



PRIVUS CAPITAL

Cannabis in Mexico Report

How Big? How Far? How Fast?

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Regulation of the legal production, sale and use of cannabis in Mexico is advancing at a strong and steady pace. Although the precise timeline and legal framework remain to be seen, interested parties are exploring ways to participate appropriately in a market of approximately 130 million people.

Once banned and subject to stringent enforcement, cannabis and its derivatives, supported by strong science (R&D) and innovation, are rapidly becoming mainstream products across North America. In the United States, while the possession and use of cannabis remains a federal offense, two-thirds of the individual states already permit the medicinal use of cannabis while eleven have now legalized cannabis for recreational use and active consideration of such legalization is underway in others.¹ At the federal level, hemp has been removed from the Schedule I controlled substances list, making it an ordinary agricultural commodity (with regulations still being developed by USDA), allowing for rapid development of a new market in CBD-related products. Canada nationally authorized medicinal use of cannabis in 2001 and recreational use in 2018. In Mexico, the Supreme Court has ruled in favor of access for personal use, and the administration of President Andrés Manuel López Obrador (AMLO) has indicated it also favors comprehensive regulation of cannabis use and consumption as part of its strategy to

¹ Cannabis is still classified as a Schedule I controlled substance by the U.S. Drug Enforcement Agency, and, as such, it remains a federal crime in the United States to grow, sell, possess, distribute and/or use cannabis, regardless of any U.S. state law that may decriminalize such activity under certain circumstances. Accordingly, there remains a conflict between federal laws that criminalize cannabis and the laws of U.S. states that have legalized cannabis. Even though federal enforcement policy may at times defer to state laws that have legalized cannabis, please be aware that compliance with state law in no way assures compliance with federal law, and there is a risk that conflicting federal laws will be enforced. Any content contained in this newsletter is not intended to provide legal advice nor to assist with the violation of any state, provincial or federal law in the United States, Canada, or Mexico.

address the drug trafficking issue. Legislation to legalize and regulate production and use of cannabis products in Mexico may be adopted as soon as late 2019. Furthermore, increasing commercial interest in all parts of the supply chain and ancillary products used in its production and consumption creates business opportunities worthy of exploration. This newsletter provides a review of the current legal status of cannabis and its derivatives in Mexico, including the status of licenses issued under the prior administration, and describes prospects for legislative action later this year.

We are also pleased to [announce](#) our firms' strategic collaboration to help investors and industry participants navigate the exciting opportunities ahead (see below).

Current Legal Regime for Cannabis in Mexico

Historically, the cultivation and consumption of cannabis for any reason has been illegal in Mexico. The legal regime has begun to change in light of recent Mexican Supreme Court decisions, combined with a change in policy favoring regulation/legalization that was first articulated under the administration of former President Enrique Peña Nieto.

On October 31, 2018, the Mexican Supreme Court issued rulings on two cases in which the Court found that the prohibition of cannabis was unconstitutional, since it violated the "fundamental right to personal development" guaranteed by the Mexican Constitution. This ruling had a significant impact on the status of legalization throughout Mexico since it marked the fifth such Supreme Court ruling. Under Mexican law, when the Supreme Court reaches similar rulings on 5 separate cases, the decisions are considered precedential and are thus mandatory for all of Mexico's courts. In the conclusion written for the fifth case, a 4-to-1 decision, the Supreme Court noted that "with the existence of five precedents in the same vein on the subject, the judgement will be mandatory for all courts in the country." Prior to the October 31 decisions, the Court's prior rulings were binding only on the three plaintiffs who were granted the right to use and cultivate cannabis for *recreational purposes*. Following last year's decisions, similar challenges in the future to the legal prohibition of cannabis must similarly be decided in favor of plaintiff(s). Importantly, the underlying law does not change, but rather the manner in which the courts must interpret it is clarified. The Supreme Court ruling is also consistent with the AMLO administration's plans to shift from the hardline approach against cannabis adopted by many of its predecessors.

