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AGRICULTURE, AQUACULTURE & FISHING SECTOR ALERT

IN THIS ISSUE

South Africa's green gold

According to the *Africa Cannabis Report - March 2019*, compiled by international research group Prohibition Partners, Africa's climate, affordable land and low-cost labour offer enormous opportunities in a market that could exceed \$US7,1 billion by 2023. The Department of Trade and Industry and the Agricultural Research Council have projected that the current cannabis industry in South Africa is worth R14bn (US\$936m) and by 2024, this could double to R28bn (US\$1.9bn), making up 70% of the R44bn (US\$2.9bn) estimated African market.

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While the regulatory landscape remains shifting what is increasingly clear from international precedent is that cannabis is fast becoming "green gold", with promising returns for those early market entrants with the requisite financial wherewithal and appetite for risk.

What this article aims to provide is a brief insight into the current South African cannabis economy as well as illustrate that large-scale, commercial cannabis cultivation, processing, product development, retail and export is possible and is currently underway.

The cannabis market is multifaceted, with three broadly defined product subsectors being: agricultural hemp, medicinal cannabis and recreational cannabis. Admittedly, there are overlaps in these sectors, providing several revenue streams for prospective cannabis investors.

The hemp market is traditionally focused on construction materials, textiles, paper, biofuel and cellulose-based plastics. As a result, it is cultivated en masse to achieve profitability. Increasingly, however, hemp

is being cultivated for the main purpose of CBD, CBG and CBN cannabinoid extraction, for use in the medicinal sub-sector. Notably, hemp cultivars are low-THC and do not appeal to the recreational subsector.

The medicinal cannabis market comprises mostly of high-potency cannabinoid containing flower and extracts. This entails cultivation and processing of specific strains of cannabis, usually indoors and/or under greenhouse conditions. Because of strict quality control, associated costs of production and economies of scale, medicinal cannabis (and secondary products produced from extracted cannabinoids) remains a highly valued commodity with consistent international and increasingly domestic demand.

Finally, the recreational cannabis market shares much of the same revenue streams with medicinal cannabis but remains legislatively out-of-bounds from a commercial perspective in that it is still illegal to buy and sell cannabis and cannabis by-products to and from unlicensed individuals/companies. However, once unlocked, recreational cannabis presents a viable domestic value stream, especially for smaller to medium enterprises, generating both skilled and unskilled jobs, as well as significant tax revenue.

Current legal status of cannabis

In September 2018, the Constitutional Court in the seminal case of *Minister of Justice and Constitutional Development & Others v Prince (Clarke and Others Intervening); National Director of Public Prosecutions and Others v Rubin; National Director of Public Prosecutions and*

South Africa's green gold...continued

The Medicines and Related Substances Control Act 101 of 1965 (Medicines Act) established SAHPRA as one of the regulators in respect of Scheduled substances.

Others v Acton [2018] ZACC 30 legalised the private growing of cannabis for private purposes entailing the use of and possession of cannabis by adults in private places for personal consumption. For more information on the Constitutional Court judgment, [please see our article here](#).

Notably, it still remains illegal to buy and sell cannabis, with certain exceptions as are discussed below. Legislation regulating the cultivation, processing and sale of medicinal cannabis is currently being developed by the Department of Health and the South African Health Products Regulatory Authority (SAHPRA). Read more about the Draft Cannabis for Private Purposes Bill [here](#).

Cannabis licenses in South Africa

The Medicines and Related Substances Control Act 101 of 1965 (Medicines Act) established SAHPRA as one of the regulators in respect of Scheduled substances. SAHPRA is, in terms of section 22C(1)(b) of the Medicines Act, empowered to issue a license, on application and payment of the prescribed fee, to a manufacturer, wholesaler, distributor of a Scheduled substance to manufacture, import, export, act as a wholesaler of or distribute such Scheduled substance.

With the abovementioned exclusions in mind and from a strictly commercial perspective, a section 22C(1)(b) license is required to:

- Cultivate/grow and produce Cannabis and Cannabis resin;
- Extract and test Cannabis, Cannabis resin and/or CBD;
- Manufacture a Cannabis-containing or CBD-containing substances;
- Import Cannabis-containing substances;
- Export Cannabis-containing substances; and/or
- Distribute a Cannabis-containing substances.

An applicant must meet various requirements to acquire such a license including, *inter alia*, having a strictly controlled farm/facility already established/built and available for inspection, as well as third party agreements with seed banks, waste management companies, laboratory testing facilities and off-take agreements.

From our consultations with the SAHPRA Cannabis Inspectorate, the 2020 prescribed license fee is R902 per Hemp Application and R23,980 for a Medicinal



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provide practical and commercial advice to help our clients in this sector achieve their business objectives, protect existing interests and maximise opportunities.

