
CHAMBERS GLOBAL PRACTICE GUIDES

Gaming Law 2023

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India: Law & practice and Trends & Developments

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INDIA



Law and Practice

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Contents

1. Introduction p.5

1.1 Current Outlook and Recent Changes p.5

2. Jurisdictional Overview p.10

2.1 Online p.10

2.2 Land-Based p.14

3. Legislative Framework p.15

3.1 Key Legislation p.15

3.2 Definition of Gambling p.17

3.3 Definition of Land-Based Gambling p.17

3.4 Definition of Online Gambling p.17

3.5 Key Offences p.17

3.6 Penalties for Unlawful Gambling p.18

3.7 Recent or Forthcoming Legislative Changes p.18

4. Licensing and Regulatory Framework p.18

4.1 Regulatory Authority p.18

4.2 Regulatory Approach p.19

4.3 Recent or Forthcoming Changes p.19

4.4 Types of Licences p.19

4.5 Availability of Licences p.21

4.6 Duration of Licences p.21

4.7 Application Requirements p.21

4.8 Application Timing p.22

4.9 Application Fees p.23

4.10 Ongoing Annual Fees p.24

5. Land-Based Gambling p.24

5.1 Premises Licensing p.24

5.2 Recent or Forthcoming Changes p.24

6. Online Gambling p.25

6.1 B2C Licences p.25

6.2 B2B Licences (Suppliers, Software, Etc) p.25

6.3 Affiliates p.25

6.4 White Labels p.25

6.5 Recent or Forthcoming Changes p.25

6.6 Technical Measures p.25

7. Responsible Gambling (RG), Also Known as Safer Gambling (SG) p.25

- 7.1 RG Requirements p.25
- 7.2 Recent or Forthcoming Changes p.26
- 7.3 Gambling Management Tools p.26

8. Anti-money Laundering (AML) p.26

- 8.1 AML Legislation p.26
- 8.2 Recent or Forthcoming Changes p.27
- 8.3 AML Requirements p.27

9. Advertising p.27

- 9.1 Regulatory/Supervisory Agency p.27
- 9.2 Definition of Advertising p.27
- 9.3 Key Legal, Regulatory and Licensing Provisions p.27
- 9.4 Restrictions on Advertising p.28
- 9.5 Sanctions/Penalties p.30
- 9.6 Recent or Forthcoming Changes p.30

10. Acquisitions and Changes of Control p.31

- 10.1 Disclosure Requirements p.31
- 10.2 Change of Corporate Control Triggers p.31
- 10.3 Passive Investors Requirements p.31

11. Enforcement p.31

- 11.1 Powers p.31
- 11.2 Sanctions p.31
- 11.3 Financial Penalties p.32
- 11.4 Personal Sanctions p.32

12. Tax p.32

- 12.1 Tax Rate by Sector p.32

13. Anticipated Reform p.34

- 13.1 Anticipated Reform p.34

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Nishith Desai Associates is an India-centric global law firm with offices in Mumbai, Bengaluru, Delhi, Silicon Valley, Singapore, Munich and New York. The gaming practice comprises four leaders and 12 qualified lawyers. The team has been a pioneer in the industry, and the gaming practice has existed almost as long as the online gaming industry in India. The team has worked on multiple innovative and out-of-the-

box transactions in the gaming space, particularly cross-jurisdictional investments and entry strategies for foreign clients. The firm's focus on research and academic work in this area enables it to provide cutting-edge solutions for clients. Nishith Desai Associates has also been instrumental in industry-wide efforts and policy advocacy on behalf of the Indian gaming industry.

