Massachusetts Appeals Court holds ABCC has Discretion in Sanctioning Cross-Tier Ownership Violations

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For alcohol beverage businesses operating in more than one tier, or in more than one state, the Massachusetts Appeals Court's recent decision in *Monsieur Touton Selection of Massachusetts, Ltd. v. Alcoholic Beverages Control Commission* is worth a close read. On September 10, 2026, the Appeals Court vacated the Alcoholic Beverages Control Commission's (the "**ABCC**") revocation of an alcoholic beverages wholesaler's license. The court held that, when a company violates the Commonwealth's prohibition on common ownership of an out-of-state supplier and a Massachusetts wholesaler, the ABCC has discretion to choose the appropriate sanction and is not required to revoke every license involved.

The decision gives licensees a meaningful opportunity to argue for a lesser penalty. It is important to note, however, that it does not change the underlying prohibition. Revocation remains available to the ABCC, and the case is a reminder of how easily a multistate ownership structure can run afoul of Massachusetts law.

The Three-Tier System and the Cross-Tier Prohibition

Like most states, Massachusetts separates the alcohol business into three tiers. Manufacturers and suppliers sell to wholesalers, wholesalers sell to retailers, and retailers sell to consumers. The Supreme Judicial Court has explained that this structure is meant to keep "the multiple branches of liquor traffic" from becoming "muddled due to collusion and corruption." Out-of-state suppliers participate through a certificate of compliance issued under M.G.L. c. 138, § 18B (a "**Certificate**"), and may sell only to

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licensed Massachusetts wholesalers.

Section 18B provides that no person holding a Certificate "shall hold or be granted" a Massachusetts wholesaler license under § 18. A person is treated as holding both if the person or any member of the person's immediate family holds them. For corporations, anyone who, together with immediate family, owns more than 10 percent of the stock is deemed to be the Certificate holder or licensee. A violation "shall be cause for the revocation of all certificates and licenses held by the certificate holder and his immediate family."

The 10 percent figure in § 18B should not be confused with the ABCC's disclosure requirements, which have no ownership threshold. Under M.G.L. c. 138, § 15A, licensees must disclose every person and entity with a direct or indirect beneficial or financial interest in the license. The ABCC's application forms describe an indirect interest as one held through an intermediary "no matter how removed from direct ownership." The ABCC has suspended licenses for failing to make complete disclosures. Section 18B's 10 percent rule instead determines who is *deemed* to hold a Certificate or wholesaler license for purposes of the cross-tier prohibition.

The Decision

Monsieur Touton Selection of Massachusetts, Ltd. ("**MTMA**") has held a Massachusetts wholesaler license since 1999. Its parent company also owned a New York affiliate that obtained a Certificate in 2018. MTMA stipulated that the two companies were under common ownership in 2018 and 2019, and the New York affiliate surrendered its Certificate in February 2020 after the ABCC began investigating. In a decision dated May 16, 2023, the ABCC revoked MTMA's wholesaler license, stating that it was "without discretion in this matter." The Superior Court affirmed.

The Appeals Court disagreed. Relying on the Supreme Judicial Court's decision in *Cleary v. Cardullo's, Inc.*, the court held that the phrase "shall be cause for" authorizes, but does not mandate, revocation. The court also pointed to the statute's history: in 1971, the Legislature replaced draft language providing that a violation "shall act as a revocation" with the current "shall be cause for" language, leaving the choice of sanction to the ABCC. As a result, the ABCC may impose "a less severe sanction commensurate with the nature and scope of the violation." For example, where a wholesaler did not know that an affiliate held a Certificate, a

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suspension to allow for divestiture may be sufficient. The court sent the matter back to the ABCC and expressly offered no opinion on what sanction should apply.

Why Multistate Groups Should Take Note

Monsieur Touton illustrates a trap for businesses that operate in more than one state. Under § 18B, the ABCC issues a Certificate to an out-of-state licensee whose home-state license authorizes it to export or sell alcoholic beverages to Massachusetts licensees. A Certificate holder may sell only to licensed Massachusetts wholesalers, and for purposes of the cross-tier prohibition it is treated as a supplier, whatever its role in its home state.

This matters most for craft producers. Massachusetts farmer-series licenses, including the farmer-brewery license under § 19C, are issued by the ABCC to qualifying applicants and carry privileges that a Certificate does not. A farmer-brewer, for example, may sell its malt beverages to Massachusetts wholesalers, sell directly to Massachusetts retailers up to 50,000 gallons per year, and sell by the bottle to consumers on its premises. An out-of-state brewery that self-distributes at home does not bring those privileges with it. If it sells into Massachusetts under a Certificate, it must sell through a Massachusetts wholesaler.

The facts of *Monsieur Touton* show how easily a cross-tier problem can arise. A single holding company owned both a Massachusetts wholesaler and a New York company that obtained a Certificate to sell into Massachusetts. Because § 18B deems anyone owning more than 10 percent of a corporate Certificate holder or licensee to be the Certificate holder or licensee, the common parent was treated as holding both, which the statute prohibits.

What This Means for Your Business

Because § 18B applies under Massachusetts law regardless of how other states treat the same arrangement, an ownership structure that is permissible elsewhere may be prohibited in Massachusetts. Businesses considering entering the Massachusetts market should confirm, before applying, that obtaining a Certificate will not violate § 18B. This requires checking any wholesaler license held by the business, by an immediate

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family member, or by any person who owns more than 10 percent of its stock. Businesses already operating in Massachusetts should evaluate whether their current structure gives rise to a § 18B issue. That includes any affiliated suppliers or wholesalers inside or outside the Commonwealth, because common ownership of an out-of-state Certificate holder and a Massachusetts wholesaler will violate the statute.

The review should map every direct and indirect owner of each Massachusetts licensee and Certificate holder in the group. It should also confirm that ABCC disclosures are complete. Finally, it should identify any person or immediate family member (the person's spouse, parent, child, brother or sister) who holds more than 10 percent of the stock and may trigger a § 18B violation.

These overlaps often come to light in license applications, transfers and change-of-ownership filings, because those filings require disclosure of direct and indirect ownership interests. Buyers and investors should test post-closing structures under § 18B before signing. The deal documents should address license transfers, change-of-control approvals and any required divestitures.

If a potential violation surfaces, acting early matters. After *Monsieur Touton*, revocation is not mandatory. The Appeals Court held that § 18B "grants the commission authority to revoke certificates and licenses, but does not mandate revocation in every instance". The ABCC therefore has discretion to impose a lesser sanction. Please note that the decision is a slip opinion subject to formal revision, and the matter now returns to the ABCC for further proceedings. We will continue to monitor developments on remand.

If you have any questions about this decision or the Massachusetts three-tier system, please contact Attorney Zach Luczyk or any member of our Alcohol Beverages Group.

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