

Mexican Senate Approves New Provisions and Amendments for the Regulation of Cannabis (Marijuana) in Mexico

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On Nov. 19, 2020, the Mexican Senate approved new provisions and amendments to the federal laws that regulate cannabis, including various provisions of the General Health Law and Federal Criminal Code. The amendment will now be sent to the Chamber of Deputies for discussion and/or amendment and potential approval (the Resolution) and subsequent publication in the Federal Official Gazette (Diario Oficial de la Federación, DOF). The Resolution is at an early stage of its legislative process and is not yet in effect. Below is an overview of some of the most relevant changes.

1. FEDERAL LAW FOR THE REGULATION OF CANNABIS.

A. Scope and definitions.

The Federal Law for the Regulation of Cannabis (LFRC, for its acronym in Spanish) is generally applicable to all national territory and has amongst its main objectives the regulation of the use of cannabis, psychoactive cannabis, and its derivatives. The LFRC additionally defines certain key terms:

- i. **Associations:** Civil associations constituted under the terms of the ordinary laws, without profit purposes and with the only social object of satisfying the individual needs of its associates for the acts of self-consumption for adult use, under the terms and conditions that are expressly authorized by the LFRC and the applicable regulations.
- ii. **Cannabis:** Generic term used for seeds, plant or parts thereof, containing CBD and THC components, which may or may not produce psychoactive effects.
- iii. **Psychoactive Cannabis:** Sums, flowering or fruiting, except for the seeds and leaves not attached to the sums, of the plant species member of the Cannabaceae family, from which the resin has not been extracted, regardless of the name assigned, as well as any compound, derivative, mixture, preparation or resin of the sums, whose THC content is equal to or greater than 1%.

B. Uses of cannabis and its derivatives

The LFRC states that cannabis and its authorized derivatives may be used for:

- Adult use, which includes: personal use or self-consumption, shared use among those who are members of an association for the consumption of psychoactive cannabis, and the sale of cannabis for adult use;
- Research, except for research for medical use of cannabis and its derivatives; and
- Industrial use, except for the industrial use for medical use of cannabis and its derivatives.

In this regard, the scope of each of the above uses permitted under the LFRC is described as follows:

a. Adult use:

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Self-consumption: Adult use of cannabis for self-consumption includes the following activities: sow, cultivation, harvest, use, preparation, possession, transportation, and consumption. The first five activities are limited to four psychoactive cannabis plants and its produce per person, which must remain in the consumer's home. If there are more adult consumers residing in the household, the amount of psychoactive cannabis plants (and produce) may not exceed six plants per household. Users of psychoactive cannabis must purchase such product in authorized places.

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Shared use among members of an association: Associations must be constituted of at least two and a maximum of 20 persons of adult age, and must not include in their name any word, term, or connotation that promotes psychoactive cannabis. Associations may carry out the following activities related to psychoactive cannabis and its derivatives, for personal use or

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for associated persons: sow, cultivation, harvest, use, preparation, and consumption. Associations may plant up to four psychoactive cannabis plants per associated person per year.

Sale for adult use: The Resolution would allow the sale of psychoactive cannabis, its products, and derivatives for adult use, to persons of adult age and to legally constituted collective legal persons that have the corresponding commercialization license. Among the responsibilities for those who sell or distribute cannabis are: to make sure that only persons of adult age enter the establishment, to display warnings about the use of psychoactive cannabis, to provide information about the use, compounds, effects, and risks of psychoactive cannabis, and to refrain from selling more than 28 grams per day to the same person.

b. Scientific and research:

The Resolution would allow persons of adult age, as well as entities legally constituted as universities, research centers, institutes, cloisters, or any other institution accredited as researcher or centers for investigation, to conduct activities that are ethically necessary for scientific and research purposes. The Resolution states that the Mexican Institute for the Regulation and Control of Cannabis (the Institute) will establish the mechanisms and guidelines to promote research related to cannabis.

c. Industrial:

The Resolution considers allowing people of adult age, as well as to legally constituted entities, to carry out the acts protected under the license for industrial purposes of which they are owners, with the exception of the medical use of the cannabis and its derivatives.

Under the terms of the Resolution, non-psychoactive cannabis products and their derivatives for industrial use may be sold, exported and imported in compliance with the requirements established in the LFRC, health regulations and other regulatory and commercial provisions contained in international treaties to which Mexico is a member party, as long as the same activity is legal in the countries of origin and destination.

C. Packaging and labelling.

Psychoactive cannabis products and derivatives that are offered for sale must observe, in addition to the other requirements that are applicable under other provisions, the following requirements:

- Be in a generic standardized package, without colors or striking elements;
- Packaging should preferably be made of sustainable, recyclable, biodegradable, and compostable materials;
- Be airtight, resealable, and childproof;
- Contain the type of psychoactive cannabis used and the levels of THC or CBD;
- Contain the valid license number and its registration data;
- Warn about the possible effects of the consumption of the product on at least 50% of the main exposed surfaces, and
- Include a label with the following warning: *“Consumption of this product is harmful to health. It is recommended that adults between 18 and 25 years of age, as well as pregnant and nursing women, to avoid consumption of this product”*

Packaging must NOT include:

- testimonials or endorsements about the product;
- explicit or subliminal images that evoke any emotion or feeling associated with the consumption of the product.

