smoke, import, plant, carry, possess, prepare, produce, sow, transform, transport, supply, and sell.
- Coordinate the determination of public policies and core concepts of the health control of cannabis, its derivatives, and of hemp for the permitted legal uses.
- To grant, amend, renew, suspend, or revoke licenses for cannabis-related activities.
- Establish the regulation that will specify the procedures and characteristics related to granting the licenses or authorizations regulated under the LRC.
- Determine the content of permissible THC and CBD levels, and the number of varieties of cannabis with different THC and CBD ratios permitted for each of the established uses and purposes.
- The joint determination with the Ministry of Health (Secretaría de Salud) with respect to the number of licenses that must be issued in each state for each of the relevant uses.
- Establish the requirements that each of the natural and legal persons shall comply with to obtain the licenses and permits that must be issued for each of the cannabis uses.
- Issue general guidelines that the points of sale must comply with, except for those intended for the sale of products for medical or pharmaceutical and therapeutic or palliative purposes, which will be regulated under the General Health Law and other applicable regulations.
- Apply pertinent administrative sanctions for violations to the regulations set forth in the LRC.
- The registry of the products that have been authorized to be marketed to be made available to consumers, prepared with cannabis and its derivatives.

#### **D. Licenses.**

There are four types of licenses subject to the LRC, which include the following activities:

- a. Cultivation. Acquisition of seeds or seedlings, sowing, cultivating, harvesting, and preparing cannabis.
- b. Transformation. Preparing, transforming, manufacturing, and producing cannabis.
- c. Sale. Preparing, transforming, manufacturing, and producing cannabis. The sale of cannabis is permitted for the cannabis uses described above.

Furthermore, with respect, specifically, to the marketing of psychoactive cannabis for fun or recreational purposes, the LRC provides the following:

- The sale of psychoactive cannabis, its products and derivatives for recreational purposes is permitted for persons of legal age, with legal capacity, and to legally organized companies.

- Any person or entity that markets, distributes, or supplies psychoactive cannabis products or its derivatives for recreational purposes must:
  - offer information services in connection with the uses, compounds, properties, effects, and risks of psychoactive cannabis and its derivatives in accordance with the guidelines issued by the IMC;
  - display the license granted by the IMC;
  - make sure that the persons that enter the point of sale location are of legal age, and
  - keep on display a sign that contains the caption on the prohibition to market, sell, distribute, and supply to underaged persons, and the warning caption on the use of psychoactive cannabis and its derivatives.
  
- With respect to the packaging and labeling, psychoactive cannabis products that are put on sale for the purposes described in this section must comply, among others, with the following:
  - use a standardized, generic package, which is colorless or does not stand out;
  - must not include testimonials or endorsements of the product;
  - must not include explicit or subliminal images that may cause any emotion or sensation associated with the consumption of such product;
  - the packaging must be prepared with sustainable material, must be recyclable, biodegradable, compostable, and hermetic;
  - include the psychoactive cannabis used and the THC or CBD levels;
  - include the number of the license granted and its registration information, and
  - warn on the possible effects of consumption of the product in at least 30% of the main exposed surfaces.

d. Export or Import. Distribution and sale outside Mexican territory under the terms of the laws, treaties, and other applicable regulations, which must specify the intended use or source of the cannabis product, respectively.

The licenses will include the ancillary activities of transportation and storage, and that the four types of licenses exclude each other. The foregoing entails that the IMC may only assign one type of license for each holder. This prohibition will also extend to the holder's members, subsidiaries, shareholders, blood relatives up to the fourth degree, spouse or other relations that result in a vertical integration of the industry in accordance with the provisions of the IMC. With respect to the sale license, it may only be granted for up to three points of sale in the same state, for each holder thereof.

### **E. Permits.**

The LRC provides for the following types of permits:

- Permit to smoke cannabis. Persons of legal age, with legal capacity are permitted to smoke cannabis and its derivatives for personal use, provided they meet the following requirements: prove the legal acquisition of the seeds and plants and in the authorized amounts, and that there are no underaged persons, or persons without legal capacity, or persons that do not grant their free and informed consent at the address or residence of the person at the time of the consumption.

- Hemp transformation. The natural or legal persons whose purpose is exclusively to transform hemp will not require a license and may request a permit from the IMC, which will allow them to perform such activity.

#### **F. Sanctions.**

Persons that violate the provisions set forth in the LRC may be subject to the following administrative sanctions, depending on the severity of the violation:

- fine of up to 3,475,200 pesos
- product confiscation
- temporary suspension of the license or permit, which may be partial or total
- revocation of the license or permit
- community service
- temporary or definitive closure, and
- arrest for up to 36 hours.

#### **2. GENERAL HEALTH LAW.**

With respect to the LGS, the Decision intends to amend Articles 234, 235, 247 and 479, and to add Section VII to Article 235, and a second paragraph to Article 235 Bis and Section VII to Article 247. The main changes provided in the Decision are:

A. For cannabis sativa, indica, and americana or marijuana, its resins, preparations, and seeds to be deemed mood altering drugs, these must contain THC in an amount equal to or above 1%.

B. The grams for permitted personal consumption of cannabis sativa, indica, or marijuana will be of 28g.

#### **3. FEDERAL CRIMINAL CODE.**

With respect to the Federal Criminal Code, the Decision intends to amend Section II of Article 195 bis of the Federal Criminal Code, establishing that the Federal Public Prosecutor's Office (Ministerio Público Federal) will not file criminal charges for persons in possession of peyote, hallucinogenic mushrooms, and cannabis, where from the amount and circumstances of the case, it may be presumed that they will be used in ceremonies, uses and customs of indigenous people, and communities, as recognized by their own authorities.

Lastly, the Decision has not yet been discussed in detail and, therefore, has not been approved by the Plenary Session of the Senate, hence, its content is subject to amendments or supplements. Likewise, there is still no scheduled date for the foregoing to occur.

*This GT Alert is limited to non-U.S. matters and law.*

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