

The road to cannabis legalization in Mexico

Mexico is fast approaching the legalization and regulation of cannabis, after an initial push that was started by a Mexican Supreme Court ruling that granted the plaintiffs the authorization to personally consume cannabis, while not authorizing them to commercialize cannabis nor to consume any other type of drug. This 2015 ruling indicated a fundamental human right was infringed, that is, the free development of personality permitting adults to partake in recreational activities of their choice, limited only by a balancing test over the Mexican Constitution's concerns for public health and safety.

In 2017, after two years of inaction after the 2015 court ruling, the Mexican Congress passed an amendment to the Mexican General Health Law, allowing patients consume THC (tetrahydrocannabinol) content products only for medical purposes, imposing on government agencies the mandate to create regulations to implement the new law.

In August 2019, the Mexican Supreme Court granted an amparo (*habeas corpus*) injunction for a minor suffering from the West syndrome condition, a type of epilepsy that affects infants that is also referred to as infantile spasms, stating that, in addition to known hormones, seizure medication or steroids, the minor could have also taken CBD (cannabidiol) as well as THC (tetrahydrocannabinol) content products in prescribed doses as part of the patient's available medical treatments. The ruling rested upon the 2017 amendment to the Mexican General Health Law.

The Mexican Supreme Court's August 2019 ruling held the patient's right to comprehensible health treatment was violated by the lack of secondary regulations that were supposed to be enacted under the 2017 amendment to the Mexican General Health Law. It resolved that new regulations should have provided the patient with access to treatments with CBD and THC products. Furthermore, the 2019 ruling ordered that secondary regulations be promulgated by the Health Ministry for the therapeutic use of cannabis and its by-products, following on its earlier failure to promulgate secondary and implementing regulations by the original deadline that was set by the aforementioned amendment.

The draft of the Cannabis and Hemp Bill ("Bill") proposed on the floor of Mexico's Senate in October 2019, which you can find here, permits a broad scope of cannabis use that shall be regulated by the Bill and the institutions that it authorizes to oversee cannabis use, whether

personal or industrial, including but not limited to cannabis and by-product storage, production, commercialization, distribution, harvesting, packaging, and smoking. The Bill also aims to specify the sanitary controls that cannabis and its by-products must comply with for them to be grown, harvested, produced and commercialized within the country as well as for testing and government oversight mechanisms, protocols that must be followed, and the sanctions that shall be imposed for not complying with these new regulations.

Another objective of the proposed Bill is to foster scientific innovation regarding cannabis and its approved uses and, with regard to the social aspect of the Bill, to protect, promote and improve the general population's health through public policies that will reduce the risks of psychoactive use of cannabis and its by-products for an individual.

The draft of the Bill sets forth the creation of a Mexican Institute of Cannabis, as an institution under the Mexican Ministry of Interior, with the purpose of coordinating between the different government agencies that will enforce the regulations regarding cannabis and its by-products, as well as to assist sanitation authorities in controlling and surveilling that the regulated activities be performed in accordance with the Bill as well as the applicable regulations to be enacted.

Other objectives of the Bill are to seek the development of public policy to reduce risks and damages that non-normal use of THC and CBD may create. Likewise, the newly created Mexican Institute of Cannabis shall develop processes for testing and government oversight for all cannabis seeds and plants, as well as by-products, and will determine the THC and CBD concentration levels that shall be permitted in production, commercialization, and consumption for cannabis strains used in personal and industrial applications.

The Mexican Institute of Cannabis will grant, renew, suspend and rescind any permits or licenses to the parties interested in participating in the nascent Mexican cannabis industry, with cutting-edge legislation that will represent an affirmative benefit to marginalized communities that have been affected by the preceding era of prohibition on the use of cannabis.

The Bill's enactment is subject to pressure from several political parties, adding attention to the political conditions that permeate and polarize the country, but the deadline set by the Mexican Supreme Court, thru the jurisprudence enacted on October 2018, expired at the end of October 2019, prompting the Mexican Congress to request a 180-day extension which will expire at the end of April 2020. Therefore, in the months to come, Mexico expects to continue the discussions of a revised draft of the Bill for approval by the Mexican Congress.

In order for lawyers to continue advising clients on the Mexican cannabis and hemp industries and/or on similar developments with regard to the relating by-products and uses, or on the upcoming government oversight, agro-business or energy-related applications and topics and opportunities, RHT Legal Consulting monitors any legislation developments and remains ready to advise clients on the best way to enter, operate, and comply with new regulations in this nascent and complex industry for the production and sale of Mexican cannabis, hemp, and related products.

Please contact us for any comments or questions.

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