



PRIVUS CAPITAL

Cannabis in Mexico Report

December 2019

Legislative Process Moves Ahead...Slowly

Deadline for Legislative Action Extended into 2020

Despite a Supreme Court mandated deadline of October 31 to establish cannabis regulations, the Mexican Senate decided to press ahead with comprehensive legislation rather than submit a very limited bill to meet the immediate requirements established by the Court. When it became clear that the deadline would be missed, Senate President and Morena party leader Ricardo Monreal announced that the legislative body would ask the Supreme Court to [extend the deadline](#) for, literally, a few weeks to give it time to pass legislation for “reasons of State.” He also insisted that the Senate [would not succumb to pressure](#) from stakeholders and other interested parties who had been seeking to influence the outcome of the debate. Monreal suggested that a delay was necessary to “let waters settle” and to review [the law and international experiences](#). Summarizing the debate at the time, Monreal indicated that several additional issues needed to be addressed or reassessed, including, among other things, whether seeds must be imported, if and how consumers must register, and the number of plants permitted for individuals. How to address addiction was also raised as a concern as was the proposal to set aside 20% of the licenses for residents of areas impacted by the drug trade.

In response, on November 2, the Supreme Court granted [an extension](#) until the end of the current legislative session on April 30, 2020. The extension was much longer than requested or anticipated. Given that no cannabis legislation was prioritized for passage before the Senate broke for the holidays on December 12, the Mexican Congress and government will take advantage of the extra legislative time to extend debate into 2020 and give it time to address the many specific aspects that require more attention and clarification.

Senate Health and Justice Commissions' Report

On October 23, the Health and Justice Commissions, with input from the Public Security Commission, released an almost 200-page document (*dictamen*) that reviewed the iterative legislative history of eleven proposals that had been in circulation at different times in the process, provided extensive background on cannabis usage (including a summary of the Supreme Court decisions), and contained a new draft bill to regulate cannabis. This draft bill is the updated baseline document that will be the continued focus of the next rounds of legislative debate early in 2020 and provides a roadmap to the increasingly defined parameters of legal cannabis regulation in Mexico. It is important to note, however, that the final version of the law, which will be voted on before April 30, 2020, could look different from the current draft.

Initial review of the *dictamen* began during the week of November 4. The draft bill contains several noteworthy items discussed below, including the creation of an autonomous agency, the *Instituto Mexicano del Cannabis* (the “**Institute**”), to regulate and oversee the entire new cannabis space. **We urge interested readers to [contact us](#) with specific questions about the *dictamen*.**

Introductory Provisions

The draft bill ascribes resolution of many of the social and economic challenges facing Mexico to the legalization of cannabis. The drafters note that the focus of their legislation is on public health, human rights, and sustainable development, including to improve living conditions, combat the consequences of problematic use of cannabis, reduce crime associated with narcotrafficking, and promote peace, security, and wellbeing.

Further, since the use of cannabis should address sustainable development, the draft law mandates that the policies, plans, guidelines, and programs used by the State will focus on security, prosperity, and well-being in pursuit of 17 specific objectives including: poverty reduction or elimination, eradication of hunger, food security, improved nutrition, sustainable agriculture, inclusive and equal education, gender equality, resilient infrastructure, reduction of inequality, and sustainable use of oceans and water resources (Article 9).

In keeping with the focus of Mexican President Andrés Manuel López Obrador (AMLO) on the poor and underserved communities, the legislation specifies that it is intended to “empower groups of peasants, farmers, and communities in activities related to the

planting, cultivation, and harvesting of cannabis and its derivatives, as well as their preference over other less vulnerable groups in the enjoyment of the rights granted by this Law,” as well as in the granting of licenses and authorizations (Article 5, X). In addition, the State must help peasants (*campesinos*), indigenous persons, micro and small farmers to gain benefits stemming from the law including through access to development bank financing. The law grants the aforementioned groups preferential treatment over others less or not at all vulnerable in the granting of licenses and authorizations (Article 11). In keeping with the social justice aspect of the law, the draft legislation mandates that for at least the first five years after entry into force, 20% of the crop licenses should preferably be granted to *campesinos* or *ejidos* in the municipalities in which, during the period in which cannabis was prohibited, federal, state, and municipal governments have carried out eradication efforts. After the fifth year, the percentage can be reduced, but cannot fall below 5% (Transitory Article 7).

