

CANNABIS & HEMP

The market for hemp, cannabidiol (CBD), delta-8 THC, and other cannabis products is booming, and the complexity of federal and state laws and regulations create a number of challenges for cannabis-related businesses. Anyone looking to enter the cannabis and hemp industries, operate within them, or even interact with them needs well-versed counsel to help them navigate the unique issues that will inevitably arise within this uncharted territory.

How we help

Everyone involved—from farmers and processors, to distributors and retailers, to researchers and governmental entities—needs good advice from attorneys who know the industry. For example:

- How can your business position itself to launch in a new market with a patchwork of federal, state, and local laws and regulations?
- How can you avoid criminal exposure in a space when handling a product that may be illegal depending on its cannabinoid content?
- What licenses are necessary, are they available for your planned business model, and how will you obtain them?
- Will your business be permitted to operate at its planned location?
- Once launched, how will your business ensure compliance with regulatory requirements?
- How will your business protect its intellectual property interest in new products as you develop them?
- How will your business handle its revenue when banks hesitate to transact with players in the cannabis industry?
- How will your business navigate protections for employees who use medical or adult-use

cannabis in jurisdictions where it is legal under state law?

- What are the risks faced by suppliers and other businesses servicing the cannabis industry?
- For investors and lenders, what issues are raised by investing in the cannabis and hemp industries?
- What does the limited availability of federal bankruptcy court remedies mean for the industry?

The Hodgson Russ Cannabis & Hemp Practice Group is especially qualified to provide insight and counsel on these and other questions. We can assist you with meeting the challenges of the industry and adapting as the laws continue to change. We use experience and industrial knowledge, as well as a cross-disciplinary approach that spans to many of our practice areas, to provide clients with the skills and services they need to position themselves for success.

We provide legal advice on the full spectrum of issues facing companies that cultivate, process, distribute, or sell cannabis products, as well as clients who service the industry, such as landlords, equipment manufacturers, food and beverage organizations, financial service providers, and others. Because many cannabis-related businesses are entrepreneurial



Consumers are projected to spend on average \$57 billion per year on legal cannabis products by 2027.



The Hodgson Russ Cannabis & Hemp Practice provides the insight and counsel needed to navigate through these and other questions, meet the challenges of the industry, and adapt as the law continues to change.



We provide legal advice on the full spectrum of issues facing companies that cultivate, process, distribute, or sell cannabis products, as well as clients who service the industry, such as landlords, equipment manufacturers, food and beverage organizations, financial service providers, and others.

in nature, we advise on enforcement of contracts, employment laws, environmental compliance, intellectual property, and other areas of law beyond day-to-day operations.

LICENSING AND REGULATORY COMPLIANCE

Hemp and cannabis regulation varies from country-to-country, state-to-state, and, in some jurisdictions, even between municipalities. Each jurisdiction may have its own licensing process, regulatory landscape, reporting requirements, testing requirements, and other specific obligations. For example, New York's Marihuana Regulation and Taxation Act ("MRTA") generally prohibits vertical integration between licenses, but there are some exceptions. In New York and in other jurisdictions, we help our clients know and understand the regulatory landscape, meet applicable licensure requirements, anticipate compliance issues, and limit exposure when mistakes happen.

MERGERS AND ACQUISITIONS

Recent years have seen a boom in transactions in the medical cannabis and hemp industries, as well as the adult use (or "recreational") industry. The Hodgson Russ team helped clients position themselves with strategic acquisitions, including some of the largest transactions in the history of the industry. Our experience gives us insight into the industry's complex regulatory requirements, the potential impact of a change of control on a target company's pending license applications, and ways to structure transactions accordingly. In addition, we have been involved with unique financing options in support of strategic acquisitions.

SECURITIES

Running a hemp or cannabis business is capital-intensive. Today's operators range from startups with a few angel investors to publicly traded companies listed on national exchanges. Whatever the size of your company, Hodgson Russ has the securities expertise to structure your business' capital

raise in a manner that satisfies the registration requirements under the U.S. Securities Act, or is otherwise exempt from such registration. Although it remains a challenge for businesses with U.S. hemp cannabis operations to be listed on a U.S. stock exchange, there has been a flurry of fundraising activity by such companies on various public stock exchanges in Canada, where the cannabis industry is fully legalized. Hodgson Russ does not practice Canadian law, but through our extensive cross-border contacts and office in Toronto, we can assist your company in finding the right partners for a going-public transaction north of the border.

