

The Grow Kit

Maine Edition

A Guide to Starting, Owning, and Operating a Cannabis Company

Contents

- Introduction: What’s The Grow Kit?.....1
- Timeline.....2
- Checklist.....3

- SEEDING, GERMINATION, AND SEEDLING STAGES**
- Entity Formation.....5
- Brand Identity and Trademark Protection.....6
- Financing and Real Estate.....8
- State and Local Licensing and Compliance.....11
 - Adult Use (“Recreational Use”) Cannabis.....11
 - Medical Use Cannabis.....12
 - Hemp and Cannabidiol (“CBD”) Products.....12

- PRE-FLOWERING, FLOWERING, AND HARVESTING STAGES**
- Additional Considerations.....14

Introduction: What's the Grow Kit?

The Grow Kit is a practical guide for start-up and existing canna-companies that is meant (1) to help simplify an otherwise complex start-up process for canna-companies that are in the planning or early growth stages of their businesses, and (2) to raise important reminders for existing canna-companies to consider or revisit. It includes a timeline, a handy checklist, and brief descriptions of some of the most common legal issues for start-up and existing canna-companies to consider and explore.

The Grow Kit is designed for:

- registered caregivers
- registered dispensaries
- cultivation facilities
- manufacturing facilities
- testing facilities
- retail stores
- hemp growers and related businesses

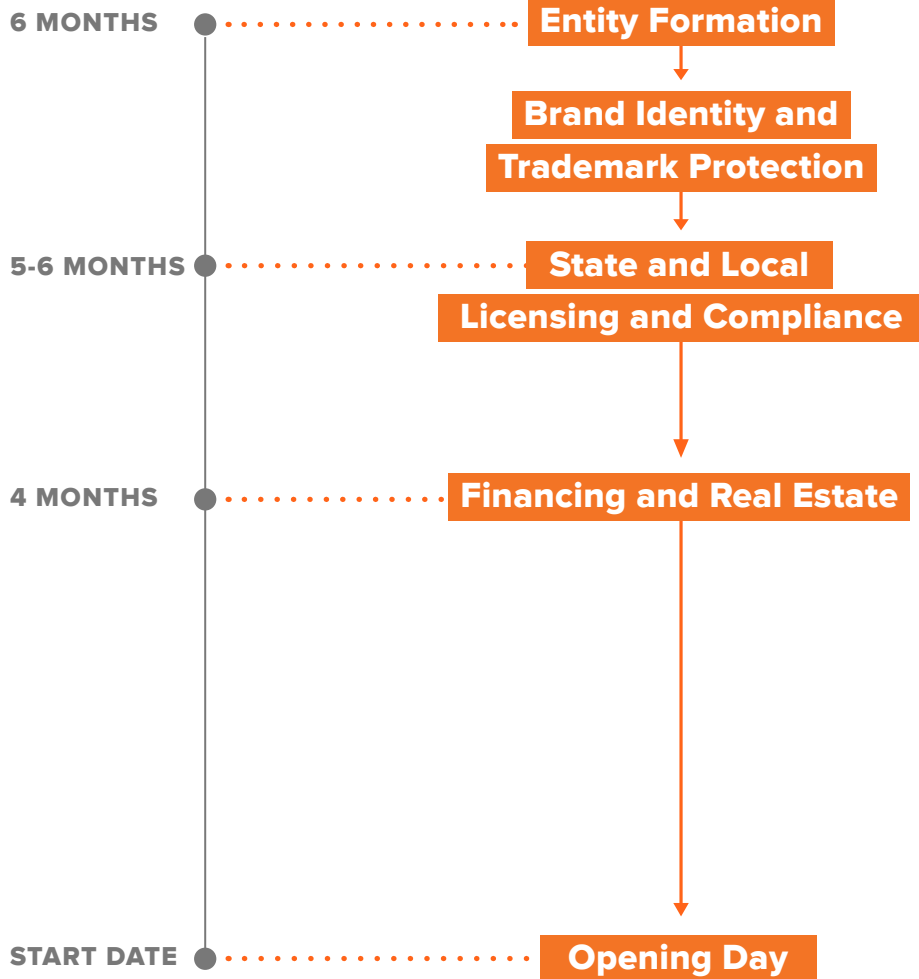
It is advisable for start-up and existing canna-companies to engage legal counsel with significant experience in regulated substances industries—like Bernstein Shur's **Cannabis Industry Group**. Our practical approach and industry knowledge allow canna-companies to enjoy the benefits of contributing to the state's "growing" cannabis industry.

