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Québec Releases Framework for Recreational Cannabis

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The Canadian government is going full steam ahead with its plans to legalize cannabis for recreational purposes in July 2018, but it has left some of the toughest decisions relating to the sale, distribution, cultivation and promotion of cannabis to the provinces and territories. As a result, a number of our clients in a wide range of sectors – private equity investors, landlords, biotechnology companies and bankers – now have more questions than answers. In a recreational cannabis market that is projected to be valued somewhere between $5 billion and $20 billion, what are the rules by which Canadian businesses will be asked to play?

On November 16, 2017, the Québec government weighed in on these questions with the introduction of Bill 157, *An Act to constitute the Société québécoise du cannabis, to enact the Cannabis Regulation Act and to amend various highway safety-related provisions* (Bill).

The primary purposes of the Bill are (i) to create the Société québécoise du cannabis (SQC), a subsidiary of the Société des alcools du Québec, which would act as the sole retail distributor of cannabis in the province; and (ii) to enact the Cannabis Regulation Act (Act), which would establish a framework to regulate the possession, sale, distribution, cultivation, promotion and use of cannabis for recreational purposes. If enacted, the Bill will create a government-run monopoly for the distribution and sale of cannabis.

Retail Sale of Cannabis by the Société Québécoise du Cannabis

The SQC would be permitted to (i) purchase cannabis from producers licensed under the federal *Cannabis Act*; (ii) operate retail locations; (iii) sell cannabis over the Internet; and (iv) authorize a person to engage, on the SQC's behalf, in the transportation, including the delivery, and storage of cannabis.

The Québec government plans to have 15 retail outlets in operation by July 2018, with 150 retail outlets planned to be operational by July 2020. Sales would also be facilitated over the Internet via an online platform, with Canada Post delivering cannabis to consumers. The SQC would determine the retail price of cannabis, although the Minister of Finance may set parameters on which the SQC must base the retail price of cannabis. The taxation of cannabis is yet to be determined; however, the federal government has proposed a taxation plan under which the federal and provincial governments would share equally in tax revenue at a rate of $1 per gram of cannabis or 10% of retail price, whichever is greater.

The minimum legal age for purchase, possession and use of cannabis will be set at 18. The SQC may not sell a total amount equivalent to more than 30 grams of dried cannabis to a purchaser in the course of a single visit to a cannabis retail outlet.

Cultivation, Possession and Use

The Act prohibits cultivating cannabis for personal purposes, even though the federal *Cannabis Act* permits individuals to grow up to four cannabis plants for personal purposes. Individuals may possess up to a maximum of 150 grams of dried cannabis, and cannabis must be stored in a place that is not easily accessible to minors.

The Act prohibits smoking cannabis on the property of health or social service institutions, on university and CEGEP campuses, in certain outdoor areas that are frequented by minors and within other enclosed spaces to which the public has access. Certain enclosed facilities may allocate a room in which smoking cannabis is permitted, so long as the operators of such facilities post visible signs indicating areas where smoking cannabis is prohibited.

Advertising and Promotion

No name, logo, brand element, design, image or slogan that is associated with cannabis, a brand of cannabis, the SQC or a cannabis producer may be associated with a sports, cultural or social facility or a facility maintained by a health or social services institution or research centre.

Direct and indirect advertising would be significantly limited under the Act, and advertising of cannabis would be prohibited where it is directed at minors; is false or misleading, or is likely to create an erroneous impression about the characteristics, health effects or hazards of cannabis; associates the use of cannabis or a cannabis accessory with a particular lifestyle; uses testimonials or endorsements; uses a slogan; contains text that refers to real or fictional persons, characters or animals; contains anything apart from text, with the exception of an illustration of the package or packaging of cannabis occupying no more than 10% of the surface area of the advertising material; and is disseminated other than in printed newspapers and magazines with an adult readership of no less than 85% or by means of signage visible only from the inside of a cannabis retail outlet.

Comparison with Other Provinces

Québec is the second province – after Ontario – to introduce draft legislation regulating the possession, sale, distribution, cultivation, promotion and use of cannabis for recreational purposes. Alberta also tabled draft legislation on November 16, 2017. A brief summary of the Ontario and Alberta legislation and the approaches discussed by other provinces and territories is provided below.

Ontario

The *Cannabis Act, 2017* was tabled on November 1, 2017, and provides the following: cannabis will be distributed through retail outlets and online by a government-operated subsidiary of the Liquor Control Board of Ontario; the minimum legal age to purchase, possess and use cannabis will be set at 19; cannabis cannot be consumed in public places, workplaces or vehicles; adults may possess up to 30 grams of dried cannabis; adults may cultivate up to four cannabis plants at their personal residence.

Alberta

On November 16, 2017, Alberta tabled Bill 26, *An Act to Control and Regulate Cannabis*, which provides the following: cannabis will be distributed through privately operated stores that will be licensed by the Alberta Gaming and Liquor Commission and online through an Alberta government website; the minimum legal age to purchase, possess and use cannabis will be set at 18; smoking cannabis is prohibited in the same public locations where smoking cigarettes is prohibited and at schools, daycares, hospitals and places that children frequent; adults may possess up to 30 grams of dried cannabis in a public place; adults may cultivate up to four cannabis plants at their personal residence.

Manitoba

Manitoba has not tabled legislation as of the date of this bulletin, but has announced its intention to implement a distribution framework whereby the Manitoba Liquor and Gaming Authority will be responsible for regulating the entire distribution channel for the sale of cannabis from federally licensed producers. The proposed model would allow for the private sector to apply for and be approved to sell cannabis at retail outlets within the province.

New Brunswick

New Brunswick has not tabled legislation as of the date of this bulletin, but has announced its intention to have New Brunswick Liquor distribute cannabis through tightly controlled, stand-alone retail outlets.

British Columbia

British Columbia is seeking public input on a regulatory framework and is considering leveraging the existing network of municipally licensed dispensaries in Vancouver and Victoria.

Other

Saskatchewan, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Nunavut, Northwest Territories and Yukon are conducting surveys and soliciting public input but have not disclosed any formal plans.

Conclusion

While Québec has risen to the challenge issued by the federal government, many questions surrounding the retail cannabis landscape in Canada remain unanswered. Clients looking to become involved in this emerging sector, whether as investors, marketers, producers, landlords or otherwise, are encouraged to closely monitor the industry to stay up to date on all regulatory and legislative developments.

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