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## Global Cannabis Industry: The Essential Primer

As more countries legalize or decriminalize the cultivation, manufacture, sale, and use of cannabis, companies across a variety of industries are looking for opportunities to capitalize on this emerging market. But the global legal landscape is confusing and constantly evolving, making it essential for People and businesses around the world to secure strong legal representation.

This white paper offers a primer to the complex and confusing global cannabis industry as it stands today. It is not meant as legal advice, but simply as an introduction to some key issues to consider if you are planning to enter the cannabis industry or expand your business into other regions. It should be noted that this is a fast-changing market segment, and the paper represents only a snapshot of one moment in time.

### State of the Industry

The cannabis segment has attracted strong interest from marketers across a spectrum of industries, who see a business that is still emerging but will ultimately have great commercial potential. Retailers such as Walgreens, CVS, Rite Aid, Kroger, Safeway, Nordstrom, and DSW are selling or plan to sell CBD-infused topical lotions, cosmetics, and even edibles where they are legally able to do so. Food and beverage makers are gearing up to sell CBD-containing products, when allowed by regulators, including Lagunitas Brewing, which has developed a cannabis-infused IPA and a THC-based sparkling water, and Ben & Jerry's, which plans to offer a CBD-infused ice cream.

Not only are makers of foods, health and beauty products, and supplements interested in CBD and THC. "There are also ancillary businesses that have shown immense growth," says Gil Selinger, a lawyer at Fairfield and Woods, P.C. (Denver, Colorado, USA). Colorado has legalized both recreational and medical use of cannabis. Selinger cites software, point-of-sale systems, and packaging as areas that are thriving in the state.

Providers of raw materials, warehouse owners, transportation companies, and wholesalers are also keeping a close eye on this emerging industry. In fact, business segments as diverse as tourism (e.g., wellness retreats) and home and garden products (e.g., CBD candles and outdoor grow lights for home cultivation) are expected to embrace cannabis to various degrees.



Investment activity involving consumer brands and cannabis specialist companies is already on the rise. Constellation Brands, owner of Corona and Modelo beers, invested \$4 billion in leading cannabis company Canopy Growth, while Molson Coors Canada entered into a joint venture with Canadian medical cannabis firm HEXO. Conversely, cannabis investor Sol Global took a 9.8% stake in Jones Soda.

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Meanwhile, mergers and acquisitions between cannabis marketers is intensifying as industry players position themselves for expansion beyond their local market. Arizona, where medical cannabis is legal and many believe recreational use will be allowed in the near future, has been an active market for M&A activity. “We’ve been involved with six deals in the past six months, with four more pending,” says Janet Jackim of Sacks Tierney P.A. (Scottsdale, Arizona, USA). “Outsiders are coming in thinking that we’ll be passing legal recreational marijuana shortly and are willing to invest. The sales prices of dispensaries are rising almost daily.”

Of course all of this industry interest springs from consumers, who are not only increasingly voting yes on legalization, but are also ready to purchase. The Ontario Cannabis Store, for example, received about 100,000 online orders within the first 24 hours of cannabis becoming legal in Canada, with 12,000 of these placed within the first 60 minutes. When the first physical stores opened six months later in April 2019, legal recreational cannabis sales in the province more than doubled online sales from the previous two months.

“The realization and increased focus on the therapeutic benefit from the various cannabinoids within the cannabis plant, and the lessening stigma from progressive governments worldwide decriminalizing recreational use, is seeing heightened interest in permissioned usage globally,” says Michael Finney, Bennett & Philp Lawyers (Brisbane, Queensland, Australia).

### Cannabis Basics

The *Cannabis sativa L.* species, from which all forms of cannabis are derived, has three main varieties or cultivars. Each has different levels of a compound called tetrahydrocannabinol (THC), which is what gives marijuana users their high.

Plants with a level of THC content low enough that they are considered non-intoxicating—with the specific definitions varying depending on the jurisdiction—are classified as industrial hemp. Hemp’s fibers, seeds, and flowers can be used to make paper, textiles, construction materials, rope, hemp seeds and hemp seed oils, and much more. Hemp has been used for these purposes for centuries in cultures around the world.

Plants with higher THC levels are typically bred and consumed for medical or adult recreational purposes, either in dried form for smoking or with the THC content extracted and infused into foods, beverages, topical ointments, candles, and other products. All of these applications give the user a high and many of them, say proponents, offer health benefits.

THC is just one of the cannabinoids in the *Cannabis sativa L.* plant. The other major cannabinoid of particular interest commercially is cannabidiol (CBD). CBD can be extracted from the flowers of plants classified as industrial hemp as well as those with higher THC content. Both THC and CBD are psychoactive, but unlike THC, CBD does not intoxicate. Many experts believe it can lead to beneficial treatments, reiterated in a report released by the National Academies of Sciences, Engineering, and Medicine in January 2017.

