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THE CANNABIS ACT IS HERE

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Following months of speculation and at least one false start, the Canadian Cannabis Act (the “Act”) has finally come into force on October 17th 2018, ending the debate as to how and when the already established cannabis industry (therapeutic purposes) will pivot into an adult-use one. This pivot is often referred to as the second wave of legalization.

Some context: After lengthy public consultations on the existing Access to Medical Cannabis regime and following an electoral promise by the Liberal government of Canada, the Act was introduced to Parliament in April 2017. The Act then ping ponged between the government and the Senate. The industry was of course eager to have some clarity as to the direction it eventually needed to take moving forward. That’s the quick and easy version of the story.

Originally promised for July 1st 2018, the Act came into force shy of two months and a half later, on October 17th 2018. This gave the industry just enough time to digest another piece of legislation that was tabled over the summer of 2018: the Cannabis Regulations (the “Regulations”) in support of the Act. These regulations were the result of public consultations on the topics of license classes, permitted activities involving cannabis, security clearances, reporting duties to Health Canada, administrative penalties, etc. The provinces were also busy at work drafting their own legislation on how cannabis products will be made available, marketed, sold and consumed in each respective province.

Many articles have since been written reporting on how the industry should interpret the Act, and how the government should enforce it in anticipation for October 17th, the date the market became open to the adult use of cannabis.

As we are comfortably past that date, now is as good a time as any to give a general overview of some key commercial aspects of the Act and the Regulations to those who are attracted by the industry.

Cannabis Products

When the Act was open for debate, and prior to Royal Assent, there were several discussions regarding the classes of products that would be available for sale to the public, their mode of

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consumption and the restrictions regarding the potency of these products. For Example: Would we see edibles?

The following five categories of Cannabis Products are, at the time this article was written, the only formats available in Canadapost October 17, 2018, excluding additional restrictions imposed by individual provincial regimes (for example Quebec, with its ban on home growing), or for other commercial reasons:

1. Dried Cannabis;
2. Fresh Cannabis;
3. Cannabis Oil;
4. Cannabis Plants
5. Cannabis Seeds.

Classes of Licenses

The Regulations create six different classes (with additional subclasses) of licenses that authorize the industry to handle cannabis in one way or another. Multiple classes of licenses can be held by the same holder, at the same time:

- License for Cultivation;
- License for Processing;
- License for Analytical Testing;
- License for Sale;
- License for Research; and
- Cannabis Drugs License.

The **License for Cultivation** includes three subclasses: (a) micro, (b) standard and (c) nursery cultivation. These subclasses dictate the amount and the type of cannabis that the license holder will be entitled to cultivate per year. For example, a nursery license allows for the handling of cannabis plants or seeds, but not dried cannabis. Both the standard and micro cultivators will be authorized to obtain dried cannabis, fresh cannabis, cannabis plants or seeds by cultivation. Micro cultivators will be limited to a surface area of 200m². Interestingly, Cultivation License holders will be able to make a one-time declaration at the time that their application is filed with Health Canada regarding the type and quantity of their starting material, whether it be from a licit market or not.

As for the **License for Processing**, there are two subclasses: (a) micro and (b) standard processing. Processing involves transforming the product, such as creating cannabis oils via extraction. Such a license does not include the right to cultivate cannabis and conversely, a holder of a processing license will be authorized to produce cannabis products in ways that cannot be obtained with a License for Cultivation alone. Micro processors are restricted to a yearly amount that is equivalent to 600kg of dried cannabis unless they also hold a license for micro-cultivation for the same site and for which the cannabis is sold exclusively to that site.

A **License for Analytical Testing** authorizes the possession of cannabis, as well as altering its chemical or physical properties, for the purpose of testing. This was included to allow a specialized industry to service Cannabis businesses (to test for pesticides, potency, or even develop their own products), without the cumbersome framework that existed prior.

A **License for Research** allows a holder, for the purpose of research, to possess and produce cannabis, as well as sell cannabis plants and plant seeds to a cultivation license holder, to another holder of a license for research, to a holder of a cannabis drug license, and to administer and distribute cannabis to a research subject.

The **License for Sale** includes a “**License for Sale for Medical Purposes.**” As such, this model is for those who wish to sell and distribute cannabis products directly through therapeutic only channels.

A License for Cannabis Drugs: Very succinctly, cannabis can, under certain conditions, be qualified as a pharmaceutical drug requiring a DIN number. In order to develop these drugs containing cannabis, one must hold a cannabis drug license as well as a drug establishment license under the Food & Drug Act.

Security Clearances and Key Investors

For cannabis license holders, new categories of individuals must now obtain a valid security clearance in order to exercise their functions. For example, a “key investor” having direct control of a cannabis license holder.

Briefly, a key investor is someone who, by virtue of their contribution to the license holder (whether monetary or not), is in a position to exercise direct or indirect control over this cannabis business.

In either case (direct or indirect control), a holder of a license will have to maintain a record that contains personal information on each key investor, which will then have to be disclosed annually to Health Canada. In the event that a key investor is in a position to have direct control over the operations of a cannabis company, this key investor will also need to be security cleared. This criteria alone has already for effect the restructuring of the way in which commercial transactions are managed in the cannabis space.

Conclusion

This was a very general overview of the context in which the cannabis industry now finds itself in Canada. It goes without saying that mastering the new regulatory framework is key to plotting a successful business plan for cannabis related activities. Given the regulatory challenges, it is of course suggested to deal with professionals familiar with the field, such as those who are part of [ROBIC's Cannabis Group](#).