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Relaxation of Cannabis Regulation: A New Hope for Alternative Medicine

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In recent years, medical benefits from cannabis, ranging from pain relief, alleviation of Parkinson's disease symptom, to a cure for cancer, have been widely reported in various scientific studies. Although the debate between the medical aspect of cannabis and the risk from addiction is still an on-going issue, many countries have started to recognize cannabis as one of the alternative medicines by way of legalization of cannabis. Thailand is among those countries and has become the first country in Asia to revise its regulation to allow the use of cannabis for medical treatment.

1. Background of Cannabis Regulation in Thailand

It can be said that Thailand has a long history of cannabis regulation. The first regulation regarding cannabis in Thailand was the Cannabis Act of 1934 which prohibited the import, export, sale, possession and consumption of cannabis. Prohibition of cannabis was later regulated by the Narcotics Act of 1979 (the "1979 Narcotics Act") which is the general law prohibiting narcotics and addictive substance in Thailand and is still enforced up to present day.

Under the 1979 Narcotics Act and the Ministry of Public Health Notification re: Designation of Category 5 Drug dated 31 July 2018 and the amendment thereof, cannabis was classified as a "Category 5 Drug" which consists of mostly plant-based narcotics such as hemp or kratom. Manufacturing, selling, importing, exporting and possession of cannabis are principally prohibited and subject to fine and/or imprisonment, for example, the penalty for manufacturing, importing or exporting is from 2 to 15 years of imprisonment and a fine of THB 200,000 to 1,500,000 under Section 75 of the 1979 Narcotics Act.

The first wave of the relaxation of cannabis regulation in the legislative level can be seen by the amendment of the Narcotics Act in 2019 (the "2019 Amendment") in which manufacturing, importing, exporting or possession for research and medical use of cannabis are allowed under the licensing system. Subsequently, the movement to relax cannabis regulation in Thailand became more prominent by the result of the general election in 2019 when the relaxation of cannabis regulation was made as one of the agendas of the coalition government. On 27 December 2019, an MOU on Removing Kratom and Cannabis from Narcotics List was concluded between the Ministry of Public Health and the Ministry of Justice to initiate to the task force for revision of kratom and cannabis regulation. Under the said MOU, both ministries will cooperate to revise the status of cannabis from "narcotics" to an alternative herbal medicine and also to research the impact of cannabis towards the economy and society.

2. Relaxation of Cannabis Regulation under the 2019 Amendment

Before the relaxation of cannabis regulation, it must be noted that a special permission to allow manufacturing, selling, importing, exporting and possession of cannabis is not a new concept under Thai laws. Under Section 26 of the 1979 Narcotics Act, the licenses for manufacturing, importing, exporting, selling or possession of “Category 5 Drug” which includes cannabis could be granted on a case-by-case basis by the Ministry of Public Health under the approval of the Narcotics Control Committee (the “Narcotics Committee”). Thus, it can be said that, to a certain extent, the license to manufacture, import, export, sell or possess cannabis had been recognized under Thai law even before the amendment of the 1979 Narcotics Act. However, the 1979 Narcotics Act did not contain any provision regarding the qualification of the license applicant and any regulation concerning personal consumption of cannabis for medical treatment. Moreover, the authority to grant the license under the 1979 Narcotics Act was vested only with the Minister of Public Health which posed a hindrance for the public to utilize the licensing system.

The enactment of the 2019 Amendment, which became effective from 19 February 2019, now shifted the authority to grant the license regarding cannabis to the Food and Drug Administration (the “FDA”) and the Narcotics Committee. The said Amendment also stipulates the criteria for the application of the licenses and allows the licensing of cannabis for the following activities:

- (a) Manufacturing, importing or exporting of cannabis for the benefit of medical treatment, research and development, government affair, agriculture, commerce, science, industry or medicine shall require the license issued by the FDA under the approval of the Narcotics Committee (Section 26/2 (1));
- (b) Importing or exporting of cannabis by passengers for personal illness treatment shall require the license from the FDA, providing that (i) the amount of cannabis possessed by such passenger must be in an amount necessary for personal treatment, and (ii) the license must also be accompanied by a prescription or certification by issued medical professions, dentist, or, practitioners of Thai traditional medicine (both by applied medicine or purely traditional), or folk healers who have fulfilled the qualification under the criteria announced by the Narcotics Committee (Section 26/2 (2)); and
- (c) Selling of cannabis shall require the license from the FDA and possession of cannabis in the amount from 10 kg (approximately 22 lbs) shall be assumed as possession for sale which requires the license to sell in the same manner (Section 26/3).