Some of the potential health benefits associated with THC and CBD, with and without the high, respectively, include reducing chronic pain such as from migraines or cancer, alleviating anxiety, reducing inflammation, and helping treat conditions such as epilepsy, PTSD, and glaucoma.

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Both THC and CBD can be infused into an array of products including foods and beverages; dietary supplements, protein powders, and over-the-counter medications; cosmetics, moisturizers, lotions, and shampoos; ointments, tinctures, and oils; and home fragrances and candles. The sky's the limit.

All told, the global legal cannabis industry, including dried cannabis and products containing cannabinoids, was estimated at US \$11.9 billion in 2018, and with a compound annual growth rate of 23.9%, is predicted to reach \$66.3 billion in 2025, according to Grandview Research. Another researcher, New Frontier Data, pegged the global value of legal and illicit cannabis together at \$340 billion in 2018. Dollar figures vary widely depending on researcher and methodology, but most concur that growth is likely to be a robust 20% to 25% per year in the near term.

### North America at the Forefront

As of 2018—remember that the status changes almost daily—more than 30 countries had legalized cannabis in some form, according to *Marijuana Business Daily*. Each jurisdiction is unique in the usage allowed, including among other aspects:

- whether medical and/or adult recreational use is allowed.
- how the segments are defined (e.g., the THC levels that differentiate industrial hemp from marijuana).
- the form the finished product can take (edibles, topicals, etc.).
- which aspects of the law are determined federally versus locally.
- which governmental bodies are responsible for regulating the law.

Canada is one of only two nations that have legalized adult recreational cannabis at the federal level. Uruguay has legalized recreational use, but in a more restrictive way, and is further behind in the implementation process.

“What sets us apart from the rest of the world is that we’ve legalized cannabis for recreational use on a federal basis,” says Trina Fraser of Brazeau Seller Law (Ottawa, Ontario, Canada). “But we have a high level of regulation with respect to quality assurance standards and security and in many ways are more restrictive than other countries that have legalized medical cannabis or the US states that have legalized recreational cannabis.”

Cannabis has been legal for medical purposes in Canada since 2001, with several iterations of regulation and legislation shaping the industry over the years. On October 17, 2018, recreational cannabis became legal nationwide under the federal Cannabis Act, which also began governing medical marijuana. The new law rolled out first with dried cannabis and low-concentration cannabis oils.

In June 2019, the country released its regulations for other forms of cannabis, from topicals to extracts to edibles, which become legal on October 17, 2019. Some of the regulatory controls include limits on THC, packaging and labeling requirements, and products that cannot be combined with THC (e.g., alcoholic beverages, caffeine, and tobacco). Many of these are meant to address public safety risks, especially for young people.

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“Many licensed producers have had to adjust their branding and promotional strategies given the very strict guidelines in the Regulations,” says Whitney Abrams of Minden Gross LLP (Toronto, Ontario, Canada).

Although the new regulations come into effect on October 17, 2019, processors are required to give Health Canada 60 days’ notice of any new product they intend to sell. As such, December 16, 2019, is the first date new products such as edibles, extracts, and beverages can be sold in Canada. Every component of cannabis is treated the same way under the Canadian law, meaning that products containing CBD fall under the same regulations as those containing THC.

In the US, the situation is much different from Canada’s. There is no federal law governing either medical or recreational cannabis, because cannabis in all its forms (other than industrial hemp) remains a Schedule I drug under the Controlled Substances Act and illegal at the federal level. Several bills have been introduced in Congress in 2019 that call for legalizing or decriminalizing the substance.

“It’s complicated,” says Alex Malyshev of Carter Ledyard & Milburn LLP (New York, New York, USA). “States may have made it legal or decriminalized it, but federal law trumps state law, and for both medical and recreational use cannabis remains illegal.”

The federal landscape means that cannabis activities carry even greater risk for non-US citizens. Things like investing in, or working for, a cannabis company can be seen as aiding and abetting an illegal enterprise, and even something as benign as attending a cannabis convention in the US can be seen by US border authorities as supporting an illegal enterprise. For non-US citizens, Malyshev explains, this can result in a lifetime ban from entry into the US under current policy. So there is still significant risk for foreign individuals and companies interested in investing in the US, despite the future potential of the industry.

