Let the iGames begin: What you need to know about Ontario's new iGaming market

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What you need to know

- On April 4, 2022, the Ontario iGaming market opened to private gaming operators who have executed an operating agreement with iGaming Ontario and registered with the Alcohol and Gaming Commission of Ontario (AGCO).
- The same day, BLG co-hosted a celebration of the market's launch in collaboration with the Canadian Gaming Association.
- Ontario became the first province to run a private market for online betting and there are predictions that it could be one of the biggest gaming markets in North America.
- As of April 12, 2022, 13 different iGaming operators, representing 21 different gaming sites, have executed an operating agreement with iGaming Ontario and registered with the AGCO. The launch of the new market has lead to a series of major partnerships between these iGaming operators and major professional sports teams and leagues.
- On March 16, 2022, the AGCO announced additional advertising and marketing guidance for internet gaming operators (iGaming operators).
- The coming months will see continued dialogue with regulators regarding the implementation of an "open liquidity" model.

Celebrating the launch of Ontario's new iGaming market

On April 4, 2022, BLG and the Canadian Gaming Association hosted a celebratory reception commemorating the new iGaming market's launch at BLG's Toronto offices. The reception brought together a host of key industry stakeholders, including registered iGaming operators and suppliers, key regulators and government leaders. The reception included keynote remarks from Martha Otton, Executive Director of iGaming Ontario and Paul Burns, President and CEO of the Canadian Gaming Association, among others.

iGaming operator round-up

As of April 12, 2022, 13 different iGaming operators, representing 21 different gaming sites, have executed an operating agreement with iGaming Ontario and registered with the AGCO. Based on previous announcements from the AGCO, there are at least 17 prospective iGaming operators in the registration que who may also soon be able to offer their products to Ontarians.

The launch of the new market has spurred a bevy of new partnerships between registered iGaming operators and professional sports organizations, highlighted by, among others:

- FanDuel Sportsbook (FanDuel) and PokerStars, both owned by Flutter Entertainment plc, joint partnership deal with Maple Leaf Sports & Entertainment (MLSE);
- TheScore Bet's 10-year exclusive partnership with the Toronto Blue Jays;
- PointsBet Canada's multi-year sports betting partnership with MLSE; and
- FanDuel and Bet MGM's multi-year partnerships with the National Hockey League.

The active pace of these partnership announcements points to a highly competitive market, where customer acquisition and retention will be top of mind for all iGaming operators, whether their brand is well-known or brand new to Ontario players.

AGCO's advertising and marketing guidance

On March 16, 2022, the AGCO announced advertising and marketing guidance for internet gaming operators (iGaming operators) in order to ensure expectations for appropriate conduct are clear. The timing of the announcement indicated the AGCO's intention to ensure public confidence in the new iGaming market was established at the time of the market launch, and perhaps indicated some concern on the part of the AGCO with the proposed advertising and marketing plans of prospective registered operators.

In that vein, below are the key takeaways from the AGCO guidance on advertising and marketing requirements which all iGaming operators should pay particular attention to:

- **Promotional partnerships.** Responsible promotional partnerships are allowed, however, neither iGaming operators nor other businesses may provide gaming devices or gaming equipment (*e.g.,* tablet) to play to access an iGaming site at a physical premises.
- **Affiliates and other third parties.** It is the sole responsibility of iGaming operators to ensure compliance with the advertising standards. It is also the responsibility of iGaming operators to ensure that any third parties they contract with, including "marketing affiliates", also meet the advertising standards. Further, all "marketing affiliates" must not also advertise gaming sites that operate in Ontario without AGCO registration.
- **Inducements, Bonuses and Credits (IBCs).**
    - **No public advertising of IBCs.** Public advertising of IBCs is strictly prohibited, including targeted advertising and algorithm-based ads.
    - **Advertising on the gaming site.** IBCs may be displayed once players choose to visit an iGaming operator's gaming site or app.

- **Advertising through direct messaging.** IBCs may also be provided through *direct marketing* to individuals that have first consented, on the gaming site to receive them. The AGCO has made it clear that such consent may only be received from players upon visiting one of a registered iGaming operator's gaming sites – player consents obtained elsewhere (ex. third party website or consent obtained prior to market launch) does not satisfy this requirement.
- **Display of conditions for permitted inducement advertising.** All IBC offers must disclose all material conditions and limitations at the offer's first presentation so that the player has the information needed before deciding whether to accept the offer. This requirement is of particular note to newly registered iGaming operators, many of whom are actively offering IBCs to players as a means of customer acquisition and retention.
- **Free means free.** Offers must not be described as "free" or "risk-free" if the player actually needs to risk their own money or incur a loss to qualify.

- **Truthful Advertising and Informed Play.**
  - **No offers that require players to incur substantial losses.** All offers must be truthful and not misleading. Offers shall not communicate products or promotions that are not reasonably attainable without incurring substantial losses.
  - **Offers cannot promote excessive play.** Game design features, including IBC promotions, shall help prevent extended, continuous and impulsive play, and facilitate low risk play behaviours. IBCs that require excessive play (ex. significant playthough requirements) do not meet this requirement.
  - **Responsible Gambling message.** All advertising and marketing materials must include a responsible gambling message.

Although the additional guidance provided by the AGCO is helpful in clarifying expectations around advertising and marketing, all registered and prospective iGaming operators should seek independent legal counsel to fully understand their responsibilities under full suite of regulatory requirements.

Next steps: addressing liquidity

One of the key outstanding matters to be addressed for Ontario's new iGaming market is liquidity. "Liquidity" refers to the ability to have a critical mass of players participating in a game, which contributes to potential prize pools and game experience. An "open liquidity" model would permit Ontario players to play opposite players from jurisdiction outside of Ontario. Conversely, a "closed liquidity" model only permits Ontario players to play against others players in Ontario.

iGaming Ontario has made it clear that only "closed liquidity" models are currently permitted, such that any games involving liquidity pools outside of Ontario may not be offered. This "closed liquidity" approach has resulted in major daily fantasy firms, including DraftKings and FanDuel, no longer offering free or paid daily fantasy sports contests to Ontarians post-market launch.

Although there are unresolved legal issues around having international liquidity in Ontario, the AGCO and iGaming Ontario remain committed to enhancing consumer choice and incorporating those sites already offering gambling to Ontarians prior to the

launch of the new iGaming market. It is likely that the coming months will see continued dialogue amongst regulators and operators regarding the implementation of an "open-liquidity" model in the future.

Takeaways

The launch of Ontario's new iGaming market, and the legalization of single-event sports betting by the federal government in 2021, promise to make 2022 one of the most dynamic years for Canadian gaming in recent history. As prospective operators and suppliers look to capitalize on the opportunities presented, we encourage them to engage with legal counsel to assist with maneuvering through this rapidly evolving regulatory space.

For more information on Ontario's iGaming market, reach out to the key contacts below.

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