

Ontario's Cannabis Regulations: Rushed to Release

Nov 16, 2018

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The Ontario government has released General Regulation 468/18 (the **Regulation**) under the *Cannabis Licence Act, 2018* (the **Licence Act**) and has announced that the Alcohol and Gaming Commission of Ontario (the **AGCO**) will begin accepting retail store applications (online only) on December 17, 2018.

WHAT WE HAVE LEARNED

The Regulation is a very limited in scope, meaning that many practical details will be contained in the AGCO's Registrars Standards (i.e., cannabis store operating standards). These will be published in the coming weeks. (More details in the 'What's Next' section below.)

- **No "cannabis distribution services" agreements.** The Licence Act already dictates that provincial retailers can only purchase cannabis from the Ontario Cannabis Retail Corporation (the **OCRC**) and that sales can only be made in-store. So perhaps the most interesting inclusion in the Regulation is the provision that makes it a condition of a retail store authorization that store operators not enter into "cannabis distribution services" agreements with any entity or individual other than the OCRC. Though the scope of what constitutes "distribution services" is open to interpretation (and will have to be interpreted by industry participants, the AGCO, and perhaps eventually the courts), it appears this may be a further effort by the Ontario government to limit the scope of federal licensed producer (**LP**) influence in the retail recreational cannabis market.
- **"Affiliate" defined.** The Licence Act prohibits an LP together with any "affiliate" from holding more than one retail store authorization. Now the Regulation has defined "affiliate" - and it has done so very broadly. (The definition comprises almost 20% of the words used for the entire Regulation!) Though not exhaustive, the definition of "affiliate" includes:
 - Any corporation in which the LP, directly or indirectly, owns (or has a right to acquire) **10% or more** of such corporation's securities.
 - Parent companies, sister companies and subsidiaries as well as typical (and atypical) structures that might otherwise have been used to involve LPs in recreational cannabis retail, such as partnerships and trusts.
 - Any corporation in which the LP has either legal / voting control or a majority of the economic interest - whether directly or indirectly.
 - Any member of the same joint venture. (Not only does the phrase "joint venture" have no single meaning at law, but this would catch joint venturers working together on a project unrelated to recreational cannabis retail.)
 - Entities or individuals that have any "direct or indirect influence that, if exercised, would result in control in fact of that person". (This language could potentially implicate any number of third party relationships, such as those with franchisors and lenders.)

Unfortunately, the government's effort to rein in the influence of LPs by throwing the kitchen sink into the definition of affiliate is likely to create uncertainty, and so potential licensing inefficiencies for (or disputes among) the AGCO and industry participants. The government should amend the Regulation to address this issue, and others (see next).

- **Accidental new restriction on Licensed Producers?** As previously announced, the Licence Act limits the number of store authorizations issuable to an LP or its affiliates to one only. Further, the Licence Act stipulates that store authorizations will only be issued to a person who holds an operator licence (or an applicant for an operator licence). However, the Regulation prevents the issuance of an operator licence to an applicant corporation which is 10% or more owned or controlled, directly or indirectly, by **“one or more licensed producers or their affiliates”**. This provision appears to disentitle an LP and its affiliates from acquiring an operator licence and therefore prevents LPs from obtaining even the single store authorization permitted under the Licence Act. It is presumed that this is a drafting mistake resulting from the rush to release the Regulation.
- **Cap on number of stores.** A retail store operator (and its affiliates) can hold no more than (a combined) 75 retail store authorizations.
- **Stand-alone stores only.** The Regulation does not permit a cannabis retail store to be located inside another commercial establishment (i.e., sometimes referred to as the ‘store-in-store’ model) - except where the cannabis store is accessed through the common area of an enclosed shopping mall. Shared storage spaces or receiving docks are also not permitted.
- **Land use setbacks.** The Regulation requires that a store be located no closer than 150 metres from a public or private school.
- **Public interest objections.** Under the Licence Act, the AGCO must consider the public interest in determining whether to issue a licence. (Such interests can be raised by local residents when a store authorization application is publicized.) The Regulation dictates that the AGCO may only consider matters of public interest that relate to (i) protecting public health and safety, (ii) protecting youth and (iii) preventing illicit activities.
- **Permitted sale items.** Cannabis retail stores will not compete with convenience or other general goods retailers. Cannabis retail store operators will only be permitted to sell cannabis products, cannabis accessories and shopping bags.
- **Training.** Store authorization holders, cannabis retail managers and all other store employees will be required to complete training on the responsible sale of cannabis, required record keeping and preventing diversion to the illicit market.

WHAT'S NEXT

The AGCO's Registrars Standards (i.e., store operating standards) and Cannabis Retail Application Guide are to be rolled out in the coming weeks. The guide is being published chapter by chapter as a result of the very short timeline afforded to the AGCO by the Ford government. Applications can be submitted commencing on December 17, but (reading between the lines of the AGCO press release) it appears the application itself will not be made available prior to that date. Rather, the AGCO has announced that they plan to post a summary of required application information before December 17, and implement other supports such as educational webinars.

Anyone hoping to apply promptly following December 17 should move quickly now to have their applicant corporation set up (or cleaned up), their proposed retail store location secured and certain other ducks rowed.

Contact the author or any other member of the Aird & Berlis Cannabis Group if you have any questions about the new regulations.

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