DISCLAIMER: THE GROW KIT IS A NON-COMPREHENSIVE OVERVIEW THAT IS PROVIDED ONLY FOR GENERAL INFORMATION PURPOSES. THE GROW KIT DOES NOT OFFER, AND SHOULD NOT BE INTERPRETED TO OFFER, LEGAL ADVICE. YOUR ACCESS TO, POSSESSION OF, OR READERSHIP OF THE GROW KIT DOES NOT CREATE AN ATTORNEY-CLIENT RELATIONSHIP BETWEEN BERNSTEIN SHUR AND YOU, YOUR CANNA-COMPANY, OR ANY OTHER PERSON OR COMPANY. THE INFORMATION CONTAINED IN THE GROW KIT IS BASED UPON MATERIALS (SUCH AS STATUTES, REGULATIONS, ORDINANCES, AND OTHER LAWS) THAT ARE OFTEN CHANGING AND BEING UPDATED, SO THE GROW KIT MAY NOT BE CURRENT AND IS SUBJECT TO CHANGE WITHOUT NOTICE. LASTLY, YOU SHOULD NOT RELY SOLELY UPON THE INFORMATION CONTAINED IN THE GROW KIT WHEN STARTING, OWNING, OR OPERATING A CANNA-COMPANY OR HAVING ANY OTHER TYPE OF INVOLVEMENT WITH A CANNA-COMPANY.

Timeline

SEEDING, GERMINATION, AND SEEDLING STAGES

Before Start Date



PRE-FLOWERING, FLOWERING, AND HARVESTING STAGES

After Start Date



Checklist

SEEDING, GERMINATION, AND SEEDLING STAGES

ENTITY FORMATION

- Select and form the proper legal business entity
- Consult with an experienced attorney and other experienced professional service providers (e.g., accountants).
- Consider key questions, such as tax treatment and liability protections



BRAND IDENTITY AND TRADEMARK PROTECTION

- Choose brand identity - consider regulatory restrictions
- Obtain trademark registration, if possible and/or available

FINANCING AND REAL ESTATE

- Find and secure financing - consider compliance with federal and state securities laws, which depends on the type of financing
- Find and secure a location in a city or town that allows canna-companies and their specific business operations (e.g., cultivation, manufacturing, retail, etc.)



STATE AND LOCAL LICENSING AND COMPLIANCE

- Identify, apply for, and obtain state and local license(s) and other approval(s)
- Register for, and file, state taxes

PRE-FLOWERING, FLOWERING, AND HARVESTING STAGES

ADDITIONAL CONSIDERATIONS

- Lay out a plan with legal counsel for ongoing maintenance of trademarks, employment policies, management issues, and state and local regulatory compliance matters



Seeding, Germination, and Seedling Stages

Entity Formation

SEEDING, GERMINATION, and SEEDLING STAGES



In general, the first step for a canna-company is to select and form the proper legal entity through which it will conduct its business operations. The legal entity itself (rather than its owners) will likely hold all of the applicable state and local licenses, permits, and other approvals that are necessary for the canna-company to conduct its business operations.

What: A legal entity (e.g., corporation, limited liability company or “LLC”, limited partnership, etc.) is a business structure that is created by state law, separate and distinct from the legal entity’s owners, and through which business operations will be conducted.

Why: The proper selection and formation of a legal entity, among other things, formalizes the ownership and management structures of the business, typically seeks to limit the personal liability of the legal entity’s owners, and offers several tax planning advantages. It is usually less intimidating than it sounds.

How: Consult with an attorney—like one of the attorneys in Bernstein Shur’s **Business Practice Group**—and an accountant—who are experienced in business and taxation matters. They can help structure a canna-company’s business in the most stable and efficient way possible to guarantee its short-term and long-term health and continued success. They can also help a canna-company optimize tax-lowering strategies.

In order to determine the most appropriate legal entity structure for a canna-company, its professional advisors will ask its owners and managers a few key questions and they can save time (and money) by preparing answers before they consult with the canna-company’s professional advisors.