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LEGAL AND TAX COUNSELING WORLDWIDE

1. Introduction

1.1 Current Outlook and Recent Changes Policy Changes

Appointment of nodal ministries for online gaming and esports

The Ministry of Electronics and Information Technology (MeitY) was appointed as the nodal ministry for online gaming and the Ministry of Youth Affairs and Sports as the nodal ministry for e-sports through amendments to the Government of India (Allocation of Business) (Three Hundred and Seventieth Amendment) Rules, 2022 in December 2022. Previously, there was no central ministry appointed for these industries. Further, the Ministry of Information and Broadcasting (MIB) has been vested with the jurisdiction over online advertisements, which may include gaming advertisements.

Central law for online games

On 6 April 2023, the MeitY introduced the Central regulations primarily for real money games through amendments (the “Gaming Amendments”) to the Information Technology (Interme-

diary Guidelines and Digital Media Ethics Code) Rules, 2021 (the “IT Rules”).

The Gaming Amendments introduced a light-touch, co-regulatory framework between MeitY and designated self-regulatory industry bodies (SRBs), in line with the government’s overall objective of reducing prescriptive laws and enhancing the ease of doing business in India.

In summary, the Gaming Amendments:

- specify certain online games as permissible, being a (i) permissible online real money game (PORMG), ie, a game where a user makes a deposit in cash or kind with the expectation of earning winnings on the deposit, or (ii) any other online game that is not an online real money game;
- introduce specific regulations for PORMG and online gaming intermediaries (OGI), ie, entities that enable their users to access one or more online games;
- vest MeitY with the power to extend such regulations applicable to PORMG to other online games as well;

- require PORMG to satisfy two conditions: (i) be an online real money game, where a user makes a deposit in cash or kind with the expectation of earning winnings on the deposit, and (ii) be verified by an online self-regulatory gaming body;
- provide for the designation of SRBs on meeting certain criteria, for the purpose of verifying online games as PORMG, as well as discharge functions such as grievance redressal for members, ensuring reporting by members, and maintaining a list of verified PORMG and members; and
- require SRBs to verify online real money games as PORMG after being satisfied that (i) the online real money game does not involve wagering on any outcome, and (ii) the online real money game and the OGI adhere to certain obligations prescribed under the IT Rules as well as the frameworks of the SRB, and only offer their games to those above the age of 18 (the obligations under the IT Rules require the OGI to offer online games in compliance with Indian law).

The specific obligations applicable to OGIs and PORMG are discussed in **2.1 Online**.

The above obligations under the IT Rules are effective after the expiry of three months from the date on which at least three online gaming self-regulatory bodies have been designated. As per news reports, the All India Gaming Federation, the Esports Player Welfare Association and jointly the E-Gaming Federation and the Federation of Indian Fantasy Sports have submitted three applications respectively to be designated as an SRB. However, it has been reported that MeitY is now reconsidering dissolution of the plan to establish SRBs for certification of games.

Introduction of 30% withholding tax on net winnings for OGIs

The Finance Act, 2023 overhauled the tax regime for income from online games and created a distinction between taxation of online and offline games. In this regard, Section 115BBJ was introduced in the Income Tax Act, 1961 (ITA) to provide for 30% tax on net winnings from “online game”. An “online game” is defined to mean a game that is offered on the internet and is accessible by a user through a computer resource, including any telecommunication device. Hence, the obligation is applicable to all types of online games, ie, games of skill or games of chance. The obligation to withhold tax will apply even in cases where the players do not make a deposit for participating in the game.

Section 194BA was also introduced in the ITA to impose an obligation to withhold tax on the person responsible for paying any income by way of winnings from any online game during a financial year at the rates in force. These provisions have been effective from 1 April 2023.

Introduction of 28% Goods and Services Tax for online gaming, casinos and horse racing

In August and September 2023, the central government notified the amendments to the Central Goods and Services Tax Act, 2017 (the “CGST Amendment Act”) as well as the Central Goods and Services Tax (Third Amendment) Rules, 2023 (the “CGST Amendment Rules”) to implement the goods and services tax (GST) at the rate of 28% on the full value of the amount paid, or payable to, or deposited with, the online gaming platform, starting 1 October 2023. Multiple states including Uttar Pradesh, Karnataka, and Goa have notified implementation of the GST rate in the respective states, while states like Kerala and Madhya Pradesh are in the process of introducing the same.

