Cultivation of medicinal cannabis now possible in Switzerland

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On 1 August 2022, the revision of the Narcotics Act will come into force, with the aim of liberalising medicinal cannabis. The revision centres, on the one hand, on the lifting of the legal ban on the marketing of narcotics containing an effective concentration of cannabinoid for medical purposes; this topic will be examined in a separate legal update. On the other hand, the revision provides for a two-stage authorisation procedure for the cultivation of medicinal cannabis, which is the subject of the current legal update. The sale and consumption of cannabis for non-medicinal purposes, however, remains prohibited.

Key takeaways

- **Lifting of the legal ban on medicinal cannabis: The cultivation, production, processing and trade of medicinal cannabis is now subject to the authorisation and control system of Swissmedic, in line with the regulation of other narcotics used for medical purposes.**
- **Two-stage authorisation procedure: An establishment licence and an individual cultivation licence are now required for the cultivation of cannabis plants for medicinal purposes.**
- **Legal separation of medicinal and non-medicinal cannabis: The use of cannabis for non-medicinal purposes is not affected by these amendments to the law and remains prohibited in principle.**

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Background

Cannabis with a THC (tetrahydrocannabinol) content of 1% or more is currently considered a prohibited narcotic in Switzerland. In principle, it may therefore not be cultivated, produced, imported or placed on the market. Medicinal use of cannabis has therefore been fundamentally excluded up to now under the regular narcotics licencing and control system. Preparations containing cannabis with a THC content of less than 1% and preparations containing CBD (cannabidiol), on the other hand, do not fall under the scope of the Narcotics Act and are already permitted (and will not be considered further in this legal update).

The revision that is now coming into force amends the Narcotics Act and classifies cannabis as a controlled narcotic with restricted marketability. This means that the cultivation, production, processing and trade of cannabis for medicinal purposes will no longer be subject to the exemption system of the Federal Office of Public Health (FOPH), but to the authorisation and control system of Swissmedic (further information on the lifting of the ban on cannabis for medicinal use can be found in a separate legal update).

Two-stage authorisation procedure for the cultivation of cannabis for medicinal purposes

The lifting of the ban on medicinal cannabis has resulted in an adjustment of the narcotics law system for control with regard to the requirements for cultivation. Cultivation of cannabis plants for medicinal purposes is now subject to a two-stage authorisation procedure, consisting of an establishment licence and an individual cultivation licence.

Establishment licence

As a result of the revision of the law, an establishment licence for cultivation is now being added to Swissmedic's regular establishment licence system for narcotics, so that cannabis plants may be cultivated for medicinal purposes. Establishment licences are valid for a maximum of five years and will be granted only on the condition that (a) the applicant is entered in the commercial register; (b) the correct storage of the cannabis is ensured; and (c) a person is appointed to be responsible for compliance with the provisions of the Narcotics Act. In addition, the applicant must prove that measures have been taken to provide sufficient protection against theft and to prevent the misuse of the cultivated plants.

The cantons are responsible for the inspections to be carried out as part of the authorisation procedure and after the licence has been granted. It is also the responsibility of the establishment licence holder to submit the records for the reporting year electronically to Swissmedic by 31 January of the following year in accordance with Art. 17 of the Narcotics Act.

Individual cultivation licence

In future, the authorisation system will also provide for an individual cultivation licence, granted by Swissmedic for one-off cultivation. The licence is valid for a maximum of one year and is not transferable. To obtain this licence, the applicant must (a) have the above-mentioned establishment licence; (b) prove that a system is in place that enables the traceability of the substances supplied and quality assurance; and (c) submit a written purchase agreement with a

purchaser who also has an establishment licence to handle controlled substances, whereby the Narcotics Control Ordinance provides for further requirements regarding the purchase agreement. As part of the application, the applicant must also disclose information on the specific cultivation cycle. Finally, the holder of the individual cultivation licence must comply with reporting obligations (including those relating to sowing, any incidents, harvesting and distribution) within 10 working days in each case.

While the application forms – provided by Swissmedic – for an establishment licence for the cultivation of cannabis for medicinal purposes still have to be submitted by post, the application for individual cultivation licences and imports of seeds or cuttings, as well as the recording of reporting obligations associated with the individual cultivation licence, are made electronically via the NDS-WEB portal.

Conclusion and outlook

The lifting of the ban on narcotics containing an effective concentration of cannabinoid for medical purposes and the accompanying changes are to be welcomed. Switzerland is following the example of countries whose systems allow extended access to medicinal cannabis products (e.g., Canada, Germany, the Netherlands, Italy).

Practice will have to demonstrate whether the continuous effort required – especially due to the individual cultivation licence and associated reporting obligations – is feasible and whether the planned system will prove its worth. In addition to practical suitability concerns, particular attention is needed to establish whether the measures can achieve their purpose of preventing diversion and of controlling the flow of goods. In addition, the question arises as to how the short validity of the individual cultivation licence will affect the long-term nature of supply relationships that many stakeholders would prefer.

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No legal or tax advice

This legal update provides a high-level overview and does not claim to be comprehensive. It does not represent legal or tax advice. If you have any questions relating to this legal update or would like to have advice concerning your particular circumstances, please get in touch with your contact at Pestalozzi Attorneys at Law Ltd. or one of the contact persons mentioned in this Legal Update.

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