

**Cannabis in New York: Intro to the Marijuana Regulation and Taxation Act
May 4, 2021**

Presented by [Simon Malinowski](#) and [Hilary Bricken](#)

This webinar audio has been transcribed by an automatic transcriber.

Hilary Bricken 0:05

Hi, everybody, good morning and good afternoon, depending where you're at the weather the United States today. Thanks for joining me, my name is Hilary Bricken, and I'm a partner at Harris Bricken. And its Los Angeles office. And today I have with me my colleague, Simon Malinowski to talk about cannabis in New York and an introduction to the Marijuana Regulation and taxation act, before we commence in the webinar is an hour know that it will be recorded. If you want a copy of the recording, just let us know. It'll also be posted to our blog. Also, we're going to take questions throughout this panel, which this is basically going to be a very intimate chat about the MRTA and its potential regulations that we have coming down the pipe from the state, and of course, locally, but please pose your questions throughout. And we'll answer them as they come up. And as it makes sense, really, in our dialogue, and we have a ton of questions that we got from potential attendees before we kicked off the webinar. And of course, we're going to go through those in turn as much as we can. I want to let everybody know, this is the biggest webinar this law firm has ever done. After being in the practice area for more than a decade now. Over 1000 of you registered for this webinar. Clearly there is huge interest in the Marijuana Regulation and taxation Act and the potential that New York has really to become maybe the largest, most innovative cannabis market in the United States, potentially the world as we move on with maybe federal legalization going into the 2022 midterms. But without further ado, to kick it off. I'm gonna let Simon introduce himself. He's coming to us today from New York. And he's going to give us a little bit of his background, and then I'll kick it off with some questions. So

Simon Malinowski 1:45

Hi, so I'm Simon Malinowski. I'm the managing attorney for Harris Bricken's New York office, which we opened roughly two months ago. For me, it's a bit of a return to home. I originally started practicing at what was then Harris and Moure in the Seattle office about 10 years ago, when Washington State initially passed its medical cannabis regime. And Hilary and I then worked very closely together and creating all of the client forms from regulatory documents to memorandums to systems for tracking patients and plant linkage. And then, you know, the going to local municipalities and advocating on behalf of our clients in the legislation as a whole. And for us, we were very excited when it became clear that 2021 was probably going to be the year that New York passed a comprehensive cannabis bill. I think it happened a little bit sooner than we all anticipated. Our office officially opened on March 15, we thought that we'd probably have a couple of months to get our feet under us. But it turns out that New York had other ideas. And I think literally within a week, we had a fully fully passed piece of legislation. And now we have all of you waiting to hear about the ins and outs of it. And the way that we see the industry growing and building.

Cannabis in New York: Intro to the Marijuana Regulation and Taxation Act May 4, 2021

Hilary Bricken 3:20

Good. Okay, so let's get into the substance of the topic because it's pretty comprehensive what we have to cover today. And first off, what exactly is the Marijuana Regulation and Taxation Act? And when was it enacted? Why was it enacted now?

Simon Malinowski 3:37

So it was officially enacted signed by Governor Cuomo on March 31 of 2021. And it is a comprehensive piece of legislation that legalizes cannabis in New York in a number of different ways. I think the single most pressing part of it is that it legalized adult use of recreational cannabis in New York, we'll get into the different license types. But that in and of itself was a huge thing. Medical Cannabis had been legal in New York for several years, but with one of the more restrictive medical cannabis programs in the country. So the other thing that the MRTA did was it expanded New York's existing medical cannabis program to include more patient types to really allow more people to get certifications for cannabis for medicinal purposes. And the other thing that the market did was there had already been legalization of hemp and hemp cannabinoids in New York, but it was a kind of restrictive and not particularly clear licensing process. MRTA will kind of crystallize that it will eventually supersede the regulations that had previously been in place and basically open Not a complete industry that comprehensively addresses legal cannabis in New York. To your second question, Hilary, why now? You know, that is that is an interesting thing that we'll kind of get into as we deal with questions that attendees have asked about. Practically speaking, they're kind of two primary reasons why it happened this year, and why it happened as quickly as it did. The first and kind of more sultry reason is, is that there had been for the last few years a we'll call it, creative difference between the legislature and Governor Cuomo and conflicting versions of illegal cannabis program. And the two as they often do in New York kind of buttheads. As all of you know, Governor Cuomo has issues that he is now dealing with in the political sphere. And because of that, I think everyone needed a political when it allowed the legislature to push through their version of the bill, and ultimately lead to licensure that were not licensure, but passing the legislation. This second motivation is COVID. New York is a state that has traditionally been very reliant on tourism. It is one of the capitals of finance from a global perspective. And the state of New York City and particularly has been hit really hard. We all know that it's resulted in closing lots of businesses. That is true for many states and cities in the country. But their reliance on retail, their reliance on office space, all of those things were really hit when people had to start staying home when travel was restricted. And all of those things ultimately led to New York having one of the more significant budget deficits that it's ever had. And because of that, the tax revenue that will be gained by the passage of murder, and a taxable product that will be sold from both a retail and medicinal perspective, is going to bolster the state's coffers and hopefully close some of that budget deficit.

