English Translation of The Lebanese Medical Cannabis Law

March 21, 2021

On 20 April 2020, the Lebanese Parliament passed a law permitting the cultivation, trade, research, and use of medical cannabis. W&W has drafted an unofficial English translation of the law:

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Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
Profile:
https://waselandwasel.com/about/mahmoud-abuwasel/

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Who owns the content that influencers post?

March 21, 2021

Influencer marketing has become one of the most successful trends in marketing over the past few years. In 2018, 81% of marketers reported that using influencers to bolster their marketing plans was an effective strategy. But as the influencer marketing wave becomes increasingly more popular,

the emerging nature of the industry is causing a variety of legal issues; as a result, businesses are being advised to draw up iron-clad contracts with Instagram influencers.

In early 2019, Legacy – a Melbourne café – entered into an influencer agreement with Chole Roberts. Roberts is a fitness influencer with 210,000+ followers on Instagram and can earn a reported USD 1,200 per sponsored post. The owner of the café, Con Katsiogiannis, engaged Roberts for a series of Instagram advertisements, but over the course of their relationship a disagreement broke out over the fees. Katsiogiannis took issue with the posts about his café when they were archived by Roberts. Archived posts are not visible on Instagram; however, the account holder can re-upload them.

Roberts claimed that 90% of the views on her posts occurred within the first week of posting and that archiving posts was a method to prevent a large number of old posts from building up on her page. This belief holds some merit as a recent study found that 49% of consumers expect content on a daily basis from the influencers they follow. There was no written contract between the two parties outlining their business relationship, but rather, a series of verbal agreements, which meant there was no contract specifying how long Roberts would display each post. Roberts argued that she was entitled to be paid for the posts she later hid. This resulted in a dispute over Roberts claiming USD 2,500 that was adjudicated by the Victorian Civil and Administrative Tribunal("VCAT").

The VCAT deputy president reached the conclusion that "in a general sense", Katsogiannis did not lose value when the old posts were archived. However, it was unclear whether the influencer was permitted to delete posts at any time, and pursuantly VCAT ruled that the cafe owner (Katsogiannis) pay the influencer (Roberts) two-thirds of the USD 2,500 that being claimed by Roberts.

Sophie Light-Wilkinson, the VP of marketing EMEA at

Bazaarvoice, voiced her opinion on the matter stating:

"This latest debate asks questions around who owns the content ultimately paid for by advertisers but created by influencers. The simple answer is that these conundrums should be answered by the details of any contracts drawn up between brands and internet personalities. After all, brands need to ensure some rules safeguard their public identity from content that is either too materialistic or misrepresents real-life."

Therefore, if the influencer does delete the posts and the relationship with the entity paying for the sponsorship was not agreed upon contractually, then the influencer is not in breach of any regulations. In Roberts' case, because there was no contract in place, the VCAT ruled that Roberts could archive the posts, however, could not decide who the posts belonged to. With that being said, this brings about the issue of moral rights versus economic rights and leads us into copyright territory.

The concept of moral rights relies on the connection between a person and their creation, as moral rights constitute the right of the creator to protect the integrity and ownership of their work and to maintain the "indestructible creational bond" that exists between their personality and their creation. The term economic rights refer to the exclusive right of the right holder to authorize or prohibit the reproduction, distribution, exportation or importation, or other exploitative activities. Moral rights cannot be relinquished, whereas economic rights can be. Therefore, when an influencer publishes a sponsored post, the moral rights remain with the influencer perpetually, however, if the influencer is paid for the post, they have relinquished their economic rights to the post.

The Berne Convention for the Protection of Literary and Artistic Works is the fundamental body of work for copyright law. As of September 2020, there are 179 nations that are

signatories to the Convention – these signatories have all adopted the text of the convention to create their own respective copyright laws (albeit the application of the law varies from state to state).

In the UAE, moral rights are covered under Article 5 of Federal Law No. 7/2002 (the Copyright law), however, economic rights are not referenced as they fall under contractual obligations which are stipulated under UAE Federal Law No. 5/1985 (the Civil Code).

In the circumstance of influencers in the UAE, the moral and economic rights of the post/content belong to the influencer; if the post is a sponsored post and the influencer gets paid by an entity for publishing the post, the influencer has transferred the economic rights of the post to the said entity upon payment. If there is no agreement in place that outlines the specifications for the post (i.e. the type of post or the length for which the post remains visible on the influencer's account) then the influencer may unilaterally decide what to do with the post.

The influencer and the entity must also take into account that in the UAE, the influencer is required to have an influencer license in order to be permitted to monetize their social presence; if the influencer does not have an influencer license and is subsequently paid by the entity for their posts, they may be fined AED 5,000 by the National Media Council for each post they make without a license, and both the influencer and the entity will be in violation of UAE laws.

Entities seeking the services of influencers must ensure that the influencer has the required licenses – pursuant to UAE laws – that will allow them to advertise their product. For example, if it is an entity that specializes in cosmetics seeking the influencer services, they must ensure that the influencer has obtained prior approval from the Ministry of

Health for the advertising of their products.

Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
Profile:
https://waselandwasel.com/about/mahmoud-abuwasel/

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business@waselandwasel.com

General Data Protection Regulation – Two years on, are you compliant?

March 21, 2021

The EU General Data Protection Regulation came into effect on 25th May, 2018 ("**GDPR**") and is coined as the most comprehensive changes to data protection around the world in the last 20 years. The GDPR rules apply to almost all private sector processing by organizations in the EU or by organizations outside the EU which target EU residents. The maximum fines for non-compliance are the higher of €20m and 4% of an organization's worldwide turnover.

Many organizations state on their websites and represent to their customers that they are GDPR compliant. But what exactly are the practical steps that organizations need to take to meet these legal requirements of the GDPR?

1. Determine whether your organization is subject to GDPR and needs an EU Representative

The GDPR applies to controllers and processors established in the EU and to non-EU establishments "offering goods or

services” to or “monitoring” the behavior of persons in the EU. Such non-EU controller or processor within the extra-territorial reach of the GDPR must designate a representative in a Member State in which data subjects are being offered goods and services or behavior monitored unless an exception applies.

