

Financing Options Guidance



The Maryland Cannabis Administration (MCA) is issuing guidance on alternative methods for licensees to raise capital, or partner with other entities. This includes the ability for licensees to use the value of a cannabis license as collateral to obtain a loan from an MCA-registered creditor, and alternative methods in which repayment models can be structured to align with current statutory and regulatory provisions. This document is intended to assist licensees in understanding the process set forth in regulations, and is not intended to be construed as legal or financial advice. Notwithstanding this guidance, or the described processes, the statutory and regulatory provisions on transfers of ownership and control are still applicable, and subject to MCA review and approval.

License as Collateral

A licensee, including a conditionally licensed entity, may use the value of a cannabis license as collateral to obtain a loan from an MCA-registered creditor. If the licensee borrower becomes insolvent or otherwise defaults on its loan obligations, the license can be sold to an eligible bidder to satisfy the debt. In this case, a creditor must select, or a court may appoint, a receiver who will oversee the orderly transfer of the license and manage the cannabis business while it is in receivership. In order to minimize the time that a license is non-operational, a prospective receiver must apply for and receive approval from the MCA to act as a receiver. COMAR 14.17.17 establishes the receivership process, including receiver application requirements and receiver responsibilities for disposition of a license.

Creditors

A financial institution or business that wishes to lend money to a cannabis licensee and secure the loan with the value of the cannabis license must register with the MCA by completing the MCA's [creditor registration](#).

Receivers

As part of the MCA receivership application, a prospective receiver must submit a general plan that explains their approach to the orderly disposition of a license. The MCA may approve, deny, or request additional information from the applicant. Find the receivership application [here](#). According to the Maryland Commercial Receivership Act, an individual nominated to be a receiver may not:

- Have any affiliation to the creditor party or cannabis entity;
- Hold a material interest in the creditor party or cannabis entity, either directly or indirectly;
- Have a material financial interest in the outcome of the action;
- Have a debtor-creditor relationship with any party involved;
- Hold an equity interest in the cannabis license;
- Within two years of receivership, have been employed or awarded any interest in the cannabis entity;
- Have been convicted of a felony or other crime involving moral turpitude; or
- Have been found liable of fraud, breach of fiduciary duty, theft, or similar misconduct.

MCA regulations additionally prohibit an approved receiver from having a financial or ownership interest in any Maryland cannabis licensee during the period the receiver is actively carrying out its receivership responsibilities.

Once a creditor appoints an MCA-approved receiver, the receiver must also submit a plan for disposing of the specific license in receivership. The receiver's plan may include but is not limited to operating the business until the sale is complete, attracting investors, or selling parts of the business to satisfy the debt. During the period of receivership, a receiver is subject to State laws and regulations governing licensed cannabis businesses. This includes ownership and control disclosure requirements, criminal history record checks, and all MCA regulations and State laws applicable to the cannabis business type.

Eligible Bidders

To qualify as a bidder, an individual or entity must provide the information listed in [COMAR 14.17.17.06C](#) for each individual who would acquire 5% or more ownership interest in the cannabis license.

Priority Return on Capital Investment

Alcoholic Beverages and Cannabis Article, Sec. 36-1103, Annotated Code of Maryland, defines “Genuine Ownership” to mean an owner who “enjoys the customary incidents of ownership and shares in the profits and losses of the cannabis license or registration proportionate to the percentage of the owner’s interest in the cannabis license or registration.”

A licensee, including a conditionally licensed entity, may structure loans, partnerships, or other investor agreements with an investor in such a manner that provides priority repayment of the investment, provided that once the investment has been repaid, the payment structure from the business returns to a proportionate amount, consistent with the ownership structure of the business. The amount attributed to the priority repayment must be proportional to the initial investment made.

Examples:

1. An entity is owned by two individuals: 65% owned by Person A, the Social Equity Applicant (SEA), and 35% owned by Person B, a non-SEA. This entity requires \$1 million dollars to begin operations, \$750,000 of which was provided by Person B, \$250,000 of which was provided by Person A. It would be a permissible financing structure for Person B to receive up to 75% of the business’s profits, until their initial investment of \$750,000 is recouped. Following the recoupment of the initial investment, the entity’s profits are returned to the ownership share of the entity, or 65% to Person A, 35% to Person B.

2. An entity is owned entirely by one individual, and needs \$1 million to begin operations. The owner is able to provide \$300,000 of the initial capital, the remaining \$700,000 is being provided by another lender. The lender may receive up to 70% of the revenue from the business, until the initial \$700,000 has been repaid, after which point, the owner would receive all profits and revenues.

Branding, Partnerships, and Use of Trade Names

The MCA is aware of interest among licensees to enter into branding or licensing arrangements with other cannabis companies. This section of the guidance seeks to explain what is and is not permissible under current Maryland law.

A licensee may not enter into a licensing or branding agreement that permits the licensor to exercise ownership or control over the operation of the licensee, as defined in § 36-101 of the Alcoholic Beverages and Cannabis Article and COMAR 14.17.01.01. “Control,” as defined in statute and regulation, includes the ability to make major marketing decisions.

Further, a licensee may not operate its business using the name of another company. However, a licensee may operate its business under a name that indicates a relationship with another company.

Additionally, a licensee is permitted to enter into licensing agreements to sell certain products. A licensing agreement may also restrict the use of the tradename or trademark that would damage or dilute the value of the tradename or trademark, or that would incur liability to the licensor.

Examples:

1. A licensed entity called “Joe’s Cannabis Shop” exists, another licensee, Licensee A, may not operate its business as “Joe’s Cannabis Shop” or a derivation thereof, even if “Joe’s Cannabis Shop” would license the use of its name to the licensee. Because Maryland law does not permit “Joe’s Cannabis Shop” to exercise control or ownership over Licensee A, allowing the licensee to operate its business under the name “Joe’s Cannabis Shop” creates a risk of consumer confusion by suggesting a status or connection that does not exist.

However, Licensee A could operate as, “Licensee A: a Dispensary that Collaborates with Joe’s Cannabis Shop.”

2. There is a licensed company called “GreenMonster”. Another licensee could enter into a licensing agreement to sell products bearing the “GreenMonster” tradename or trademark, and use the “GreenMonster” tradename or trademark on displays within the licensee’s store or on the licensee’s website.

Further, a licensing agreement regarding the sale of products may permit the licensor (“GreenMonster”) to establish requirements regarding how the licensee markets or sells the products bearing its tradename or trademark. For example, requirements regarding the display of a product, or other requirements that would prevent the dilution of the tradename or trademark.