

## The Indian Government seeks to regulate online gaming - proposes amendments to the IT (Intermediary Guidelines & Digital Media Ethics Code) Rules, 2021

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### Background

On January 2, 2023, the Ministry of Electronics and Information Technology, Government of India (“**MeitY**”) invited comments from the public on a host of proposed amendments to the IT (Intermediary Guidelines & Digital Media Ethics Code) Rules, 2021 (the “**Draft Amendments**”). The Draft Amendments are aimed at ushering in a new regulatory framework to regulate online games (i.e., games available on the internet for which a user makes a deposit with the expectation of earning winnings) in India. This development comes immediately after the Indian government, on December 27, 2022, appointed MeitY as the nodal ministry to regulate online games in India.

The pace of these developments is not surprising. According to press reports, revenue from online gaming in India grew 28% in 2021 to US\$ 1.2 billion and, as per government estimates, is expected to reach US\$ 1.9 billion by 2024. Given India’s position as the largest fantasy sports market (with an estimated user base of 130 million) and India having added “new paying users” in online gaming at the fastest rate in the world for two (2) consecutive years (at 40% in 2020, and 50% in 2021), online gaming (including real money gaming) is garnering increasingly more investments from investors. These sentiments have been echoed by the government in its statement accompanying the release of the Draft Amendments, where it has emphasized the role of the online gaming industry and start-ups operating in this space, in achieving India’s “One Trillion Dollar Digital Economy” goal by 2025-26.

In this update by M&P, we have analyzed some of the key aspects of the Draft Amendments.

### Classification of Online Game Providers as Intermediaries

The Draft Amendments seek to classify a provider of online games as an “intermediary” under the Information Technology Act, 2000 (the “**IT Act**”), thereby creating a separate classification called “Online Gaming Intermediary.”

Earlier, in 2021, the government introduced the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (the “**Intermediary Guidelines**”). The Intermediary Guidelines superseded the erstwhile Information Technology (Intermediary Guidelines) Rules, 2011, and brought in significantly stricter provisions to regulate digital media and social media platforms. Inclusion of Online Gaming Intermediaries in the same bracket is, therefore, a significant development and gives a clear idea of the government’s approach towards Online Gaming Intermediaries. Our detailed analysis of the Intermediary Guidelines can be read [here](#). It is pertinent to note that classification of Online Gaming Intermediaries as an ‘intermediary’ under the IT Act also gives the government overreaching

powers to direct any Online Gaming Intermediary to block public access to any online game (in the interest of sovereignty and integrity of India, defence of India, security of the state, friendly relations with foreign states or public order) and provide the required information to law enforcement authorities (in relation to investigations, prosecutions, or cybersecurity incidents) within a prescribed time period.

## **Additional compliance requirements**

In addition to the due diligence requirements already applicable to intermediaries under the Intermediary Guidelines, the Draft Amendments seek to impose additional compliance requirements on Online Gaming Intermediaries. An Online Gaming Intermediary will, *inter alia*, be required to:

- have a physical contact address in India published on its platform for the purposes of receiving any communication addressed to it;
- display a demonstrable and visible mark of registration on all online games registered by the relevant self-regulatory body (more on this below);
- ensure that its rules and regulations, privacy policy, terms of service and user agreement inform the gamer of:
  - all the games offered,
  - risk of financial loss and addiction associated with such games,
  - measures taken to safeguard deposits made by such gamer as well as the policy for withdrawal or refund of such deposits,
  - manner of determination and distribution of winnings,
  - any other fees or charges payable by the gamer, and
  - the know-your-customer procedure followed by the Online Gaming Intermediary;
- identify and verify each gamer creating an account on its platform, in line with procedure required to be followed by an entity regulated by the Reserve Bank of India for identification and verification of a customer;
- appoint an Indian resident as the Chief Compliance Officer, who must also be a key managerial personnel or senior employee of the Online Gaming Intermediary. The Chief Compliance officer will primarily be responsible for ensuring compliance with Indian laws and cooperating with law enforcement agencies;
- appoint a nodal contact person for 24\*7 coordination with law enforcement agencies (there is a degree of duplication in the responsibilities of the nodal contact person and those of the Chief Compliance Officer);
- publish on its platform a “random number generation certificate” and a “no bot certificate” from a reputed certifying body for each online game offered by it;

- implement an appropriate mechanism for receipt, tracking and resolution of complaints and grievances; and
- within twenty-four (24) hours, provide information under its control or possession to law enforcement agencies investigating, prosecuting, preventing or having detected a cybersecurity incident.