Hilary Bricken 7:22

Now, I'm licensed in Washington State, California, in the state of Florida, at least in California and Washington state are very impactful, adult use laws and regulations came from votes of the people, we literally had to go to the ballot box, push government into the 21st century of cannabis. New York obviously did not necessarily have to do that. Because this is a piece of legislation that was passed by our legislature, how big of a deal is it, that your government took steps before a vote of the people? Because that seems to be a really big political and cultural shift that we're now seeing it wasn't the only state to do that recently. But is that going to be impactful? That government seems

Cannabis in New York: Intro to the Marijuana Regulation and Taxation Act
May 4, 2021

like a willing participant in the experiment, as opposed to maybe some of these other states?

Simon Malinowski 8:11

It's huge. I mean, you have, from a statewide perspective, government backing of the industry. And that's, that's something that's really important, as licenses start to roll out, as we start to see the issuance of rules and regulations, and get a better sense of what this is going to look like in the short term. And in the long term. You know, the reason I think, why there's so much state backing and why this ultimately was passed from a legislative perspective, is that in many ways, this the legislation itself has two goals that are expressly written into the statute, and then a kind of third, hidden goals that I think we can talk about. And we'll address some of these things as we continue the discussions. But the the two kinds of goals that are expressly addressed in the statute are our first social equity. And second, a wide open industry that is anti monopolistic and provides smaller entrance into the market, so that there's kind of a comprehensive industry that allows many more people to enter into it, even if they don't have experience operating on a nationwide or multi state basis. And I so the one of the sponsors of the legislation, Assemblywoman crystal people Stokes gave a presentation last week where she talked a lot about the ins and outs of the legislations. And again, we'll we'll address some of the substantive points because it gets to a number of the questions that we've seen. But this this, the legislature really viewed this as an opportunity. To undo a lot of the historical wrongs, that that have been caused by the historic implementation of drug laws, particularly cannabis laws in New York, and also provide economic opportunities to a wide swath of people in the state. You know, the third in the background thing is, again, the revenue generation and closing the budget deficit. Because I mean, the estimates are already well into the billions in terms of the amount of money that the industry is going to generate. But, you know, from a short term, what the legislature is really focusing on and why there was so much support for passing this legislation. From a statewide perspective, because Assemblywoman Peoples- Stokes is from Buffalo, not from New York City, is the social equity, and the kind of possibility for a very competitive and open industry here in New York.

Hilary Bricken 11:06

And let's get into some of the specifics in the market, because this is what people really care about. They want to know what licenses are available, how we get these licenses? What are the other barriers to entry going to be at this point in New York has a slew of regulatory blueprints from which to borrow, including California where I'm at. And I will tell you, we are not a very good model for how to do this. That's my personal opinion. On the cultivation side of the aisle, we have 17 different license types. That's insane. It's a lot of bureaucracy, a lot of red tape to have to deal with. Plus, we're a very strong local control state, which has thrown a wrench into people's plans to be able to open up in the state of California because you can't get to the state unless you pass through the locals. That's a very common roadmap to licensure and a majority of states at this point under the MRTA, what are the specific license types?

Simon Malinowski 12:01

So the license types are kind of stratified throughout the industry. I'll run through them. One of the important things to note is that generally speaking, there is a prohibition on vertical integration. And once you obtain or have an interest in one of the license types, it prohibits you from obtaining licenses any really any other license. So running through the spectrum of the production process.

Cannabis in New York: Intro to the Marijuana Regulation and Taxation Act

May 4, 2021

The first is a cultivators license, then a processors license. And for those who aren't familiar with the terms, the cultivators license really is for the growth of the cannabis flower. processor licenses are actually processing the flower and either from a kind of usable cannabis form or derived like deriving the THC from it. There'll be a distribution license, and then a retail license and an onsite consumption license, which we'll talk a fair amount about because I think it's a very interesting, creative thing that I think a lot of people are going to be interested in. And then there are a number of other license types, a micro business license, a cooperative license, a nursery license. There are a few other ancillary licenses having to do with testing and a delivery license which is another very interesting license type because it will actually allow for the delivery of adult use cannabis to consumers at their homes. Now, separate from the adult use licenses. There are also going to be separate licenses for processing hemp and hemp, cannabinoids, and then retail sales of hemp and hemp, cannabinoids. And again, as we get further into this, we'll talk about the interchange between the adult use processor license and the hemp processor license because I think that a number of people have questions about edibles and potentially adult use bakeries. And that really ties into the interplay between those two license types.