2. Determine your organization’s Main Establishment

If controllers or processors have establishments in more than one EU Member State, it should determine which of its establishments is the “main establishment” using the criteria set out in the GDPR and assess which Supervisory Authority is the lead Supervisory Authority that will enforce the GDPR in respect of cross border processing.

3. Data Governance and Accountability

Organizations must implement measures to reduce the risk of non-compliance with the requirements of the GDPR and be able to demonstrate that data protection has significant prominence as well as board attention and support. Data protection officers should report directly to the highest management level within the organization. Large organizations should implement a formal data protection program. A Controller must be able to demonstrate compliance with the obligations on a Controller set out in the GDPR (e.g data protection principles or legal basis for processing personal data).

4. Data Processing Inventory or Article 30 Register

Controllers are required to create and maintain a formal, written record of processing activities under its responsibility except where the Controller employs less than 250 persons and the processing is not likely to result in a risk for the rights and freedoms of data subjects, is not occasional, or is not of special categories of data. Processors are required to record all categories of personal data processing activities carried out on behalf of a

controller and to provide a copy to the Controller or a data protection authority on request.

5. Appointing a Data Protection Officer (DPO)

Controllers and Processors must assess whether they are required to appoint a DPO, for example including (a) where its core activities consist of processing operations which require "regular and systematic monitoring" of data subjects on a "large scale"; or (b) where its core activities consist of processing of special categories of data on a "large scale"; or (c) where required under Member State law. The DPO should report to the highest management level of that organization and should be supported by skilled and appropriate resources. The DPO's contact details must be notified to the Supervisory Authority as the first point of contact in relation to data protection matters.

6. Conducting Data Protection Impact Assessments

Controllers are required to conduct data protection impact assessments where a type of processing is likely to result in a high risk to the rights and freedoms of individuals and is required at least in the following cases:

- a systematic and extensive evaluation of the personal aspects of an individual, including profiling;
- processing of sensitive data on a large scale;
- systematic monitoring of public areas on a large scale.

Data Protection Authorities, in consultation with the European Data Protection Board may provide a white list where a DPIA would be required. The controller may consult with the Data Protection Authority prior to commencing the processing activity regarding any residual risks that cannot be mitigated.

7. Privacy Notice

Organizations are required to provide an information notice to data subjects including the source of the data, the legal basis for processing the personal data, the period for which the personal data will be retained, and the third party recipients of the data. The information duty differs where the personal data has been obtained directly from the data subject or from a third party. Unlike privacy policies that previously sat in website footers, the GDPR requires that the notice must be given in a concise, transparent, intelligible and easily accessible form using clear and plain language. Icons may be used. Where presented electronically the information conveyed by the icons must be machine-readable.

8. Subject Access Requests

Controllers are required to comply with subject access requests which include:

1. To information about a Controller’s processing (right to be informed)
2. To restrict the processing of personal data (right to object)
3. To request that personal data held by the Controller is rectified were inaccurate (right of rectification)
4. To have a copy of personal data and information (right of access)
5. To have personal data transmitted to the data subject or another controller in a commonly used machine-readable format (data portability)
6. To require the controller to erase personal data in certain circumstances and where the data has been made public to take reasonable steps to inform controllers that are processing the data that the data subject has requested its erasure of any links to, copies or replication of it (right to be forgotten or right of erasure)
7. To object to automated decision making or profiling

9. Data Breach

Organizations are required to notify Data Protection Authorities within 72 hours and data subjects without undue delay in certain high-risk circumstances. A personal data breach register is also required.

10. Data Processing Agreements

Controllers are required to engage processors who provide sufficient guarantees of compliance with the obligations of the GPDR on a processor and must enter into a data processing agreement meeting the requirements of Article 28.3 of the GDPR.

Is your organization compliant or on the journey towards compliance?

Every organization is unique but there are many milestones that must be achieved before it can say that it is GDPR compliant as part of its data protection compliance program. The fines for non-compliance with GDPR may be up to €20 million, or 4% of the annual worldwide turnover of the preceding financial year, whichever is greater. Is your organization compliant or on the journey towards compliance? If not, create a team led by your legal compliance experts along with HR, commercial, finance, and marketing teams. Implementation of a data protection compliance program will entail more than a simple communication of these concepts to your organization but also the creation of new processes, policies and procedures, training and awareness and ultimately the building of a privacy culture across your business in order to manage data protection risk.

Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
Profile:
https://waselandwasel.com/about/mahmoud-abuwasel/

Lawyers and consultants.
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www.waselandwasel.com
business@waselandwasel.com

Commentary on Lebanon's Medical Cannabis Law

March 21, 2021

On 20 April 2020, the Lebanese Parliament passed a law permitting the cultivation, trade, research, and use of medical cannabis. The law covers an array of topics ranging from the types of licenses available to the prevention of monopolization in the industry. In providing a deeper look at the law, W&W has drafted a commentary on the articles therein.

Article 2: Definition of Terms:

Inter alia, the Article defines "Output", "Import", "Export", "Transport", "Medical Product", and "Pharmaceutical Product".

Each of these definitions utilizes the terms "controlled substance" or "controlled substances". The use of these terms under Lebanese law differs from the usage in the United States under federal law and the drug laws for the majority of the states. For instance, in the United States, the definition of "controlled substance" excludes most hemp or CBD derived from hemp. This is due to the fact that under federal law, certain hemp and CBD derived from it still remains illegal if it is not in complete compliance with various statutory and administrative requirements.

Definition of "International Agreements"

The three treaties mentioned under this definition have been signed by almost all of the nations across the world, including countries in which cannabis is already allowed in

whole or in part. Thus, these treaties are somewhat vague in their implementation. These treaties may be cited by anti-drug groups to stymie the implementation of the law.

Definition of "Law on Drugs"

Depending on specific provisions in the 1998 law, some complications may arise despite the moderate admonition in Article 3 of the law.

