

Questions Regarding Canadian and Uruguayan Cannabis Laws

Date: June 24, 2019

Original Newsletter(s) this article was published in: Blaneys on Cannabis: June 2019

From: Patrick Cummins, Blaney McMurtry LLP, Toronto, Ontario, Canada

To: Jonás Bergstein, Bergstein Abogados, Montevideo, Uruguay

Cummins: In North America many cannabis companies are being listed on the Canadian Stock Exchange because other North American stock exchanges restrict access if cannabis operations take place in the United States, where cannabis is still illegal federally.

Cummins: ARE THERE ANY SIMILAR RESTRICTIONS IN URUGUAY?

Bergstein: As long as the cannabis company has obtained the required license from the *Instituto de Regulación y Control Canábico* ("IRCCA"), Uruguayan securities laws do not contain any restriction expressly precluding cannabis companies from listing their shares on a publicly traded stock exchange. Therefore, the answer to the question should be "No": there are no similar restrictions in Uruguay.

However, there is the practical issue that any license granted by IRCCA to a cannabis company involves a thorough review by IRCCA of the shareholding structure, ultimate beneficial owners and legitimate origin of funds of the cannabis company. As a general rule, any transfer of the stock affecting the corporate structure of a cannabis company requires the prior authorization of IRCCA (to whom all relevant details of the ultimate beneficial owner must be provided). Therefore, as a practical matter, it may be difficult to conduct such prior analysis where the acquisition of the cannabis company's shares is made through a stock exchange.

Cummins: WHERE DO URUGUAYAN CANNABIS COMPANIES TYPICALLY LIST?

Bergstein: Although trade of cannabis is fully permitted and cannabis companies are allowed to list on any Uruguayan stock exchange without restrictions (as long as such companies are duly licensed by IRCCA), as of today there are no cannabis companies listed in either of Uruguay's stock markets. (It would be fair to say that the whole activity of Uruguay's stock exchange is fairly modest, and only very few companies are listed).

As far as we are aware of: (i) the only Uruguayan-licensed cannabis company quoting on a stock market does so on the New York Stock Exchange (“NYSE”); and (ii) foreign shareholder(s) of local cannabis related companies are listed on stock markets in Canada.

Cummins: The Canadian Stock Exchange typically allows international cannabis companies to list on their exchange by way of: (i) an initial public offering (“IPO”) completed by way of a prospectus offering in conjunction with an initial exchange listing or (ii) reverse take-over (“RTO”) whereby a public company (usually inactive and with few assets, if any) acquire all of the stock of a private company which has substantial assets or business operations.

Cummins: DO URUGUAYAN CANNABIS COMPANIES LIST BY WAY OF IPO?

Bergstein: We refer to the above responses.

Cummins: DO URUGUAYAN CANNABIS COMPANIES LIST BY WAY OF RTO?

Bergstein: We refer to our responses above. From a Uruguayan regulatory perspective, in order to go public abroad, it seems to us that the RTO approach could be more effective vis-à-vis the IPO approach.

Cummins: Because cannabis is still illegal at the federal level in the United States, many cannabis companies cannot open bank accounts and are looking to Canadian Banks to open bank accounts and to the Canadian public markets to raise capital to expand operations, introduce product lines and make acquisitions.

Cummins: CAN CANNABIS COMPANIES OPEN BANK ACCOUNTS IN URUGUAY?

Bergstein: In Uruguay there are no legal restrictions which would preclude a Uruguayan cannabis-licensed company from opening a bank account. However, as a practical matter Uruguayan banks have been rather reluctant to open bank accounts for cannabis companies (because of internal policies imposed by their head offices in the US or Europe).

Cummins: If you choose to file a prospectus in the Canadian province of Quebec, you would be required to translate essential documents from English into French.

Cummins: ARE THERE ANY SIMILAR TRANSLATION REQUIREMENTS IN URUGUAY?

Bergstein: Yes, to list on a Uruguayan stock exchange, relevant information/documents must be translated into Spanish.

Cummins: An international cannabis company going public in Canada will be required to establish a business entity incorporated in at least one Canadian province.

Cummins: WOULD THERE BE ANY RESTRICTIONS FOR A URUGUAYAN CANNABIS COMPANY ESTABLISHING A BUSINESS ENTITY IN CANADA?

Bergstein: Assuming that the Uruguayan company’s bylaws so authorize it, there would be no issue for this company to establish a business entity in Canada.

Cummins: Would there be any restrictions on a Canadian resident or Canadian held company establishing or purchasing a cannabis related company?

Bergstein: No, in Uruguay there are no restrictions for foreign individuals or companies to own local cannabis-related companies. On the regulatory side, should a Canadian company (or individual) wish to establish or purchase a local cannabis related company, such operation would require IRCCA's prior authorization.

Cummins: Would there be any restrictions on a Canadian resident or Canadian held company purchasing a cannabis farm?

Bergstein: As noted above, as long as there is full compliance with Uruguay regulations on cannabis (obtaining the required authorizations), there would be no restrictions for a Canadian resident or a Canadian held company to purchase a cannabis farm. Essentially, applicants should be in a position to demonstrate technical credentials, file a grounded and reasonable business plan (technically and financially), and evidence of good moral character.

Cummins: The Canadian government does not support facilitating a regime premised on servicing global demand of cannabis given the associated public health, safety and security risks. For such reasons, importation and exportation of cannabis would only be permitted in Canada under very limited circumstances, such as, importing starting materials for a new Licensed Producer or exporting a unique cannabis strain for scientific investigation in a foreign laboratory.

Cummins: WOULD THERE BE ANY RESTRICTIONS ON THE IMPORTATION OR EXPORTATION OF CANNABIS IN URUGUAY?

Bergstein: In order to import or export cannabis in Uruguay, it is necessary to obtain authorization from the competent authority on a case-to-case basis. However, there are no significant restrictions as in Canada.

In order to export and import non-psychoactive cannabis and seeds, authorization must be granted by the Ministry of Agriculture.

For the export or import of cannabis products for medicinal or scientific research purposes, it is necessary to obtain an authorization from the Controlled Substances Division of the Ministry of Public Health as well as a certificate of registration and authorization of sale issued by the Department of Drugs of the same Ministry.

In order to gain the authorization for the export, both cases require the presentation of an import certificate (*certificado de importación*) granted by the competent authority of the importing country, certifying the authorization for the entry of those products.

Although excluded from the scope of the above inquiry, Uruguay also offers certain platforms which in practice have been suitable for tax planning purposes.