In practice, this means that Mexican citizens who wish to cultivate cannabis and consume it for leisure or medicinal purposes under the current legal regime still in force must first apply for a special permit from Mexico's FDA equivalent, the Federal Commission for Protection Against Sanitary Risks (COFEPRIS), that allows them to cultivate cannabis from seeds. However, since the issuance of such a permit is prohibited by the General Health Law, COFEPRIS will deny the request. Once the request has been denied, the citizen may request that a federal appellate judge order the application of precedential case law so that s/he may be allowed to grow cannabis for personal consumption for recreational or medicinal purposes.

Until a new Mexican law and its enabling regulations can be promulgated, the legal and policy environment is not harmonized and requires careful navigation. The Supreme Court precedent has created a public policy demand for regulation of the space. Yet, at the same time, the cultivation, use, and commercialization of cannabis remains illegal. Further, laws criminalizing the possession of more than 5 grams of cannabis remain on the books (presumably on the grounds that such quantities exceed what is required for purely personal use). As a result, individuals violating these laws can still be arrested or fined.

The treatment of medicinal cannabis has a differentiated history. The import of medicinal cannabis products had been allowed under certain cases since 2016; however, legal cannabis products in this specific space are limited to derivatives which have less than 1% THC content as stipulated by articles 295 and 375, numeral 8, of the General Health Law. In June 2017, the Mexican congress [legalized medicinal cannabis](#), or more specifically, "pharmacological derivatives of cannabis" to be regulated for medicinal use and studied by the Ministry of Health.

Current Licenses

Prior to the end of its term on November 30, 2018, the administration of former president Enrique Peña Nieto granted import licenses for medicinal cannabis derivatives to seven companies. However, the licenses were never published in the *Diario Oficial de la Federación* (Official Daily Gazette), which has led some (importantly including Interior Secretary Sánchez Cordero) to consider them null and void. In addition, the lack of a regulatory framework and a specific prohibition for cannabis use in the General Health Law, made the licenses invalid. Further, in late March, COFEPRIS [revoked the guidelines](#) issued on October 30, 2018, which had allowed companies to import such cannabis

derivatives into Mexico. The regulatory agency determined that the guidelines exceeded the legal framework found in the General Health Law (as amended in 2017) by authorizing the marketing of various products derived from cannabis for purposes other than medicine or research and had not been subjected to the required regulatory review process. Mexican authorities are in the process of reviewing those seven import permits, the only ones that currently exist; they cover approximately 37 products including “gummies,” cosmetics, and other products.

Today, some of these license holders are continuing to import cannabis derivatives using a temporary *amparo*, or injunction, under which they have decided to proceed. These companies are mostly focused on imports of hemp-derived products, mainly CBD, and are avoiding products with THC content. It is important to note that there is no law or regulation in Mexico for the production, use or sale of cannabis with low levels of THC, including CBD from hemp and CBD-infused products. As such, these products are currently sold without regulation or consumer protection oversight.

Prospects for Legislation

In September 2018, then-Senator (and now Secretary of the Interior) Olga Sánchez Cordero and Senate President Ricardo Monreal introduced a bill, on behalf of AMLO’s Morena party caucus, that would regulate cannabis for recreational, medicinal, and commercial purposes.² Senior Mexican officials recently clarified that the proposal is intended to be regulatory in nature—that is, regulating permitted uses of cannabis, rather than promoting a wholesale decriminalization of cannabis in all respects. The AMLO government has made clear it emphatically *does not favor or support* the promotion of the use of cannabis but rather wants to destigmatize and decriminalize the growth/cultivation by peasant/rural communities and the limited use of the product in certain contexts, in part as an important component of a broader strategy in its war on drugs. Indeed, during a mid-September 2019 [morning press conference](#), AMLO confirmed that drug legalization is not at the center of his political and legislative agenda, rather his administration will address the topic only as it pertains to the safety of Mexican citizens. He highlighted the importance of public health campaigns aimed at preventing increased drug consumption, particularly among the youth, as well as investing in addiction treatment and rehabilitation services.