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South Africa's green gold...continued

While necessary to ensure internationally competitive standards, these strict licensing conditions serve as a barrier to entry for those without readily adaptable growing facilities or the financial means to set them up.

Cannabis Application, with an inspection fee of R714 per hour and a hardcopy license collection fee of R3180 if and when such licenses are issued.

While necessary to ensure internationally competitive standards, these strict licensing conditions serve as a barrier to entry for those without readily adaptable growing facilities or the financial means to set them up. However, this presents an opportunity for those who can/do qualify for a license, due to the limited number of legitimate market participants and the increasing demand for high quality, South African cannabis globally.

Commercial Cannabis Products

The Medicines Act has 10 schedules of chemical substances (numbered 0 – 9), with increasingly restrictive provisions regarding the use, distribution, possession and manufacture of the substances as one ascends into the higher schedules. The two main cannabinoids regulated under the Schedules are CBD and THC.

Cannabidiol (CBD)

As a Schedule 4 medicine, CBD products cannot be sold unless the purchaser is furnished with a prescription to purchase it. However, if the CBD product complies with one of the following two exceptions, it will be classified as Schedule 0 (which means that it can be sold in the open market):

- (a) First Exception: if the CBD containing product is a (i) complimentary medicine which (ii) contains 600mg or less of CBD per sales pack, (iii) provides a maximum daily dosage of 20mg CBD and (iv) it makes a general health enhancement, health maintenance or relief of minor symptoms claim, or

- (b) Second Exception: the CBD product is (i) a processed product made from Cannabis raw plant material (ii) intended for ingestion (iii) contains 0.0075% or less of CBD and (iv) only the natural occurring quantity of cannabinoids found in the source material are contained in the product.

Tetrahydrocannabinol (THC)

As a Schedule 6 substance, THC products will require a prescription before they can be purchased. However, if the THC product complies with one of the following three exceptions, it will be exempt from Schedule 6:

- (a) First Exception: the THC product is (i) in raw plant material and processed products manufactured from such raw plant material (ii) intended for industrial purposes and not for human or animal ingestion and contains 0.2% or less of THC;
- (b) Second Exception: the THC product is a processed product made from cannabis containing 0,001% or less of THC; or
- (c) Third Exception: when raw plant material is cultivated, possessed, and consumed by an adult, in private for personal consumption.

Notably, as of November 2020, no CBD- or THC-containing medicines had been registered by SAHPRA and the aforementioned pharmaceuticals would need to be imported, via a special permit application from the Director General of Health, under Section 21 of the Medicines Act.

South Africa's green gold...continued

As a means to cater to the recreational market, several South African companies have deployed what has internationally become known as the Grow Club Model.

Private Growing and the Grow Club Model

As a means to cater to the recreational market, several South African companies have deployed what has internationally become known as the Grow Club Model. Under this model, a large grow space is "sub-divided" into smaller plots, which are then leased to private individuals. Whatever is grown on these plots is and remains the private property of these individuals, while the company provides professional horticultural services to these private persons.

This is a model currently being tested before the court in a declarator application brought by us on behalf of The Haze Club. While at present the future of the Grow Club Model remains uncertain, the potential revenue, jobs, societal benefits and tax that the recreational cannabis market may bring to the South African economy cannot be ignored. For more information on this case and the grow club model, please see a recent IOL article [available here](#).

What Services we provide

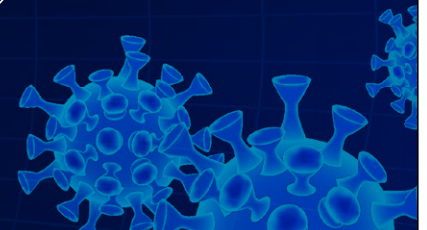
To date, CDH has been involved in several spheres of the domestic cannabis economy. This includes providing regulatory compliance and due diligence services on large-scale cannabis mergers, general corporate and commercial services for established cannabis companies, terms and conditions in relation to the Grow Club Model, dispute resolution services for cannabis companies, commentary on legislative developments and the fine-tuning of business models with a view to achieving a thriving legitimate, domestic cannabis economy.

As a full-service law firm, our experts in the legal field are equipped to offer the highest quality legal services in the cannabis space, partnering with our stakeholders to ensure that the economic and social benefits experienced globally are realised within the near future.

Shaad Vayej
Overseen by Andre de Lange

CDH'S COVID-19 RESOURCE HUB

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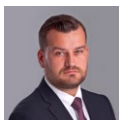
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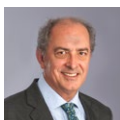
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BBBEE STATUS: LEVEL TWO CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

PLEASE NOTE

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