The historic US Multi-State Internet Gaming Agreement

Jeff Ifrah, Founding Member of Ifrah Law, provides an intimate view of the first Multi-State Internet Gaming Agreement in the US, which has seen Delaware and Nevada enter into an agreement whereby players from each state will be allowed to play against each other in an online environment. Jeff, who served as special internet gaming co-counsel for Delaware during this precedent setting agreement, explains its inner workings and importance.

Three states have authorised online gaming in their states. Two of the states, namely Delaware and Nevada, recently joined together to allow players in their states to play against each other in the online environment. In a historic action, on 25 February 2014, the states of Delaware and Nevada entered into the Multi-State Internet Gaming Agreement (MSIGA). Pursuant to that agreement, Delaware and Nevada will allow players logging on to Delaware and Nevada licensed internet poker sites to play against one another. The MSIGA also created the Multi-State Internet Gaming Association. The Association will oversee the operation of internet gaming by the Member States and ensure its compliance with the MSIGA. The execution of the MSIGA and the creation of the Association are two historic developments in the legalisation and regulation of a national online gaming program.

The MSIGA was contemplated from the moment that each state legalised online gaming. When online gaming legislation passed in 2013 in Delaware, Nevada and New Jersey, each state anticipated that in order to improve player pools and experience, compacting desirable. Accordingly, each state included a provision in its law and/or regulations permitting the negotiation of, and entry into, a multi-state agreement.

Delaware

Both the Delaware statute and the implementing regulation on online gaming discuss interstate compacting. Specifically, 28 Del. C. 4826 states: 'Notwithstanding the foregoing, persons who are not physically present in this State may engage in Internet lottery games only if the Office determines that such games are not inconsistent with federal law and the law of the jurisdiction in which the person is physically present, or if such games are conducted pursuant to an interstate compact to which the State is a party that is not inconsistent with federal law.'

The Delaware regulation at 13.22.2 also provides: 'The Internet lottery system shall only allow players access to play for money games if there is reasonable assurance that the players are physically located in either the State of Delaware or a jurisdiction pursuant to a compact to which Delaware is a party.' Players must be located in Delaware to engage in online gaming, and if there is an agreement with another state, players need to be physically located in that state. Players can reside in these states, or be visiting those states.

Nevada

The Nevada statute is very specific on the authority granted to the Governor to negotiate and execute a multi-state agreement. Nevada Revised Statute 463.747 provides that the Governor may enter into agreements with certain governments for purposes of interactive gaming. '1. Upon recommendation of the [illegible] behalf of the State of Nevada, is authorized to: (a) Enter into agreements, in accordance with the requirements of this section, with other governments whereby persons who are physically located in a signatory jurisdiction may participate in interactive gaming conducted by one or more operators licensed by one or more of the signatory governments; . . . .' As with Delaware, in order to engage in online gaming pursuant to the statute, the players must be located in Nevada (and, if applicable, a contracting state) at the time of play.

New Jersey

New Jersey law at NJ 5:12-95.31 also provides for multi-state agreements. 'Notwithstanding any other provision of P.L.2013, c.27 (C.5:12-95.17 et al.), wagers may be accepted thereunder from persons who are not physically present in this State if the Division of Gaming Enforcement in the Department of Law and Public Safety determines that such wagering is not inconsistent with federal law or the law of the jurisdiction, including any foreign nation, in which any such person is located, or such wagering is conducted pursuant to a reciprocal agreement to which this State is a party that is not inconsistent with federal law.'

The MSIGA

Only three months into New Jersey's launch of online gaming, Delaware and Nevada signed the MSIGA. By this summer, it is predicted that the first mixed player pools will commence play.

The MSIGA contains 17 sections and two exhibits. The provisions of the MSIGA project a strong commitment to compliance while recognising the objective of maximising net revenues for the

the MSIGA. MSIGA membership is open to any 'State.' For purposes of the MSIGA, State is defined broadly as: '. . . any governmental unit of a national, state or local body exercising governmental functions, and includes without limitation national and sub-national governments, including their respective departments, agencies or instrumentalities and any departments thereof.' Whether future Member States will include representatives of the Native American or international community remains to be seen, but this is certainly contemplated by the broad definition.

Notably, the MSIGA provides for pooling of both internet poker and other internet gaming. However, because Nevada law permits only internet poker at this time, Nevada and Delaware will only pool players of a common internet poker licensee at this time.

One of the primary concerns regarding the concept of an MSIGA was how it would calculate the distribution of revenue to the Member States. The MSIGA provides that when revenue is calculated on the basis of rake, 'such commission shall be individually attributed to players who had placed wagers within that round of play on a pro rata basis reflecting each player's weighted contribution to the commission collected within that round of play.' The MSIGA requires each licensing state to collect the revenue from its licensees and distribute the respective share in accordance with the above calculation. The standards for ensuring players are located in the authorised States is left to the discretion of each Member State's regulatory regime.

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This exhibit ensures that while each Member State is committed to an appropriate regulatory regime, no Member State is subject to the regulatory regime of another Member State. This exhibit also reflects the commitment of Member States to combating problem gaming. The second exhibit to the MSIGA provides a current listing of internet games offered in Nevada (poker only) versus those offered in Delaware (poker and casino).

The Association

The Association is introduced in the MSIGA in section VII. The Association's purpose is to have one entity charged with supervising compliance with the MSIGA and its structure and purpose is virtually identical to the Multi-State Lottery Association. The Association consists of a Board charged with resolving disputes and handling the withdrawal or termination of a Member State.

As other states adopt online gaming and seek to join the MSIGA, the process for doing so is for the prospective state to have online gaming authorised within its borders and for authority to be enacted to enter into the MSIGA. Two-thirds of the Member State representatives of the MSIGA Board must approve the new state applicant for membership. Once a state is a Member, it may voluntarily withdraw with 60 days written notice, or be terminated by a 75% vote of the representatives of the MSIGA Board.

New Jersey

New Jersey has not officially commented on the MSIGA and it is not clear why it did not have a seat at the table when the MSIGA was signed. New Jersey with its larger population may have been less motivated to consider the

meeting, Governor Brian Sandoval of Nevada stated that he has spoken with Governor Chris Christie about New Jersey entering into the MSIGA, but Sandoval did not provide further insight. New Jersey State Senator Ray Lesniak appeared to be surprised at the announcement of the MSIGA. In comments, Lesniak suggested the scandals that have beset Governor Christie's administration may have distracted the administration from considering the MSIGA.

Will terms be renegotiated?

The MSIGA includes a comprehensive treatment of all of the issues that are likely to arise in the context of an interstate online gaming agreement. Moreover, the MSIGA was written in a manner that addresses not only the relationship between Nevada and Delaware, but the expected relationship among a number of states that may ultimately sign onto the agreement. For that reason, there should be no need to renegotiate the terms of the MSIGA as other states join, and the agreement should provide a reliable framework for online gaming in additional joining states.

Conclusion

In the quest to establish a national online gaming regime in the US, the MSIGA is a critical component. The MSIGA provides for all issues necessary for a successful national gaming program. The key development will be for New Jersey to join the MSIGA as a signatory. In the future, as states develop legal frameworks for online gaming, it can be expected that such states will immediately join the MSIGA to ensure the success of their gaming program.

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