In 2018, the Farm Bill legalized industrial hemp in the US market, where it is defined as *Cannabis sativa L.* plants with .3% or less THC content. Prior to the Farm Bill’s implementation in 2018, US companies could import hemp fiber, but not the flower. Once the provisions of the Farm Bill are fully implemented, the whole plant could be grown anywhere in any state that participates in the Department of Agriculture’s cultivation plan, or adopts its own, and shipped across state borders. The Farm Bill removed industrial hemp from the controlled substances list, moving oversight from the Drug Enforcement Agency to the Department of Agriculture, where it is treated like any other crop.

States are currently working to establish their own regulations or legislation on industrial hemp within the boundaries of the Farm Bill. Colorado has been on the forefront of proposing new regulation of hemp, rather than just relying on the federal law, Selinger reports.

“The Farm Bill is big,” says Malyshev. “Hemp could replace tobacco as a cash crop in states that are well-placed to grow it, allowing a new industry to replace a dying one.”

The Farm Bill also legalized CBD extracted from industrial hemp and many products that contain CBD, such as the topical lotions and cosmetics seen at Kroger and CVS. The industry has taken the view that as long as the compound is extracted from industrial hemp, and the CBD is not contained in a food or beverage, it is generally allowed. “This has led to a gold rush for CBD,” says Malyshev. CBD that contains more than .3% THC content remains illegal.

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The Farm Bill preserved the authority of the Food and Drug Administration over cannabis extracts, like CBD and THC. CBD-containing ingestible products, such as supplements, foods, and some oils, fall under the federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and are regulated by the FDA. This is true even if the CBD comes from industrial hemp. The FDA previously approved Epidiolex<sup>®</sup>, a drug for juvenile epilepsy that features CBD and THC as the main active ingredients, putting CBD into the category of an “active drug ingredient” (a broad category that includes substances like ibuprofen). This, among other things, prevents manufacturers from adding CBD to ingestible products such as food without prior FDA approval. The CBD industry and the FDA are at odds as to where the line is.

“The takeaway is that even though hemp, or CBD derived from hemp, may no longer be a Schedule I drug and illegal from a criminal standpoint, there are other laws and regulators, specifically the FDA, that will determine the legality of your business or product,” says Andrew Linden of Norris McLaughlin, P.A. (Bridgewater, New Jersey, USA).

The FDA has started to hold hearings to determine whether it will change its policy on foods and beverages containing CBD made from industrial hemp, and CBD products more broadly. The verdict is highly anticipated, with the first hearing attracting 100 speakers and 1,500 comments. But many observers believe it could take from two to five years before the FDA comes up with its final rules for cannabis edibles.

Meanwhile, as of this writing, 33 US states have implemented some form of medical marijuana program. The recent legalization of adult-use recreational marijuana in Illinois—the first state to legalize without a public referendum—means 11 of the 33 states now have made both recreational and medical use legal.

“The differences from state to state make this industry very complicated,” says Linden. “What may be perfectly legal in one state could lead to an arrest in another.”

Legalization has led to an economic boon for some—but not all—jurisdictions that have established a cannabis framework. The industry in Colorado, a pioneer that began allowing recreational use in 2014, is one of the most financially successful among US states. The state government has said that 25% of tourists coming to the state over the past five years have listed cannabis as a reason for their visit, and the industry reportedly generates \$1 billion annually for state coffers, representing 3% of Colorado’s budget. As of June 2019, Colorado had 2,917 licensed marijuana businesses and more than 41,000 people licensed to work in the industry.

In Arizona, medical use has been legal since 2010, with 130 dispensaries now open across the state after two rounds of licensing. Each license covers one retail store, most of which are vertically integrated, with their own cultivation facilities and kitchen. “It’s big business,” says Jackim, noting that there are 200,000 patients in the state who hold cards allowing them to purchase cannabis for medical purposes.

A referendum on legalizing recreational use failed in Arizona, but another vote is likely to come up in 2020. “The industry is working hard to get it passed,” Jackim reports. If the effort succeeds, the medical and recreational programs would likely operate side-by-side rather than combined, with each overseen by different government agencies and each taxed differently.

The number of other states that have been making attempts to decriminalize or legalize recreational cannabis continues to grow. For example, although New York’s efforts to pass a recreational marijuana law have failed to date, the state recently passed marijuana decriminalization legislation that reduces penalties for low-level possession. It should be noted



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that whether states have legalized medical use only, or both medical and recreational use, their legislative, regulatory, and licensing regimes vary widely.

While cannabis remains illegal on a federal basis in the US—aside from industrial hemp and some CBD products—the government has altered its enforcement priorities. Due to limited resources, it rarely prosecutes if a company is meeting protocols established in various federal memoranda, which are nonbinding but serve as a template for enforcement.