Article 4(5) and Article 4(8):

The use of the term "coordination" with "international bodies" may cause complications. Historically, such international bodies have tended to oppose efforts by countries to loosen restrictions on cannabis. We may be seeing a moderation in that opposition, as more jurisdictions permit legal cannabis (medical or otherwise), however, any significant changes will take time.

Article 4(9):

The Article specifies compliance "*with provisions of international treaties*" which could potentially cause the same complications as those mentioned under Article (4)(5) and Article (4)(8).

On 2 December 2020, the United Nations' Commission on Narcotic Drugs removed cannabis from the category of the world's most dangerous drugs. By a vote of 27 to 25, the Commission voted to follow the recommendation of the World Health Organization to remove cannabis and cannabis resin from Schedule IV of the 1961 Convention on Narcotic Drugs, where it had been listed alongside heroin and other highly addictive opioids.

Despite this reclassification, cannabis still remains subject to a high level of international control, however, the development could lead to further loosening of international restrictions on cannabis. Moreover, this downgrading of the

perceived dangers of cannabis may open the field in adding countries for further research and for more recognition of the medical benefits derived from cannabis.

Article 4(18):

Elsewhere, we have seen that the regulations governing testing laboratories can be an obstacle in the growth of successful cannabis programs. For example, the price of required tests, the percentage of product that must be subject to test, the test sample sizes, the number of chemicals that must be tested for, the allowable tolerances for the presence of those chemicals, and many other details related to testing protocols, can greatly delay – and in some circumstances, prevent – cannabis from successfully getting into the market.

Accordingly, when the specifications are developed for lab testing, it will be helpful if the operational philosophy is that the cannabis testing requirements should be no more onerous than the testing mandates for any other commercially cultivated product consumed by man.

Article 16:

The retention of electronic records of "*address[es]*" and the "*details of places and properties*" pursuant to Subsections (1) and (3) are vital, however, there may be safety or security issues if too much of such data is made publicly available. Thus, the Authority may want to keep this in mind, should it choose to publish the data when "*taking into consideration*" the protection of stakeholders under Subsection (4).

Article 18(4):

The definition of "*agricultural cooperatives*" may vary in Lebanon, however, in many states in the United States, they are a special kind of corporation subject to unique laws that may be useful for various agricultural businesses. Depending on the definition in Lebanon, this may be a beneficial option

for some clients.

Conclusion

With the legalization of medical cannabis in Lebanon and the development of the new industry, it is likely that we will see growth in the Lebanese economy in the coming years, as we have seen in the United States and other nations that have taken the same route. In 2019, Colorado – a state with a slightly lower population than Lebanon – collected more than USD 302 million in taxes and fees on medical and recreational marijuana. Sales in the state totaled over USD 1.7 billion. As Lebanon implements the law and opens doors to foreign investors, the nation will potentially see a boom in its economic and business growth.

Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
Profile: https://waselandwasel.com/about/mahmoud-abuwasel/

Lawyers and consultants.
Tier-1 services since 1799.
www.waselandwasel.com
business@waselandwasel.com

ICC Issues Guidance on Arbitration During COVID-19

March 21, 2021

On 9 April 2020, in light of the COVID-19 pandemic the International Chamber of Commerce ("ICC") assured that the International Court of Arbitration (the "Court") remains operational and continues to progress pending arbitrations and accept new cases, and issued a guidance note on possible measures aimed at mitigating the effects of the COVID-19 pandemic.

The guidance note addresses various issues including mitigating COVID-19 related delays, modification of the procedural timetable or adoption of appropriate procedural measures, guidance on virtual hearings, cyber-protocol, and sample clauses.

Here we outline some of the highlights of the ICC's guidance note.

Mitigating COVID-19 related delays

The guidance note ensures consistency and compliance with Article 22(1) of the ICC Arbitration Rules (the "Rules") which require tribunals to conduct any arbitration in an expeditious and cost-effective manner and Article 25(1) of the Rules which requires tribunals to proceed with as short a time as possible to establish the facts of the case by all appropriate means.

The ICC advocated that the pandemic should not create an unnecessary delay to tribunals' deliberations or draft awards as such can be conducted remotely, with the time-limits for submission of draft awards to the Court as well its policy to reduce arbitrator fees in cases of unjustified delays remain in effect.

Notwithstanding, the ICC will take into consideration specific cases where delays are genuinely attributable to specific COVID-19 caused situations, such as the illness of an arbitrator.

The ICC has also noted that it will be accountable for any hardship faced due to COVID-19 in assessing advances for fees.

Modification of the procedural timetable or adoption of appropriate procedural measures

The guidance note provides a non-exhaustive list of procedural options that parties, counsel, and tribunals may adopt in line with Article 24(3) of the Rules to mitigate potential delays

caused by COVID-19 such as:

- Identifying whether the entirety of the dispute or discrete issues may be resolved on the basis of documents only, with no evidentiary hearing.
- Considering whether site visits or inspections by experts can be replaced by video presentations or joint reports of experts.
- Using either audioconference or videoconference for conferences and hearings where possible and appropriate.
- Considering whether and how the number and size of submissions can be limited.
- Considering whether the parties would agree to opt-in to the ICC Expedited Rules Provisions.

As of 17 March 2020, new requests for arbitration must be filed in electronic format, and the ICC encourages tribunals and parties to conduct the arbitration digitally as is reasonably possible, including the electronic signing of terms of reference, counterparts to an award signed separately and assembled in a single electronic file, and submitting all exhibits in electronic format.

Guidance on virtual hearings

The guidance note clarifies that the language of Article 25(2) of the Rules which requires that a tribunal "shall hear the parties together in person if any of them so requests" should not be misconstrued to permit virtual means of the appearance, but should be read in that it refers to parties having an opportunity for a live, adversarial exchange in person.

