



Bermuda's Cannabis Licensing Act

April 2021

Introduction

On 19 February 2021, the lower house of Bermuda's Parliament (the "House") passed the Cannabis Licensing Act 2020 ("CLA"). The legislation was, however, rejected by Bermuda's upper house, the Senate, and sent back to the House on 3 March 2021. Bermuda's Government has nevertheless committed to pressing forward with the legislation.

As of the date of writing, passage of the CLA would make Bermuda the first offshore location to join a growing number of jurisdictions legalising (or taking steps to legalise) the cultivation, import/export, and sale of both medical and recreational cannabis. As an established offshore jurisdiction with a globally respected regulator, Bermuda presents an attractive location for investors interested in the still-nascent, but rapidly growing cannabis industry. As established cannabis companies in North America mature, Bermuda also presents a known solution for offshore corporate structures.

Current Status

The rejection of the CLA in Bermuda's Senate does not spell the end for the legislation in its current form. Due to the provisions of Bermuda's constitution, the Senate's decision may only delay the passage of the CLA by 12 months. As a result, it remains worthwhile understanding the CLA, particularly as Bermuda's cannabis regulations impose greater restrictions in some respects than regimes in the United States and Canada, as further described below.

Bermuda's constitution permits the House to pass a new bill that is identical to the bill previously rejected by the Senate. Once the new bill is passed by the House, it will be presented to the Governor for Royal Assent, even if the Senate rejects the new bill a second time. Though the new bill must be identical to trigger this mechanism, the House can include suggested amendments with the second attempt that the Senate may include should it vote in favour of the new bill. These suggested amendments would not prevent the new bill from being sent for Royal Assent.

The Cannabis Licensing Act 2020

Anyone familiar with the cannabis regulatory scheme in Canada will see many aspects of that system incorporated into the CLA. However, as discussed further below, the CLA presents in certain important respects a conservative approach to legalisation. The legislation addresses three main facets of cannabis legalisation in Bermuda: (a) the establishment of a "Cannabis Licensing Authority" (the "Authority") to regulate and carry the intent of the CLA into effect; (b) the creation of a licensing system that will be managed and overseen by the Authority; and (c) the removal of cannabis from the list of controlled drugs and the creation of a regulatory offences scheme.

The Cannabis Licensing Authority

The Authority would be created to "regulate the cannabis industry and advise the Minister". The Minister responsible for drug prevention would have broad powers under the CLA to manage and direct the



functioning of the Authority, which would be funded primarily from sums approved for the Authority by the legislature and monies received through licensing activities. The Minister would also have the power to appoint a board, comprised of five voting members from five relevant disciplines (health, research, business, planning and agriculture) and three non-voting Government officials (the Attorney-General, the Collector of Customs and the Director of National Drug Control). The Authority would then appoint an executive director responsible for day-to-day management of the Authority.

The Licensing System

There are eight types of licences contemplated under the CLA: cultivation, retail, import, export, manufacturing, research, transport and event licences. Cultivation and manufacturing licences are divided into tier 1 licences for personal use and tier 2 licences for commercial use. Manufacturing under the CLA refers to activities related to processing of edible cannabis and similar products (eg oils or resins). This tiered system goes further than cannabis regulations in many other jurisdictions by requiring licences for personal activities in addition to commercial activities. Other regimes generally licence the inputs required for personal cultivation or "manufacturing", like seeds or oils, rather than the personal activity itself. Notably, retail licences under the CLA would include "sale and consumption of cannabis", suggesting cannabis bars and similar establishments would be permitted under the proposed Bermuda regime.

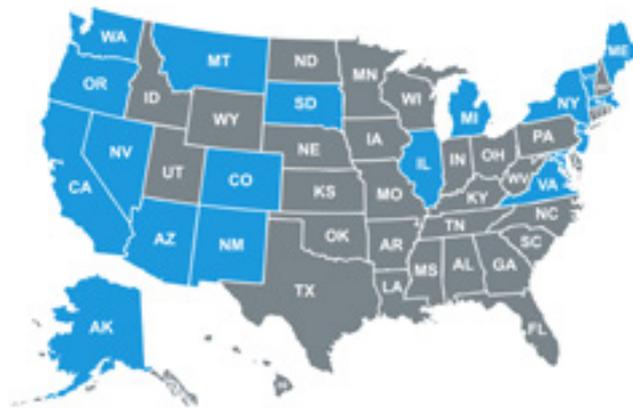
The licence application process, which is largely set out in the CLA, is quite involved. Specific requirements are dependent on the type of licence sought. Based on the information required of applicants under the CLA, the Authority would have significant discretion in deciding whether to grant a licence and what terms and conditions to impose. The CLA

also provides for certain mandatory terms and conditions applicable to all licences, including compliance with Authority guidelines and the terms of the licence.

Offences and Enforcement

The CLA would remove "cannabis", "cannabinoids", "cannabis resin" and "hemp" from the Misuse of Drugs Act 1972. The CLA then sets out several new regulatory offences, including a broad offence for undertaking activities without a licence, which is the only new offence under the CLA that carries the potential for indictment. Also of note is that use of cannabis in a public place is made an offence under the CLA, with the exception of use in public retail shops or at cannabis events.

The offences also establish the maximum public possession limit, being seven grams for individuals 21 years of age or older. This provides another example of strict



limits in Bermuda. Many jurisdictions in North America have legalised recreational cannabis or have passed legislation to legalise it, notably Canada¹ and 19 states in the United States.

Enforcement of obligations and limitations prescribed under the CLA would be conducted by inspectors designated by the Minister, or by police officers. Inspectors

would be given broad powers under the CLA with respect to the regulatory offences and enforcement of the terms and conditions of licences

Early Entrants in the Market

In 2019, Canadian companies and investors demonstrated that there is significant upside for early entrants in the cannabis industry. Of course, entrants in Canada were limited by the emerging international recreational market. Since 2019, numerous states in the United States have legalised recreational use, though it remains illegal at a federal level. President Biden's administration has vocalised support for federal decriminalisation, but has stopped short of full legalisation. The passage of a bill in Mexico on 10 March 2021 to legalise recreational cannabis adds to the growing movement towards legalisation. As it continues, this trend presents significant opportunities for companies and investors, particularly those with a head start and established regulatory reputations and flexible structures.

Bermuda already provides a mature offshore jurisdiction for cannabis investors, whether through the establishment of a fund or through tax efficient corporate structures. Bermuda's sole regulatory body, the Bermuda Monetary Authority (the "BMA") released [a notice in November 2019](#)

indicating that it would not object to BMA-regulated-entities conducting business with cannabis industry participants where such business is legal in the jurisdiction of origin at a federal level, like in Canada.

Alaska	District of Columbia	Michigan	New York	Vermont
Arizona	Illinois	Montana	Nevada	Virginia
California	Maine	New Jersey	Oregon	Washington ²
Colorado	Massachusetts	New Mexico	South Dakota	

1. See <https://www.justice.gc.ca/eng/cj-jp/cannabis/>

2. As at the time of writing, according to the database maintained at <https://norml.org/laws/legalization/> by the National Organization for the Reform of Marijuana Laws, NORML. This list is subject to change. Please note that Walkers Bermuda does not advise on the laws of these states. References to the laws of these states is for illustrative purposes only based on currently available public information and does not constitute legal advice.



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