Some of these protocols include: no involvement from criminals or cartels, no sales to children, no shipping across state lines or selling in states where cannabis remains illegal, and no violations of the laws of the state where the company is based. Generally, legal ethics boards have ruled that lawyers advising in the cannabis field must advise that the activity is illegal federally, but that they can also advise on the relevant state laws. But lawyers should check their own state's ethics opinions first.

### Medical Legalization Continues Around the World

Fully 185 countries are signatories to the United Nations' Single Convention on Narcotic Drugs of 1961, which prohibits cannabis as a drug that can be abused and cause ill effects, without bringing a substantial therapeutic advantage. Each signatory's laws must reflect the Convention; that is the case for the US' Controlled Substances Act of 1971. Countries that have legalized cannabis are flouting the convention, and some, such as Canada, admit that openly.

"By passing the Cannabis Act, Canada has taken a position of principled non-compliance with its international drug treaty obligations," says Fraser. "We're acknowledging that making cannabis illegal didn't work, and that a more effective way to protect the health and safety of Canadians is to provide adults with access to a regulated and safe cannabis supply for non-medical purposes."

Thanks to changing public perceptions, moves such as Canada's, ongoing research on health benefits and risks, and the urging of the World Health Organization—in 2019 it came out in favor of less restrictive control of cannabis and of removing prohibitions for pure CBD and CBD preparations containing no more than .2% THC—the United Nations has said it will revisit cannabis under the Single Convention. It should be noted, however, that amending the convention is difficult with so many members involved.

Despite the convention, countries around the world have been moving toward legalization or decriminalization, especially on the medical side.

"Medical use of cannabis is and will be accepted around the world a lot more quickly than recreational use," says Mario Torres of Brazeau Seller Law (Ottawa, Ontario, Canada). "People are not enthused about prohibiting medical care. They don't want to disallow access to the only thing that may stop epileptic seizures in children or is part of a patient's treatment plan." Medical use is becoming more acceptable even in very conservative countries like South Korea and Thailand, which have legalized cannabis for medical purposes.

Latin America is one region that has been taking small steps toward legalization. With 600 million people, it is a big market. But more than that, it is the best place to cultivate cannabis due to its location near the equator and its rich history in the agro-industrial sector. "In addition to becoming a significant market in the future, it could become a global

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powerhouse in the export of cannabis,” says Torres. “It potentially could be so critical that companies that don’t position themselves in Colombia or Peru could be at a significant disadvantage in the long term.”

Within Latin America, Colombia is the territory that is furthest along in implementing its law, which legalizes cannabis for medical use only. After setting up a system with four different kinds of licenses for growing, processing, and selling cannabis, the government started approving licenses in April 2018. From August through December 2018, it received 1,500 applications. Most of the activity involves topical products such as cosmetics; it is difficult to register any supplements, beverages, or foods, at least in the early years of the law.

“All of the Canadian, Australian, and US investors are very interested in Colombia,” reports Monica Bonnett of Posse Herrera Ruiz (Bogotá, Colombia). She notes that the country’s location makes its environment perfect for efficient, year-round cultivation of *Cannabis sativa L.* “And the market is positive from an IP point of view,” she says, reporting that trademark and patent registration for cannabis-related brands and recipes is a streamlined process.

Neighboring Peru’s medical cannabis law was passed in 2017 and its basic regulations were published in February 2019. Although it is now legal to issue licenses, none have been granted yet as the industry waits for further regulations from the ministries of Health and Agriculture and the safety protocol from the Ministry of the Interior.

There are some grey areas in the law, according to Samantha Boy Roca of Garcia Sayán Abogados (Lima, Peru). In Peru, the cut-off between industrial hemp and other forms of cannabis is set at 1% THC content. “The law doesn’t talk about CBD, which could come from either,” Boy says. “Still any product that is not under the medical cannabis law, that is considered a pharmaceutical product, a medical device, or a sanitary product, will need a sanitary registry for its import and commerce.”

Other countries in the region, such as Argentina, Brazil, and Mexico, could ultimately be strong consumer markets, some experts believe, although it may be a long time coming. Chile has a decriminalized model and the legislature does not see cannabis as a big social issue, but is also not in a rush to create an export industry, in spite of the country’s position as a prime agricultural source of fruits and vegetables for the global market.

Mexico is an interesting case. The new government is drafting legislation through the Interior Ministry that is expected at the end of 2019. The move was spurred by the country’s Supreme Court, which recently ruled that prohibiting the use of marijuana, both medical and recreational, is illegal. It is not yet known if the law will create a framework for the country—another agricultural power on the global market—to create an export industry, or what kind of production, sale, or usage will be allowed.