However, Section 15 of the guidance note also states that:

"While tribunals have often erred on the side of caution and decided to hold at least one face-to-face hearing on the merits if a party so requires, the COVID-19 pandemic may mean that it is not possible to hold a face-to-face hearing in a reasonable time and that waiting until it becomes possible

would produce unwarranted and even prejudicial delay. Accordingly, a tribunal may, in appropriate circumstances, adopt different approaches as it exercises its authority to establish procedures suitable to the particular circumstances of each arbitration and fulfills its overriding duty to conduct the arbitration in an expeditious and cost-effective manner."

The guidance note encourages parties and tribunals to be appreciative of restrictions on travel, and health and safety concerns, but where the tribunal determines that convening in a single physical location is vital but not currently possible, efforts should be made to reschedule the hearing or convene in a way that mitigates delay.

If it is an absolute necessity to convene in a single physical location, the guidance note advises that specific rules and guidance on the location and appropriate sanitary measures should be put in place to ensure the safety of the participants.

Cyber-protocol and sample clauses

The guidance note emphasizes that virtual hearings require the creation of a cyber-protocol (implementing measures) subject to consultation between the tribunal and the parties. Sample clauses provided for by the guidance note include:

- How parties, counsel, the tribunal, witnesses, expert, transcribers, other participants, and support staff and technicians take part in the virtual hearing including detailing their log-in locations and points of connection.
- Minimum system specifications and technical requirements, and hardware, equipment, and any location-specific requirements, and test runs to ensure connectivity.
- Confidentiality, privacy, and security including no

recording of any part of the hearing and inclusion of support or technical staff or consultants as participants.

- Online etiquette and due process considerations such as muting microphones when not speaking, avoiding the use of equipment that interferes with connectivity, and mechanisms for objections.
- Presentation of evidence and examination of witnesses and experts in a clear and visible manner on screen, coordination towards the connection time and duration for each witness or expert, virtual sequestration of witnesses and experts, permissibility or prohibition of synchronous or asynchronous communications, whether witnesses or experts will be giving testimony whilst alone or with the assistance of anyone on location, and other matters.

The guidance note also emphasizes adherence to data privacy controls and regulations in the application of a cyber-protocol and virtual hearings.

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To access the guidance note, click here.

Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
Profile:
https://waselandwasel.com/about/mahmoud-abuwasel/

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business@waselandwasel.com

Land and Costs for Investing

in Lebanon’s Medical Cannabis Industry under the new Medical Cannabis Law

March 21, 2021

In April of 2020, the Lebanese Government legalized the use of cannabis for medical purposes. In this article, we discuss some of the practical expectations regarding the investment dynamics in the current Lebanese environment and under the new Law.

The currently fertile land in Lebanon for the growth of cannabis is expected to be between 5,000 to 6,000 acres. It is also expected that the landmass for the legal cultivation of cannabis would increase beyond 6,000 acres as the cultivation of medicinal and industrial cannabis expands in Lebanon.

The cost of setting up factories for the manufacturing of cannabis varies from country to country. No factories are currently established and/or operational for the manufacturing of medicinal cannabis in Lebanon, given the fact that the legislation was passed a few months ago and no licenses have yet to be granted by the Authority for Cannabis Cultivation for Medical and Industrial Use (the authority that will be overseeing the industry in Lebanon). However, we can make a distinct comparison with factories that have been newly established in countries that have recently legalized medical and/or recreational marijuana. For instance, a 55,000 square foot laboratory with 24 heat-adjusted production halls in the Canadian province of Québec costs approximately USD 31.6 million. Another plant in Canada, consisting of 14,600 square feet with 11 farming halls that are capable of producing

approximately 4,500 kilograms of cannabis per year, costs approximately USD 12 million.

According to a recent study, Lebanon is expected to make a revenue of USD 1 billion by 2025 from the export of cannabis products for medical use. It is expected that Lebanon will be one of the leading competitors in cannabis cultivation due to the excellence of its land and climate and will perhaps produce the best quality medicinal and industrial cannabis in the near future.

When comparing the cost of producing a gram of cannabis, the cost in Canada is USD 1; in Europe, more than USD 0.50; whilst in Lebanon, the cost is expected to fall between USD 0.18 and USD 0.20. The conditions and natural factors of the climate, land, and soil in areas like Baalbek-Hermel are optimal for the production of cannabis and increase the quality significantly. Lebanon will without a doubt be one of the competing countries in cost, production, and quality.

Currently, there are around a dozen pharmaceutical plants in Lebanon. With the passing of Lebanon’s Medical Cannabis Law, some of these plants may be enticed to enter the market for the production of medicinal materials made from the cannabis plant, and other cannabis-related goods. However, as per Article 18(1) of the Lebanese Medical Cannabis Law, these pharmaceutical companies must obtain prior approval from the Ministry of Public Health in order to obtain a license. Similarly, for a farmer/owner/tenant to obtain a license for the cultivation of cannabis, they must abide by the requirements set out in Article 18(5) of the Lebanese Medical Cannabis Law. This Article stipulates that the individual must be a Lebanese natural person residing in Lebanon, who is at least twenty-one years old. Both the farmer/owner/tenet and the pharmaceutical companies must obtain a Good Agriculture and Collection Practices Certificate (“GACP Certificate”) and a Good Storage Practices Certificate (“GSP Certificate”); additionally, the pharmaceutical company will also have to

obtain a Good Manufacturing Practices Certificate (“GMP Certificate”).

Along with the pharmaceutical companies and the Lebanese farmers/owners/tenets, there are four other classes that are eligible for one of the nine licenses that will be made available at the start of 2021. Article 18 of the Lebanese Medical Cannabis Law specifies these other classes like the following: (1) Lebanese industrial companies approved by the Ministry of Industry for the manufacture of fibers for industrial use, oils, extracts, and preparations in which the cannabis is included (i.e., cosmetic products, tires, etc.). (2) Foreign companies specialized in the field of agriculture, industry, storage, export, marketing, or that have a license from the country to which they belong to carry out the operations specified in the license they obtain, and who shall undertake foreign investment into Lebanon through local manufacturing. (3) Agricultural cooperatives duly established in Lebanon, which have the capacity to respond and adapt to the licensing requirements specifically for the agricultural aspect; these cooperatives will also have to obtain a GACP and a GSP Certificate. (4) Recognized research centers, laboratories, and institutes, provided they have the professional and scientific qualifications that require specialization to use the substances under supervision.

Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
Profile:
https://waselandwasel.com/about/mahmoud-abuwasel/

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business@waselandwasel.com

First Arab Medical Cannabis Law (Lebanon)

March 21, 2021

On 20 April 2020, the Lebanese Parliament passed a law permitting the cultivation, trade, research, and use of medical cannabis. The Lebanese government began first studying the legalizing of medical cannabis in 2018 where projected government revenue was expected to amount to USD 1 billion per annum.

Lebanon is not the first country in the extended region to legalize cannabis for medical use. Turkey passed laws in 2016 permitting doctors to prescribe certain cannabis-based medicine, and regulated cannabis cultivation in 19 out of its 81 provinces for medical and scientific purposes. In 2019, President Erdogan announced that soon all Turkish provinces should be allowed to cultivate cannabis for industrial use, i.e. for manufacturing textiles, foods, paper, personal care products, plastics, and building materials.

The passing of the law by Lebanon creates an opportunity for leading medical cannabis companies, such as those in the US and Canada, that have globalized their business in the past years.

For example, the legalization of medical cannabis in Germany resulted in substantial market entry to the German local cannabis cultivation market by Canadian companies controlling substantial market share.

In this brief, we focus on the highlights of Lebanon’s recent medical cannabis legislation.

How is cannabis defined?

Cannabis is defined in the law as a controlled plant that has psychoactive properties. It includes the fertilized or unfertilized buds and the seeds of the hemp plant, for medical and industrial use, that contains tetrahydrocannabinol (THC) by a percentage not exceeding 1% of its content and other medicinal materials other than the anesthetic of the cannabinoids in different proportions including the cannabidiol (CBD).

The percentages and contents of the plant are identified pursuant to the methods approved by the Authority.

Cannabis products are defined as every product including fibers for industrial use, and oils, extracts and compounds used for medical and pharmaceutical purposes

Overseeing authority?

The law establishes an authority named the Regulatory Authority for the Cultivation of Cannabis Plants for Medical and Industrial Use (the "Authority").

The Authority is responsible for issuing licenses, and among other things:

- Entering into agreements with public authorities, or private sector entities, whether domestic or foreign, for the execution of the provisions of the law, including for purposes of knowledge transfer.
- Identifying the geographic parameters where cultivation of cannabis may take place, and other details such as soil types, investment, light accessibility, and so on.
- Identifying the permitted percentage of THC and CBD in industrial, medical, pharmaceutical products.
- Overseeing research and development centers, and laboratories, that are renowned and have the professional and academic skillsets for cannabis

cultivation for the permitted uses.

- Establishing rules on production waste and the administrative and security measures to avoid illicit use of waste including that of cannabis stems or any other illicit activity resulting from cannabis cultivation waste management.
- Establishment of central test facilities or contracting with a private sector test facility to ensure compliance with the law.
- Ensuring anti-dumping and anti-trust compliance.

A committee is also established pursuant to the law responsible for the review of licensing applications and compliance with the law and any instructions by the Authority.

Licenses

There are nine licenses that shall be available as follows:

1. License to import seeds and seedlings
2. License to establish a cannabis plantation
3. Cannabis harvesting operations license
4. Manufacturing license
5. Research centers and laboratories license
6. Export license
7. Transport and storage license
8. Sales and distribution license
9. License to import related chemicals

There are six classes of applicants:

1. Foreign companies licensed in their home jurisdiction.
2. Renowned research and development centers, laboratories, and academic institutions.
3. Lebanese companies approved for the manufacture of medicines by the Ministry of Public Health.
4. Lebanese companies approved for industrial activities by

the Ministry of Industry.
5. Lebanese agricultural cooperatives.
6. Lebanese natural persons.

Globally

The law clearly addresses the globalization of medical cannabis trade and industry. In addition to Lebanon, countries that have legalized the medical use of cannabis include Australia, Brazil, Canada, Chile, Colombia, Croatia, Cyprus, Czech Republic, Finland, Germany, Greece, Italy, Jamaica, Luxembourg, North Macedonia, Malta, the Netherlands, New Zealand, Peru, Poland, Portugal, Sri Lanka, Thailand, the United Kingdom, and Uruguay.

In the United States, the use of cannabis for medical purposes is legal over 30 states and the District of Columbia, and although medical use of cannabis has not been legalized at a Federal level, prosecuting individuals acting in accordance with state medical cannabis laws is prohibited.

As for international law governing global medical cannabis trade and industry, Schedule IV of the United Nations' Single Convention on Narcotic Drugs addresses cannabis making it subject to special restrictions. Article 2 of Schedule IV provides as follows:

"A Party shall, if in its opinion the prevailing conditions in its country render it the most appropriate means of protecting the public health and welfare, prohibit the production, manufacture, export and import of, trade in, possession or use of any such drug except for amounts which may be necessary for medical and scientific research only, including clinical trials therewith to be conducted under or subject to the direct supervision and control of the Party."

Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
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business@waselandwasel.com

Major League Baseball's Salary Arbitration: A Homerun ADR System

March 21, 2021

Baseball is the second most-watched sport in the US (tucked behind American football and in front of basketball) and the seventh most watched sport in the world. Major League Baseball ("MLB") is the American professional baseball organization and the oldest of the major professional sports leagues in the US and Canada.

Unlike their counterparts, baseball players make insurmountably more money than any other sport because they have a stable union, and there's no maximum limit amount on the money they can earn; and unlike the NBA (professional basketball) and the NFL (professional American football), baseball has no salary cap, nor is player compensation tied in any way to overall league revenues. Under virtually every previously conceived circumstance, MLB contracts are fully guaranteed. For instance, last year the Los Angeles Angels gave Mike Trout a 12-year, USD 426.5 million contract extension – all of which is fully guaranteed. So how does the MLB maintain the highest paying sporting contracts whilst simultaneously avoiding disputes?

