HEALTHCARE & LIFE SCIENCES

Relaxing Cannabis

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The regulatory travels of cannabis continue. In terms of amendments published to the Schedules to the Medicines and Related Substances Act No. 101 of 1965, as amended ("the Medicines Act"), as GNR 586 on 22 May 2020, the legal classification of cannabis or THC has shifted relatively significantly.

In terms of the amendments:

- Cannabidiol is a Schedule 4 substance. However, cannabidiol is a Schedule 0 substance when the following criteria are met:
    - it is contained a complementary medicine as that term is legally defined in the General Regulations to the Medicines Act (GNR 859, dated 25 August 2017);
    - the complementary medicine contains no more than 600mg cannabidiol "per sales pack", providing a maximum daily dose of 20mg of cannabidiol; and
    - making a general "health enhancement, health maintenance or relief of minor symptoms (low risk) claim", none of which is defined in the amendment or the Medicines Act;
- processed products made from "cannabis raw plant material" for ingestion containing 0,0075% or less cannabidiol "where only naturally occurring quantity of cannabinoids found in the source material are contained in the product"
- THC or (-)-transdelta-9-tetrahydrcannabinol is now a Schedule 6 substance having been moved from Schedule 7 by the amendments. The classification, however, does not apply to the following products and circumstances:
    - in raw plant material and processed products when intended for industrial purposes and not for human or animal consumption and contains 0,2% or less of tetrahydrocannabinol;
    - processed products made from cannabis containing 0,001% or less of tetrahydrocannabinol; or
    - when raw plant material is "cultivated, possessed, and consumed by an adult, in private for personal consumption".

For purposes of the amendments and as applied in terms of the Medicines Act, Schedule 4 substances are controlled and their possession and use are restricted to certain healthcare professionals as identified in section 22A(5) of the Medicines Act and include, pharmacists, manufacturers, medical practitioners, practitioners and nurses. Schedule 0 substances are readily available to consumers directly off the shelves of supermarkets and health shops.

In contrast, Schedule 6 substances, albeit that they are treated equally to those in Schedules 2, 3, 4 and 5, in terms of section 22A(6)(i)(i), a Schedule 6 substance may not be repeated unless a new prescription is obtained and, in terms of section 22A(6)(j) shall only be available in an emergency on controlled circumstances and only in the smallest possible unit sales pack available. Other restrictions also apply to Schedule 6 substances in terms of the Medicines Act. Substances that appear in Schedule 7 require a permit for acquisition, use, possession, manufacture or supply in terms of section 22A(9) of the Medicines Act.

The amendments now create an environment where cannabidiol may be present in complementary medicines or processed products, which arguably are not medicinal in nature, where 0,0075% or less of cannabidiol is present and "where only the naturally occurring quantity of cannabinoids found in the source material are contained in the product". Whilst the easing of the regulatory environment is evident, there remains much to do in respect of addressing complementary medicines and their registration in terms of the Medicines Act. Therefore, whilst the regulatory easing of cannabidiol is taking place, a further hurdle, in the form of complementary medicine control and regulation, remains firmly and grimly in place.

In addition, the amendments arguably align the Schedules with the pronouncements by the Constitutional Court (in *Minister of Justice and Constitutional Development and others v Prince (Clarke and Others Intervening); National Director of Public Prosecutions and Others v Rubin; National Director of Public Prosecutions and Others v Acton* 2018 (10) BCLR 1220 (CC)) concerning the personal use of cannabis by an adult in private with the change of THC from Schedule 7 to Schedule 6 and the provisos that are now included in Schedule 6 to the use and possession of THC.

The amendments may indeed be welcomed by some and derided by others, there are various terms that will require clarification in order to understand the scope and ambit of the amendments, especially, with reference to cannabidiol, "general health enhancement, health maintenance or relief of minor symptoms (low risk) claims" as well as the effects of the use of conjunctive "and", in respect of THC, in "cultivated, possessed, and consumed".

Whether or not the continued fall through the Schedules by cannabidiol and THC is to be continued remains to be seen. However, based on the now direct connection between cannabidiol and complementary medicines, one would expect much in the way of product development in the South African market.

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