In Australia, meanwhile, there have been a number of legislative amendments over the past two years, at both the federal and state levels, that have liberalized the landscape somewhat. Cannabis for medicinal purposes is permitted in a very controlled way under Australia’s Narcotic Drugs Act 1967 and cultivation for medicinal purposes is possible with a license and permitting from the Australian government. Certain medical patients, such as those participating in clinical trials, can gain access to cannabis under the Therapeutic Goods Act 1989, with each state having its own regulations as well. One CBD-containing product, Nabiximols, sold under the brand name Sativex<sup>®</sup>, has been registered for use in Australia for the treatment of spasticity in multiple sclerosis patients.

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“It should be noted that the cultivation of plants with a THC content greater than 1% in Tasmania and Queensland and .35% in Victoria is an offense under relevant Australian state drug legislation,” Finney says. “The framework for production of industrial hemp is quite different and licensing provisions are available in all states for growers.”

Australia’s medical marijuana regime is likely to continue to expand. “It is likely this trend will continue as clinical trials continue and a number of medicinal cannabis products become approved medicines, like Sativex<sup>®</sup>,” Finney says. “However, beyond use for medicinal and scientific purposes, it is likely that Australia will maintain a cautious approach and remain mindful of its international obligations under the United Nations Single Convention.”

In Europe, meanwhile, Switzerland, Portugal, Italy, Germany, and Britain are among those who have legalized medical marijuana or moved in that direction. The landscape is more highly regulated than in some US states, with usage limited to cancer and terminal illnesses, for example. Luxembourg is set to be the first country to legalize adult recreational use. And even in Asia, which has been the slowest region to allow the use of cannabis for any purpose and has some of the strictest penalties for violating the law, there is some movement toward legalization on the medical side, with Thailand and South Korea leading the way.

Because of the local nuances, one of the most important factors to determine before entering a new jurisdiction is how much THC and CBD a given product contains, as well as the type of cannabis it contains. This is the basis of whether it is truly legal. “The most important thing anyone getting involved in this industry needs to think about—as an investor, operator, or retailer—is knowing your product,” Linden says.

Consumers, employees, and anyone else with a connection to cannabis must do their due diligence as well. Cases in New York, Texas, and Idaho have all revolved around a user, retailer, or trucker not being aware of what was included in a product and getting caught for doing something he or she thought was legal and safe.

### **A Fast-Changing and Confusing Landscape**

“This industry seems to move 10 times faster than any other,” Fraser says. “The legal framework and the political and cultural landscape are changing so quickly, and the deal flow is amazing. Clients are racing to seize global opportunities. It’s literally changing every day.”

Not only is the landscape constantly evolving, but the implementation of new laws can take some time, with bumps along the way. This can lead to some confusion. “There are always growing pains when you have the letter of a new law play out,” Torres says. “There are processes and steps to setting up a brand new industry. Nothing disruptive rolls out easily.”

“There have certainly been glitches [in the implementation of the law in Canada],” says Abrams. “Many of them have been a result of the fact that the Canadian recreational cannabis industry is uncharted water.”

In the US, marketers of hemp and CBD under the Farm Bill are awaiting further information before they can proceed. “Don’t forget, although hemp is now legal at the federal level, it must be grown, distributed, and sold in accordance with the Farm Bill, and we are still waiting on federal and state regulations explaining how to do that,” says Linden.



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Often issues that come up during and after the implementation phase lead to further changes in the law. Arizona's medical cannabis law was recently amended to require testing of all medical marijuana when requested by the patient, with the Department of Health appointed as the advocate to help develop lab standards for the testing.

In Colorado, the law has evolved in two major ways since it was first implemented, Selinger reports. One involves the ability to designate areas for public use of cannabis. Initially usage was allowed only in homes and not in parks, at music venues, on sidewalks, or in hotels. Legislators are opening that up a bit to include more communal-use locations like coffee shops, bars, and restaurants, although some municipalities have ordinances restricting these types of use.

Also changing in Colorado: the relaxation of limits on who can invest in local cannabis companies. Investing was initially restricted to state residents, with a maximum of 10 investors, none public, allowed per company. Now the state is considering opening the flow of capital to include large angel investors that are currently barred, expanding the number of investors that can be involved in a business, and other changes that would help bring more capital into the state.

Oklahoma's medical marijuana law went into effect in June 2018. But issues arose that needed to be addressed thereafter, leading to the Oklahoma Medical Marijuana & Patient Protection Act of 2019. The new law added some additional protections for employers, among other elements. New protections include the right to refuse to hire applicants for safety-sensitive positions and to discipline or discharge employees in safety-sensitive positions if they test positive for marijuana, even if they hold a valid medical marijuana license.