CORPORATE STRUCTURE AND GOVERNANCE

Like New York, many states limit the types of businesses and individuals who can own and operate as hemp or cannabis cultivators, processors, distributors, or retailers. Moreover, regulators insist on strict adherence to corporate formalities. Your business will need to follow the law and best practices applicable to corporate governance, and keep meticulous documentation. Hodgson Russ corporate attorneys have extensive experience helping individuals, startups, and established companies with the myriad issues and regulations applicable to the operations of corporate boards and the conduct of their directors. In addition to helping our clients choose and create the best corporate structure for their needs, we assist corporate clients in developing charters, bylaws, and compliance policies; in performing board self-assessments; and in creating board structure.

FEDERAL, STATE, AND LOCAL TAX

In an extraordinarily regulated industry, your business cannot afford to make mistakes with its books. Your business needs a carefully-structured tax plan, pristine recordkeeping, and a team of experienced professionals to address any IRS inquiries. Hodgson Russ is a leading firm for New York State, New York City, and multistate tax matters including planning, compliance, litigation, and damage control. Our

professionals have the breadth and depth of experience necessary to anticipate tax questions arising from new, ever-changing laws and regulations specific to the cannabis industry. For example, in New York, adult-use cannabis sales are subject to both a state-wide tax (9%) and local tax (4%). In addition, distributors must remit taxes based on the THC content of the products they sell. Cannabis flower is taxed at 0.5 cents per milligram of THC, cannabis concentrate is taxed at 0.8 cents per milligram, and edibles are taxed at 3.0 cents per milligram. Hodgson Russ stands ready to help your business navigate tax minefields with confidence.

LITIGATION

Whenever laws and regulations are new and untested, litigation is sure to follow. Municipalities adopting their own rules have seen challenges. Approval of cultivation and processing facilities has been challenged under environmental review statutes. Disputes over patents and other intellectual property in cannabis products have received national attention. Hodgson Russ has significant litigation experience representing its clients in land use, intellectual property, and business disputes. We also have broad expertise across a spectrum of issues, allowing us to anticipate and handle novel theories from Day 1, including products liability, business torts, contract litigation, and environmental and toxic torts. Our lawyers also have extensive experience representing clients before a variety of state and federal agencies, including the IRS, Federal Trade Commission (FTC), Food and Drug Administration (FDA), United States Department of Agriculture (USDA), United States Patent and Trademark Offices (USPTO), and state tax and regulatory agencies.

REAL ESTATE

Real estate questions for the industry include acquisition of land for cultivation or processing operations, structure of leasehold interests, compliance with zoning laws, and many others. Hodgson Russ provides counsel to individuals and businesses across the spectrum of issues arising from real estate transactions, zoning and regulatory

approval, landowner and lessee liability, water rights, and borrower and lender financing. As different jurisdictions look to bolster newly legalized markets, our attorneys have significant experience with myriad public financial incentives utilized for real estate development projects, including public-private partnerships, state and federal tax credits, industrial development agency incentives, Excelsior Jobs Program and Start-Up NY benefits, and other similar state and local financial incentives.

ENVIRONMENTAL AND LAND USE

Cannabis cultivators and processors face all of the challenges of the agricultural and food industries, with the additional regulatory hurdles imposed by other agencies. With an expanding cultivation or processing operation comes applicable environmental law and regulation. Hodgson Russ attorneys have broad experience with environmental due diligence and transaction services, regulatory compliance and risk management counseling, enforcement defense (administrative, civil, and criminal), and environmental impact reviews.