Persons/agencies who will be eligible to apply for the licenses for manufacturing, importing, exporting and selling as mentioned above must be any one of the following (Section 26/5):

- (a) Government agencies which are responsible for researching, providing services and teaching of medicine, pharmacy, science and agriculture, drug enforcement agencies or the Thai Red Cross Society;
- (b) Medical professions, pharmacists, veterinarians, practitioners of Thai traditional medicine (both by applied medicine or purely traditional), or folk healers who have fulfilled the qualification as announced by the Narcotics Committee under the 2019 Amendment;
- (c) Institutions for higher-educations which are responsible for research and teaching of medicine and pharmacy;
- (d) Local enterprises whose members are farmers and are registered under the laws on local enterprises or agricultural cooperative, providing that such organizations must be under the cooperation and direction of the licensee in (a) or (c). Such local enterprises can also participate in researching and development of formulas for traditional or herbal medicine under the cooperation of the licensee in (a) or (c);
- (e) Operators of international public transportation business;
- (f) International passengers who are required to bring cannabis for their person illness treatment during

- inbound or outbound trip; and/or
(g) Other persons/agencies as designated by the Minister of Public Health under the approval of the FDA.

Nevertheless, it must be noted that for the first 5 years of the enactment of the 2019 Amendment (until 19 February 2024), only the person/agencies as specified in (a) and the person/agencies in (b), (c), (d) and (g), who cooperate with (a) can apply for the licenses for manufacturing, importing and exporting of cannabis for the benefit of medical treatment. On the other hand, for the license to sell cannabis, the person/agencies in (a) to (g) can independently apply for the license without having to cooperate with any government agency.

In terms of the use for personal illness treatment, no license shall be required for domestic possession of cannabis for such treatment and in the required amount, providing that such possession must be accompanied by a prescription or certification by medical professions, dentist, practitioners of applied Thai traditional medicine, or practitioners of Thai traditional medicine or folk healers who have fulfilled the qualification under the criteria announced by the Narcotics Committee.

3. Further Development

On 4 August 2020, the Cabinet has approved the principle of the draft amendment to the 2019 Amendment proposed by the Ministry of Public Health. Under the said draft, patients who have been certified by medical professions or certified practitioners of Thai traditional medicine or folk healers will become eligible to apply for the license to manufacture, import, export, sell or possess cannabis. The draft will also allow manufacturers of agricultural products to apply for the licenses and participate in the research and development of formulas with pharmaceutical manufacturers (both western and herbal medicine). According to the statement in the draft's proposal, this amendment intends to open an opportunity for patients to grow cannabis for their medical treatment and also for folk healers to use their traditional knowledge to contribute to development of medicine which contains cannabis or cannabis derivatives and in turn will improve the use of cannabis for medical purpose as a whole. The public hearing for the draft amendment had been concluded on 9 June 2020. As of today (September 2020), the draft is now under the consideration of the Council of State and it is expected to be enacted sometimes in 2021.

4. Conclusion

It must be noted that the relaxation of the regulation by the 2019 Amendment is strictly limited to the use of cannabis for medical purpose, while the recreational use of cannabis still requires further deliberation on the impact to the society. Moreover, Thailand is still under the commitment as a member country to the Single Convention on Narcotic Drugs 1961 which allows the use of cannabis only for medical and research purposes. Furthermore, the opportunity for private sectors to participate in the medical cannabis industry is still under the development process as the eligibility to apply for the licenses are strictly limited to state agencies and medical professions. Nevertheless, the relaxation of the regulation can be seen as a stepping stone to legalize cannabis and to recognize cannabis as the new agricultural products for Thailand.

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