Report by MIB's Animation, Visual Effects, Gaming and Comics Task Force

In April 2022, the MIB set up an Animation, Visual Effects, Gaming and Comics (AVGC) Task Force (the “AVGC Task Force”), composed of central government bodies, industry representatives and state governments, to boost industry potential through various training initiatives and government incentives. The AVGC Task Force released its report in December 2022 (the “AVGC Report”), which discusses the global and Indian trends in the AVGC sector along with the challenges and critical success factors for this industry in India. The AVGC Report includes recommendations made by the AVGC Task Force, which focus on market access, training and mentorships, education, access to technology and financial viability in these industries. Below are the major observations and recommendations discussed in the report.

- The AVGC Report recognised the contribution of the gaming industry to the Indian economy, and its exceptional growth in the preceding years. It projected that India would be one of the world's leading markets in the gaming industry and its value to reach USD3.9 billion by 2025.
- The growth of the gaming industry could be attributed to its young demographic, increasing smartphone growth, embracing of cloud gaming, affordability of gaming products, and adoption of gaming for education purpose by businesses.
- The AVGC Report suggested several measures to further boost the industry, including through an annual Gaming Expo conducted by the government of India along with the industry. The Expo would focus on foreign direct investments (FDI) in gaming, creating market access, generation of employment, knowledge sharing, among others.

- The report also suggested several measures for enhancing education and training in the gaming industry, as well as an incentive schemes to attract hardware manufacturers to the country, such as for gaming consoles.

State-specific changes

Certain state-level policy changes are expected. Currently, various states are in the process of introducing state laws to implement the newly introduced 28% GST for the gaming industry.

Telangana

Currently, offering all games for stakes (including games of chance as well as games of skill) is prohibited in Telangana. The current Telangana law banning skill games was challenged as unconstitutional in the Telangana High Court, as offering and playing games of skill have been recognised as constitutionally protected activities by Indian courts. A petition to transfer the matter to the Supreme Court was filed by the Telangana government and is currently pending.

Rajasthan

The State of Rajasthan had introduced the draft Rajasthan Virtual Online Sports (Regulation) Bill 2022 (the “Rajasthan Bill”) in May 2022 and sought public comments on the same. It proposed a licensing regime to regulate fantasy sports, esports and derivative formats. Other skills games (eg, poker, virtual stock games and quiz games) are not specifically included within the regulation. However, in accordance with the state's general exemption for games of skill, such games may continue to be offered. In November 2022, the government submitted to the State High Court that the Rajasthan Bill was still under consideration by the state government.

Tamil Nadu

In August 2021, the High Court of Madras struck down certain amendments to a law seeking to prohibit online games of skill for stakes in Tamil Nadu as unconstitutional. The state government filed an appeal against the High Court's order before the Supreme Court, which is still pending. In parallel, Tamil Nadu enacted the Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Act, 2023 effective on 10 April 2023 (the "Tamil Nadu Act"). The Tamil Nadu Act:

- prescribes registration of local online games providers, being online games providers, whose central management and control of the service is in Tamil Nadu; and
- prohibits offering, playing and advertising online gambling on games of chance with stakes, which include those games that:
 - (a) have elements of chance and skill and the element of chance dominates over the element of skill;
 - (b) require superlative skill to dominate chance;
 - (c) are presented as involving an element of chance; or
 - (d) involve any element of random event generation (eg, cards, dice or wheel).