Hilary Bricken 14:19

Now across the licensing spectrum, because New York is going to have tide house rules, which is a very common concept in the liquor business where you cannot vertically integrate, I imagine that some of this is going to look like alcohol. But to know the details of these license types, for example, the potency of certain edibles between adult use versus medical, the ability to grow a certain size, whether it's going to be indoor outdoor mix late and that kind of medium. I imagine that those details are going to come from the regulations once the governing bodies or body have come together to kind of contemplate and discuss with state coders what these details should look like. Is that about right

Simon Malinowski 15:04

100%. You know, the thing that we are all waiting on right now is for the formation of the cannabis control board, which according to MRTA is going to be the governing body that issues the rules and regulations that govern the industry. They there are already provisions in the legislation that deal with potency and labeling. But the specifics in terms of really like the black and white rules by which people are going to have to operate haven't been issued yet. And it's that's really going to dictate what the day to day looks like from from an operational perspective.

Hilary Bricken 15:43

Okay, now, let's talk a little bit about local control. This is probably one of the most controversial issues in cannabis, because the locals have a tremendous amount of police power, which means they can act enact all kinds of regulations, typically, including bans to protect allegedly, the health and safety of their citizens, from city to city, county to county in New York, maybe borough to borough. I don't know New York municipal law, you're going to have to listen about that. But how will the licenses be granted, allocated maybe per municipality? What's that roadmap going to look like in New York, because I will say across the states, this has worked differently for the latitude of local control. Sometimes it's incredibly robust. Sometimes it's right in the middle, where, for example, the city has to electively opt out. It can't just ban and ask no questions, and as to put it to the vote of the citizens. What's that roadmap in New York for local control?

**Cannabis in New York: Intro to the Marijuana Regulation and Taxation Act
May 4, 2021**

Simon Malinowski 16:43

So that's really a two pronged question, the first thing that you've asked about, which is the number of licenses that are allocated, we're still waiting for that information. Right. So we have the full spectrum of license types. We don't know whether or not there's going to be a specific number of licenses allotted per license type, or whether or not it's going to be across the industry, we don't know whether or not there's going to be geographic limitations on the number of licenses issued. So that's going to be something that we'll see once the CCB starts issuing regulations. In terms of the local control of everything. The legislation kind of creates two different groups, there is the retail and onsite consumption. And then there is everything else. From a retail and onsite consumption perspective. The legislation provides that any local municipality can opt out of the legislation and prohibit retail locations and on site consumption locations, provided that they do so by December 31 of 2021. Now, at any point after that they can choose to opt back in, but that is their cut off for opting out. And with regards to all of the other license types, not only can municipalities not opt out. But in terms of local ordinances that are put in place, as you put it from a police power perspective, the legislation actually expressly prohibits issuing regulations that are so restrictive that they effectively act as a ban on operations. So for example, if the town of Woodbury decided that they were going to enact a regulation that said that a cultivation facility is only allowed to operate between the hours of 1pm and 3pm. That would be grounds for challenging the lawfulness of the regulation pursuant to murder, because it effectively acts as a ban on operations, which is not provided for and murder. Now, to your question about how it is split up from a geographic perspective, for New York City proper, the opt out provision applies to community boards.

And New York has I believe that somewhere between 50 and 60 community boards, each community board which corresponds to various neighborhoods, in the five boroughs, each has the opportunity to opt out from a retail and onsite consumption perspective. And then for the rest of the state. It's from a local municipality, town city. City perspective where the local municipality has the right to opt out, again, limited to retail and onsite consumption. Now, there are already towns, there's been a lot of publicity about several towns in Long Island, openly talking about opting out of retail and onsite consumption. You know, it's, it's something where, you know, we as a firm have talked about potentially advocating on behalf of clients and Effectively going in front of these boards and explaining why it's two to two communities benefits. And I think that that's a really important consideration as we get closer to the issuance of licenses. Because you know, a lot of the motivations for why municipalities are talking about opting out have to do with safety concerns, or the accessibility of cannabis to minors, or the kind of underlying concern that many people have expressed, which is that cannabis is potentially a gateway drug, all of which I think are historically have been proved to be inaccurate. And I think that the fact that we have an industry in New York, that is now kind of coming into the light and becoming completely regulated, is the sort of thing that's really going to be beneficial to communities, having retail and onsite consumption operations going, I think, are going to benefit local towns, cities from an economic perspective, from a safety perspective, because we're going to now have an industry that's completely regulated in a way that I think is going to benefit everyone.

**Cannabis in New York: Intro to the Marijuana Regulation and Taxation Act
May 4, 2021**

Hilary Bricken 21:18

So let me just summarize that for listeners, because this is going to be particular to New York. And again, local control is a very sticky issue. The state could end up making local approval, a condition, state licensure, it's incredibly important. Most of the beef that happens with peels, litigation happens at the local level, and not necessarily with the regulators. But it sounds like in New York, if I am in a municipality, whose Community Board does not opt out by December 31 of this year, for retail or onsite consumption, I may have a blank check to proceed with my retail license, or my onsite consumption license. Is that accurate?

