

NEWSLETTER

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SIM ATTORNEYS INC

The Commercialisation of Cannabis

Despite the very obvious benefits that are attainable through the commercialisation of the cannabis industry we are, having regard to what has been achieved to date, squandering this opportunity.



The recently presented 5th draft of the National Cannabis Master Plan (NCMP) states that in 2019 Cabinet took a decision "... that the country needs a national strategy to commercialise cannabis".

The achievement of this objective was, and is, seen as being of critical importance to the growth of our economy as it is recognised and accepted that the cannabis industry will, if properly managed, result in, amongst others:

- substantial revenue generation and socio-economic upliftment;
- increased tax revenues;
- direct and foreign investment;
- reduced law enforcement costs;
- job creation;
- the provision of much needed impetus to secondary industries such as production and distribution;
- medical cannabis based products benefitting consumers.

As matters currently stand it is estimated that:

- there are at least 3.5 million South Africans who regularly consume cannabis and about 900 000 illegal cannabis farmers in the country;
- the value of the illegal cannabis market may currently be worth as much as 28 billion Rand, much of which is currently lost to the fiscus.

Despite the very obvious benefits that are attainable through the commercialisation of the cannabis industry we are, having regard to what has been achieved to date, squandering this opportunity.

Current Status of Commercialisation

Disappointingly (given the benefits of commercialisation) and save and except for 16 growers who are licensed by the South African Health Products Regulatory Authority, and who currently produce cannabis for export, there has been no commercialisation of the cannabis industry.

The Barriers to Commercialisation

We reiterate that despite there being no basis to gainsay the argument for and in respect of commercialisation we currently lack both predictable policy and a workable legislative framework, both of which are a prerequisite to the successful commercialisation of the cannabis industry.

The practical effect of the above is that not only are we unable to move forward with the commercialisation objective, but we are also allowing the illegal market to flourish and take further purchase.



The primary reason for this being that whilst the Constitutional Court has ruled that the use and cultivation of cannabis in private is no longer illegal the exchange of remuneration for cannabis remains illegal.

The Draft Cannabis for Private Purposes Bill (“the Bill”) in its current form will further serve to entrench the current narrow and restrictive approach as it similarly seeks to prohibit the exchange of remuneration for cannabis, cannabis plants, seeds, and seedlings.

From a commercialisation perspective the Constitutional Court ruling, and the Bill represent the antithesis of commercialisation as they both seek to prevent the exchange of remuneration for cannabis.

As a consequence of the above there is currently no commercialisation process to speak of. As is to be expected, by legalising the right to consume cannabis in private, without providing for any legitimate means of acquiring cannabis (unless you grow it), creates both a vacuum and fertile ground for the illegal cannabis market to flourish. The reason for this being, simply put, is that the illegal cannabis market now has a customer base who are legal consumers but not growers.

There can be no doubt that any legislation that further serves to prevent the commercialisation of cannabis would amount to nothing more than self-defeating legislation.

The extent of the above problem has been made worse by the fact that commercial models, which comply with the letter of law, currently do not enjoy the protection that they deserve as there are no clear policy



guidelines and, for the moment, much is left to the discretion of the South African Police Services.

There can be no doubt that the inevitable consequences of there being no proper policy or legislative framework is that that law that we do have (being the Constitutional Court Judgement) is being twisted and stretched to fit the agendas and purpose of conflicting interest groups, and unfortunately, for the moment the illegal market seems to be prevailing as:

- the average person is now forced to obtain cannabis illicitly,
- the illegal market is being reinforced;
- the economy is deprived of attainable tax income.

NCMP

In an effort to redirect the industry back towards legitimate commercialisation government has published the 5th draft of the NCMP for comment. Whilst the NCMP certainly does not constitute policy it does provide both a platform and an invitation for the private sector to work together with government in driving the commercialisation of the cannabis industry.

Importantly the NCMP also sets out as to what government's objectives are and these objectives, as we see it, bring a degree of clarity at least insofar as charting the way forward is concerned. The objectives being:

- the amendment of existing legislation by removing existing constraints that hinder commercialisation;
- the implementation of breeding programmes for new dagga and hemp cultivars;
- supporting research and development programmes for the country's cannabis industry;
- mobilising and supporting farmers to participate in the cannabis value chains;
- developing new domestic and export markets for the South African cannabis industry;
- including indigenous cannabis growers in the value chain.

As is the case with most plans, the devil is in the detail and in this case specifically the detail relating to timing and implementation.



For those who support the commercialisation of the cannabis industry they are now left with two options being either to stand back and criticise the NCMP or accept the invitation to work together to secure its implementation, and, in so doing demonstrate that the cannabis industry can indeed deliver on its promise to grow the economy, create jobs and

generate revenue.

As we see it the latter option is the only option.

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