Court cases also result in changes to the law over time. A recent State Supreme Court decision in Arizona involved a medical marijuana patient and card holder who had picked up a small amount of hashish resin from the medical marijuana he possessed. He was convicted and spent two and a half years in prison. He appealed the result and the Court of Appeals ruled that hashish was not part of the medical marijuana law and remained a Schedule I illegal drug. "That threw the industry into a tizzy," Jackim says. "Some retailers removed hash products from their stores, while others thumbed their noses and continued business as before the ruling."

Sacks Tierney represented a doctors' group in a further appeal of the Appeals Court decision, filing an amicus brief along with 10 other groups representing patients, dispensary associations, and others. In May 2019, the State Supreme Court ruled that hashish is part of the medical marijuana plant and that all parts of the plant are covered under the medical marijuana program and therefore legal, overturning the original conviction.

Companies and individuals must contend not only with confusion surrounding changes in the law and the regulations attached to it, but they also must negotiate a complicated web of sometimes conflicting laws at the federal, state/province/territory, and municipal level.

This is not only true in jurisdictions where cannabis is illegal at the federal level but legal in some states, as is the case in the US and India. In Canada, for example, federal law and regulation dictate aspects such as limits on possession, sale and distribution; minimum age for consumption; the licensing and permitting regime (through Health Canada); rules on personal cultivation; rules for packaging, labeling, advertising, and promotion; import and export rules and what types of trading partners are allowed; and the banking and taxation framework.

The role of the provinces and territories, meanwhile, is to set the minimum age for purchase of cannabis, as long as it is not lower than the federal age of 18; set their own possession limits (federal law dictates 30 grams); decide whether to

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restrict or ban personal (non-medical) cultivation; determine where cannabis can be consumed and how it can be distributed; and determine retail and/or online sales protocols in their region. “Each province has a unique approach to each aspect and, although there is some overlap, there are many differences between the way that individual provinces have decided to regulate,” says Abrams. “The most obvious from a consumer perspective are minimum age for purchase and, of course, the retail framework in each province.”

Municipalities also have some say, such as in whether consumers can use cannabis in public spaces or whether cannabis can be used, sold, or grown there at all.

Local laws can also be confusing and must evolve. In the US, Arizona’s Farm Bill, passed in 2018, permits industrial hemp cultivation, harvesting, transporting, etc., all overseen by the State Department of Agriculture. It requires a provisional series of licenses to be obtained from the state, with five licenses available for different activities, but there is no protocol for retail licensing and the State Department of Agriculture claims to have no jurisdiction over CBD retailing. “It’s like a country without a home,” says Jackim. “Retail CBD shops are fumbling to figure out where they stand with respect to retail hemp.”

### **Broad Implications**

As with any disruptive industry, there are far-reaching implications from new cannabis laws, both medical and recreational, impacting all areas of the business and legal landscape.

One of the most important areas is intellectual property, including trademarks for cannabis brands and patents for formulas and processes. In most cases, cannabis and cannabis-related products cannot be shipped across state lines in the US. They cannot be imported or exported across national lines or, in many instances, globally either, at least not yet. But a company can establish a brand and expand by licensing that brand to businesses operating in other jurisdictions. That requires an intellectual property that is fully protected in all relevant territories.

“Intellectual property is the biggest asset cannabis companies have,” says Malyshev. “You can’t ship the product physically across state lines but you can export trademarks, know-how, and processes.”

A complication in the US is that a company cannot file a federal trademark for an illegal business, which is where most areas of the cannabis industry currently sit. “In the US, state-level trademarks are less valuable than federal trademarks, but they’re the best available solution,” Malyshev says.

The Farm Bill made it possible to file federal trademarks for products related to industrial hemp, including some CBD products, but lawyers report that the USPTO seems to be sitting on the applications without making a decision one way or the other. A further complication is that some of the visual representations of these brands feature a picture of the hemp leaf, which is indistinguishable from a THC-containing cannabis leaf, meaning that applications involving that type of brand imagery are typically rejected.

The workplace is another area where legal medical and recreational cannabis use can have consequences. Many issues have to do with balancing the human rights of allowing the use of cannabis for medical purposes and the right of a company to ensure safety in the workplace. For instance, a Newfoundland, Canada, arbitration case dealt with the undue hardship to an employer for having to accommodate medical cannabis users in a safety-sensitive workplace in the

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construction industry. A Newfoundland court upheld the arbitration decision, siding with the employer, which had refused employment.

In another workplace incident, an employee in Idaho used CBD oil that she had purchased and thought was legal, but her drug test came back positive for THC and she lost her job. (There is no way for consumers to tell if the product really contains what it says it does on the label, due to the lack of regulation in the US.) This is just one of several similar examples across the country.