History of the System

The origins of salary arbitration are rooted in the reserve system that was created at the inception of baseball. When professional baseball was born in the 1870s, players were held to one-year contracts; this allowed them to switch teams continuously. As a result, a handful of the team owners made a "gentlemen's agreement" that would allow each owner's team to protect five of their own players. These players became "reserved" to their current team and out of reach of other teams.

By the 1880s, this reserve system disseminated to every team in the league and each player had a reserve clause inserted into their contract, which bound the player to the original team they had signed with, preventing the player from leaving the team until their retirement. In essence, whichever team the player signed with originally, became their home for the rest of their career.

The reserve system first came to a legal battleground in 1922 during the case of *Federal Baseball Club v. National League of Professional Clubs* (the "FBC case"). In the FBC case, the US Supreme Court created an antitrust exemption for baseball. According to Chief Justice Holmes, baseball was exempt from the antitrust laws – which are statutes developed by governments to protect consumers from predatory business practices and ensure fair competition – because they did not constitute interstate commerce. Therefore, baseball did not fall within the scope of the Sherman Act, which outlaws every contract, or conspiracy in restraint of trade, and any monopolization attempted monopolization, or conspiracy to monopolize. Thus, the US Supreme Court upheld the reserve system.

The issues revolving around the reverse system were once again brought into play in 1972 in the case of *Flood v. Kuhn* (the "Flood case"), in which Curtis Flood attempted to bring an

antitrust claim against the MLB for the reserve system. However, the court upheld the decision of the FBC case and ruled that Congress had several opportunities to abolish baseball's antitrust exemption but choose not to do so. As a result, the court determined that the reserve system was acceptable.

With all the problems that the reserve system created, the players – through the assistance of the National Labor Relations Board – developed a union bargaining status and created a salary arbitration provision with the team owners. Shortly after the decision of the Flood case, a new Collective Bargaining Agreement ("CBA") was signed. The CBA created a process for salary arbitration from the fragments of the reserve system.

The Salary Arbitration System

Baseball's salary arbitration is significantly more different than that of conventional arbitration used in labor negotiations. The distinctiveness of salary arbitration in baseball comes from the final offer format, which is referred to as the high/low format. The high/low format means that each party (the player and the team owner) submits a salary proposal to an arbitrator. Subsequently, the arbitrator must choose either the amount proposed by the player or the amount proposed by the team owner. The arbitrator makes their decision based on a set of evidence which is provided by either party pursuant to the criteria outlined in Article VI (F)(12) of the CBA.

As per Article VI (F)(12)(a) of the CBA, the following evidence may be introduced in the arbitration hearing:

- Quality of the player's contribution to the team during the past season including, but not limited to, the player's overall performance, special qualities of leadership, and public appeal;

- The length and consistency of the player's career contribution;
- The player's record of previous compensation and comparative baseball salaries;
- The existence of any physical or mental defects on the part of the player; and
- The recent performance record of the club including, but not limited to, its league standing and attendance as an indication of public acceptance.

According to Article VI (F)(12)(b) of the CBA, the following evidence is not admissible in the hearing:

- The financial position of the player and the team;
- Press comments, testimonials or similar material bearing on the performance of either the player or the team, and any recognized annual awards for excellence of performance;
- Offers made by either the player or the team prior to the arbitration;
- The cost to the parties of their representatives, attorneys, etc.; and
- Salaries in other sports and occupations.

In January of 1999, the CBA was modified to include Article XX. This Article set forth the requirement that reserved players with greater than three years, but less than six years of service, may demand salary arbitration.

The Problems with the Salary Arbitration System

The provisions of the CBA leave an open space for problems that may arise between the players and the team. However, there are three issues that are quite prominent in the fundamentals of this system.

The High/Low Format

The first issue is rooted in the high/low format of the system. In this format, the arbitrator cannot reach a compromise or a middle ground for the offer; they must either choose the player's salary proposition or the owners. Thus, owners believe this issue is the root of the extraordinarily high salaries in baseball.

If the team owner was to present an amount that is significantly low, the arbitrator will tend to favor the player and choose the higher amount. In the pursuit of preventing this from occurring, owners often present an amount that is higher than they would like.

The Effect on the Ongoing Relationship

The second issue is embedded in the evidence which both parties present and whether this may affect the ongoing relationship between the player and the team. Looking at Article VI (F)(12)(a) of the CBA which outlines the criteria for evidence that may be introduced throughout the proceedings, the team can essentially present evidence that may degrade the player and his accomplishments. However, since the player will likely be returning to the same team the following year, the team may tend to hold back sensitive information that may offend the player.

During an interview with a prominent arbitrator who handles the proceedings for the New York Yankees, most teams tend to hold back degrading and malicious information about some of their players, out of fear of the repercussions that may occur during the following year.

For instance, during the salary arbitration proceedings between the owner of the New York Islanders, a National Hockey League team, and their then goalie, the owner introduced humiliating evidence into the hearing about the goalie. The goalie felt so betrayed by his team and the whole process that

he refused to return to the Islanders the following season. Thus, the goalie was traded because of his refusal to play, which was the direct result of the salary arbitration proceedings.

A Sense of Betrayal

The other major problem that occurs is what happens after either party wins. In the event the owner wins, the player may feel betrayed sensing they had played well in the previous season and that they are owed a salary increase. Thus, the player may avoid playing up to their full potential during the following season as a point of resentment towards the team. With that being said, there is also the possibility that the player may play even better the following season with the intention of being scouted by other teams and not re-signing with his present team.

On the other hand, if the player wins the salary arbitration, the owner may choose to reduce his playing time or change where he bats in the line-up, thus affecting his offensive output. For instance, if the player is a pitcher, the team may put him in a more mediocre role, which may affect the player's ability to negotiate for a higher salary in the future during free agency.