Poker and rummy, which are recognised as games of skill, were specifically called out as games of chance in the Tamil Nadu Act, effectively prohibiting them in the state. The Act:

- specifically prohibits non-local online games providers from offering games of chance in the state, unless they implement certain due diligence or implement geo-blocking measures in Tamil Nadu;
- constitutes the Tamil Nadu Gaming Authority (the "TN Gaming Authority") to register online games and introduce regulations for such

online games, including time limits, monetary limits, age restrictions, issue show-cause notices to defaulting online games providers, and suspending/revoking registrations in certain scenarios; and

- establishes an appellate authority to hear appeals from the decisions of the TN Gaming Authority suspending/revoking certificates of registration.

The Tamil Nadu Regulation of Online Games Rules, 2023 came into force on 21 April 2023, which prescribes the form and manner for applying for registration, manner of constitution of the TN Gaming Authority, manner of filing appeals to the appellate authority, among others.

In August 2023, the five-member TN Gaming Authority was constituted.

On 9 November 2023, the High Court of Madras struck down the prohibition on rummy and poker as unconstitutional. The High Court also held that the prohibitions under the Tamil Nadu Act were to be read to apply to only games of chance, and not games of skill.

Kerala

In September 2021, the High Court of Kerala struck down as unconstitutional a February 2021 notification introduced by Kerala seeking to prohibit "online rummy when played for stakes" (ie, a game of skill). An appeal has been filed and is pending before a division (two-judge) bench of the High Court.

Karnataka

In February 2022, the High Court of Karnataka struck down certain provisions introduced by the Karnataka Police (Amendment) Act 2021 (the "Karnataka Act") that sought to prohibit all online games for stakes, including games of skill. The

state government has filed an appeal against the High Court's order before the Supreme Court, which is currently pending. The appeal is now joined with the appeal regarding the challenge to Tamil Nadu law and is being heard together before the Supreme Court.

Pending Litigation

There are several litigations pending before the Supreme Court and High Courts in India.

Supreme Court litigations

- The Karnataka High Court struck down a “show cause notice” issued by the tax authorities against a rummy operator on the basis that the game was not “betting and gambling”, but a game of skill. However, on appeal, the Supreme Court issued a temporary stay on the order and the matter is still pending.
- The question of whether sports betting is a game of skill is pending before the Supreme Court in the case of Geeta Rani vs Union of India & Ors (the “Geeta Rani Case”). If the judgment concludes that it is a game of skill, sports betting will be exempt from prohibitions under most Gaming Enactments (as defined in 2.1 Online) and may be offered in most Indian states.
- The Supreme Court has also stayed the operation of a Bombay High Court order that held that fantasy sports games are games of skill. Accordingly, the Supreme Court may take up the question of whether fantasy sports qualify as games of skill. Notably, several other High Courts in the country have recognised fantasy sports games as games of skill. The Supreme Court has also dismissed several petitions seeking permission to appeal against these orders.
- As mentioned above, the High Courts of Karnataka and Tamil Nadu have struck down

prohibitions on games of skill introduced in these states as unconstitutional. The state governments have filed appeals against these orders before the Supreme Court.

State litigations

Uttar Pradesh

A petition has been filed in the Allahabad High Court challenging the constitutional validity of the CGST Amendment Act and CGST Amendment Rules pertaining to the 28% GST on the amount paid or payable to or deposited with the online gaming platform.

Bombay and Gujarat

Petitions have been filed by skill gaming operators before the High Courts of Bombay and Gujarat challenging show cause notices issued against them by tax authorities seeking to impose 28% GST on the total buy-in amount deposited by players with the operator.

Delhi

A non-government organisation (NGO) has challenged the constitutional and legislative validity of the new central law, ie, the Gaming Amendments in a petition before the Delhi High Court. Per reports, it has been alleged in the petition that the Gaming Enactments go beyond the rule-making powers of the Information Technology Act (the “IT Act”). Further, a suit has been filed by a gaming operator against an app store in the High Court of Delhi, alleging that the app store discriminated against the operator by displaying a warning to users when downloading the game.

