

Joint Ventures in Hemp – You Don't Have to 'Go It Alone'

Written By **Richard J. Crow** (rjcrow@wardandsmith.com) and
Tyler J. Russell (tjr@wardandsmith.com)

May 15, 2020



Investors and owners of hemp and CBD businesses have grit – a trait that goes hand-in-hand with being an entrepreneur.

They are innovative, learn quickly from mistakes, and regularly adapt to new and changing regulations, industry standards, and consumer preferences. They are no

strangers to unknowns and continuous pivoting to keep their businesses profitable and lawfully operating.

For months, the hemp and CBD industry has faced an economic liquidity crunch and regulatory uncertainty from the FDA, USDA, and other agencies. With the addition of the COVID-19 pandemic, stay-at-home orders, and the economic recession that may follow (or has followed – depending on who you ask), those uncertainties and financial struggles have intensified. Many hemp and CBD businesses are pivoting into new opportunities and ventures, and others are struggling to stay afloat.

There are opportunities for continued business growth and innovation, despite the current pandemic and economic issues. However, businesses may need to look outside of their own walls to find strategic partners that possess complementary or additional assets, skills, intellectual property, and other resources that, when pooled with its own resources, will help each achieve its goals. A joint venture might be an option to consider.

What is a Joint Venture?

A joint venture is a collaboration of two or more businesses that combine or share assets, expertise, intellectual property, and other resources for the purpose of engaging jointly in a specific activity or project. A joint venture does not have to be engaged in for-profit – although it can be. It might be formed for a particular short-term purpose or goal, such as jointly researching, developing, or producing a product. It also might be formed for a more long-term endeavor such as selling or distributing products, or leveraging buying power that comes with a larger enterprise.

What are the Benefits of Joint Ventures?

Joint ventures afford an opportunity to pool and leverage the combined resources, assets, know-how, talent, intellectual property, market share, and other resources of the participating businesses. A joint venture is not

a merger of companies, so each participant in the joint venture can retain ownership over its own business and properties. For example, a cannabinoid processor may have significant resources and skills in the extraction process, but limited experience or abilities in product formulation or consumer sales operations. By joining forces with other experts in a joint venture, the extractor may be able to leverage communal resources to create a new product or brand that would not otherwise be available (or as cost-efficient to produce and operate) on its own.

Participants in a joint venture also may be able to cut or minimize their operational costs through economies of scale, shared labor, shared advertising and marketing expenses, and other cost savings mechanisms. The joint venture participants can provide for these expenses to be borne by the joint venture and paid from cash flow – meaning the individual owners may not have to fully fund these costs on their own.

In addition, joint ventures allow the participants to combine and share their experiences and knowledge on particular issues. The parties may wish to keep some matters confidential from one another in certain instances. But, generally, the joint venture (with a properly drafted joint venture agreement) allows for greater flexibility in the sharing of information among the parties. And, each party brings its own unique knowledge, experience, and know-how to the relationship. The participants can benefit from each other's skillsets and talents. This is best leveraged by associating with participants that complement and support each other's abilities and expertise in the overall joint venture operation.

How are Joint Ventures Created?

Although not recommended, creating a joint venture can be as simple and informal as a handshake. The problem with that approach is that the actual terms and conditions of the joint venture will invariably become cloudy (or forgotten) over time – which will lead to miscommunication, disputes, or outright litigation. In addition, it is possible that participants in a joint venture that is not conducted through a properly prepared written joint venture agreement or through separate legal entities may be deemed to be general partners in a general partnership. In North Carolina, if you join with one or more other persons or businesses as co-owners to engage in a business for profit, but do not form and operate the business through a separate legal entity (such as a limited liability company, corporation, or limited partnership), you may be a partner in a general partnership – whether you wanted to be or not. General partnerships are troubling in that partners may be held jointly and severally liable for the debts and liabilities of the general partnership. In other words, a general partnership and its partners do not benefit from the same liability protection benefits available to members of a limited liability company or shareholders of a corporation. Considering the scope of uncertainties, risks, and liabilities faced by businesses in the hemp and CBD industries, it would be advisable to avoid classification of a joint venture as a general partnership.

The preferable approach to creating a joint venture is to enter into a written contract (often referred to as a joint venture agreement), or to form a separate legal entity to operate the joint venture, such as a limited liability company, corporation, or limited partnership. Determining whether to set up a separate legal entity or to rely only on a written joint venture agreement requires an understanding and analysis of a myriad of business, legal, and tax issues.

Whether you create a joint venture by contract or by formation of a separate legal entity, a thorough written agreement between the participants is imperative. The agreement should address each participant's rights, responsibilities, contributions, and obligations with respect to the joint venture. It should cover, among many other matters, protection of each participant's confidential and proprietary information, any non-competition agreements, contributions of cash, property, or other resources to the joint venture, obligations to pay or share expenses, allocations of profits and losses, tax matters, the term of the joint venture, how the

participants will communicate, performance criteria, the division of labor, ownership, and use of assets and intellectual property created during the joint venture, termination of the joint venture, and restrictions on transfers of joint venture interests. It is highly advisable to consult with your tax and legal advisors at the outset of joint venture discussions and throughout the process of structuring the joint venture and preparing the appropriate agreements.

Venturing Forward

Joint ventures are complicated business arrangements that must be properly structured and documented in order to minimize your risk and maximize the benefit and utility to the participants. With proper planning, negotiation, and drafting on the front end of the relationship, they provide hemp and CBD businesses with a real tool to leverage opportunities and strategic relationships, especially in a difficult economy. It is becoming increasingly more difficult for hemp and CBD operators to "go it alone" in the world. Finding and maintaining strong relationships within the industry just may be the key to long term success and survival.

Ward and Smith's Hemp Law attorneys can guide you through the complexities of doing business in the hemp and CBD industries. Our team is here and willing to help you move forward.

This article was first published by the Remedy Review.

--

© 2022 Ward and Smith, P.A. For further information regarding the issues described above, please contact Richard J. Crow or Tyler J. Russell.

This article is not intended to give, and should not be relied upon for, legal advice in any particular circumstance or fact situation. No action should be taken in reliance upon the information contained in this article without obtaining the advice of an attorney.

We are your established legal network with offices in Asheville, Greenville, New Bern, Raleigh, and Wilmington, NC.