- How will you fund the business’s present and future financial needs?
- Do you hope to limit your personal liability for the business’s debts, obligations, and other liabilities?
- How will the business’s profits be taxed?
- How will you be compensated for your time and effort in connection with your ownership and operation of the business?
- Who will own and/or control the business, who will manage the business’s day-to-day operations, and what will that management structure look like?



Brand Identity and Trademark Protection

SEEDING, GERMINATION, and SEEDLING STAGES

The next steps for a canna-company are (1) to choose its brand identity, which helps the general public and the canna-company's suppliers, vendors, testing facilities, cultivators, manufacturers, retailers, and consumers identify, locate, and connect with the canna-company's products and services, and (2) to protect that brand identity through trademark registration. It is important to note that there are certain restrictions on the type of brand and/or logo that a canna-company can use. It would be sensible for a canna-company to engage legal counsel to assist in its review and compliance with these restrictions.

CHOOSE A BRAND IDENTITY

Why: The name of a canna-company is critical to its brand identity. It defines the business's ethos, reinforces its independent culture, and sets it apart from other competing businesses in the marketplace. Like a simple misstep in the seeding, germination, or seedling stage of the cannabis plant's growth cycle that might negatively affect its harvest potential, a business's name that misses the mark might similarly affect its growth and success.

SECURE A FEDERAL AND/OR STATE TRADEMARK REGISTRATION, IF AVAILABLE

What: A trademark is a word, phrase, name, symbol, or design (or some combination thereof) that identifies the source of a business's goods or services and distinguishes them from other business's goods and services in the marketplace. Although the simple use of a name may grant some initial trademark rights to a business, a state trademark registration or a federal trademark registration of that name through the United States Patent and Trademark Office ("**USPTO**") typically offers better protection for a business and its brand identity. However, for several reasons, a business might not be able to obtain a federal trademark registration for its name, logo, or other trademark.

Why: The rapid growth and expansion of the cannabis industry throughout the country will likely lead to more trademark disputes between and among canna-companies. Therefore, it is increasingly important for a

canna-company to protect its brand identity during the initial stages of development. This includes not only a canna-company's name, but also any logos or product names that are critical to establishing its brand as whole.

How: Discuss brand identity with an experienced trademark attorney—like one of the attorneys in Bernstein Shur's **Intellectual Property Practice Group**—and a marketing professional who understands the cannabis industry and the marketplace. It is worth the extra time and effort to find the right name—one that strikes the right balance between what the business represents and the availability for trademark registration and protection. An experienced trademark attorney can help a canna-company select a name that meets both criteria.

In addition, a canna-company should consult with an experienced trademark attorney who can conduct a full trademark clearance search to ensure that its proposed business name is not currently used or registered by another business, whether in the cannabis industry or otherwise. Bernstein Shur can provide guidance on how a canna-company enforce its trademarks in the marketplace, which is an ongoing responsibility for any small business (see "**MAINTAINING TRADEMARK REGISTRATIONS AND ENFORCING TRADEMARK RIGHTS**" below).

Financing and Real Estate

SEEDING, GERMINATION, and SEEDLING STAGES



Once a canna-company completes its business plan, which should include financial projections that include one-time and ongoing payment obligations, it should consider (1) how it will fund its payment obligations, and (2) where it will secure affordable real estate space for its business operations.

FIND AND SECURE FINANCING/FUNDING

Why: In the early stages of a business, the business’s founder(s) will often contribute her, his, or their personal funds to help pay for some of the business’s start-up costs (i.e., “bootstrapping”), but the business may later use debt financing, equity financing, or a combination of both, to pay for big-ticket capital expenditures, high utility costs, and other payment obligations.

How: There are generally three (3) options to finance a business’s operations:

- (1) debt financing,
- (2) equity financing, or
- (3) a combination of debt and equity financing.

“Debt Financing” is the process by which a business raises capital by borrowing funds (i.e., taking out a loan) from a traditional lender (e.g., bank, credit union, etc.) or from a non-traditional lender (e.g., one or more private individuals or companies, etc.) and promises to repay those funds with interest over a certain period of time. However, because of federal law, many traditional lenders (e.g., banks and credit unions, etc.) are unable or unwilling to lend money to canna-companies. This presents a considerable (but not insurmountable) challenge for canna-companies. The term “debt financing” also includes “convertible debt,” which refers to certain types of debt that, upon the occurrence of one or more certain events, “converts” the debt into ownership or “equity” in the business.