Simon Malinowski 21:59

That's accurate. Now blank check being provided that the rules and regulations don't throw some sort of wrench into all of this. But pursuant to the plain letter of the law and murder, if a municipality has an opt out by December 31, of 2021. You can obtain a license for retailer on site consumption in that jurisdiction.

Hilary Bricken 22:24

And for non retail non on site consumption, those licenses, cultivation, processing, manufacturing, ancillary lab, etc. I can't be banned, but my municipality can regulate me, and they cannot regulate me in such a way that a de facto ban is created. Is that fair to say?

Simon Malinowski 22:42

Right.

Hilary Bricken 22:42

Okay, very good, guys. Alright, that's the roadmap for local control. We just got a question in in live real time asking if we're going to go into more detail on the license types today. And I don't want to put words into your mouth, Simon. But I'm not sure that we can actually do that, because we don't have any regulations around the license types of for example, for the cultivation license itself. We don't know the categories, let's say of canopy size, that are going to be allowed for given cultivation license type. I will say in most states, there's going to be a cap either on acreage, for totality for the state or it'll be unlimited, but there'll be limited by size individually speaking. When do you anticipate that coming online for New York, just so we clear the air again about when the regs will

Simon Malinowski 23:29

come out? So as part of the presentation that Assemblywoman Peoples- Stokes gave last week, and she actually addressed this question, which is the first time I've seen it addressed in public. According to her, the cannabis control board is anticipated to be formed by June of this year. So really a month away. There's a separate advisory panel that's contemplated by the MRTA, which should be formed in July, August, at which point from then they will immediately begin working on rules and regulations, including what the application will look like, and more of the details in terms of what operations will look like, when the once the industry starts running. The question that many people have asked, which is when licenses will actually be issued, it's a little bit murkier. The timeframe that that Assemblywoman Peoples-Stokes gave was between 18 and 20 months, which presumably is from the legislation being passed. With that said MRTA expressly requires the cannabis control board to give their first report on the state of the industry, including retail sales on

Cannabis in New York: Intro to the Marijuana Regulation and Taxation Act
May 4, 2021

January 1 of 2023. And by definition is that contemplates that in 2022 the industry will at least have begun retail sales in some capacity.

So I mean, Hilary, I think it probably goes without saying, but when you know that when we start an industry from scratch, I mean, it takes time for rules and regulations to be created. But then beyond that, assuming in New York that we have a significant number of applicants, which I think is a fair assumption, given the number of people who have applied just for this webinar, it's going to take a fair amount of time to evaluate those applications. We don't exactly know what the evaluation process is going to be. But at a minimum, given how comprehensive the general criteria are, Justin in MRTA, before seeing the actual rules and regulations, and going through an application, it's going to take some time. And so I think that it means that it's going to take a little bit of time before we actually see licenses start being issued.

Hilary Bricken 26:01

Yeah, I'm gonna give you my guess, guys, just based on a decade of experience, I think it's going to take a year to engage in and finalize the regulations, because there's an entire process that involves public comment under the Administrative Procedure Act, which every state has, my guess is that we'll see the first licenses issue, January one, this is ambitious, I would say January 1 2022. If the regulators can really get their act together, and they have all kinds of power regarding emergency regulations that can be passed very quickly, to get things kind of up and running, and then address issues as they come up.

Or they could really take their time and engage in continuous 30 to 60 day, public comment periods. We are getting some questions that are very specific to license type, for example, can you locate at the same licensed premises or retail and on site consumption license? I'll let you answer that, Simon, but my guess is, we don't know that yet. Because that's something that would come out in the regulations, unless it's already codified by statute. In most states, you would need to separate premises. There are states, for example, in California, you can combine them if they're adjacent on the same premise use and somebody got a retail license already heavily controlled by local control. We also got questions about how will they divvy up canopy size versus maybe single root systems. Again, I think that's something that we're going to see come out of these very specific regulations, as stakeholders step up to say, this is what this should look like. This is what other states have done. And really kind of informed the board based on experience with the gold standard for New York will be and having said that, I want to segue while we can, to barriers to entry, because this is another thing that's unique states, right? They could be protectionist. They could be very business friendly. There could be a liquidity requirements. One of the major questions we keep getting is to finance one of these things, or to own it, take equity in it, whether that's membership units, partnership units stock, do I need to be a resident of New York to take advantage of the program?

Simon Malinowski 28:14

So it's a very, very interesting question, by the letter of the law, that there is no prohibition on non New York residents from having an ownership interest in any license type. Nothing in the legislation prohibits it. It is important to note that there is a requirement that any owner, be a US citizen or have permanent residents in the US, but from a state perspective, no requirement. Now, with that said, as part of her presentation last week, this was a question that was asked of Assemblywoman

Cannabis in New York: Intro to the Marijuana Regulation and Taxation Act
May 4, 2021

People Stokes, and the response was this and I'm summarizing it. The CCB is going to issue regulations and the CCB is going to issue regulations in the spirit of the legislation. And in her opinion, the spirit of the legislation is to benefit New York and New Yorkers as a state. And so I would not be surprised, although it is nowhere written into the legislation that while there may not be any prohibition on out of state residents from obtaining a license or having an ownership interest in a license, that there will likely be some version of a preference for New York residents, simply based on the comments that were made last week.

