

AGCO Updates and Ontario Government Emergency Order Permitting Pickup and Delivery of Recreational Cannabis by Licensed Retailers

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On March 17, 2020, the government of Ontario declared the COVID-19 pandemic to be a provincial emergency, which allowed the Ontario government access to extensive statutory powers under the *Emergency Management and Civil Protection Act* (the “**Emergency Act**”). Among other things, the government of Ontario can now impose restrictions on travel, mandate business closures, establish emergency facilities, introduce price controls, and procure goods and services as it deems necessary.

On March 23, 2020, pursuant to the Emergency Act, the Ontario government ordered all businesses in Ontario to close for a(n initial) 14-day period except for businesses on the published list of essential workplaces that were allowed to stay open during the ongoing pandemic.

Following the advice of Ontario’s Chief Medical Officer of Health, on April 3, 2020, the Ontario government announced an updated list of essential businesses (the “**Current Essential Businesses List**”) that are permitted to continue operating, subject to taking certain precautions intended to minimize the risk of COVID-19 transmission. All businesses not on the Current Essential Businesses List are required to stay closed until (at least) April 18, 2020.

Cannabis retail stores were initially listed as an essential business on the March 23 list, but were excluded from the Current Essential Businesses List. This meant that all cannabis retailers licensed by the Alcohol and Gaming Commission of Ontario (the “**AGCO**”) (“**Licensed Retailers**”) in Ontario were required to shut their doors as of April 5, 2020.

However, on April 7, 2020, pursuant to an emergency order made under the Emergency Act (the “**Emergency Cannabis Order**”), the Ontario government announced that for the duration of the emergency period, Licensed Retailers would be permitted to: (1) allow customers to pick up cannabis products (and any other products permitted to be sold at a licensed cannabis retail store); and (2) deliver such products directly to purchasers.

Shortly following release of the Emergency Cannabis Order, the AGCO released an Information Bulletin relating to cannabis pickup and delivery rules, and providing an update on cannabis licensing matters.

Rules for pickup and delivery

The Emergency Order, and the AGCO’s Information Bulletin, prescribe the following rules in connection with the pickup and delivery of cannabis by Licensed Retailers. Except to the extent the Emergency Order rules conflict with the rules under the *Cannabis Licence Act, 2018* (and its regulations and the AGCO’s Registrar’s Standards for Cannabis Retail Stores), the existing rules under the statute, regulation and Registrar’s Standards continue to apply.

Rules applicable to both pickup and delivery

- Licensed Retailers must comply with all government directives concerning social distancing;
- Licensed Retailers must receive payment, online or by telephone, prior to pickup or prior to cannabis leaving the store for delivery;

- the store employee providing the cannabis at pickup or on delivery must inspect ID before providing cannabis to a person who appears to be under 25 years of age;
- cannabis must be sold in its original packaging and in such a manner as to ensure the contents are not visible to minors;
- pickup or delivery can only be done between the hours of 9 a.m. and 11 p.m.; and
- pickup at cannabis retail stores, or delivery to addresses, on First Nation reserves is not permitted if the applicable Band council has passed (and delivered to the AGCO) a resolution mandating that pickup or delivery of cannabis is not permitted. (The current list of such First Nations is here.)

Rules specific to pickup only

- pickup location must be an outdoor area in close proximity to the store that is “clearly captured by the store’s surveillance cameras”; and
- pickup must be by the same individual who ordered/purchased the cannabis.

Rules specific to delivery only

- only Licensed Retailers or their CannSell-trained employees can deliver cannabis;
- delivery must be made to the residential address specified in the order;
- delivery must be to a person residing at the residence who is at least 19 years of age;
- cannabis and accessories must be kept secure up until the point of delivery;
- Licensed Retailers must retain the name and address of the purchaser to whom cannabis is delivered; and
- Licensed Retailers can charge for delivery.

Temporary pause on AGCO issuance of retail store authorizations

The AGCO’s Information Bulletin indicates that for the duration of the emergency period, the Ontario government is also placing a temporary pause on the issuance of Cannabis Retail Store Authorizations. In the meantime, the AGCO will continue to issue Cannabis Retail Operator Licences and will continue processing store authorization applications and conducting eligibility assessments to the extent possible, so that businesses will be prepared to move forward once restrictions are lifted.

Other AGCO updates relating to COVID-19

The AGCO also announced various rule changes in connection with the pandemic, including:

- relaxing certain inventory and other regulatory reporting requirements;
- permitting certain operational changes to minimize coronavirus transmission risk; and
- requiring that payment processing be completed online or by telephone.

Finally, the AGCO’s information bulletin indicates that applicants for Retail Operator Licences, Retail Store Authorizations or Cannabis Retail Manager licences may cancel their application and receive an application fee refund on request. Previously, the AGCO would issue application fee refunds only under very limited circumstances.

Looking forward

Given the goal of “flattening the curve” to reduce the risk that our health-care system becomes overwhelmed by Canadians suffering with Covid-19, it is reasonable to presume that Licensed Retailers

(and most other businesses) will not be returning to normal, full operation in the near term - at least until the current state of emergency has been lifted.

Licensed Retailers and their employees should look to take advantage of the economic measures that the federal government has recently introduced to provide economic support to businesses and individuals suffering during the pandemic.

Please contact the authors or any member of our Cannabis Group if we can assist your business with employment, leasing, regulatory, corporate, financing or other legal matters in these difficult times.

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