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CANNABIS REGULATION AND CANNABIS DERIVED PRODUCTS

INTRODUCTION

As more jurisdictions around the world move to legalize various forms of cannabis, including hemp and CBD products, recreational marijuana, and medical marijuana, the global cannabis industry continue to blaze forward. But changing and even inconsistent laws and an evolving regulatory environment have created legal uncertainties and tensions in the development of the industry and marketplace. This booklet aims to provide practitioners a summary reference for cannabis laws and regulations in various jurisdictions across the globe. Practitioners should note that because cannabis laws are quickly evolving, through the legislative process, ballot initiatives and regulatory rule implementations and changes, each jurisdiction's most recent cannabis laws and regulations should be reviewed and assessed.

A QUICK PRIMER ON CANNABIS BASICS

Cannabis vs. Marijuana vs. Hemp

Cannabis refers to a genus of plants that has three species – indica, sativa, and redueralis. Marijuana and hemp are both cannabis. Despite popular misconception, marijuana and hemp are not different species of cannabis.

Marijuana, in the common parlance, is cannabis that, when consumed, results in a "high." The "high" in marijuana is produced as a result of high tetrahydrocannabinol or THC content. Hemp, again in common usage, does not cause intoxication because it has low levels of THC.

INTRODUCTION

Some jurisdictions around the world still do not distinguish between marijuana and hemp. For example, for decades, the federal government in the U.S. did not distinguish between hemp and marijuana or the level of THC content in either – both were illegal cannabis and a controlled "Schedule I" drug.

As cannabis laws and policy have changed over the years, now, in the U.S. and, as applicable, in other jurisdictions, the legal difference between marijuana and hemp is often based upon THC content level. In the U.S., again by way of further example, the Agriculture Improvement Act of 2018 defines legal hemp as "Plant Cannabis sativa L. and any part of that plant, including cannabinoids with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis." Thus, under federal law in the U.S., cannabis that has no more than 0.3% THC is legal hemp, but cannabis that contains more than 0.3% remains illegal marijuana. Each jurisdictions' definitions for each should, of course, be consulted to determine whether hemp and marijuana are distinguished from one another and where the lines of cannabis legality or illegality are drawn.

THC vs. CBD

THC and CBD are both cannabinoids found in cannabis. A cannabinoid is a naturally occurring compound that reacts with cannabinoid receptors found in our nervous system that are part of our endocannabinoid system, involved in appetite, mood, and sensing pain.

As noted, THC is a psychoactive cannabinoid in marijuana that produces a "high." CBD, or cannabidiol, is a non-psychoactive cannabinoid that may have some health benefits. But more studies are needed. CBD can be derived or extracted from hemp and marijuana. Many CBD products are derived from hemp, containing low levels of THC and higher levels of CBD. Whether CBD or CBD products are legal in any particular jurisdiction will be driven by legal definitions and parameters established by applicable regulatory authorities.

GIBRALTAR
HASSANS INTERNATIONAL LAW FIRM

1. What regulatory frameworks are relevant to medical and recreational cannabis and the cultivation, manufacture, distribution etc of cannabis and cannabinoids in Gibraltar?

The Drugs (Misuse) (Amendment) Regulations 2019 (the Regulations) provide for the supply and possession of certain cannabis-based products for medicinal use, in limited circumstances.

Cannabis and/or cannabis resin, cannabinol and cannabinol derivatives are "controlled drugs" for the purposes of the Crimes Act 2011. The supply, possession, importation and exportation of such substances is therefore prohibited, subject to the Regulations.

The prohibition does not apply to products with a THC content of less than 0.3%.

It is envisaged that Gibraltar may seek to introduce legislation to control, licence and regulate medicinal cannabis. In particular, it is expected that this new legislation could be introduced at some point during 2021 to capture, inter alia, the import, export, manufacture and processing of cannabis for medicinal purposes in and from Gibraltar.

2. What are the regulatory challenges in allowing the medical and recreational use of cannabis and cannabinoids in Gibraltar?

The use of cannabis-based products for medicinal purposes is restricted to use by an individual to whom such product has been supplied by an authorised medical practitioner, for the limited purposes set out in the Regulations (see paragraph 3 below).

The recreational use of cannabis is not legal in Gibraltar.

3. What regulatory frameworks are relevant for the cultivation, manufacture and supply of medicinal and recreational cannabis products in Gibraltar?

The Regulations provide for registered medical practitioners in the employ of the Gibraltar Health Authority to authorise the supply of cannabis-based products for

medicinal use to patients. Practitioners are able to supply, or direct the supply of, such products to patients who have been diagnosed as suffering from the following conditions:

(a) moderate to severe muscle spasticity in multiple sclerosis that has failed to respond to standard medications;

(b) severe, refractory epilepsy that has failed to respond to standard medications;

(c) severe and life-altering pain that has failed to respond to standard and rising levels of pain control medications; or

(d) intractable nausea and vomiting associated with chemotherapy, despite the use of standard treatments under supervision.

The authority to dispense approved cannabis-based products to the public is also limited to the Gibraltar Health Authority pharmacy.

Cultivation of any plant of the genus Cannabis is specifically prohibited by section 508 of the Crimes Act 2011.

As set out above, it is envisaged that a draft bill in connection with medicinal cannabis may be presented in the near future. It is anticipated that this could lead to legislation specifically seeking to licence and regulate, inter alia, the import, export, manufacture and processing of cannabis for medicinal purposes.

4. Which body is responsible for legislative controls relating to CBD?

The Gibraltar Health Authority is responsible for the training of medicinal cannabis practitioners and the supply to the public of products for medicinal purposes.

The Ministry of Health is responsible for Government policy on health-related matters.

5. Is there any possibility to commercialise CBD products without a Novel Food approval or medicinal product marketing authorisation in Gibraltar?

Each product to which the Regulations apply must also have first been specifically approved by the Gibraltar Health Authority, after consultation with practitioners, as a product which is safe and effective for use by affected patients.

6. What are the testing specifications in Gibraltar for determining the compliance of CBD with regulatory requirements (i.e. what are the testing specifications for determining the purity and/or level of any controlled substances in CBD?) and what documentation or evidence would need to be submitted to the regulatory authority in this regard?

There is currently no regulatory framework of testing of CBD products. Each individual product must first be approved by the Gibraltar Health Authority in consultation with practitioners.

7. Are there any regional limits on the quantity of CBD that can be purchased or imported?

Products with a THC content of more than 0.3% can only be purchased or imported by the Gibraltar Health Authority, or at the direction of the Gibraltar Health Authority, for the limited purposes referred to in paragraph 3 above.

There is no quantity limit on the importation or sale of products with a THC content of less than 0.3%.

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