Andhra Pradesh

The Andhra Pradesh Gaming Act, 1974 was amended to prohibit all online gaming activities for stakes (including games of skill). The amendments were challenged before the High Courts of Andhra Pradesh, where the High Court

directed the state government to form a committee to assess whether rummy, which has been held to be a game of skill, is still a game of skill in online form. The State of Andhra Pradesh had appealed against the High Court's direction to appoint a committee in the Supreme Court. The Supreme Court dismissed the State's challenge to this direction, and directed the High Court of Andhra Pradesh to assess the issues in light of the Gaming Amendments as well as the report by the committee.

There have also been certain restrictions introduced on misleading gaming advertisements and surrogate advertisements for gambling products, which are covered in **9.4 Restrictions on Advertising**.

2. Jurisdictional Overview

2.1 Online

Indian gaming laws operate at a state and a central level. There are specific Gaming Enactments to regulate gaming/gambling activities in that relevant state, and the central government has introduced central regulations applicable to OIGs under the Gaming Amendments, as discussed at **1.1 Current Outlook and Recent Changes**. The Gaming Amendments apply in addition to the state-wise laws and do not replace them.

Under the State Gaming Enactments

Betting and gambling are State matters under the Constitution of India, so each state has the exclusive legislative competence to enact laws relating to betting and gambling within the state. The Public Gambling Act 1867 (the "PGA") has been adopted by certain states in India, whereas other states have enacted their own pieces of legislation to regulate betting and gambling

activities within the state (the "State Enactments").

The PGA and most of the State Enactments (collectively, "the Gaming Enactments") were enacted prior to the advent of virtual/online gambling and therefore primarily prohibit gambling activities from taking place within physical premises (defined as a "common gaming house"). However, some courts (eg, Bombay, Rajasthan, Punjab and Haryana) have applied the Gaming Enactments of these states to online gaming operators without specifically dealing with whether such laws can apply to online operators or the online space. Conversely, the High Courts of Gujarat and Kerala have made it clear that the Gaming Enactments of these states do not apply to the online medium.

Under the Central Gaming Amendments

As discussed at **1.1 Current Outlook and Recent Changes**, the Gaming Amendments have introduced obligations on OIGs offering PORMG.

The online games and online real money games verified as "permissible" by SRBs, ie, "permissible online games" and PORMGs are allowed to be offered as per the law in accordance with the Gaming Amendments. One of the prescribed conditions under the IT Rules for verification as a PORMG is that the online real money game "does not involve wagering on any outcome". There is no further guidance provided under the IT Rules with respect to what is meant by "wagering on any outcome". The Gaming Amendments introduce several obligations on OIGs, such as:

- requiring OIGs to verify user identity before accepting any deposits in cash or kind, according to the Master Direction – Know Your Customer (KYC) Direction, 2016;

- requiring OGLs to appoint grievance redressal officers that are resident in India, publish their contact details, establish a mechanism to make complaints for users and resolve grievances within 15 days from the date of their receipt;
- providing an appeal process to the Grievance Appellate Committee for grievances not resolved by GOs within 30 days from receipt of communication from the GO;
- prohibiting OGLs from financing through credit, or enabling financing to be offered by a third party, for playing online games;
- introducing requirements and criteria for verification of online real money games offered by OGLs eg, requirement to apply for verification an SRB on such permissible online real money game;
- providing MeitY with the power to issue blocking orders against permissible online real money games; and
- requiring OGLs to inform users to not publish, share, etc certain information via their rules and regulations, privacy policy, and user agreements.

MeitY is vested with the power to issue blocking orders against the games.

Certain states such as Nagaland, Telangana, Andhra Pradesh, Tamil Nadu, Chhattisgarh and Sikkim have also specifically extended their State Enactments to the online medium through amendments to the Gaming Enactments or introduction of new state laws regulating online gaming. The State of Rajasthan is considering the Rajasthan Bill to regulate fantasy-based formats, as discussed in **1.1 Current Outlook and Recent Changes**.