Local laws are changing to deal with workplace issues as well. New York City adopted a new law banning pre-employment testing for marijuana and THC, effective in May 2020, excluding certain safety-sensitive positions.

The cultivation, production, packaging, and sale of cannabis will also have a great impact on real estate, zoning, and commercial leasing. Where there is land that is zoned for cannabis manufacturing or growing, landlords and lenders need to understand zoning laws and protect their property security interests in the event that they get caught up in a federal case, even if their activities are locally legal.

Some landlords in Canada have implemented a blanket prohibition on growing or consuming cannabis on their land, which could lead to human rights cases asking whether a person has a right to restrict a patient using cannabis for medical purposes from growing or consuming the substance on property where its use is banned. Regulations and legislation will also arise regarding processing and growing in private facilities that are rented for commercial uses.

Some other areas to watch:

- **Impaired driving.** A case in Canada is being defended based on unconstitutionality. The government inaugurated a *per se* limit of THC that signifies impairment, but opponents argue that the limit is not appropriate since a defined amount of THC does not correlate directly with impairment, as it does with alcohol.
- **Transportation.** Even under the Farm Bill, some states still have on their books that any amount of THC is illegal. An Oregon driver was hauling industrial hemp from Oregon to Colorado. In Idaho, his load was tested to see if it contained THC, and the results were positive, even though the levels were under the proper limit to classify it as industrial hemp consistent with federal law. State troopers announced the biggest bust of marijuana in state history, confiscated the load, and criminally charged the driver.
- **Banking.** Banks stay away from the cannabis industry in jurisdictions where it is illegal, and sometimes where it is legal as well. The US Farm Bill did not specifically address banking issues related to hemp, and some banks have decided to avoid the hemp and CBD industry altogether, despite the newfound legality. Grocer Thrive Market stopped selling CBD products at the insistence of its payment processing company. In Arizona, the industry is established enough that some community banks are starting to handle money from cannabis companies with legal businesses, but it has been a slow road.
- **Securities.** Federal securities laws in the US prohibit investment in illegal businesses, and that includes businesses operating in states where cannabis has been legalized. If an investor and the company are both located in Colorado, for example, you will be granted an exception, but that does not work across borders or in states where cannabis remains illegal.

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- **Mergers and acquisitions.** As with everything else having to do with the cannabis industry today, mergers and acquisitions can be more complex in this industry than in others. In Arizona, transactions associated with cannabis companies require a complicated structure involving the sale of related businesses and affiliated entities and a changing of the board.
- **Agriculture.** British Columbia, Canada, is dealing with whether growing cannabis is an appropriate use of fertile agricultural land, while other provinces and some US states are asking whether they should allow cannabis to be grown outdoors since it could cross-pollinate and mar the industrial hemp grown on nearby farms.
- **Tribal law.** Arizona has 22 Native American tribes and the issue has come up of what happens when a Native person has a state-issued medical marijuana card but consumes cannabis on the federal reservation, where the activity is illegal. As it stands, that person could be arrested and incarcerated in tribal jail, even though he or she purchased the cannabis legally and for legitimate medical purposes.

Some of the many other areas impacted include insurance, taxation, and family law. And, while the examples mentioned relate to the US and Canada, which is ahead of the curve in seeing some of these issues come up, the same situations can occur all around the world wherever cannabis is legalized.

“Every day there’s a new issue,” says Fraser. “I wouldn’t say they are unintended consequences, but rather things that haven’t been fully addressed and are coming to the forefront.”

### Local Laws, But a Global Business

Cannabis is currently, for the most part, an industry in which local companies do business locally. That will certainly change quickly as companies look for additional opportunities and as legalization continues to occur. National and global expansion is already happening as companies seek to acquire existing cannabis firms in other regions, set up independent divisions to secure licenses in different countries, invest in local firms, or license their trademarks around the world.

“Cannabis companies in Canada have invested heavily in facilities and other aspects of their business, and they’re certainly thinking about opportunities in other countries,” Fraser says. “There are only so many Canadian consumers.”

Canadian cannabis firms, many of which are among the largest and most established in the world, want to enter Latin America to get access to the local market as well secure a presence in a global hub of cultivation and production. They also are eager to expand to other big markets, such as the US, when that becomes viable.

Canadian companies can currently legally export medical dried cannabis and oil only, due to the international treaties to which it and most other developed countries are a party. And they can export only to countries that allow medical cannabis on a federal level, including Australia and several countries in Europe, South America, and Africa.

