

BREAKING INTO THE CRAFT BREWING INDUSTRY IN MICHIGAN: WHAT STRATEGIC ARRANGEMENT IS RIGHT FOR YOU?

by: *Jessica Russell*

Over the last decade, the craft brewing industry has exploded in popularity. Small micro-breweries and brewpubs have cropped up across Michigan and the United States—many obtaining regional and national popularity.

However, breaking into the brewing industry and keeping up with the competition isn't an easy task. High start-up costs, long licensing waiting-periods, and extensive regulatory restrictions place economic limitations on entrepreneurial brewers looking to get their foot in the door. Brewers that achieve increased popularity may not be able to meet increased demand due to the capacity limits of their facilities, their licensed brewing volumes, or restrictions on their ability to engage in off-premises distribution.

However, there are less costly and less burdensome alternatives to immediately opening and licensing a brand new brewing facility or investing in additional facility space and equipment. The Alcohol and Tobacco Tax and Trade Bureau ("TTB") and the Michigan Liquor Control Commission ("MLCC") allow for certain persons or entities to have their beer brewed by existing licensed brewers in order meet beer production needs. However, if these arrangements are not carefully set up and licensed in accordance with state and federal law, it can create compliance issues for both parties.

Contract Brewing

In this type of arrangement, a person or entity ("licensor") may contract to have a licensed Michigan brewer manufacture the licensor's beer product. The licensor enters into a licensing and brewing arrangement with the licensed Michigan brewer, whereby the licensor grants the licensed Michigan brewer the right to its trade name, beer recipe, and ownership rights to any of the licensor's beer that is brewed by the licensed Michigan brewer in exchange for a royalty fee.

Benefit to Licensor: The licensor gets the benefit of profits with minimal investment and reduced overhead. The licensed brewer shoulders a majority of the licensing, operating, and financial obligations. This type of arrangement may interest a brewer that has reached its licensed manufacturing capacity or has insufficient equipment and facilities to support increased beer production. It can also be ideal for a retailer that desires to produce a beer product in order to profit off its popular trade name.

Benefit to Licensed Brewer: The licensed brewer gets the benefit of the sales profits. This arrangement would be especially beneficial if the brewer is experiencing decreased demand of its own products and/or has excess brewing capacity in its facility.

Alternating Proprietorship

In this type of arrangement, a Michigan licensed brewer (the "tenant") may enter into an agreement to "alternate" use of another Michigan licensed brewer's premises (the "host"). The tenant essentially brews its beer using the host's facility and equipment (and sometimes employees) in exchange for a fee.

Benefit to Tenant: The tenant gets the benefit of brewing beer without being required to immediately invest in a facility and equipment. This type of arrangement is advantageous for a new brewer desiring to test the market prior to opening its own brewery or an existing brewer that is unable to meet its licensed brewing capacity due to space or equipment restrictions.

Benefit to Host: The host gets the benefit of increased profits with reduced overhead. In addition, beer attributable to the tenant will not go towards the calculation of the host's licensed brewing capacity.

Avoid The Pitfalls

While contract brewing and alternating proprietorship arrangements present two unique alternatives for brewers in Michigan, such agreements must be carefully drafted to comply with state and federal law and, if required, the arrangements must be licensed at a state and federal level. Parties should consult with an experienced attorney before entering into one of these arrangements, since both parties must adhere to special rules with respect to many business matters, including licensing, record retention, taxes, distributor contracting, and operations.

This client alert is published by Dickinson Wright PLLC to inform our clients and friends of important developments in the field of brewing law. The content is informational only and does not constitute legal or professional advice. We encourage you to consult a Dickinson Wright attorney if you have specific questions or concerns relating to any of the topics covered in here.

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