

Banking in the Cannabis Industry: What You Need to Know

When states across the country, including California, began legalizing recreational cannabis, they did so primarily because of the huge financial upside generated by tax revenue from the industry. It was, quite simply, money in the bank. Yet for many commercial cannabis businesses, that term has taken on a darker meaning, because federal legalization effectively prevents these entities, which are operating legally under state law, from obtaining banking services.

Under federal law, it is illegal to manufacture, distribute or dispense cannabis unless the activity is compliant with the Controlled Substances Act of 1970 (the “CSA”). With respect to banking, however, the question of enforcement depends on federal priorities, specifically the current and future policies of the Department of Justice (“DOJ”) and Treasury. Congress could amend the CSA or the various federal anti-money laundering laws to resolve inconsistencies and effectively legalize banking for the commercial cannabis industry, but it has yet to do so. Hope springs eternal that a federal law change is on the horizon following the 2020 election.

So how do industries outside of the cannabis sphere interface with these potential clients while minimizing their risks? Many cannabis businesses handle large amounts of cash as a result of their banking issues and are left asking vendors to take cash payments for their services. This puts vendors—like yourselves—in the difficult position of determining their potential exposure when depositing cash from cannabis clients in their own bank accounts. Under existing federal laws, any cash received and deposited from a cannabis business remains tainted as arising from the trafficking of a federally illegal controlled substance, namely cannabis.

This means that any cash you accept from cannabis clients is, in essence, fruit from the poisonous tree for purposes of anti-money laundering laws. While federal enforcement in this space is virtually nonexistent at present, and what enforcement there is tends to be against the cannabis businesses themselves, there are a few important ways to insulate your business from potential liability.

First, be vigilant about what clients you accept, ensuring that your clients are at a minimum operating legal cannabis businesses. This can be done through a simple search to find the business’ state licensing information—any cannabis business licensed by the state is likely to be operating legally. If you routinely enter service agreements with your clients, it would be a good idea to include a warranty within those agreements that they are operating in full compliance with all state and local laws. Those service agreements should also clearly define the scope of the services you will perform, which should clarify that you are doing work for the cannabis entity that you would do for any other client and will not aid and abet in the laundering of cash from a cannabis business. The agreement should be as clear as possible about the work you are doing and the fees you are paid for it, and those fees should be in line with what you would charge other customers.

Second, note that professional liability insurance coverage likely applies to claims that may arise from your servicing cannabis business clients. Because the services you will perform for commercial cannabis entities are no different from those you would perform for other clients, these services are likely to be covered by your insurance. Note, however, that your insurance is unlikely to cover the costs of responding to any criminal investigation or defending any criminal charges

filed against you as an entity. In other words, your insurance will cover you for routine work with cannabis clients, but there will likely be holes in your policy for if you are ever accused of wrongdoing or cooperating with a federal investigation of a client accused of wrongdoing.

Third, it is important that you report any cash exceeding \$10,000 that you receive from a cannabis business on IRS Form 8300 within 15 days of receipt.

Finally, keep in mind that regulatory compliance liability is generally placed on the commercial cannabis entity itself, not on broader service providers who may interface with those entities. This means you are not required to be an expert in cannabis regulations in order to do work with cannabis clients. Instead, you should remain an expert in the services you provide, and rely on your clients—through a warranty when possible—to ensure their own compliance to avoid any enforcement against themselves. Such enforcement actions are generally unlikely to involve your business unless you have separately taken actions in violation of local, state or federal law. Taking money from a cannabis business for your service alone is unlikely to place you under risk of federal criminal charges, but you do run the risk of account closure at any time by your financial institution.

Cannabis Packaging and Labeling: The Basics

The cannabis industry has very particular packaging and labeling regulations, which any PIASC member should be familiar with before agreeing to print any packages for commercial cannabis entities. To begin with, California cannabis regulations permit certain types of license-holders—manufacturers may package and label manufactured cannabis products such as vape cartridges or edibles, while distributors can package and label cannabis flower—to handle the packaging and labeling. Retailers who run cannabis storefront dispensaries or delivery services are not permitted to do any labeling, unless they also have a manufacturing or distribution license.

All cannabis products must be packaged in child-resistant packaging. This means that the packaging for the product must contain security elements which would make it difficult for children to access the product, which is often edibles that may be mistaken for candy by a child. If product containers are separable from the outermost packaging (i.e., a product container is inside a separate box), then the container itself must also contain certain key information which is required on the outermost layer—this means you may be labeling products multiple times, or providing manufacturers with a series of differently sized and specified labels. All cannabis goods must provide certain information, including the universal symbol and government warnings, and must identify the cultivator of the flower.

The liability for compliance with these packaging and labeling regulations falls specifically on the commercial cannabis business, not on vendors serving those businesses. This means you are not required to be an expert in cannabis regulations in order to do work with cannabis clients. However, you should familiarize yourself with the regulations surrounding the products you contract to provide any packaging and labeling services for, in order to ensure good client service in the final product you produce, as well as to assist your clients in ensuring regulatory compliance.