Hilary Bricken 29:46

Okay, and what other key barriers to entry do you see coming down the pipe? I mean, I can give you examples from other states residency is one Nevada used to have a \$250,000 liquidity requirement in the bank ready to deploy, you had to submit all kinds of operational plans in states that were competitive like Minnesota like New York for medical cannabis. What do you see coming down the line for mrta, especially if there's that bent, that this is really supposed to benefit New York and New Yorkers, and kind of dovetailing with that? What about the impact of MSOS? I mean, we know that there are some msos already in New York with the medical cannabis regime, but incoming msos, which they seem to be gaining Legion as we speak, when you have tied house rules, is it really going to be attractive for them at the end of the day? Or is the point that it's not supposed to be attractive to them?

Simon Malinowski 30:43

I think you'd hit the nail on the head. And well, we'll get back to the second the first half of your question in a second. The point of the legislation is to make it not only unappealing for msos, but also harder for them to gain entry into the market. I mean, the way that the legislation is really conceived is to allow the opportunity for for new entrants and into the industry to begin operations and to get in. And I think that that's part of the reason why the license types are so stratified. Because, by definition, when you have new people who are entering into an industry, the operational experience for let's say, just to retail license is so much easier than needing this, like institutional knowledge of the entire spectrum of production, it becomes easier for new entrants to kind of wrap their hands around this place one specific license type, and to begin successful operations. And it's the fact that one, that's how the license types are issued, that that's the signifier. But then the other kind of key part of it is, is that as part of the issuance of ccps, regulations, and then the ongoing evaluation of the industry, which is contemplated by MRTA. There is a focus on preventing monopolistic behavior, and anti competitive behavior, which really kind of goes directly in the face of msos. Entire agenda, right? I mean, they they kind of want to get in and get as much control as possible. Now, from the registered organization perspective, which is the existing medical operators in New York. The the clear answer is they have a leg up, they've been operating in New York for five, six years now. with that said, it is not nearly as advantageous as I think that they would have hoped, because while they are allowed to continue their vertically integrated operations, they are going to be limited to three retail locations. So at any existing medical retail dispensary, they will now be allowed to operate adult use dispensaries, but with a limit of three and add those adults use retail dispensaries, they will only be allowed to sell products that is derived from their own cultivation, which means that they they cannot go to a distributor licensee and buy product that was created by someone else.

Cannabis in New York: Intro to the Marijuana Regulation and Taxation Act
May 4, 2021

I mean, so, you know, in a lot of ways. I recognize it from a business perspective, it's probably not a very popular formulation of industry regulations. With that said, given the goals of the legislature and crafting it, it's actually a very smart way of putting it together because you can create the regulations. But from a practical perspective, you're really kind of immediately beginning to limit the opportunity for for dominating the industry.

Hilary Bricken 34:14

Yeah, that's so wild to me that the anti monopoly mitigating factor is ROs existing medical cannabis operators, some of which are msos. That's no secret can only dip into their own supply in New York. I cannot imagine what that's going to do to competitiveness and then to cap it with three retail storefronts. I mean, that's that's not great. And it's really unique, that New York is taking that position. Now we get this question a lot. And sometimes we give the waresly answer, which it depends. And that's a sucky answer, because it's a non answer. But when you don't have all of the facts, because the regulations haven't been issued, there's not too much guidance to give about strategy.

However, before we transition really into examining the social equity piece of the legislation, which is really robust, what would you say, hypothetically summarily right now, can people do to prepare themselves in the face of what's coming with these delayed timelines starts and stops over regulations and not really having the regulations? What can people do right now from a business perspective, to prepare themselves to pursue licensure, and probably local approval.

Simon Malinowski 35:31

So I think there are a few things. And I, the first is to really think about and identify what license type is appealing, because it's really the starting point for everything else, it will drive the real estate component of it. Because depending on which license type you you're interested in, applying for, geographic location starts to matter, amount of space starts to matter. And I think that that's really the starting point. The next is thinking about whether or not you want to partner with anyone, or kind of how you kind of envision the business operating. And then the third is thinking about where you want to operate. Because a huge component of this legislation, from a practical perspective, is real estate. And one of the requirements throughout the license types is demonstrating. And this is different for social and equity applicants and non social equity applicants, but demonstrating that you either have ownership or a some sort of contract be at lease or management agreement in place for the place for the physical location, which you intend to operate for the duration of your license, and the initial licenses are for two years. Which means that, you know, people should really start thinking about where they want to operate. And I do think it's probably a little bit early to start going down the road of actually negotiating leases, or acquiring property. But at least having an idea of where you're anticipating operating is really important. It's something that should happen now.

