

Navigating through the cloud of cannabis legislation in South Africa

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Currently, South Africa is one of only three African countries that permit the cultivation of medical cannabis. Zimbabwe and Lesotho also permit the plant's cultivation and Uganda and Swaziland are in the process of introducing new legislation to regulate commercial production. In South Africa, a licence for cannabis production can be obtained, but the processes for its provision are stringent. Further recent legal developments in the country point to a growing attempt to harness the plant's potential and ensure adequate control of the cultivation and sale of cannabis products.



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The Medicines and Related Substances Act of 1965 (Medicines Act) historically mandated the-then Medicines Control Council, now referred to as the South African Health Products Regulatory Authority (SAHPRA), to regulate the availability of quality medicines, which are safe and efficacious for their intended use. Amongst other things, this mandate requires SAHPRA to apply standards for the manufacturing, distribution, selling and marketing of medicines, medical devices and scheduled substances, which includes cannabis.

In terms of the Medicines Act, medical practitioners are permitted to apply to SAHPRA for permission to access and prescribe unregistered medicines when intended to treat their patients, which may include cannabis. Accordingly, SAHPRA acknowledges and permits that cannabis products, intended for medicinal purposes, may thus be made available in exceptional circumstances, to specific patients under medical supervision.

Cultivation licence

Potential cannabis growers and producers should note that, under the Medicines Act and in line with the United Nations Single Convention, the cultivation, production, manufacturing and use of medicinal cannabis products may only occur through a licence issued by SAHPRA and a permit issued by the Department of Health. Applicants can apply to SAHPRA for a licence to cultivate/grow and produce cannabis and cannabis resin, extract and test cannabis, cannabis resin and/or cannabinoids, and to manufacture medicines containing cannabinoids.

In providing the licence, SAHPRA will inspect the plans for the facility and the quality-control procedure, amongst other things. In addition to this, applicants would also be required to apply to the Director-General of Health for a permit to acquire, possess, manufacture, use or supply cannabis. The stringent quality control measures are necessary to ensure that the product is safe for medical use. Although there is no limit on the amount of cannabis that can be grown, as part of the application process, SAHPRA will allocate a permitted quantity.

It should be noted, however, that SAHPRA is unlikely to issue any new licences during South Africa's lockdown period, as cultivating cannabis is not listed by the government as an essential service that is allowed to remain operational during this period.

Recent legal developments include the reassigning of Cannabidiol (CBD), which is a component of the cannabis plant, from Schedule 7 of the Medicines Act (being a highly regulated substance) to Schedule 4 (being substances that can be sold with a prescription). In addition, some CBD products and products with THC levels of less than 0.001% and less than 0.0075% of CBD were excluded from the list altogether (which means they can be purchased without a prescription). For licenced cannabis producers in South Africa, this has now opened a range of potential new markets for their product. That being said, CBD products which do not fall into the exemption (namely CBD products and products with THC levels of more than 0.001% and more than 0.0075% of CBD), continue to require a prescription by a medical practitioner in order to be sold.

Personal use

The laws around personal use of cannabis have also changed and tend to point to the increasing acceptance to the use of the plant under certain circumstances. In 2018, the Constitutional Court legalised the private use of cannabis, upholding the Western Cape High Court's 2017 ruling, which found that the criminalisation of the private use of cannabis was unconstitutional. The Constitutional Court found that banning private cannabis use was an infringement of a person's right to privacy and "unconstitutional and invalid". The Court also ordered parliament to draft new laws within 24 months (the deadline being September 2020) to reflect the order. Reportedly, a draft of the Regulation of Cannabis Bill has been drawn up by the South African Ministry of Justice and circulated to various government departments for comment, although this Bill has not yet been published in the public domain.

Tito Mboweni, South Africa's Minister of Finance, indicated earlier this year that he was in the process of considering the legalisation of the cannabis industry. President Cyril Ramaphosa also voiced his support for the economic opportunities afforded by the cannabis industry during his State of the Nation address in February 2020. A recent report by Prohibition Partners estimated that South Africa's cannabis industry could be worth over \$23-billion by 2023. The legalisation of the cannabis industry in South Africa could potentially also lead to an enormous increase in revenue collection by the South African Revenue Service.

International trade and control

In addition to these current regulations, South Africa is a signatory to the three United Nations (UN) conventions that

regulate the international trade in narcotic substances and the country is in regular contact with the International Narcotics Control Board. The three UN Conventions are the Single Convention on Narcotic Drugs, 1961 (as amended by the 1972 Protocol); the Convention on Psychotropic Substances, 1971; and the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988. The purpose of these conventions is to establish international control measures for psychoactive substances so that they can be made be available for medical and scientific purposes, while preventing their illegal use.

For investors willing to comply with existing and developing legislation, medical cannabis is optimistically expected to generate billions of dollars for the economy in coming years, an exciting market to monitor, with a great deal of potential. This is welcome news in current, uncertain times and hopefully the industry will see high growth in the coming decades.

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