First Arab Medical Cannabis Law (Lebanon)

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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."

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

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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.

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