“Equity Financing” is the process by which a business raises capital by selling ownership or “equity” in the business to third parties (i.e., investors). As most types of non-bank debt, convertible debt, and equity meet the definition of a “security” (i.e., an “investment”), a business’s offer, sale, and issuance of non-bank debt, convertible debt, or equity are likely

subject to compliance with relevant federal and state securities laws. It is highly recommended that canna-companies consult with legal counsel experienced in both debt and equity financing—like one of the attorneys in Bernstein Shur’s **Private Capital Group**—to make sure that the business complies with all applicable federal and state securities laws and fully understands its ongoing debt and equity obligations.

FIND AND SECURE REAL ESTATE

Why: A canna-company must have a location where it will conduct its business operations. As such, it is critical for a canna-company to locate and secure commercial real estate where it will operate - whether the commercial real estate is purchased or leased.

“Purchasing Real Estate”—If a business wants to find and purchase commercial real estate, then it will likely engage a commercial real estate broker to find and negotiate the purchase of a suitable property. Once the business is comfortable with the terms of the purchase and sale of the property, the business, as the buyer, and the owner of the property, as the seller, will sign a contract (i.e., a “purchase and sale agreement”) to complete the transaction. The completion of the transaction will involve the seller’s delivery of a deed and other related transaction documents and the buyer’s delivery of the agreed-upon purchase price. It is common for a buyer to obtain a loan to fund the purchase of the real estate and the buyer’s lender typically requires collateral to secure the loan, such as a mortgage on the real estate and personal guaranties from the buyer’s owners.

“Leasing Real Estate”—If a business wants to lease or rent commercial real estate, then it will likely engage a commercial real estate broker to find and negotiate the lease of a suitable property. Once the business is comfortable with the lease terms, the business, as the tenant, and the owner of the property, as the landlord, will sign a contract (i.e., a “commercial lease agreement”) to complete the transaction. If the business is a legal entity, then the landlord will likely require the business’s owners to personally guarantee the business’s obligations under the lease agreement, such as payment of rent.

How: It is advantageous for a canna-company to engage competent legal counsel that is well-versed in real estate and municipal law—like one of the attorneys in Bernstein Shur’s **Real Estate Practice Group** and **Municipal & Governmental Services Practice Group**—to ensure that the canna-company’s desired location is, among other things:

1. If applicable, properly located in the “right” zone of a municipality that allows or permits cannabis-related activities (Please note that a municipality’s “allowance” of cannabis-related activities may depend on whether the activities involve medical use cannabis or adult use cannabis.); and
2. If applicable, properly distanced from public and private schools and public preschool programs and, potentially, other cannabis-related businesses. These requirements will vary from municipality to municipality.

The terms of many lease agreements are years-long, and account for tens, if not hundreds, of thousands of dollars in rent and other costs. As such, they represent a critical part of a canna-company’s financial obligations and should be carefully reviewed by legal counsel.

State and Local Licensing and Compliance



SEEDING, GERMINATION, and SEEDLING STAGES

Once a canna-company forms a legal entity, creates and protects its brand identity, and secures financing and real estate, the next step is to secure the state and local licenses, permits, and other approvals that are necessary to conduct its business operations.

There are three (3) categories of cannabis licenses, permits, and other approvals in Maine:

- (1) adult use cannabis,
- (2) medical use cannabis, and
- (3) hemp.

Each of these categories offers its own subset of licenses. If a canna-company plans to operate in a state other than Maine, then one of the attorneys in Bernstein Shur's **Cannabis Industry Group** may be able to help it navigate that state's licensing requirements.

IDENTIFY, APPLY FOR, AND OBTAIN STATE AND LOCAL LICENSES AND OTHER APPROVALS

1. Adult Use Cannabis

What: In order for a business to cultivate, test, manufacture, distribute, transport, and/or sell adult use cannabis and/or adult use cannabis products, it must secure one or more of the following four (4) adult use cannabis licenses: (1) cultivation facility, (2) products manufacturing facility, (3) testing facility, or (4) retail store. Each license offers certain rights and privileges and imposes certain obligations. A canna-company's legal counsel and/or the Maine Office of Cannabis Policy ("OCP") can further explain them to the canna-company's owners or managers. The state and local licensing process includes the following steps: (1) state "conditional" license, (2) local license or approval, and (3) state active license. OCP provides a helpful summary of the state active license process [available here](#).

