

How cannabis production can boost revenue for pandemic-stricken countries

By [Darryl Bernstein](#)

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Medical and adult use cannabis production could provide new sources of taxable revenue for countries seeking to recover financially in the aftermath of the pandemic. Recent legal developments in South Africa point to a growing attempt to harness the plant's potential and ensure adequate control of the cultivation and sale of cannabis products.



Source: Eric Limon – [123RF.com](#)

In April 2021, the South African government proposed a draft national master plan with the aim of loosening regulations in the cannabis industry in order to boost economic development. The plan looks at the prospect of creating an export market for cannabis producers and how current legislation can be amended to remove constraints on the commercial cannabis market. The plan also involves increasing investment in cannabis industry research. Other suggestions included in the plan are support for farmers and indigenous dagga growers in the cannabis value chain, as well as support for manufacturing and product development. One of the priorities included in the plan is signing of the Cannabis for Private Purposes Bill into law by 2023.

Small producers

Countries that want to make a success of their cannabis production industries are now looking at ways to lessen the barriers for small farmers to help steer the legal cannabis market in a more equitable and sustainable direction. The current legislative frameworks for cannabis production tend to push out the smaller cannabis producers. Legislators are looking at ways to give small farmers preferential access to subsidies and financial assistance, special licenses and quotas for small producers. In this regard, there is a need for consultation with small producers as well as experts in the healthcare and life sciences, and legal sectors, to ensure that the right legislative framework is in place to support all elements of the market. This will also help to ensure that the rapid development of cannabis market is in line with the United Nations' sustainable development goals, especially the goal pertaining to the notion that no one gets left behind.



Navigating through the cloud of cannabis legislation in South Africa

Rui Lopes and Darryl Bernstein 21 Apr 2020



Cannabis legislation in South Africa

In South Africa, requirements regarding permits and licenses to produce and sell cannabis are currently onerous and legal advice is a necessity in order to participate in this sector.

South Africa permits the cultivation of medical cannabis. A license for cannabis production can be obtained, but the processes for its provision are stringent. 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, including 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.



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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 license issued by Sahpra and a permit issued by the Department of Health. Applicants can apply to Sahpra for a license 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 the license, 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.

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 licensed 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 point to the increasing acceptance to the use of the plant under certain circumstances. In 2018, the Constitutional Court legalized the private use of cannabis, upholding the Western Cape High Court's 2017 ruling, which found that the criminalization 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 was September 2020) to reflect the order.



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In September 2020, the South African government published the Cannabis for Private Purposes Bill which stipulates that people who deal in cannabis or sell it to a minor will likely face 15 years of jail time. The regulations also state that anyone who smokes the substance in public or too close to a non-consenting adult will face up to two years in jail, while a jail sentence of up to four years is to be expected for those who smoke close to children. For those living alone, the rules state that they can have unlimited seeds, but a maximum of four flowering plants, grown for personal use only.

International conventions

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 available for medical and scientific purposes, while preventing their illegal use.

Risks

Countries have different levels of legislation for cannabis and there is a high risk of breaking laws in some jurisdictions, for those transacting across borders in the cannabis industry. In light of the discrepancies in approach to cannabis regulation between countries worldwide, and in particular the extraterritorial application of anti-money laundering legislation, financial institutions should consider whether the cross-border elements of a proposed financing are likely to trip up the cannabis laws to which they are subject. Lenders, investors and underwriters in particular should query whether the borrower has subsidiaries, assets or operations in other jurisdictions that have not legalized their cannabis related business activities, and whether the activity in question would be considered illegal in the jurisdiction in which the lender or underwriter operates. Lenders, underwriters and other capital providers should consider their own internal risk appetite, including the legal, regulatory, credit and reputational risks of transacting across borders in the cannabis sector.

Despite these risks, however, recent legal developments in South Africa highlight the many opportunities to capitalize on the demand for cannabis products as a way to recover from the impacts of the pandemic.

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