

## Opportunities in Medical Cannabis in Germany

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The legalization of medical cannabis in 2017 has turned into an attractive destination for related businesses. New business perspectives have opened up; however, anyone wishing to do business with cannabis should be familiar with its complex legal framework.

Medical marijuana has been legal in Germany since March 2017. Since this date, doctors have been able to prescribe cannabis flowers and extracts from cannabis to seriously ill patients. The number of patients receiving cannabis on prescription has increased rapidly, triggering a genuine demand for domestic growing and importation and thus offering a great opportunity for innovative business models. However, it should be noted that, under German law, medicinal cannabis products are subject to both pharma and narcotics legislation with accordingly high requirements on product quality, import and distribution.

The domestic growing of cannabis is managed and controlled by the Federal Cannabis Agency (Cannabisagentur) set up by the Federal Institute for Drugs and Medical Devices (Bundesinstitut für Arzneimittel und Medizinprodukte, BfArM), as the competent regulatory authority whose main task is ensuring a high quality of cannabis produced in Germany. Home growing, even for medical purposes, remains prohibited and production can only be carried out by companies selected by the Cannabis Agency in a government bidding process.

The first successful tender procedure was completed in May 2019. The tender covers a total of 10,400 kg of cannabis, spread over four years with 2,600 kg each. It is divided into 13 lots of 200 kg per year. This means that the first contract has been awarded for the cultivation and harvesting of a total of 7,200 kg of cannabis and is expected for the fourth quarter of 2020.

The total production will be bought up by the Cannabis Agency and subsequently

resold without profit to pharmaceutical manufacturers, wholesalers and pharmacies holding the required licenses. Until the next bidding process is initiated, the growing of cannabis remains reserved only for those that have been already selected by the Cannabis Agency.

Additionally, supply of cannabis products to patients will be covered by imports. Importation of cannabis requires several narcotics and pharma legislation-related licenses and authorizations. In particular, any company wishing to import cannabis products into Germany has to apply to the Federal Opium Authority, a sub-unit of the BfArM, for a narcotic trade license; the applicant must have a registered office in Germany and has to provide specific documentation, inter alia relating to the persons in charge, who must have the required expertise, as well as relating to the local production plants, which must be secured against unauthorized removal.

Finally, it should be mentioned that violations of the applicable narcotics legislation may result in severe criminal sanctions. Still, if the licensing proceedings mentioned above are observed, the legalization of cannabis offers great opportunities for innovative business models.

In this context, cannabis manufacturers should consider protecting their brand as a trade mark. To note that in Germany trade mark protection for recreational cannabis is not possible because the retail of it would constitute an infringement of the Narcotic Drugs Act (Betäubungsmittelgesetz - BtMG). This is why the German Patent and Trademark Office for the time being only accepts trade mark protection for marketable cannabis. A typical list of goods and services would include the following items: 'cannabis for medical purposes' (Class 5), 'foodstuffs containing marketable cannabis' (class 29), 'marketable cannabis plants' (Class 31), 'smoking articles for the use of marketable cannabis' (class 34), 'retail of marketable cannabis' (Class 35).