



LEGALINK

INTERNATIONAL BUT PERSONAL

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 continues 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 ruderalis. 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.

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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 jurisdiction’s 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.

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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.

NETHERLANDS

EKELMANS & MEIJER ADVOCATEN

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

Pursuant to the Opium Act (in Dutch: Opiumwet), it is a criminal offence in the Netherlands to possess, produce or deal in drugs. The Opium Act makes a distinction between category I drugs (hard drugs) and category II drugs (soft drugs). This distinction is relevant because an offence relating to a category I substance can carry a more severe punishment than an offence relating to a category II drug. Cannabis is listed as a category II substance.

The Opium Act contains the possibility of an exemption to the prohibition of producing drugs for the purpose of public health. These exemptions are intended for businesses or agencies wishing to work with drugs referred to in the Opium Act. Under certain conditions, the prohibition does not apply to pharmacists, dispensing general practitioners and veterinarians, nor does it apply to Government-affiliated agencies or to persons or agencies that stock drugs for medicinal or dentistry purposes or for their own medicinal use. The Bureau for Medical Cannabis (BMC) is tasked with the production of cannabis for medical and scientific purposes.

Although the cultivation, production and possession of cannabis is prohibited under the Opium Act, the Netherlands has developed a policy of toleration (in Dutch: gedoogbeleid) regarding small quantities of soft drugs. This means that the cultivation, production and possession of cannabis is still illegal and punishable under Dutch law, but a person will not be prosecuted when he is not exceeding the tolerated limits. These quantities are defined as follows:

- Maximum of 5 grams of cannabis per person (marijuana or hash);
- Maximum of 5 cannabis plants for personal consumption.

Furthermore, so-called coffee shops are allowed to sell cannabis, provided that they observe the rules. These coffee shops:

- may not cause any nuisance;
- are not permitted to sell hard drugs;

- are not permitted to sell cannabis to minors;
- are not permitted to advertise drugs;
- are not permitted to sell large quantities (over 5 grams of cannabis) in a single transaction;
- are not permitted to have more than 500 grams of cannabis present in stock.

Municipalities (cities) may determine whether coffee shops are allowed to operate within their boundaries and, if so, how many. They may also impose additional rules.

Lastly, the consumption or use of drugs by persons aged 18 or above is not a criminal offence in the Netherlands. However, municipal authorities may issue a local decree (in Dutch: Algemene plaatselijke verordening) that prohibits the use of drugs in designated areas. When a person uses drugs in one of the designated areas, this person may be arrested or ordered to pay a fine.

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

The toleration policy has led to a seemingly paradoxical system. The coffee shops are allowed to buy and sell soft drugs to consumers. At the same time, the large-scale production of these drugs is prohibited and the cultivation of more than 5 cannabis plants is punishable and likely to be prosecuted. And inevitably the coffee shops can only acquire their cannabis from the criminal circuit.

The Dutch Government has acknowledged this discrepancy and is currently working on an experiment where coffee shops in certain cities can legally acquire cannabis from a state-appointed producer. The aim is to examine the effects of the experiment on the problems experienced by some municipalities in terms of crime and public health.

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

See answers under question 1 and 2.

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

The Dutch Ministry of Health, Welfare and Sport.

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

Currently many CBD products are being sold on the Dutch market. However, CBD products are often made from a concentrate of cannabis (hemp) oil. Cannabis oil is ranked in category I of the Opium Act. Its preparation, possession and sale are therefore prohibited. In practice, its sale is currently tolerated under the toleration policy.

6. What are the testing specifications in The Netherlands 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?

Tetrahydrocannabinol (THC), one of at least 113 cannabinoids identified in cannabis, is the principal psychoactive constituent of cannabis. Under Dutch law, CBD products containing less than 0.2% have been legalised.

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

See above. In practice this may vary since municipalities may set their own rules

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