



Cannabis

The cannabis industry is unique. It is rare that a new industry bursts onto the commercial landscape. Rarer still is when that new industry quickly becomes a multi-billion dollar juggernaut. According to Forbes, spending on legal cannabis worldwide is expected to reach \$57 billion by 2027.

This fast-paced, dynamic industry presents some unusual legal challenges – most notably, how can any business participate in this industry given that the use, sale, and possession of marijuana remains illegal in the United States under federal law? In navigating this new industry, it is important to engage legal counsel who understand the nuances of the cannabis industry as well as federal law and public policy as it relates to cannabis.

Despite these challenges, businesses that are part of or are ancillary to the cannabis industry are essentially no different than many other businesses. They require the same types of legal advice regarding corporate structure, commercial relationships, contracts, real estate, intellectual property, insurance, labor and employment, and many other legal issues. As such, it is important to engage business-minded counsel who can provide sound commercial and legal advice generally.

The attorneys in Leech Tishman’s Cannabis Group are able to meet all of these needs – they marry a keen understanding of the cannabis industry with a broad-based legal platform. Leech Tishman provides high-quality and cost-effective legal services to the cannabis industry.

The Cannabis Industry

As of January 2020, 11 states, as well as the District of Columbia, have legalized recreational marijuana. In addition, a total of 33 states allow for the use of medical marijuana.

In addition, the 2018 Farm Bill de-scheduled “hemp” as an illegal controlled substance in the United States. As a result, across the country, a number of businesses are now growing and selling hemp or hemp-derived products. In particular, a booming market for hemp-derived CBD products has developed.

As the cannabis industry continues to grow, sound legal advice becomes increasingly necessary. The legal issues facing the cannabis industry are complex and ever-changing, as each state determines the legality of medical marijuana, recreational marijuana, or both. Today, states even have their own laws regarding hemp, which further creates a patchwork legal landscape.

Therefore, companies operating in this space must address the tension between state and federal law as well as varying state laws, changing regulations, insurance coverage and risk management issues, investment and governance concerns, employment challenges, and more. Start-ups and/or seasoned entrepreneurs also face additional legal challenges as they try to grow in this emerging marketplace.

Leech Tishman’s Cannabis Group was created to provide comprehensive guidance to cannabis companies of all types and sizes, whether they “touch” the plant or not, including dispensaries, growers, and brands. Our attorneys also assist ancillary businesses that work directly with cannabis companies or operate in or adjacent to the cannabis industry, including, for example, investors and banks; doctors; service companies, such as advertising, packaging, and logistics companies; and real estate brokers, owners, landlords, or developers.

Our Services

Our multi-disciplinary practice group has assisted and can assist clients address complex cannabis-related issues in various legal areas, including:

Colleges & Universities

- Athletics
- Career services
- Drug and other policies
- Federal funding
- Landlord-tenant
- Research
- Sponsorship

Corporate, Investment, and Transactional

- Application for listing on Nasdaq Stock Exchange
- Business audits
- Business entity consultation, formation, and structuring

- Commercial agreements
- Corporate governance
- Creation of operational / business plans
- Cybersecurity and liability
- Domestic and cross-border financing transactions
- Drafting and/or revising operating and shareholder agreements to prepare for potential of taking your cannabis company public
- Due diligence
- E-commerce
- Exit strategy
- Identifying struggling cannabis companies in heavily regulated states and navigating the state approval process for acquisition/assignment of licenses
- Investor relations
- Mergers and acquisitions
- Operating and shareholder agreements
- Preparing your cannabis company for investments/sale opportunities
- Privacy
- Purchase or sale of businesses
- Securities law compliance
- Valuation matters
- Venture capital and business financing arrangements

Environmental

- Disposal
- Environmental impacts
- Hazardous materials
- Land use
- Natural resource protection
- Pesticide use
- Water quality, supply and rights

Federal & Criminal Law Considerations

- Aiding-and-abetting liability
- Anti-money laundering statutes
- Contract enforcement
- Federal public policy
- Federalism considerations
- Federal legislation
- Likelihood of prosecution
- U.S. Controlled Substances Act

Government Policy & Affairs / Regulatory

- Challenging statutes and administrative decisions
- Federal Trade Commission (FTC)
- Food and Drug Administration (FDA)
- Industry-related regulations
- Regulatory compliance and lobbying

Health Law

- Hospital compliance
- Research and development
- Think-tanks
- University research centers

Immigration

- Adjustment of status applications
- Audits
- Border crossing issues
- Global migration/international intracompany transfers
- Government immigration audits/enforcement actions
- Labor certification
- Labor condition applications
- Regulatory compliance
- Training/education

Insurance Coverage

- Claims
- Commercial agreements
- Compliance with state law
- Litigation and alternative dispute resolution
- Policy reviews
- Policy placement and renewals
- Product recalls
- Risk management best practices
- Risk transfer

Intellectual Property

- Licensing
- Marketing and branding
- Patent registration and prosecution, including cannabis compositions, drug formulations, methods of preparation, or specific plant patents
- Trade secrets
- Trademarks

Labor and Employment

- Compliance with state and federal law
- Drafting employment policies specific to medical cannabis
- Drug testing and hiring of medical cannabis card holders
- Discipline for medical cannabis users
- Hiring requirements for grower/processors
- Training on medical cannabis and the workplace
- Workplace safety

Litigation

- Appellate
- Alternative dispute resolution
- Application appeal process
- Class actions
- Commercial
- Debt collection
- Insurance coverage

- Product liability
- Regulatory actions and appeals
- Subpoena response
- Telephone Consumer Protection Act (TCPA)

Real Estate

- Advanced planning to address land use and zoning issues
- Applications for grower and processor and dispensary licenses
- Expansion and ancillary development considerations for dispensaries – practical approach to take advantage of value created with successful dispensary in a retail area
- Landlord considerations for leasing to cannabis businesses
 - Gross sales rent structures
 - Eviction considerations
 - Impacts on ability to finance property
 - Insurance considerations
 - Risk transfer
- Licensing certification process for successful applicants
- Sale-leasebacks
- Structuring investment structures/joint venture agreements
- Real estate transactions (acquisitions and leasing), including land use and zoning approvals
- U.S. Controlled Substances Act and other federal law considerations

Taxation

- Federal and state tax planning and advice
- IRS filings and audits

In this rapidly growing and ever-changing new industry, it is critical to have a multi-disciplinary team that knows the cannabis industry available to guide clients in all aspects of the law.