² http://infosen.senado.gob.mx/sgsp/gaceta/64/1/2018-11-06-1/assets/documentos/Inic_Morena_LC.pdf

While Morena has a majority in both houses of the Mexican Congress, it is a part of a wide coalition that includes conservative members among whom legalization is still controversial. This means that, while a bill is likely to pass, there is a possibility that there will be fulsome debate within the legislature. The draft bill, introduced in late 2018, envisioned a number of radical changes to Mexico's drug laws including:

- Legalizing the personal possession, usage, and cultivation of cannabis;
- Allowing adults to carry as much as an ounce (30 grams) of cannabis and to smoke in public places (unless they are tobacco smoke-free spaces);
- Allowing adults to have up to 20 plants at a time on their personal property; and,
- Allowing adults to produce a maximum of 17 ounces (480 grams) a year for personal consumption.

This legislation will not only have ramifications for the personal use of cannabis but will also establish regulations on the production and commercial sale of cannabis in Mexico for the first time. The legislation calls for the creation of a special agency, the Mexican Institute for the Regulation and Control of Cannabis, under the auspices of the Secretary of Health, that would oversee the cultivation, processing, purity, packaging, distribution and quality of cannabis and cannabis-derived products intended for sale for personal use. This agency will likely also incorporate representatives from several other cabinet departments including Security, Commerce (Economía), Interior (Segob), Wellbeing (Bienestar) and Finance (SHCP). The agency would regulate the commercial production and sale of cannabis and its derivatives. Notably, the draft legislation contains a prohibition on the production of foods and beverages containing cannabis derivatives (so-called "edibles"). This was one of the more controversial topics of discussion in the Senate given the potential impact on the scope and inclusiveness of the new cannabis space in Mexico should the prohibition of edibles be included in the final legislation.

Senior administration officials had confirmed for us that congressional deliberation, based on several existing legislative proposals, would commence following the summer recess period. Sen. Julio Ramón Menchaca Salazar, head of the Senate Justice Commission, had previously indicated that the commission would "take advantage of the recess period" to finalize the legislation.³ Senator Menchaca stated that he is working closely with the Health and Security Commissions to create regulations that provide for

³ <http://comunicacion.senado.gob.mx/index.php/informacion/boletines/44584-modificar-ley-de-la-fgr-y-regular-consumo-de-cannabis-temas-importantes-a-legislar-menchaca-salazar.html>

the safe regulation of the “sale, consumption and production,” of cannabis. Earlier in the summer, Senator Menchaca also stated that he is open to hearing public opinion; however, he stated that the new regulations were inevitable in order to “avoid chaos.”⁴

Perhaps demonstrating a recognition of the complexity of the issues related to cannabis regulation, Morena introduced supplementary draft legislation at the beginning of the current congressional session to revise Mexico’s General Health Law (LGS for its Spanish acronym) to bring it into compliance with the Supreme Court’s decisions.⁵ The proposal simply amends two articles of the LGS regarding treatment of cannabis within the law and directs the Secretary of Health to issue regulations regarding the consumption of cannabis by adults for recreational purposes within 90 days after the law enters into force. The effort to comply with the Court’s instruction does not, however, suggest a lack of interest in a more ambitious reform though it will likely extend the timeline for a comprehensive reform to be enacted. A more deliberate process, which could even include a national referendum (based on AMLO’s mid-September comments), might well allow Mexico to draw from the experiences of other jurisdictions (e.g. U.S. states and Canada) as it finalizes its own approach to cannabis regulation.

In the October 1 lower house session, the majority leader, Diputado Mario Delgado (Morena) further [proposed legislation](#) that would establish a public company (to be called *Cannsalud*) that would be granted the exclusive right to purchase and sell cannabis to individuals. The bill states that it “...would involve the state as a permanent supervisor and controller of activity involving this substance within a legal framework that would guarantee benefits for all.” We suspect that numerous additional bills may be introduced in both chambers – there are, for example, nearly a dozen separate cannabis-related bills in the Senate at present – demonstrating the fluid nature of the legislative debate.

Subsequent issues of this newsletter will report on and analyze those measures that would be most impactful or that have the greatest likelihood of passage.

