

# Top takeaways

## Risk management for your cannabis business

- Review existing disclosure and guidance in context of COVID for compliance with accounting standards and securities laws.
- If you think it may be necessary to restate any financial disclosure, carefully review the options with counsel and the auditor first – a restatement is an invitation to a securities class action.
- Review and refresh company disclosure, compliance and code of conduct policies for directors, officers and employees.
- Check insurance coverage – Does it cover securities and product claims? Does the company and its D&Os have sufficient coverage?
- Directors and officers should ensure they have adequate indemnities in place with the company.
- Involve attorneys with specific knowledge of cannabis laws and the industry.
- Keep detailed records of all compliance efforts including privacy impact assessments.
- Review policies regarding security of sensitive personal information as employees return to work.
- Ensure compliance with applicable Health Canada regulations, including pesticide regulations, and implement vigilant testing of crops to ensure that all safety standards are met.
- Adopt proactive risk mitigation strategies after discovering a product issue.
- First, a letter of intent or memorandum of understanding will create an enforceable contract where it contains the essential terms of the parties' agreement even though some further formality is contemplated.
- Second, where your letter of intent or memorandum of understanding is intended to create enforceable obligations, always ensure that it includes a *force majeure* clause that reflects the realities of the modern world, failing which, you will have to rely on the more uncertain doctrine of frustration of contract to excuse non-performance.
- Determining whether a party may be relieved from performance of its contractual obligations due to a *force majeure* event must be analyzed on a case-by-case basis and will depend on the language of the contract, the factual circumstances behind the non-performance and, where the contract is governed by Québec law, possibly the criteria at art. 1470 C.c.Q.
- Parties should assess and document, on an ongoing basis, the cost and delay impact of COVID-19 on the performance of their contractual obligations and take measures to mitigate its effects.

### Québec-specific (where your contract is governed by Québec law):

- It is important to review your contracts to determine whether a *force majeure* clause is included and, if so, what relief is provided for by the contract as it may differ from the relief provided for under the C.c.Q.
- If your contract does not contain a *force majeure* clause, you may still be entitled to relief under the civil law concept of force majeure found at art. 1470 C.c.Q.