Importation of medical cannabis into Canada is technically permitted, but the government will not grant a permit unless the cannabis is cultivated to standards as rigorous as Canada’s, which effectively bars imports, at least at present. “No one has standards as rigorous as Canada’s,” Fraser says. Currently the only approved imports are starting materials

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(seeds or clones) or small amounts of cannabis to be used to start plants used in research and development and clinical trials.

Imports and exports are currently limited in most other jurisdictions as well, due to federal laws and international treaties. Colombia's cannabis law, for example, allows companies to export finished products and cannabis oil, but not plants, hemp, or flowers. Although no exports have been allowed yet, many Colombian companies are looking for ways to do business in Peru and other nearby nations.

Even some countries where cannabis use is not legal are setting themselves up as cultivation and production hubs for the global market. In China, consumers cannot use cannabis, but two provinces are allowed to grow it for export, and an increasing number of CBD products are coming into the US from China.

Companies looking to expand on the global market need to be aware that each country has different laws, licensing schemes, regulatory frameworks, trademark registration processes, and general business laws, among myriad other variations. This knowledge is important as firms gear up to expand internationally and will become even more critical as some of the current restrictions fall by the wayside in the coming years.

### Securing Legal Representation

"It's a real mixed bag of laws around the world," says Torres. "Having access to reliable, competent counsel where you and your client don't know the lay of the land is so important."

"Cannabis laws in the US are [also] a patchwork of state, local, and municipal laws," Selinger adds. "You have to understand how that tapestry is woven together. The law changes if you move 10 feet across a county line. You need experts in local laws to navigate it."

For all of these reasons, it is critical for a company to have legal representation that encompasses every market where it plans to do business, that understands its needs both locally and globally, and that has both in-depth and current local knowledge in each market. That combination can be hard to find. Even the big global firms with offices around the world cannot provide full coverage or the detailed knowledge of a local firm.

The lawyers of Meritas, a global affiliation of 185 local law firms in 94 countries and 252 markets worldwide, including those contributing to this paper, have set up a number of initiatives that enable them to share information on the status of cannabis legalization worldwide. They are able to assist each other in client matters—from answering a simple question to handling a local acquisition—and help clients and potential clients stay on top of this fast-changing and complex area of law.

Some Meritas activities supporting the cannabis industry of late have included the founding of two Cannabis Practice Groups, one for Latin America and another for the US and Canada; the publication of a business guide, *Expanding Cannabis Operations in Latin American & The Caribbean*; presentations at the World Cannabis Congress and other industry events, as well as at the Meritas Annual Meeting; and informational articles in legal and business publications around the world.



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“In a new area of law that is constantly developing, we keep an eye on what’s going on and what the impact will be on our mutual clients,” says Torres, who founded the Meritas Latin American Cannabis Practice Group. “In our group we stay on top of all the developments in Latin America. It’s not just when they affect individual matters. We actively monitor and share developments in the region. Being able to say ‘we have you covered in that jurisdiction’ gives the client immense comfort.”

“We’re a team and we work together to provide the best guidance possible,” adds Bonnett.

Meritas firms are also working together to help their respective clients expand into new markets. “We rely on the local Meritas firm to assist our clients’ leadership teams in gearing up in a new jurisdiction,” Torres says. He had a client that wanted to purchase an entity in Colombia, for example. “In 48 hours I had found out that it could be done, with some heavy lifting, thanks to counsel from our Colombian firm, and in three or four months we closed the transaction.”

Some of the areas where Meritas firms have turned to each other to assist their clients include business licensing and permitting, mergers and acquisitions, intellectual property protection and licensing, import/export matters, fundraising and investment, and day-to-day operating issues such as tax implications and corporate filings. They also field many questions about local protocols and risks.

“It’s definitely helpful for the clients we have to have firms in every country with local expertise,” says Boy. She notes that Canadian cannabis companies, as well as US companies planning to market CBD products under the Farm Bill, want to get involved in bidding for licenses or acquiring cannabis companies in Peru and have been referred to her firm by their local Meritas lawyers.

“There is a lot of cross-border work, and clients will need representation in multiple jurisdictions,” says Abrams. “This is why Meritas is key, as it can help bridge that gap. Within Canada, it is helpful to have Meritas firms and contacts across the country. Their provincial expertise can be of assistance when considering nuances in the regulatory landscape or the practicalities of servicing clients in a different jurisdiction from where you practice.”

“We are connected through focused practice groups where we build relationships,” says Fraser. “We actually know each other and can safely refer and share information. When a client has a question about a market anywhere in the world, we can contact someone there and get a quick answer. I can put you in touch with a lawyer in New Zealand and open a file to get a deal started today. I can’t tell you how many times in the last six months I’ve touted my firm’s international affiliation in Meritas and that I can get a response to a question within a day. It’s invaluable and it’s always impressive to the client.”

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