Conclusion

The salary arbitration system has become a crucial component of baseball. From a legal perspective, the system is quite straightforward and astute. However, the fans may become exasperated with the politics and the business of the game. And since the fans are the ones that bring the money into baseball, whether it be through attendance or through purchasing merchandise, they may be reluctant to follow the sport, should the players and the owners continue to quarrel over labor issues and initiate more work stoppages. At the end of the day, the loss of fans means the economic prosperity

that baseball has enjoyed for so long and its unwavering position as the second most profitable sport in the world, will soon cease to exist.

Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
Profile: https://waselandwasel.com/about/mahmoud-abuwasel/

Lawyers and consultants.
Tier-1 services since 1799.
www.waselandwasel.com
business@waselandwasel.com

Choosing the Best Arbitrator for your Case

March 21, 2021

The opportunity to select your own arbitrator is one of the attractions of arbitration. Your chosen arbitrator can be the defining factor in a victory for your case. In a recent survey done in 2018, almost half of in-house counsel surveyed stated that they had insufficient information to make an informed choice about the appointment of arbitrators. Considering a search for information on arbitrators can be difficult, due to the general confidentiality of arbitration proceedings, how can you go about selecting the best arbitrator?

Professional Expertise

A deep range of knowledge regarding the nature of the dispute can be very beneficial to the arbitration. There is a common notion that the arbitrator must be expert in legal affairs. However, if your matter has a very niche nature, you will benefit from selecting an arbitrator who has experience in your specific industry.

This will save you time explaining industry concepts and terms

as they will be familiar with the issues being discussed which will subsequently save you costs. For example, you have an industrial patent infringement dispute. Selecting an arbitrator with prior experience in this industry will avoid the need for you to explain from scratch the meaning of defensive patenting.

Relevant individuals should be approached to deal with a possible dispute of specific nature. Candidates, or the institution to which they are most known, will provide personal descriptions in the form of a curriculum vitae that you may use to nominate a well-suited arbitrator for your matter. It is not only key to nominate an arbitrator who is familiar with the relevant industry, but it is also essential to understand the potential arbitrator's convictions, in order to determine their impact on the dispute. Thorough knowledge of the sector can be invaluable, but ultimately a party's interests will not be served if the nominated arbitrator has certain convictions about a matter that are diametrically opposed to the nominating party's arguments.

Are they available?

A busy arbitrator can be a major impact in the time it takes to obtain an award. An advantage of arbitration is the flexibility of the process and the management of this flexibility can have a significant impact on the length, efficiency and ultimate success. Choose an arbitrator who can commit in devoting enough time and attention to the matter and make sure their schedule allows them to take on the case. A highly sought out arbitrator will have a busy schedule, and this can lead to scheduling conflicts which may ultimately delay the proceedings. A personal conversation with the arbitrator that you wish to nominate can provide a sense of clarification. However, a conversation usually goes no further than providing reassurance as to the candidate's availability and knowledge. The chair of the International Bar Association (IBA) Arbitration Committee has recently stressed the need for

arbitrators to be genuinely available, and an interview may reveal factors affecting a candidate’s availability.

Personality

Looking for an arbitrator who has knowledge in the subject matter should be considered but also look for one with good people management skills. A good arbitrator must strike an appropriate balance between observing and actively steering the proceedings. The flexibility of managing the arbitration procedure, if not managed properly, can lead to protracted disagreements which will result in more costs and time being spent on a granular issue.

Choose an arbitrator who is as good at managing people as they are the procedure. In a study conducted by Ponak et al in 2010 regarding Personality and Time Delay Among Arbitrators, the study found that conventional, case-based coding can explain about 30 percent of the variance in time delay, whilst another 30 percent is likely due to the personality predispositions of arbitrators. Ponak and his colleagues found that characteristics of the arbitration process that predicted faster decision time were: fewer pages of written decision (a proxy for complexity), the use of legal counsel, and the use of a sole arbitrator rather than a three-person panel. The study also examined one job-related characteristic of the arbitrator– his or her workload–and found that the busiest arbitrators took longer to render their decisions. Will your selected arbitrator be adapted to dealing with cultural differences and tensions that will eventually run high? Their management of the parties is a substantial factor in the efficiency of the case, and it must be done with sterling judicial demeanor.

When we talk about cultural differences, keep in mind that in disputes between parties of different nationalities, some arbitral institutions such as the Dubai International Arbitration Centre (DIAC), permit the arbitrator from having

the same nationality as any of the parties. As per DIAC Arbitration Rule 10.3:

“Where the parties are of different nationalities, a sole arbitrator or chairman of the Tribunal shall not have the same nationality as any party unless the parties who are not of the same nationality as the proposed arbitrator, all agree otherwise in writing.”

The International Chamber of Commerce (ICC) follows a similar standard pursuant to Article 13(1) of the ICC Rules:

“In confirming or appointing arbitrators, the Court [International Court of Arbitration] shall consider the prospective arbitrator’s nationality, residence and other relationships with the countries of which the parties or the other arbitrators are nationals and the prospective arbitrator’s availability and ability to conduct the arbitration in accordance with the Rules.”

The Language of the Arbitrator

Arbitrators and participants of the procedures will be of different nationalities in most circumstances; therefore, it is not uncommon that they will speak different languages. This brings about another factor of great importance – the language of the arbitrator. The language in which the procedure is conducted is a dominant characteristic for the consensual resolution of the dispute itself. The choice of language with respect to the arbitration proceedings in the agreement will play a significant role as communications will most likely be made in the language indicated in the arbitration agreement. This bears the questions, is an “implicit agreement” of the parties regarding the language of the arbitration, a *facta concludentia* (i.e. the use of the same language for the contract, the arbitration agreement, the correspondence etc.), allowed if it is absent from the agreement? The choice of the “wrong” language may result in the need for translation and

interpretation for the majority of the proceedings, which can severely impact the cost and duration of the proceedings.

If the arbitration is conducted in English, but in a country where English is not the official language, such as the UAE, it would be advantageous to have an arbitrator who speaks both English and Arabic, to address their ability to deduce and analyze parties' submission on application of legislation to the dispute, and the legislator's intent in the drafting of a law, or provisions therein, as the parties present.