Applications: The state's adult use cannabis license applications are [available here](#).

Pro tip:

Please note that many cities and towns have enacted strict land use (i.e., zoning) and licensing ordinances that restrict and/or limit the type and/or number of local licenses that are available for all or some types of adult and/or medical use cannabis business operations. If a canna-company plans to engage in adult and/or medical use cannabis business operations, then it should carefully review these ordinances for the city or town in which it plans to conduct business operations.

2. Medical Use Cannabis

What: In order for a business to cultivate, test, manufacture, distribute, transport, and/or sell medical use cannabis and/or medical use cannabis products, it must secure one or more of the following two (2) state medical use cannabis licenses: (1) registered caregiver, or (2) registered dispensary. Each license offers certain rights and privileges and imposes certain obligations. A canna-company’s legal counsel and/or OCP can further explain them to the canna-company’s owners or managers.

Applications: The state’s medical use cannabis license applications are [available here](#).

3. Hemp and Cannabidiol (“CBD”) Products

What: In order for a business to cultivate, package, and sell hemp, it must secure one or more of the following two (2) state hemp licenses: (1) indoor hemp license, or (2) outdoor hemp license. Each license offers certain rights and privileges and imposes certain obligations. A canna-company’s legal counsel and/or the Maine Department of Agriculture, Conservation, and Forestry can further explain them to the canna-company’s owners or managers.

Applications: The state’s hemp license applications are [available here](#).

How: Consult with experienced legal counsel—like one of the attorneys in Bernstein Shur’s Cannabis Industry Group—to select the proper state and/or local cannabis licenses and submit the relevant applications and other paperwork.

Pro tip:

In addition to the specific state and local licenses that are listed above, canna-companies may need to secure additional state registrations and other approvals, including registrations and approvals from Maine Revenue Services and the Maine Department of Agriculture, Conservation, and Forestry.

Pre-Flowering, Flowering, and Harvesting Stages



Additional Considerations

PRE-FLOWERING, FLOWERING, and HARVESTING STAGES

Once a canna-company's start-up phase is complete (i.e., "SEEDING, GERMINATION, AND SEEDLING STAGES"), It will likely need to address and manage the following issues in the post start-up phase of Its business (i.e., "PRE-FLOWERING, FLOWERING, AND HARVESTING STAGES").

STATE AND LOCAL COMPLIANCE

The business will need to submit the appropriate paperwork with OCP and/ or the Maine Department of Agriculture, Conservation, and Forestry and/or the local licensing authority if one or more of the following changes occurs after the business receives its state and local licenses: change in licensed premises, operation plan, name, ownership structure, or management structure. The business should work with an attorney to ensure ongoing compliance with state and local regulations, and should also implement effective operating policies and procedures.

PLANNING FOR EXPANSION

If the business plans to expand, whether by increasing its cultivation, manufacturing, or retail capacity, constructing a quality control and assurance laboratory, moving to a larger location, or opening a new location altogether, then the business will likely need additional (i.e., "follow-on") financing to complete the expansion. The business should consider consulting with experienced legal counsel to discuss potential options for follow-on financing—whether debt or equity, traditional or non-traditional.

MANAGING STAFF, WORKPLACE SAFETY, AND QUALITY ASSURANCE

In the event that the business's current employees are overwhelmed with existing and incoming tasks, the business is continuously outpaced by demand, or the business expands its cultivation, manufacturing, or retail bandwidth, it might be time for the business to consider hiring one or more new full or part-time employees to bolster the business's growth trajectory. If possible, the business should work proactively with a labor and employment attorney to prevent future employment issues and also to create a plan that ensures both workplace safety and quality assurance. If the business plans to offer equity as incentive or partial compensation to

its employees, then it is recommended that the business consult with legal counsel experienced in securities law to help create an equity incentive plan.

MAINTAINING TRADEMARK REGISTRATION AND ENFORCING TRADEMARK RIGHTS

If the business holds one or more federal (or state) trademark registrations, then it is important for the business to understand that (1) such a registration is not permanent, and (2) it does not offer trademark enforcement or guarantee trademark protection. In other words, the business cannot simply “set it and forget it” with respect to ongoing trademark filings, enforcement, and protection. Instead, the business should work closely with legal counsel to make ongoing filings with the USPTO and to protect the business’s existing trademarks by using them properly in the marketplace and preventing third parties from using them.