



# ESTABLISHING A TRIBAL CANNABIS OPERATION TOP 10 LIST



1

## Evaluate market entry

There are many opportunities for American Indian tribes to gain entry into cannabis (hemp and marijuana) markets. Tribes must evaluate their circumstances – location, land, resources, knowledge, technology – with regard to cannabis when identifying a point of entry into the market.

2

## Create a cannabis civil regulatory system.

Before entering cannabis markets, American Indian tribes must first legalize the conduct they wish to engage in under tribal law. Tribes must create robust cannabis regulatory schemes as well as amend existing laws prohibiting cannabis.

3

## Endow Tribal regulatory body with the authority to implement cannabis regulatory system.

Tribes must either create a regulatory body to implement and oversee its cannabis regulatory system, or endow an existing regulatory body with this authority.

4

## Conduct government-to-government consultation with relevant federal, state, and local authorities, including offices for the local U.S. Attorney and Drug Enforcement Administration.

American Indian tribes seeking entry into the cannabis market should be transparent about their plans to exercise sovereignty. This means considering vetting tribal ordinances, as well as economic development plans, with relevant authorities via formal government-to-government consultation.

5

Develop an MOU or compact with state for participation in the state licensed market where appropriate.

Many tribes that have been successful in launching viable cannabis ventures have done so by entering into compacts, or other types of agreement with states. In so doing, American Indian tribes can negotiate favorable agreements in which they maintain sovereign immunity and favorable tax treatment vis-à-vis states.

6

**Evaluate appropriate tribal business structures with regard to sovereign immunity, tax advantages, and capital investment, among others.**

American Indian tribes seeking to launch cannabis business ventures should evaluate the various business structures available – federal incorporation, tribal incorporation, state incorporation – against the desired outcomes for said business. There are various tax and immunity implications depending upon the type of business structure a tribe chooses for their cannabis business.

7

**Establish a tribally owned and operated cannabis business.**

Tribally owned and operated businesses, including Section 17 corporations, receive favorable tax treatment and have well established contours of sovereign immunity. However, depending upon the circumstances, this option may not be available to all tribes.

8

**Execute contracts, as required, for cannabis cultivation, processing, transportation, and distribution.**

It is important for tribes seeking entry into the cannabis market to identify needs and execute contracts satisfying those needs in order to get their product to market.

9

**Earmark cannabis revenues for essential tribal government services.**

Cannabis offers American Indian tribes an opportunity to diversify economic development portfolios and fund necessary tribal programs. In so doing, tribes further insulate themselves vis-a-vis sovereign immunity and tax treatment.

10

**Establish tribal cannabis networks to consolidate and voice tribal cannabis interests to relevant federal, state, and local lawmakers.**

Tribes continue to struggle with obtaining parity in treatment with those states legalizing cannabis as well as access to state regulated marketplaces. It is imperative that American Indian tribes seeking entry into cannabis markets work together in lobbying for legislation that is favorable to tribes.

McAllister Garfield, P.C. is a full-service cannabis law firm that has pioneered and continues to pioneer legal strategies and services for the cannabis industry. Contact us today to schedule an appointment.