You know, the other parts of it are, you know, creating a business plan, because there are, there are examples of how to do these things in other states, from a cultivator perspective, from a processor perspective, and talking to people who have experience doing it, if you're not one of those people who already has experience doing it. I mean, that's one part of it. And then, you know, talking to lawyers and accountants, so that you're kind of ready to go at the beginning. Because the reality is, is New York is going to be competitive in one way or another, there is just too much appetite for

Cannabis in New York: Intro to the Marijuana Regulation and Taxation Act

May 4, 2021

licenses, and it's New York, we have a huge population. And in many ways, I think it's still kind of, at least in my opinion, the capital of the world. So you know, getting ducks in order and start planning, starting to plan things and getting a team ready now, even though we don't know the specifics of it, I think is really beneficial.

Hilary Bricken 38:26

I'm going to add on to that, just based on experience in multiple jurisdictions, some of which had competitive based licensing, some of which was totally random with lotteries. But a major thing to consider is the business entity you will use to pursue this license. people overlook this all the time. And it's a major detail for a number of reasons. Number one, nobody should be pursuing a commercial cannabis license individually, way too much liability with the federal government, and with the state regarding regulatory violations, just a bad idea. So contemplate entity selection, realize what's probably coming is that in that capitalization table, whether it's stock or an LLC, whatever, all of those people are probably getting disclosed to the state of New York, and maybe even to the Department of Justice. So when you're surfing for cash, and you're fundraising in anticipation of receipt of licensure, you need to tell your investors, hey, there's a very good chance you're going to have to be disclosed. And if they're not comfortable with that, they cannot participate in the fundraising, because you will not receive a license. If you are not fully transparent. I can almost guarantee that is coming for New Yorkers, whether you live in the state or not, it's not going to matter and it will extend to anybody who finances the business probably individually extends alone or takes a security interest in the business. That's obviously financial interest in some states. they too will be disclosed and there will be very few exclusions around that requirement. All of that plays into Who's in your cap table? And what kind of entity Do you have to pursue the license. It also matters for m&a, mergers and acquisitions. There's a huge secondary market in cannabis where tons of people rush to get licenses than they realize this is expensive. It's time consuming. It's emotionally draining to run one of these things. It's federally illegal, they have lots of problems with access and access to banking, and they want to get rid of it. We don't know yet, at least I don't think we know Simon, in New York at the state level, if you can just sell the license itself? Some states lean that way. Or, if you have to sell the entire entity that owns the license, if it's the latter of the two, life is going to be painful for people looking for exits, because there'll be all kinds of reporting requirements to the state, there would be similar requirements for the asset purchase, if it's just the license. But with the second one, you're going to have to disclose tons of owners, you may not be able to close until they are approved. All of that we're going to see probably come out in the regulations, I doubt m&a is covered in the statute, right, Simon?

Simon Malinowski 41:07

There's actually there doesn't get to that granular level. And this is actually a fantastic segue to the social inequity component of the legislation. But there are provisions that deal with the transfer of licenses, actually, and anyone, any license transfer is going to have to be approved by the regulatory body. So the CCP will be getting involved in any transaction having to do with the license, where they are going to be drilling down, and there will need to be approval of the license transfer. Now, we should probably start with the kind of umbrella of the social and equity economic Equity Plan. And there is an important part of that that has to do with m&a based on assembly woman Peoples-Stokes presentation last week. But I think it probably makes sense to kind of start with what the social inequity economic Equity Plan is. So as part of MRTA, there is going to be the creation of a

Cannabis in New York: Intro to the Marijuana Regulation and Taxation Act

May 4, 2021

social and economic equity program that basically prioritizes issuing licenses to a select katak select categories of people, minorities, women, service disabled veterans, and distressed farmers, and I believe people who have been historically impacted by New York's record of marijuana prosecution. And the target goal is that 50% of licenses will be issued to social and economic equity applicants now, whether or not that spread across the entire industry, or based specifically on different license types. We don't know yet. But we know that there's going to be a preference. And by definition, if there's 50% of the licenses being allocated, it's going to put people who are social and economic equity applicants, and an advantageous position from a application perspective. Now, one of the things that's written into the legislation in terms of the definitions of all of these categories is small businesses. So within the definition of a, for example, a woman owned business. If you read through the subcategories of the definitions, one of them is that if it is an entity, it is a small business. And the state is really serious about this program admitted is not just a superficial, we have an entity. It's 51% owned by women. And so we're great accepted behind the scenes. It's actually operated by man, a man or men and, you know, it's simply to put yourself in a better position from a license perspective. applicants are going to have to demonstrate if it's a 51% social and economic equity applicant business, that there's not only ownership, but that there is real operational and day to day control of the business. That that's maintained over the duration of the license. And that's this is evaluated on a every two year basis when licenses are being renewed. So it is not just a situation where you get the license, you wait two years and then it's all fine. You can start changing things six months down the road. The state is going to come back the CCB is going to ask for a number of materials, as part of the license renewal process, and make sure that our that, you know, people are putting up and actually doing what they've said that they're going to be doing from an operational perspective as part of the renewal process. Now, the transactional part of this, which I found very interesting was, according to MRTA, and social and economic economic equity applicants cannot sell their license for three years after an initial licensure unless it is to another social and economic equity applicant.