Therefore, determining what language or languages shall be used in the arbitration is decisive on three dimensions: party equality, the composition of the arbitral tribunal, and the interaction with national laws. The latter being necessary in a country such as the UAE where the first language is Arabic but the majority of arbitrations are conducted in English; when it comes to the proceedings of arbitration, the choice between these languages can be a vast factor in the interpretation of the law and facts.

Conclusion

At the end of the day, much relies on choosing the most suitable arbitrator. Make sure to vet the arbitrator you wish to nominate accordingly and enhance your chance of success for your arbitration before it even begins.

Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
Profile: https://waselandwasel.com/about/mahmoud-abuwasel/

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www.waselandwasel.com
business@waselandwasel.com

What the Normalization of GCC Relations Means for your Business

March 21, 2021

Recent reports of the thaw in the chilled relations between Qatar and the countries of the GCC previously boycotting Qatar are welcome news to businesses operating in the Gulf.

The normalization of political relations between the GCC countries pursuant to the *AlUla Declaration* that was signed in the first week of January 2021 in the Kingdom of Saudi Arabia could result in the impacts to businesses highlighted below.

Although it remains unclear at this time how each country will respond to such a rapprochement, anticipating how normalization might affect such matters as trade routes, immigration, and investment should assist businesses in recognizing opportunities and mitigating risks.

Commercial Relations

Over the course of the embargo against Qatar, businesses operating throughout the Gulf have faced disruptions to, among other things, supply routes, transportation, recruitment, and scheduling obligations. Parties have sought to accommodate the impacts of these disruptions through contractual provisions aimed at providing relief to harmed parties. These "workaround" provisions have resulted in increased costs to business operations, development projects, and ultimately the public at large, throughout the Gulf.

Businesses should consider reviewing current contract obligations and how they would be affected by the elimination of embargo related disruptions. Parties may desire to enter

into Letters of Intent or Memoranda of Understanding to specify actions that would be implemented upon a lifting of restrictions.

Contracts that were suspended or terminated for *force majeure* (or other) causes could be revisited to explore their ability to be reinstated. Where contracts provided extraordinary modes of performance to deal with disruptions to normal operating methods, parties may revert to the original means of contractual performance.

Regional rights (such as those in agency or franchising) could be negotiated with more mutually beneficial terms considering the elimination of restrictions to travel and other impediments.

The cost of insurance for ongoing projects in the GCC may be reduced reflecting a lessening of project risks, thereby reducing costs.

Parties deterred from bidding on projects in a particular GCC country due to political concerns, may revisit tender opportunities in these countries. Businesses may also seek to reestablish relations with business partners in those countries where operations have been suspended.

Trade Routes

The embargo negatively affected imports into Qatar from countries previously supplying goods and services, including Saudi Arabia, Germany, China and the United States. Those countries which realized increased trade relations include India and Turkey. These disruptions to normal trade routes resulted in part from the closure of the border between Saudi Arabia and Qatar, and the rerouting of goods through ports friendly to Qatar.

For global exporters who utilize the Jebel Ali port as a single point-of-entry to the GCC market, the normalization of

GCC relations could result in reinstating efficient access to all markets within the GCC, as the Saudi-Qatar border reopens for sea-land transport. In addition, the ability to freely access all GCC ports would eliminate current port restrictions limiting imports from foreign markets such as India and China.

Immigration and Recruitment

Businesses adapted to the restrictions imposed by the embargo by, in some cases, revising internal governance structures. These revisions were needed to comply with new rules on authorized signatories for labor contracts, bank accounts, and immigration documents. As these rules may ease with a normalization of relations, businesses may wish to revert to more efficient governance structures.

Businesses may also benefit from an easing of restrictions imposed by various GCC countries which limit immigration from specified countries and affect the rights of foreigners to reside in each country.

Enforcement

The ability to seek enforcement of judgments in each country of the GCC should be enhanced with a normalization of relations. As embassies closed during the embargo reopen throughout the GCC countries, the ability to obtain attestation and other services required in the enforcement of foreign judgments will be restored.

In addition, arbitral forums for dispute resolution located in the GCC, such as the Arbitration Centre within the Dubai International Financial Centre, may see an increase in regional cases as parties seek to avoid the higher cost of arbitration in European venues.

In sum, the consequences of normalization of political relations would go well beyond those noted above and could further enhance the GCC as a stable market for foreign direct

investment. We welcome your inquiries on this topic.

Highlights from the AlUla Declaration

Construction of the Gulf railway network:

“Completing the requirements for the Customs Union and the Common Gulf Market. This includes achieving full economic citizenship that grants citizens of GCC countries the freedom to work, move and relocate, and invest in the Member States. As well as equal access to education and health care, the construction of the Gulf railway network, the creation of food and water security systems, and continuing to encourage joint projects that localize investment in the Gulf.“

Anti-corruption:

“Strengthening governance, transparency, accountability, integrity, and anti-corruption mechanisms through Joint-Gulf action and in all entities of the GCC, including its specialized bureaus. As well as benefiting from the agreements of the G20 framework and the “Riyadh Initiative” pertaining to cooperation in investigations of cross-border corruption and the prosecution of the perpetrators in order to mitigate the impact corruption has on economic growth, sustainable development, and mutual trust between governments and their peoples.“

Economic integration:

“The full implementation of the vision put forth by the Custodian of the Two Holy Mosques, King Salman bin Abdulaziz, King of the Kingdom of Saudi Arabia, in the 36th GCC Summit in December 2015. This includes abiding by a timetable, the completion of economic integration, the implementation of joint defense and security systems, and a unified foreign policy for the Member States.“

Customs integration:

“Completing the requirements for the Customs Union and the Common Gulf Market. This includes achieving full economic citizenship that grants citizens of GCC countries the freedom to work, move and relocate, and invest in the Member States. As well as equal access to education and health care, the construction of the Gulf railway network, the creation of food and water security systems, and continuing to encourage joint projects that localize investment in the Gulf.“

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