LABOR AND EMPLOYMENT

As your business grows, so do the obligations imposed by state and federal employment laws. Employers face difficult questions arising from the conflict between state and federal cannabis laws. If an employee tests positive for cannabis use, can he or she be terminated for cause? The answer varies among jurisdictions. The professionals at Hodgson Russ have broad experience helping employers answer difficult questions concerning overtime, minimum wage, misclassification, off-the-clock, and independent contractor-related wage and hour issues. They also counsel management on every aspect of the employment relationship, including litigation when necessary. Hodgson Russ is prepared to help its clients anticipate and adapt.



CONTACT

Patrick Hines

716.848.1679

phines@hodgsonruss.com

PROFESSIONALS

ATTORNEYS

Mohammed Alam

Arielle Doolittle

Christopher Doyle

Carol Fitzsimmons

Joseph Goldberg

Patrick Hines

Heather Kimmins

Rosellen Marohn

Fallon Martin

Christopher Milne

Kinsey O'Brien

Matthew Parker

Gary Schober

Daniel Spitzer

Melissa Subject

William Turkovich



BANKING & FINANCE

As of June 2020, only 695 banks and credit unions were servicing cannabis-related businesses. When further change comes, banks and financial services firms looking to do business with the cannabis industry will need to be ready with experienced counsel. Hodgson Russ has a wealth of experience servicing the banking and finance industry, from multistate banks to small community banks. Our professionals counsel banks and financial institutions in regulatory compliance, transactions, enforcement proceedings, and litigation.

INTELLECTUAL PROPERTY & TECHNOLOGY

What brand-related protections exist for an emerging or existing cannabis company? Is trademark, copyright, or patent protection available? Hodgson Russ attorneys have broad experience solving these types of problems for Fortune 500 companies, middle-market companies, and major research and educational institutions, as well as small businesses and individuals. Our intellectual property practice

is focused not only on immediate intellectual property needs (copyright, trademark, patent, and trade secrets), but can also work with you to devise a long-term portfolio-building strategy. In addition, Hodgson Russ professionals assist our clients with enforcement and litigation of intellectual property rights.

HIPAA & PRIVACY REGULATIONS

Participants in the medical cannabis industry may be covered providers under the federal Health Insurance Portability and Accountability Act (HIPAA), and therefore they must secure access to health data in their possession in a manner that is compliant with privacy rules. Our attorneys advise and represent covered entities on privacy matters under HIPAA and New York State confidentiality laws. We assist providers in negotiating contractual relationships and managing privacy breaches and breach notifications.

OFFICES

ALBANY • 677 Broadway, Suite 401 • Albany, NY 12207 • 518.465.2333

BUFFALO • The Guaranty Building • 140 Pearl Street, Suite 100 • Buffalo, NY 14202 • 716.856.4000

GREENSBORO • 7 Corporate Center Court, Suite B • Greensboro, NC 27408 • 336.271.4014

HACKENSACK • 25 Main Street, Suite 605 • Hackensack, NJ 07601 • 212.751.4300

NEW YORK • 605 Third Avenue, Suite 2300 • New York, NY 10158 • 212.751.4300

PALM BEACH • 440 Royal Palm Way, Suite 202 • Palm Beach, FL 33480 • 561.656.8608

ROCHESTER • 90 Linden Oaks, Suite 110 • Rochester, NY 14625 • 585.613.3939

• 1800 Bausch and Lomb Place • Rochester, NY 14604 • 585.454.0700

SARATOGA SPRINGS • 60 Railroad Place, Suite 300 • Saratoga Springs, NY 12866 • 518.736.2900

TORONTO • 22 Adelaide Street West, Suite 2050 • Toronto, ON M5H 4E3 Canada • 416.595.5100

Practice restricted to U.S. law

DISCLAIMER

Please remember that the possession, use, distribution, and sale of non-hemp cannabis and cannabis products is illegal under federal law, despite certain state laws that decriminalize and/or legalize such activity. While federal enforcement policy may defer to a state's laws and not enforce conflicting federal laws, the fact remains that compliance with state law in no way assures compliance with federal law, and there is a risk that conflicting federal laws may be enforced in the future. No legal advice we give is intended to provide any guidance or assistance in violating federal law.



www.hodgsonruss.com

©2024 Hodgson Russ LLP