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Colorado attorneys weigh in on cannabis companies' restructuring options during pandemic crisis

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As the U.S. Small Business Administration pumps out an estimated \$1 billion in loans every hour, Colorado cannabis companies have been explicitly excluded from that emergency relief. And should one of these companies go under, they don't qualify even for federal bankruptcy protections.

So what's a marijuana business to do when the federal government, which considers them illegal, won't offer any help? Steve Abelman and Mike Pankow, both restructuring attorneys and shareholders at Denver-based law firm Brownstein Hyatt Farber Schreck, took the time to discuss those options with Denver Business Journal.

Due to federal prohibition, cannabis companies can't seek relief through U.S. Small Business Administration loans or even restructure through federal bankruptcy like other small businesses. What other options do cannabis companies have if they find themselves in dire straits? Many successful restructurings do not involve bankruptcy and we would explore out-of-court possibilities in all events even if bankruptcy were, hypothetically, available.

A lender may have incentive to work with a cannabis company regardless of whether bankruptcy protection is available. For instance, a lender may benefit from maintaining the going concern (as opposed to liquidation), or from attracting additional debt or equity investment, or facilitating a sale or merger — all of which may require lender concessions to make them work. Bankruptcy protection is not a practical solution in some other business lines too, e.g., for-profit colleges receiving federal money. Bankruptcy is just one of several possible tools to effectuate a restructuring.

What's the No. 1 lesson learned during processes you've been involved with for Denver firms who may face a similar situation? First and foremost, regulatory approval from the MED is required prior to acquirors taking possession of a cannabis company. This makes setting a hard closing date difficult, which has implications on employee retention and budgeting. Cannabis companies involved in real estate transactions face additional requirements when dealing with title companies. Separate escrows may be required.

Tell us why a trend of increased restructuring, receiverships and liquidations would be expected within the cannabis industry today even before the COVID-19 pandemic. One would expect restructurings in any industry as it matures. Cannabis is no exception. Loans come due. Some companies will make money as some lose money. Some business decisions will work out and others will not, over time. There will be consolidations. In addition, nascent industries attract less sophisticated players, some of whom will be replaced as competition gets rigorous and it forces operations to be very efficient.

While it's too early to know for sure what's happening right now, what sort of impact do you foresee the pandemic having on that trend? Top-line revenue, of course, will be key. As the economy is interrupted, people may have less disposable income, which puts revenue at risk. That will affect individual businesses differently. These businesses have been exempted from many shelter-in-place orders, which should help tremendously.

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