D. Mexican Institute for the Regulation and Control of Cannabis.

In the Resolution, the LFRC provides for the creation of the Institute as a decentralized agency from the Ministry of Health. The following are some of its main functions:

- a. Coordination with Federal Public Administration agencies and entities with competence in the various impact areas for the regulation of the use of cannabis.
- b. To cooperate responsibly with the competent authorities which oversee the following activities related to psychoactive and non-psychoactive cannabis: storage, use, sale, consumption, harvest, cultivation, distribution, packaging, labelling, export, import, investigation, planting, possession, transportation, preparation, production, sow, transformation, and supply.
- c. To cooperate in the determination of public policies and central axes of sanitary control for the permitted legal uses of cannabis and its derivatives.
- d. Granting, modification, renewal, suspension, or revocation of licenses for activities related to cannabis.

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- e. To establish specify the procedures and characteristics of how licenses and authorizations will be granted under the LFRC.
 - f. To determine the permitted THC and CBD content levels for each of the established uses and purposes.
 - g. To determine the number of licenses to be issued in each state for each of the corresponding uses.
 - h. To establish the requirements that must be met to obtain the licenses and permits for each of the uses of the cannabis.
 - i. To enforce the appropriate administrative sanctions for violations of the regulatory standards established in the LFRC.

E. Licenses

- a. **Cultivation.** Acquisition of seed or seeding, sowing, cultivation, harvest, and preparation of cannabis. For psychoactive cannabis, this license allows for a maximum authorized area of an hectare by licensee, for an open air space, or up to a thousand square meters if indoors.
- b. **Transformation.** Preparation, transformation, manufacturing, and production of cannabis.
- c. **Sale.** Distribution and sale of the cannabis and its derivatives and products.
- d. **Export or import.** Distribution and sale of nonpsychoactive cannabis or derivative products outside the national territory, as well as their entrance.
- e. **Research:** Includes the acquisition of seed or seeding, sowing, cultivation, harvest, preparation and transformation of cannabis and its derivatives, in the terms and quantities approved by the Institute. To apply for this license, a research protocol authorized by the Institute must be available and the capacity to carry out the corresponding research must be accredited.

These licenses will include auxiliary activities for transportation and storage. Cultivation, processing, and sale licenses are mutually exclusive, since the Institute may only grant one license per holder. Import or export licenses may be granted with another type of license.

F. Permits.

If the law is approved, the Resolution would allow Associations' members to exercise the self-consumption of psychoactive cannabis for adult use at a registered address, for which they must obtain a permit from the Institute. In any case, self-consumption should not be performed in the presence of minors, or persons who have not provided their free and informed consent. Likewise, the location must have physical barriers that prevent people other than the permit holders from having contact with the cannabis, and that prevents the smoke from being inhaled by other people.

G. Sanctions.

Failure to comply with the provisions set forth in LFRC may result in the following administrative sanctions, depending on the gravity of the violation:

- A fine of up to MX\$ 260,640.00
- Temporary or permanent closure
- Products confiscation
- Temporary suspension of the license or permit, which may be partial or total
- License or permit revocation
- Social community work
- Arrest for up to 36 hours

2. GENERAL HEALTH LAW

The Resolution intends to amend certain articles of the General Health Law, which are detailed below:

- For cannabis sativa, Indica and American or marijuana, its resin, preparations and seeds, to be considered a narcotic it should contain THC in quantities equal or superior to 1%.
- The allowed grams for personal consumption of cannabis sativa, Indica or marijuana will be of 28 grams.

3. FEDERAL CRIMINAL CODE

With respect to the Federal Criminal Code, the Resolution seeks to establish that, in the case of psychoactive cannabis, possession will only be criminally sanctioned when it exceeds 200 grams. The possession of psychoactive cannabis in an amount more than 28 grams and less than 200 grams will only be sanctioned with a fine under the LFRC.

4. RESTRICTIONS PROVIDED IN THE RESOLUTION.

If approved, during the first five years after the Resolution's entry into force, at least 40% of the licenses for cultivation will be granted preferentially to indigenous people and communities, peasants or *ejidatarios*, *ejidos*, and communities in a marginalized situation, or those in a disadvantaged situation in municipalities where plantation eradication work had been performed by federal, state and municipal governments during the period in which cannabis was prohibited.

In addition, although the Resolution regulates the cannabis sale license, it is necessary to emphasize that it only regulates the commercialization for adult use for research and industrial purposes. Its pharmaceutical, therapeutic, and palliative use will be governed by the General Health Law and the Regulation on the Subject of Sanitary Control for the Production, Research, and Medicinal Use of

Cannabis and its Pharmacological Derivatives, which will be the object of an additional legislative process. Likewise, it is worth mentioning that the fact that suppliers must abstain from selling more than 28 grams per day to the same person is considered a restriction.

The Resolution states that the Institute will be responsible for establishing the number of licenses that can be granted to a person; however, in the case of a commercialization license for psychoactive cannabis, the Resolution restricts the license to three points of sale.

The Resolution also limits the possibility for partners, subsidiaries, shareholders, relatives by blood up to the fourth degree, spouses, and those who have other relationships with licensees, to obtain licenses of other types to avoid a "vertical integration" in the industry.

The Resolution imposes multiple restrictions, for example that the licenses for cultivation, processing and sale are mutually exclusive, so it will not be possible for the same individual or company to develop the entire production chain.

Finally, it is important to mention that the Resolution has not yet been discussed at certain levels, so its content is subject to modifications or additions that may be made later, along with the authorization of the Chamber of Deputies for its subsequent publication in the Federal Official Gazette for it to enter into force.

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National Law Review, Volumess X, Number 346

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