



March 15, 2021

MEXICO'S CONGRESS MOVES CLOSER TO ENACTING A FEDERAL STATUTE REGULATING CANNABIS

The Mexican House of Representatives (*Cámara de Diputados*) approved a Bill enacting the Federal Law for the Regulation of Cannabis (*Ley Federal para la Regulación del Cannabis*) and amends and adds several provisions of the General Health Law (*Ley General de Salud*) and the Federal Criminal Code (*Código Penal Federal*) (the “**Bill**”).

On March 10, 2021, the Bill was sent to the Mexican Senate (*Cámara de Senadores*) for further analysis and potential approval.

Federal Law for the Regulation of Cannabis

What follows is a broad summary of the content of the Bill as it relates to the enactment of the Federal Law for the Regulation of Cannabis (the “**Law**”).

The Law expressly establishes the right of any person over the age of 18 to consume psychoactive cannabis. Sale of psychoactive cannabis and its derivatives for recreational use is limited to the territory of Mexico.

The main purpose of the Law is the regulation of the storage, exploitation, commercialization, consumption, farming, growing, distribution, packaging, labeling, export, import, sponsoring, possession, preparation, production, promotion, advertisement, transformation, transportation, supply, sale and procurement under any legal title of cannabis and its derivatives.

Regulation and control of cannabis is mainly entrusted to the Federal Government through the Ministry of Health (*Secretaría de Salud*) (“**SSA**”), the National Commission against Addictions (“**Commission**”). These agencies will issue official standards (known in Mexico as *Normas Oficiales Mexicanas*), among other things.

The Law expressly establishes that the conducts or acts comprising the uses of cannabis and other substances listed in Article 7 as provided in the statute may not be subject to criminal prosecution.





Licenses (*Licencias*).

The Law defines a “License” as the administrative action through which the Commission grants to a private party the right to participate in one or more links of the cannabis and its derivatives’ productive chain, for commercial or research purposes (“License”). These Licenses are non-transferable.

It is to be noted that the proposed Law does not require the applicant to be a company incorporated under the laws of Mexico, nor does it establish any foreign investment restrictions for the participation in these activities. It does, however, require that the applicant includes a tax domicile in Mexico to apply License (*see* below).

Licenses will have a minimum term of 1 year and a maximum term of 5 years. The Commission will resolve on applications within 3 months following the admission of the application. The deemed denial (*negativa ficta*) principle will apply should the Commission fail to issue a response within the 3-month deadline.

These are type of Licenses available:

- comprehensive (*integral*).
- production.
- distribution.
- retail sales.
- production or commercialization of cannabis’ derivatives, and
- research purposes.

One person may obtain more than one License. The Licenses will include the right to undertake ancillary activities (*i.e.*, transportation and storage), as well as the right to sell the product to the next link in the chain.

The Commission and the Ministry of Agriculture and Rural Development (*Secretaría de Agricultura y Desarrollo Rural*) (“SADER”) may determine maximum size for the growing of cannabis depending on the type of License, as well as the national maximum. No forestland may be transformed to grow cannabis.

A special regime (affirmative action) is created for indigenous communities, farmers and ejido owners living in poverty. The Commission can grant more than one License to these peoples.



Requirements to apply for Licenses.

While requirements vary depending on the type of License, these include, among others, general information about the applicant (name, address, incorporation documents), location of the lands (in case of production), volume/amount of cannabis to be produced, location of manufacturing site(s), retail locations, and tax domicile in Mexico. The Commission will likely expand and detail these requirements through administrative rules/guidelines.

In case of Licenses that do not include the growing/production of cannabis, the applicants will be required to include the names and Licenses of the other participants in the cannabis manufacturing/distribution value chain.

Permits for Self Consumption.

These are renewable 1-year permits issued by the Commission to grow plants at home for personal use with recreational purposes. No home may have more than 1 permit.

Production for Recreational Purposes.

Cannabis and its derivatives may be produced for: **(i)** self consumption; **(ii)** commercialization and sale for recreational uses; **(iii)** investigation/research purposes; and **(iv)** hemp for industrial purposes.

Production for personal use. This activity will be subject to a permit granted by the Commission that allows the growing of up to 6 plants at his or her residence exclusively for personal consumption for recreational purposes.