Specific Provisions

Licensing: The draft legislation establishes four types of licenses – cultivation, transformation, sale, and import/export, all of which include the auxiliary activities of transport and storage but are mutually exclusive (Article 35) and non-transferable (Article 36). The legislation identifies the prohibited relationships among license holders and specifically prohibits vertical integration (Article 36). Sales licenses are limited to up to three points of sale in the same “federative entity” (i.e. each of the individual states including Mexico City) (Article 36). It appears that the associations (groups of persons who grow and smoke cannabis collectively) described in the legislation may only apply for cultivation licenses (Article 41).

Foreign Ownership: Commercial license holders are limited to 20% foreign capital (Article 39).

Edibles, Cosmetics, and Products Combining Cannabis and Other Substances: The draft legislation prohibits the use of cannabis and its derivatives for cosmetic use as well as their import (Article 62, IV). The same Article prohibits the marketing of edible and drinkable products of cannabis or its derivatives, with the exception of those products used for medical or pharmaceutical and therapeutic or palliative purposes (Article 62, V). The legislative proposal also prohibits the sale of products that exceed the levels of THC, CBD, or a combination of both established by the Institute as well as the sale of psychotropic cannabis mixed with alcohol, tobacco, nicotine, and caffeine (Article 25).

Industrial Use (Hemp): Cannabis products and their derivatives for industrial uses may be marketed, exported and imported in compliance with the requirements established in the law, health regulations, and other regulatory and commercial provisions contained in international treaties to which Mexico is a party. The activity must be lawful in the countries of origin and destination (Article 34). Further, hemp can be processed with a permit (rather than a more formal license) and in no case can a restriction be imposed on the sale of hemp products (Article 46). The law also defines hemp as containing 1% or less THC; a definition that will apply until the Institute changes it, based on scientific evidence (Transitory Article 10).

Mexican Cannabis Institute: According to the draft legislation, the Institute shall be operational not later than January 2021. It will be responsible for an extremely broad range of activities from establishing regulatory requirements and issuing licenses to determining the appropriate acceptable combination of THC and CBD in a single product. The Institute will also have to establish standards that range anywhere from the legal limit for the amount of THC above which an operator of heavy machinery could be charged, which is not currently defined under Mexican law, to the development of testing and tracing provisions, to the designation of authorized labs (Articles 47-58). It appears that, where required, much of the clarification of the practical effects or modalities of complex provisions of the eventual law will be shifted to the Institute.

When operational, the Institute's wide-ranging authority will likely make appointments and the decisions taken by the leadership, highly politicized.

CBD: The proposed legislation makes limited references to CBD aside from ascribing to the Institute the responsibility for determining acceptable levels of CBD and for establishing the appropriate acceptable ratio of THC to CBD in products containing both substances.

Review Process: One of the more important elements of the draft legislation is a provision that requires the Board of Governors of the Institute to hold a public hearing to review the constitutional and legal framework of the cannabis issue, propose appropriate reforms, and deliver a report to the Congress (Transitory Article 3).

In addition, after one year, the Institute will be required to develop a National Plan for Monitoring and Improving the Implementation of Cannabis Regulation which must be

carried out based on scientific evidence, to conform or, where appropriate, redirect the measures adopted in the regulation of cannabis (Transitory Article 8).

Taken together, these articles clearly recognize that unforeseen issues may arise during implementation of the new law and creates mechanisms to review and revise the law. This suggests that the initial approach is intentionally strict with the intent of relaxing some restrictions if appropriate.

Constitutional Concerns: Some have suggested that the requirement that members of production and use associations, which cannot exceed 20 persons, be registered, may be inconsistent with recent Supreme Court rulings regarding personal use and/or human rights. It is possible that this provision (and perhaps others) would be challenged in court once the legislation is approved.

Next Steps

Over the next several months, the Health and Justice Commissions will complete their deliberations and submit a final version of the bill to the full Senate for deliberation and (presumably) approval. Following this step, the legislation will pass to the Chamber of Deputies (Lower House) for its review and approval. If the Chamber proposes amendments, the modified version is returned to the Senate. If not, the bill would be submitted to President López Obrador for his signature. We expect this process will likely not be completed much before the April 30 deadline mandated by the Supreme Court. On the other hand, short of a renewed extension application to the Supreme Court, which would be unpredictable, this legislative process must be completed by April 30, 2020.

Recommendation

Much about how and when exactly Mexico will regulate cannabis still remains to be determined. The legislative calendar leading to approval of a new law, as well as the time required to create and enable the powerful Institute by January 2021, suggest that a functioning legal cannabis market will not exist until at least mid-2021. Nevertheless, time for business development and planning will pass quickly as always, and many key decisions will be made in the coming months. **Firms interested in entering this nascent market should begin establishing relationships with potential Mexican partners and developing market knowledge long before the date of first legal sales.**

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