And it's approved by the CCB. With that said, one of the things that Assemblywoman Peoples-Stokes mentioned last week was that part of this is contemplating if you're in social economic equity applicant, that has obtained a license and is operated for a few years, selling an interest or the entire license or business, and that this is actually in some ways, one of the goals because the thought is that it allows people the opportunity to get into an industry on the ground floor that has tremendous economic potential. And then capitalizing on that ability, by either selling part or all of the business and gaining generational wealth. And I think that part of that has, has been driven by the fact that of the 10 registered organization licenses that were issued by the State of New York, nine of the 10 have been sold, if not once, multiple times, in the few short years, that New York's medical industry has existed. And we're not talking about small transactions. I mean, Hillary, I don't have to tell you that there is a lot of money in the industry. And there's a lot of people who are looking to grow, and to capitalize on federal legalization when it occurs. I very quickly want to add in terms of kind of the state's overarching focus on the social and economic equity program. And there's a few questions in the chat that have to do with this, which is, what sort of support is the state providing? it's twofold, that really kind of threefold. There will be interest free or low, low interest loans that are issued by either the Office of cannabis management, which is going to be created by Marta, or this the state's economic development fund to support social and economic economic equity applicants, because it is a substantial undertaking, from a capital perspective.

Cannabis in New York: Intro to the Marijuana Regulation and Taxation Act

May 4, 2021

There will be incubator programs that are created to benefit applicants, and then once they begin operating, so that you kind of gain some institutional insight from this advisory board on how to operate a business or how to prepare a business plan or how to deal with the financing components of this. So there is support that's being given? And potentially, potentially, although it's not expressly in murda grants, which would be issued for startup costs or license fees, which we don't know yet. So I know a lot of people now immediately start typing the question what our license fee is going to be, we don't know yet. We're waiting for the CCB to issue them, but potentially grants for social and economic equity applicants for the startup costs here.

Hilary Bricken 48:49

The lending and the grants are huge, just so everybody knows from the 1000 foot view, because this remains federally legal, and we have had zero changes on the federal level, even though the Dems are starting to really move on certain issues. Very difficult to get a bank account because financial institutions that are providing depository accounts are doing it pursuant to a set of guidelines that were issued in 2014. Because the Bank Secrecy Act and anti money laundering laws, otherwise stop them from making cannabis cash. And they sure as heck do not extend commercial loans to cannabis operators. That's almost unheard of. So to date, in most states, a lot of the money that's come in to finance these businesses has come from friends and family, and a certain few kind of wily institutional investors. But a lot of the, you know, stupid money that came with the initial gold rush on the west coast, frankly, has left the space as many businesses have failed. And this is kind of pre social equity, emphasis in the industry. So that's pretty massive that those candidates are going to get some form of financial help that's not restricted by the Federal Controlled Substances Act. And just to kind of tie it up the social equity piece. What are the other general benefits that these candidates get? We got one question basically asking, you know, I have an existing business, I know I qualify for social equity, would I be able to cite my license within my existing business? Because I'm social equity, or in the alternative? This was another question, will I get expedited application processing because I'm part of a social and economic equity program.

Simon Malinowski 50:24

So expedited processing we don't know yet. Anything that has to do with really the technical components of the application process? We just don't know. It's still a black box. Again, and again, we hope that we get the information sooner rather than later, but we just don't know yet. In terms of converting existing businesses. The most of the time that we've had this question in the last few weeks has come up in either the rat restaurant context or the bar context, or some version of a retail establishment that's trying to pivot into a direction where they can take advantage of either retail or on site consumption licenses. The answer is, as of right now, we don't know the specifics. But depending on what the existing business is, it will in all likelihood, require repurposing and completely revising how the business operates. So for example, if you have a bar and you're interested in expanding to an onsite consumption license, you can alcohol and cannabis will not be allowed to be sold in the same location, period and stuff. If you have a cigar lounge or have gotten a license where you were allowed to smoke indoors, as part of your establishment or on the patio of a restaurant, you cannot pivot to onsite consumption, tobacco use and cannabis. They're created a great large red line in between where if you have an onsite consumption license, you cannot also allow for tobacco use. From a restaurant perspective, it's not as clear. Obviously, we anticipate that onsite consumption licenses will include an edible component to them, in which case you're already

Cannabis in New York: Intro to the Marijuana Regulation and Taxation Act
May 4, 2021

by definition involving consumption of food. Those sorts of specifics. We don't really know yet. So from like a broad perspective, really the question about pivoting your business to take advantage of these license availabilities. It really depends on what the existing businesses

Hilary Bricken 52:37

Okay. I want to take our last few minutes to talk about the hemp and the hemp cannabinoid licensing. hemp makes my head hurt. I don't think I'm alone in that position. In that we've got one position from the FDA regarding hemp and hemp CBD, of course, the USDA with the Farm Bill, that's a whole nother kettle of fish. And then from state to state states are treating hemp CBD differently, especially when they have an existing cannabis industry that's got state licensure. Can people apply for a hemp license now in New York?