⁴ <https://www.am.com.mx/hidalgo/noticias/Reglas-para-consumir-marihuana-en-Mexico-a-finales-de-septiembre-senador-20190623-0015.html>

⁵ https://infosen.senado.gob.mx/sgsp/gaceta/64/2/2019-09-03-1/assets/documentos/Ini_Morena_Sen_Menchaca_Art_235_247_LGS.pdf

Opportunities

Mexico is about to open a new chapter in its approach to cannabis regulation that will be tied to its long-standing effort to control drug trafficking and reduce the influence of organized crime while decriminalizing the activities of rural communities that have been involved in growing cannabis. As noted above, the current judicial environment is now synchronized with a political inclination to alter the regulation of cannabis. While much is still not knowable, it is very likely that some form of legislation will be adopted during the current congressional session. While one of the recent Morena bills focuses only on correcting a legal deficiency identified by the Supreme Court, we expect that congressional debate on broader questions surrounding the production, commercialization, import, and export of cannabis and its derivatives (containing THC and/or CBD) will continue thus identifying with increasing clarity a range of opportunities in these areas. Further, development of a cannabis market will also create opportunities for the sale of ancillary services to support a nascent industry that could also include industrial hemp as well as medicinal and recreational cannabis products. Though the situation in Mexico is continuing to evolve and fluid at the time of this writing, we expect that the initial steps toward regulation will come quickly, and with these regulations will come interesting opportunities, especially for first movers.

We welcome comments and requests for additional information.

If you are interested in receiving future updates on Mexico's cannabis legalization process, please [click here](#).

The material provided in this document is for informational purposes only and not for the purpose of providing legal advice. You should contact your attorney to obtain advice with respect to any particular legal issue or problem.

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Monarch Global Strategies and Privus Capital Announce Joint Strategic Cannabis Initiative

The increasing commercial interest in cannabis, its derivatives, and ancillary products used in its consumption (for recreational and medicinal use) across North America creates business opportunities worthy of exploration. Yet the rapidly evolving legal and regulatory frameworks, which differ among jurisdictions, together with the complex domestic and cross-border politics associated with the topic, warrant careful analysis and well-planned strategies for entry into any aspect of the sector, especially for firms seeking cross-border partnerships, distribution channels, or investment opportunities. Leveraging their respective market expertise, Monarch Global Strategies and Privus Capital have joined forces to help clients navigate this complex environment. Our joint initiative offers clients a unique combination of skills, experience, and access to successfully understand and expand into the nascent legalized cannabis sector across North America.

Services offered:

- Market entry support
- Risk analysis and strategic planning
- Match making for strategic partnerships, distribution agreements, start-ups, and M&A
- Private equity and corporate strategic investment
- Regulatory filings and trademark registrations
- Government relations, advocacy, and stakeholder engagement

About Monarch Global Strategies

Monarch Global Strategies LLC is a strategic consulting firm with over 18 years of experience providing senior corporate executives with market and political intelligence, strategic advice, and stakeholder engagement support to drive market entry and business expansion efforts in North America, with an emphasis on Mexico. From offices in Mexico City, Monterrey (Nuevo Leon), Los Angeles, and Washington, D.C., Monarch's binational,

bicultural, and biliterate team has deep regional expertise and an invaluable presence on the ground.

Monarch has a proven track record of success, expert knowledge of the market and regulatory environment, and connections at the highest levels of business and politics. Its chairman, James R. Jones, a former U.S. Ambassador to Mexico, and president and CEO, Michael C. Camuñez, a former Assistant Secretary of Commerce and White House Special Counsel, have both enjoyed long and distinguished careers in foreign policy, law, and regional commercial and government affairs.

More information can be found at www.monarch-global.com.

About Privus Capital

Privus Capital Inc. is a Canadian investment and advisory firm dedicated to opportunities with high-growth potential and which have a global impact. It prioritizes disruptive new sector opportunities including the legal cannabis industry. Privus executes private equity transactions and corporate strategic investments, allowing companies to unlock value through creative corporate development strategies.

Privus is led by experts with deep experience in corporate finance, governance, operations, and international trade. The firm has become known for the breadth of its work with companies and private equity investors from Latin America. Its leadership has advised on numerous transactions in the emerging cannabis sector for companies in Latin America, Canada, and elsewhere.

Privus is located in Toronto, known as the global hub of capital for cannabis companies, after Canada became the first and only G-7 country to fully legalize the industry.

More information can be found at www.privuscapital.com.

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