## Self-Regulating Body

### *Creation*

The Draft Amendments provide for creation and registration of one or more self-regulatory bodies. Online Gaming Intermediaries can come together to set up such self-regulatory bodies, either under section 8 of the Companies Act, 2013, as a company with charitable objects, or under the Societies Registration Act, 1860 (21 of 1860) as a society. Such self-regulatory bodies will then be required to seek registration as such from MeitY. The Draft Amendments set out various criteria that MeitY will look at while considering an application for registration of such a self-regulating body, including, but not limited to:

- number of Online Gaming Intermediaries that are members of such self-regulating body;
- track record of such body in promoting responsible gaming;
- presence of persons with relevant experience on the board or governing body (such as eminent persons in the field of gaming, sports or entertainment; persons representing gamers; persons in the field of psychology, medicine, and consumer education; persons in the field of information communication technology) including a nominee of the Central Government with practical experience in the field of public policy, public administration, law enforcement or public finance;
- provisions in its charter documents ensuring its independent functioning at an arm's length from its member Online Gaming Intermediaries; and
- its technological capacity and expertise in the relevant field.

### *Powers*

Each registered self-regulating body will have the power to grant membership to any Online Gaming Intermediary subject to such Online Gaming Intermediary, and the games offered by it, being in compliance with all applicable laws. Further, each self-regulating body will have the power to grant registration to online games offered by a member Online Gaming Intermediary, provided such online game: (a) is in conformity with all applicable laws, including in relation to gambling or betting, or age at which an individual is competent to contract, (b) is not against the interest of sovereignty and integrity of India, defence of India, security of the state, friendly relations with foreign states or public order, or does not incite

the commission of any cognizable offence relating to the foregoing. Upon registering any online game, a self-regulatory body is required to inform the Central Government of such registration along with the basis on which such registration has been provided.

## *Key Responsibilities*

**Grievance Redressal:** Each registered self-regulatory body will be required to establish a mechanism for resolution of complaints of users that have not been resolved by the grievance redressal mechanism of its member Online Gaming Intermediaries.

**Establishing Framework:** Each registered self-regulatory body will be required to evolve a framework for securing conformity of online games registered by it with applicable laws. Such framework will, *inter alia*, include suitable criteria for content of online games, measures for safeguarding children, and measures for safeguarding users from financial loss and addiction (such as repeated warning messages, and allowing users to set voluntary time or money limits).

## **Government's power to regulate free games**

The Draft Amendments are primarily applicable to online games which require the users to make a deposit. However, the government has the power under the Draft Amendments to extend the application thereof to any deposit-free game (i.e., a game that does not require users to make a deposit) if it believes that such a game may create a risk of harm to the sovereignty and integrity of India, defence of India, security of the state, friendly relations with foreign states or public order, or causes addiction or other harm among children. The government can publish notifications to identify such games, and formally extend the application of the Draft Amendments to such games, in whole or part.

## **Key Takeaway**

The Draft Amendments are a welcome move towards formalizing and regulating online gaming as a sector and establishing processes to safeguard users of online games and their funds. An effective regulatory framework will also encourage responsible gaming, thereby reducing instances of online scams and frauds, and increasing security for young and vulnerable users against online abuse and indecency.

However, the Draft Amendments do not, and perhaps are not best suited from a legislative standpoint to, address the asymmetry in state specific legislations dealing with betting and gambling, which impacts various online real-money games. Under Entry 34, List II, of the Constitution of India, each Indian state has the power to regulate betting and gambling within such state. This has led to different Indian states coming out with different definitions of betting or gambling. A recent example is of Tamil Nadu, where legislation has been mooted (but not yet effected) to prohibit online gambling, including online rummy and poker. However, there are judgments of various Indian courts which clarify that rummy and poker are games of skill, as opposed to games of chance, and hence, cannot be seen as gambling or betting. The Draft Amendments do not tread the path of addressing these differences across

states, and merely provide that all online games must be “in conformity with any law for the time being in force in India, including any such law relating to gambling or betting or the age at which an individual is competent to enter into a contract.”

Further, there may be state-specific compliance requirements under various state laws, which will continue to apply to an Online Gaming Intermediary in addition to the various compliance requirements under the Draft Amendments. For instance, under the same proposed law in Tamil Nadu (discussed above), there is a requirement for online game providers to register themselves with a local authority.

Therefore, while the Draft Amendments are a step in the right direction, it will be in the interest of all stakeholders that the Central Government and the state governments work collaboratively to adopt a uniform framework for regulation of online gaming (both in terms of registration and compliance requirements, and regulation of betting and gambling). Uniformity and clarity in the regulatory framework with respect to betting and gambling will also boost foreign investments in the online gaming sector.