Simon Malinowski 53:09

So our colleague Nathalie wrote a fantastic article about this for the Canna Law Blog. And the technical answer is, yes, the practical answer as attorneys would be, it makes absolutely no sense to apply for a hemp license now, for a number of reasons. From a purely call it hemp based perspective. The MRTA contains an entire section on hemp and hemp, cannabinoids. In all likelihood, it will supersede the existing rules and regulations that were implemented a few years ago, which means that if you're in a situation where you're applying now, no one really knows what's going on, and you don't know how it's going to affect your ability to obtain a license down the road. So, you know, our advice on that point is generally that if you don't already have a license, or I think most of the licenses that have been issued have been research licenses. And it only makes sense to wait to see the rules and regulations come out from the CCB. The kind of more interesting question from my perspective, kind of longer term, are how processor licenses from the adult use perspective retail licenses from the adult youth perspective, and their corresponding licenses in the cannabinoid space will interplay because the merchant doesn't actually expressly state that if you obtain a processor license for adult use cannabis, if you can also obtain a license for processing hemp and hemp cannabinoids. The same is true for retail on both levels. And as you know, there is a lot of edibles are produced with a combination of both hemp and the flower itself. And so this now creates kind of an interesting question. Practically speaking, it really wouldn't make sense if there was a clean separation between the two, I would anticipate that ultimately, when the regulations come out eligibility or licensure, and one will not prohibit licensure on the other. But that's something that we're waiting to see.

Hilary Bricken 55:30

Very good. And then just in these last four minutes, let's do some rapid fire questions about MRTA that we maybe didn't cover previously. Is home growing allowed under the MRTA?

Simon Malinowski 55:42

Yes, but not yet. I believe it's within after the CCB issues, the regulations for home license for home growing, individuals will be able to grow up to six plants at three mature three, immature household, maximum 12, six and six.

Cannabis in New York: Intro to the Marijuana Regulation and Taxation Act
May 4, 2021

Hilary Bricken 56:03

So I think the answer this next one is hell no. But will there be any kind of an allowance of interstate commerce in the tri state area with all the states now that have adult use? What do you think?

Simon Malinowski 56:14

No. No, this is not like a wait and see that no, the general provisions, there's a section on general provisions, interstate commerce is absolutely not allowed. Every single connection between a license in New York state requires obtaining or selling to another licensee in New York, which means that anything that you buy in New York, as part of the legal cannabis industry will have to have been derived from another section of the legal cannabis industry in New York.

Hilary Bricken 56:50

What are the taxes gonna look like?

Simon Malinowski 56:53

I believe it's going to be 18%. On on retail, there are going to be other taxes that are set up in between the various license types with the goal of basically funding the industry in such a way that it's zero cost to the state.

Hilary Bricken 57:12

How about the banking situation? What's the scuttlebutt on accessing financial institutions there?

Simon Malinowski 57:19

Well, it's the same federal issue that you and I deal with on a daily basis, which I thank you so, so eloquently put, I actually think that in New York, one of the more interesting banking issues is going to actually deal with the real estate component of it. And I think that this is one of the things that's really important for people to know. Many, many commercial landlords in New York. And this is true nationwide, but particularly in New York, have mortgages on their property. And if that mortgage was issued by a federally insured bank, many of which are in all likelihood, the loan documents will contain a covenant that prohibits the landlord from leasing any space to illegal businesses. And that covenant will prop well will prohibit a large number of landlords from leasing to cannabis licenses.

Hilary Bricken 58:23

What does a micro business license do? That's a good question. California has one. It's basically a small time cannabis experience, like you'd see at a winery with certain restrictions, but basically vertical integration, but very, very small. What's it like in New York smoke?

Simon Malinowski 58:40

Exactly that except that we don't know. And the real the real problem is, it begs the question, how do you define a micro business and murder leaves that open for the CCB?

Hilary Bricken 58:56

Okay, very good. Well, we are at 1159. Pacific and I want to thank you so much for taking the time to educate us all about the mrta. I encourage everybody to stay tuned as the regulations that prop up the MRTA come out, it's gonna be a wild ride. I have no doubt. And then, of course, with the

**Cannabis in New York: Intro to the Marijuana Regulation and Taxation Act
May 4, 2021**

community boards, too, I guess anybody's best guess if you know, a lobbyist, you might want to call that person right at this point.

Simon Malinowski 59:22

Yeah.

Hilary Bricken 59:24

Okay. Well, thanks, everybody for joining us. We always appreciate your attention. catch us on the next webinar. I don't know when it will be but will notify you. Don't worry about that. Thanks so much.

Simon Malinowski 59:34

Thank you all. Thank you, Hilary.

Transcribed by <https://otter.ai>