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Ontario's Private Internet Gaming Market Is Now Live!

Jennifer McKenzie, Jonathan Sherman, Maxwell Solomons

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Ontario has become the first province to allow internet gaming (igaming) by private operators who apply for and obtain registration from a government agency called iGaming Ontario (iGO), a subsidiary of the Alcohol Control and Gaming Commission of Ontario (the AGCO). On April 4, 2022, the new market went live with a press release listing those igaming companies, called "operators," who have been registered and fully approved by iGO. From operators' websites, Ontario residents can play internet casino games, including poker, and place sports bets. Online poker rooms in Ontario will be segregated from players from the rest of Canada and outside of Canada. According to the press release, there are many entities in the application process and thus there is an anticipation that the list of registered and approved operators will grow in the coming weeks and months.

The launch of a regulated igaming market in Ontario appears similar to the motivation for federally decriminalizing the sale and consumption of cannabis for recreational use: to make the licit market safer for participants than the illicit market. According to the iGO website, fully registered operators

…will have met rigorous standards of game integrity, fairness, player protections and social responsibility. Their sites will have controls preventing underage access and measures to enable more responsible gambling. They have entered legal agreements ensuring compliance with applicable laws, including anti-money laundering.

The following is an overview of the application and registration process for entities wishing to enter the Ontario private igaming market.

Application Process - Operators

An operator is broadly defined as anyone that "operates an internet gaming site" within Ontario. The AGCO does not provide a comprehensive definition or list of activities that constitute "operating a gaming site"; rather, it provides that operating a gaming site means "having an ongoing responsibility for the gaming site as a whole," including key decision-making activities, meeting compliance obligations for the gaming site, and having authority to retain suppliers in relation to the gaming site.

The AGCO has created a web-based portal (the Portal), here, for applicants to apply for authorization and registration and obtain real-time status of their applications. Applicants must first submit their contact information through the Portal. They will then receive necessary PDF forms for completion. The supporting

documentation accompanying the forms is comprehensive and includes:

- business name registration and constituting documents, such as articles of incorporation;
- financial statements;
- tax returns and tax assessments;
- a schematic diagram showing the applicant and all shareholders, partners or others (including parent or holding corporations) owning 5% or more of the applicant and any affiliated or subsidiary corporations. (Similar disclosure is required from a corporate shareholder (including a parent or holding corporation) holding 5% or more of an applicant or an entity with an interest in the applicant.);
- a list of proposed suppliers;
- a gaming site diagram;
- personal information for the directors, officers, partners, trustees, beneficiaries, shareholders owning 5% or more of the applicant and principal employees, including copies of government-issued identification, personal history in gaming, tax returns and tax assessments, and criminal background checks (if Canada is not the primary residence);
- an independently audited assessment of the processes and controls that they have put in place to meet the "Registrar's Standards for Internet Gaming." Those applicants assessed as potentially posing "elevated risk" may be required to submit an independently audited "Control Activity Matrix Submission" prior to commencing operations, whereas applicants who are not identified as posing an "elevated risk" must complete the submission within three months of commencing operations.

There are certain additional steps for applicants, including: executing a non-disclosure agreement, letter of agreement and operating agreement with iGO; setting up and configuring access to iGO's secure data and information communication channels; completing iGO's anti-money laundering information submissions and financial information submission; and participating in a systems and data readiness cycle with iGO.

A more detailed explanation of these additional steps, and the support that iGO will provide to applicants in fulfilling these additional steps, can be found here.

iGO will also require operators to obtain the Responsible Gambling Council's RG Check accreditation within two years of the date of the operating agreement and that operators maintain such accreditation for the duration of the term of the operating agreement.

iGaming Suppliers

There are two kinds of suppliers:

Gaming-Related Supplier (GRS). A GRS can be distinguished from an operator because its primary role

does not allow it to exercise any measure of control over a gaming site as a whole. A GRS is an entity that "manufactures, provides, installs, tests, maintains or repairs gaming equipment or who provides consulting or similar services directly related to the playing of a lottery scheme or the operation of a gaming site."

Non-Gaming Related Supplier (Non-GRS). A Non-GRS is anyone not directly related to the playing of a lottery scheme or the operation of a gaming site.

For registration purposes, the AGCO classifies GRS in accordance with the degree of their involvement in the business of the operator. A GRS classification will inform the scope of registration requirements applicable to the GRS as, generally speaking, the more involved the GRS is in the scope of the operator's business, the more onerous the registration requirements and the higher the cost to register. Examples of classifications include "Manufacturer of Gaming Equipment," "Supplier of Gaming Equipment," or "Non-Gaming Related Supplier."

Registration is required for GRS, and any games (software) and "critical gaming systems" must be certified by an independent testing laboratory. Registration is not required for Non-GRS.

For more information about suppliers and supplier registration, please proceed here.

Independent Testing Laboratory (ITL) Certification

Operator applicants must have their underlying technology certified by an ITL, and in certain circumstances, that certification may need the operator applicant to provide information pertaining to a third-party GRS. The AGCO has provided a list of AGCO-registered ITLs here.

Costs

An applicant to become an operator must pay a non-refundable regulatory fee of $100,000 *annually* per gaming site. The initial fee is payable concurrently with the application. Applicants can select a one- or two-year term option, with fees payable to match the length of the term. The AGCO has prepared a registration fee schedule that can be found here.

Applicants may also be required to pay the AGCO's reasonable costs of an investigation into their application, prior to the processing of their application, on an as-needed basis. While no specifics are given on how these costs are calculated, the AGCO website states that the "amount could be significantly greater than the above-mentioned regulatory fee of $100,000 per gaming site along with investigative charges."

A GRS may be required to pay a regulatory fee ranging from $2,000 to $15,000 depending on the

classification attributed to the GRS by the AGCO.

Estimated Timing

Applicants should expect a minimum of 90 days to complete the steps required to become registered and execute the operating agreement with iGO, although the iGO website cautions that each operator application brings its own unique circumstances.

Ongoing Disclosure

The Internet Gaming Notification Matrix imposes on registrations ongoing disclosure requirements: (1) incident-based notifications; (2) scheduled reports of data indicators; and (3) other regulatory submissions. To make the disclosure, registrants must use either the Portal or the AGCO's Secure File Transfer Protocol (SFTP) Data Exchange, depending on the nature of the disclosure. A complete outline of the ongoing disclosure requirements of operators can be found here.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.