Blaney McMurtry LLP

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Legalization of Recreational Cannabis in Canada: Real Estate Trends

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The recreational cannabis industry has always existed. But, if all goes as planned, a new one will be born in Canada this summer, anointed with the blessing of the laws of the land.

Business owners, operators, investors and advisers have long realized the potential implications of what is to come. The global business consultancy, Deloitte, has projected the size of a legal, recreational retail cannabis market in Canada at nearly $9 billion per year, which figure swells to over $20 billion if the ancillary market for cannabis related products and services is included. There has already been a “green rush” by equity investors into medical marijuana companies, which, of course, will become the major players in the new recreational market, with more than $466 million raised in Canadian capital markets in 2016 alone.

Prices for cannabis stocks soared into late 2017, leading to a flurry of “cheap” M&A activity (i.e. stock_exchanged for stock with little or no cash involved - see, for example, the recent acquisition by Aurora Cannabis Inc. of MedReleaf Corp.). At the same time, increasing numbers of financiers have got involved too, in many instances offering financial assistance to licensed producers looking to expand and acquire cannabis production and refinement facilities. Even one of the big five Canadian banks (BMO) has finally jumped on board, recently participating in a $175 million “bought deal” securities issue.

With legalization not far off, we are also seeing both the private and public retail channels ramping up their physical locations. While all jurisdictions offer production licences, currently only some will offer retail licenses (e.g. Alberta will allow privately run stores whereas sales in Ontario will occur only through provincial liquor control board outlets). In any case, the retail landscape is set to change dramatically across the country over the next five to 10 years as a result of these new laws.

Residential landlords will also feel the impact of the new legislation as it will now allow tenants to grow a limited amount of marijuana for personal use. This creates obvious safety and potential damage concerns for landlords since, for example, each unit of a multi-unit apartment could now, in theory, contain a small scale grow operation.

As expansion and consolidation in the burgeoning marijuana industry continue and as Canadian companies focus on scaling up operations to meet post-legalization consumer demand, from a bird's eye legal perspective, we anticipate the following real estate trends to continue:

1. Increased acquisition and disposition of real estate as a result of increased M&A activity

2. Increased acquisition of real estate for production, refinement and retail purposes

3. Increased financing from all levels (including potentially all Schedule 1 banks once risk exposure decreases when legalization occurs) for the above purposes

4. Increased leasing (and sub-leasing) in the commercial real estate sector, with numerous special considerations and issues to be dealt with in any lease of space to a cannabis-related industry player.

5. Increased push from residential landlords, with respect to marijuana growth and use restrictions, to i) revise proposed legislation and ii) amend leases.

Of course, most of these new laws were enacted under the guise of protecting youth from the hard criminals who push illegal substances. As with any government initiatives, they are replete with political risk with respect to implementation. Nevertheless, legalization itself seems certain, even if the specific timing does not.

Blaney McMurtry has already participated in securities and real estate financing transactions in the recreational marijuana space and will continue to offer legal services to market players as the business matures.

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