So-called cannabis associations (of 2 to 20 persons) may be created with the purpose of growing psychoactive cannabis for recreational purposes; these entities will take the legal form of non-profit civil associations. These associations may apply for permits and are required to adopt the legal name of “cannabis association”. Members of these associations are allowed to grow 4 plants each without exceeding a combined total of 50 plants.

Production and Commercialization of Cannabis for Recreational Purposes.

In order to produce or distribute cannabis and its derivatives for its commercialization and sale for recreational purposes a License is required. Consumers will be required to procure psychoactive cannabis in businesses authorized by the Commission.





The Law forbids the sale of any product not authorized by the Commission, including: (i) any product exceeding the proportion and correlation of the levels of THC, CBD or a combination of both; (ii) products mixed with other substances such as nicotine, alcohol, energy drinks or any other; and (iii) any unauthorized packaged or labeled product.

The Law also establishes requirements for labeling and packaging. Requirements include the levels of THC and CBD, a registration number determined by the SSA, License number, among others.

The Law also regulates the use of cannabis and its derivatives for research purposes. Only laboratories, research centers and universities (public and private) may apply for authorizations.

Hemp Industrial Purposes.

Production and distribution of hemp requires a License. These Licenses will grant the right to produce, transform and commercialize the hemp and its derivatives. Unlike psychoactive Licenses, these licenses will be granted by SADER with the previous opinion of the Commission.

Authorities of the Commission to regulate Psychoactive Cannabis.

The Commission will issue regulations, as well as guidelines to grant the relevant authorizations and permits.

On a yearly basis the Commission will determine the maximum number of establishments (stores) per license holder and municipality. It may also determine a maximum number of permits per each municipality.

Penalties and Administrative Liabilities.

The penalties and sanctions under the Law include economic fines, temporary or permanent shutdowns, seizure of products, suspension of permits and Licenses, revocation of permits and Licenses, community service, and arrests up to 36 hours.

Without prejudice to criminal liability and consequences established under the Federal Criminal Code (as amended by the Bill), carrying out the activities included in the Law without a permit or License may entail economic fines. In case of cancellation of a permit of license, the violator may not apply for a new [authorization] in a term of 5 years.





The Law expressly forbids: **(i)** the export and import of psychoactive cannabis and its derivatives; **(ii)** the production, import and commercialization of synthetic cannabinoids or concentrates of psychoactive cannabis for its vaporization or similar uses; and **(iii)** the sale of cannabis and its derivatives in vending machines, mail, phone or internet.

Transitory Provisions of the Bill.

The transitory provisions of the Bill establish a series of consecutive milestones or steps as follows:

- (a) Within the 90 calendar days of the effective date of the Bill (*i.e.*, the day following its publication in the Federal Register (*Diario Oficial de la Federación*)), the Executive Branch shall approve changes to the Internal Regulations of the Ministry of Health;
- (b) Within the 90 calendar days after the amendments to the above Regulations take place, the Federal Executive will issue changes to the provisions creating and providing for the operation of the Commission;
- (c) Within the 90 calendar days following the achievement of the foregoing paragraph, the Commission will issue a program to prevent and treat the so-called “problematic use” of psychoactive cannabis and the national program to instrument, evaluate and monitor cannabis’ regulation, which shall be sent to the Federal Congress, and
- (d) Within the 60 calendar days following the issuance of the foregoing instruments by the Commission, the latter will publish: **(i)** the orders, procedures and other provisions to commence with the grating of the permits included in the Law, as of 2022; and **(ii)** the orders, procedures and other provisions to commence with the issuance of Licenses as of 2022.

Until: **(i)** studies about the impact of psychoactive cannabis’ consumption on the mental health of the population between the ages of 18 and 25 years are available, as a “health protection measure” the Commission may issue general limitations or prohibitions, in whole or in part, to the purchase/procurement, possession and consumption of psychoactive cannabis by this age group; and **(ii)** the SSA has scientific studies on the effects of edible products containing cannabis, no sale of these products may occur.





*Campa &
Mendoza*
ABOGADOS

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If you have any questions or comments on the matter, please contact us at:

Diego Campa: diego.campa@campaymendoza.com

Bernardo Mendoza: bernardo.mendoza@campaymendoza.com

This document does not constitute legal advice.

