

HOSPITALITY INFORMATION MEMO

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New York Cannabis Businesses: What Should I Be Doing Now?

Following the passage of the Marijuana Regulation and Taxation Act (the Act) on March 31, 2021 and the recent approval of [regulations governing the packaging, labeling, marketing and advertising of cannabis products](#), many of those hoping to jump into the projected multi-billion dollar recreational cannabis industry have been asking what steps they should be taking in order to position themselves to be ready when licensing regulations are issued. The unfortunate answer is that many of the steps potential licensees want to take right now carry significant risk before New York issues final regulations governing the application process.

With that uncertainty in mind, what should our clients who may want to be growers, processors, distributors or retailers of adult-use cannabis do now, other than wait? There are some preparatory steps that can be taken, but clients should be careful not to proceed too far down any path so as to not take on unnecessary risk or liability.

Preparing Application Information

Even though all licensing regulations have yet to be released, adult-use conditional cultivator license applications have been open to eligible hemp growers since mid-March. While the retail application may be more expansive, it is likely that much of the same information required from the cultivator application will be included in the other ones. For example, eligible hemp growers were required to submit, among other things: contact information, business locations, ownership information, financial information and cultivation and site plans. Cannabis businesses could start working with certified accountants, architects and other professionals now to begin preparing some of this information. Anything clients can get started now will only lighten the load when the final regulations on application requirements are published. Additionally, clients could start having discussions with their attorneys about the proper corporate entity to form for their businesses. Although this does not carry legal risk since preparing information to include on your application is not against any rules or regulations, clients should avoid wasting too much time before the final regulations about application requirements are released.

Real Estate

Particularly as it relates to those seeking a retail license, clients should be scouting potential locations and determining whether it is proper to buy or lease their business location. Anything beyond scouting properties carries some risk that your location may not be usable for cannabis-related purposes under the yet-to-be-drafted regulations. While New York's regulations regarding the location of medical marijuana dispensaries can be instructive—those state that a dispensary may not be located on the same street and within 1,000 feet of any school, church, synagogue or other place of worship—there may be additional restrictions as the Cannabis Control Board (CCB) addresses the significant growth in the market of marijuana sales under the Act. Further, many municipalities opted out of permitting retail sales and/or on-site consumption of cannabis within their jurisdiction prior to the end of 2021, so some areas are completely off-limits.

Banking

While it's not entirely true that marijuana-related businesses (MRBs) are excluded from banking with national banks, FinCEN estimated that through the third quarter of 2021 only 706 banks and credit unions nationwide provided banking services to MRBs. Most large banks have shied away from cannabis companies because of its illegality at the federal level. Additionally, and again particularly as it relates to retail licensees, many marijuana-related transactions occur using cash as most branded credit and debit card networks prohibit such transactions on their networks. You will want to talk with your banker about whether they provide services to MRBs, keeping in mind that if they don't, you may have to move all of your banking business to another institution if you plan to transfer funds between your other personal or business accounts and your MRB accounts.

Financing

While you may not be spending cash to buy or lease property at the moment (as discussed above), it is important to think about the financing options for your business as the capital needs are likely to be substantial. Again, looking to New York's medical marijuana regulations as potentially instructive, the license application alone carried the obligation to submit with it a \$10,000 application fee and a \$200,000 registration fee. In some states that have previously legalized adult-use marijuana, applicants have had to show that a location had already been purchased or leased, demonstrate significant capital resources to establish and operate the business, and submit with their applications certain environmental studies and traffic analyses. All of these costs come before even acquiring any required equipment or inventory or hiring employees. Add to this that some traditional bank financing may be foreclosed to MRBs (as discussed above) and the task of finding start-up capital can be daunting. You should consider what funding sources (debt or equity) you may access, though similar to the discussion of buying or leasing property, actually bringing in such financing at this time carries some risks.

Marketing and Advertising Plan

The [first set of regulations relating to adult-use cannabis](#), which regulate packaging, labeling, marketing and advertising, were approved on June 1 and will become effective later in the summer. Businesses looking to get a head start on preparations could begin crafting their marketing plans and advertising materials for when retail cannabis sales start. This carries with it some immediate risk, as the regulations have not yet been finalized. However, the regulations provide a good starting point with which to begin preparing how your business will advertise to its customers.

Social Equity Plan

While official regulations governing application requirements for adult-use cannabis licenses are still yet to be published, the Act included an applicant's plan to benefit communities and people disproportionately impacted by the war on drugs (including adopting a social responsibility plan that promotes workplace diversity) as one of the criteria the CCB may consider in determining whether to award an applicant an adult-use cannabis license. As this is already a major focus for the CCB, clients should put a significant amount of time into creating a social equity plan so it is ready and refined once it is time to submit their applications.

Breaking into New York's emerging cannabis industry does not have to entirely be a game of wait-and-see. Bond's cannabis attorneys can help you navigate the present uncertainty while also readying your business to seize the opportunities presented by this newly opened market. Please contact [Dustin M. Dorsino](#), [Jeffrey B. Scheer](#), [Jeffrey P. Gleason](#) or the Bond attorney with whom you are regularly in contact if you wish to discuss how your business can seek a license to cultivate, process, distribute or sell cannabis in New York State.



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