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Gaming & Hospitality

GAMING & HOSPITALITY LEGAL NEWS

CANADA LIFTS RESTRICTIONS AGAINST GAMING COMPANIES' ABILITY TO UTILIZE CO-LENDING PROGRAM

by Chantal A. Cipriano and Kevin J. Weber

In light of COVID-19, the Canadian government is offering financial relief by way of various forms. Relief includes, but is not limited to the following:

Wage Subsidy Program. The federal government is offering a 75% wage subsidy to all eligible employers of up to \$847 per week from March 15 – June 6. Employers must show a drop of at least 30% of their revenue during this time from last year. More information can be found: <https://www.canada.ca/en/department-finance/economic-response-plan/wage-subsidy.html>

Deferral of the Payment of Income Tax. All businesses will be able to defer until September 1, 2020, payments of the amount owing/instalments owing under Part I of the Income Tax Act due on or after March 18 and before September 1, 2020: <https://www.canada.ca/en/revenue-agency/campaigns/covid-19-update/covid-19-filing-payment-dates.html>

Deferral of HST/GST Remittances. All businesses will be able to defer, until the end of June 2020, any GST/HST payments or remittances that become owing on or after March 27, 2020 and before June, 2020. During this time, businesses are still required to file their returns before their normal deadline. The deferral also applies to quarterly GST/HST instalment payments for annual filers: <https://www.canada.ca/en/revenue-agency/campaigns/covid-19-update/frequently-asked-questions-gst-hst.html#toc0>

Deferral of Import and Custom Duties. Businesses will be allowed to defer payments due to the Canada Border Services Agency (custom duties and GST on regular imports, reassessments, penalties, etc.) to June 30, 2020. However, this does not change the accounting timeframes that are prescribed. Importers are required to submit accounting declarations for imported goods released on minimum documentation within the required timeframes: <https://www.cbsa-asfc.gc.ca/publications/cn-ad/cn20-11-eng.html>

Co-Lending Program. The Business Development Bank of Canada ("BDC") is offering a Canada Emergency Business Account and a Small and Medium Enterprise Loan and Guarantee Co-Lending Program with Export Development Canada: <https://www.bdc.ca/en/pages/special-support.aspx?special-initiative=covid19>

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Initially, the gaming industry was excluded from this important relief under the Co-Lending Program. Restrictions that predated the COVID-19 pandemic excluded the BDC from offering loans to casinos, and possibly other gaming-related enterprises such as slot manufacturers and distributors, on the basis that these businesses are not “consistent with generally accepted community standards of conduct and propriety.” Shortly after the COVID-19 relief programs were announced, these restrictions were revised. The revised restrictions now exclude only businesses owned by persons who own directly or indirectly entities that:

- a. are engaged in or associated with illegal activities;
- b. trade in countries that are proscribed by the Federal Government;
- c. violate standards with respect to human rights, labour, the environment, and anti-corruption;
- d. promote violence, incite hatred, or discriminate on the basis of race, national or ethnic origin, colour, religion, gender, age or mental or physical disability;
- e. fail to respect health, safety, labour, industry, and environmental standards and best practices established by all levels of government or applicable industry associations/governing bodies;
- f. outside Canada, fail to respect the UN Global Compact’s Ten Principles and the General Policies of the OECD Guidelines for Multinational Enterprises in the areas of human rights, labour, the environment, and anti-corruption; or
- g. manufacture or sell weapons, ammunition, vehicles/equipment, or related products or services to the military or police forces of foreign countries subject to sanctions under the United Nations Act or that fails to respect the UN Universal Declaration of Human Rights.

A business that has been sanctioned by gaming authorities in any Canadian jurisdiction, or that is controlled by a person who controls other entities that have been sanctioned in such a manner, may be ineligible for BDC loans based on (e), above. However, the concern that all gaming-related businesses might be ineligible for BDC loans has been alleviated.

The BDC has also launched a Capital Bridge Financing Program intended to support Canadian-based, venture-backed companies that have been specifically impacted by COVID-19. Pursuant to this program, the investment arm of the BDC may match, via a convertible note, current financing rounds being raised through “qualified existing and/or new investors made in an eligible company.”

As well, the Alcohol and Gaming Commission of Ontario is extending the term of granted licenses without financial penalty or regulatory repercussions. All licensees will have their licenses extended for six months, without the need for renewal, if applicable, during that time.

We will continue monitoring and being at the forefront of all gaming industry updates.

Please Note: These materials do not constitute legal advice. Government initiatives, announcements and regulations in response to the COVID-19 situation continue to evolve and change frequently. As such, it is important to ensure you are aware of current information and that you consult with a lawyer before making your business decisions.

If you have any immediate questions or require further information, please reach out to your Dickinson Wright LLP lawyer or contact the dedicated Dickinson Wright COVID-19 email at COVID19info@dickinsonwright.com.

ABOUT THE AUTHORS



Kevin J. Weber is a Partner in the Toronto office of Dickinson Wright. He can be reached at 416.367.0899 or kweber@dickinsonwright.com.



Chantal A. Cipriano is an Associate in the Toronto office of Dickinson Wright. She can be reached at 416.646.6864 or ccipriano@dickinsonwright.com.