Betting

Betting on games of chance is prohibited under most Gaming Enactments. The treatment of betting on sports and horse races under Indian law is discussed below.

Betting on horse races

In the case of Dr KR Lakshmanan vs State of Tamil Nadu (the “Lakshmanan Case”), the Supreme Court held that betting on horse racing is a game of skill. Accordingly, it is exempt from the prohibitions under most Gaming Enactments.

Most Gaming Enactments have carved out an exception for “wagering or betting upon a horse race” from the definition of gaming/gambling (the “Horse Racing Exemption”). However, the Horse Racing Exemption is subject to certain conditions under the Gaming Enactments – for example, wagering or betting must take place on the day on which the horse has run and in an enclosure that has been sanctioned by the state government. In the case of online horse racing betting, it would be difficult for these conditions to be met. However, one could argue that a horse racing bet is a game of skill independent of the Horse Racing Exemption.

During the COVID-19 pandemic, two Indian horse racing clubs (the Mumbai, and Calcutta Turf Clubs) received permission from the state governments of Maharashtra and West Bengal respectively to offer online betting on the horse races conducted in these clubs. The Hyderabad Race Club (HRC) has also started accepting bets online with the club’s totalisator.

Sports Betting

The question of whether sports betting is a game of skill is pending before the Supreme Court in the Geeta Rani Case.

It can be argued that sports betting is also a game of skill based on the principles laid down in the Lakshmanan Case. However, the view held by most enforcement authorities in India is that sports betting is a gambling activity and is thus prohibited. Further, in the recent years, there has been heightened scrutiny and enforcement action against remote gambling operators offering and advertising sports betting products in India.

As stated above, IT Rules prescribe that for verification as a PORMG, online real money game must “not involve wagering on any outcome”. Hence, it is unlikely that sports betting would be eligible for registration by the SRBs due to the presence of “wagering on any outcome” as an element in the online real money game.

Bingo

Depending upon the format, bingo may fall within the definition of a “lottery” or under the general definition of betting/gambling under most Gaming Enactments. It is a game of chance and prohibited in most Indian states. The Indian Penal Code specifically prohibits private lotteries by prescribing that whoever keeps any office or place for the purpose of drawing any lottery, not being a state lottery or a lottery organised by the state government, will be punishable with imprisonments or fines. Accordingly, lottery products cannot be offered in India.

As stated above, IT Rules prescribe that for verification as a PORMG, online real money game must “not involve wagering on any outcome”. Hence, it is unlikely that bingo would be eligible for registration by the SRBs due to the presence of “wagering on any outcome” as an element in the online real money game.

The Sikkim Online Gaming (Regulation) Act 2008 (the “Sikkim Online Act”) introduces a licensing regime for punto banco and bingo through the state-wide intranet.

Casino Games

Casino games are predominantly chance-based. As such, they are treated as betting and gambling activities and are therefore prohibited under most Gaming Enactments.

As stated above, IT Rules prescribe that for verification as a PORMG, online real money game must “not involve wagering on any outcome”. Hence, it is unlikely that casino games would be eligible for registration by the SRBs due to the presence of “wagering on any outcome” as an element in the online real money game.

The States/Union Territories of Goa and Daman & Diu, and Sikkim prescribe a license regime for land-based casinos. The Sikkim Online Act covers certain casino games (eg, roulette, casino brag and blackjack) that may be offered through the state-wide intranet within Sikkim only.

Lotteries

Under the Lotteries (Regulation) Act 1998 and the Lotteries (Regulation) Rules 2010 (collectively, the “Lottery Laws”), state governments have the power to organise, conduct and promote lotteries, subject to certain conditions.

Some states (eg, Sikkim) regulate physical lotteries, whereas lotteries have been banned in certain states (such as Madhya Pradesh) and other states (eg, Punjab) have online lotteries.

The Lottery Laws empower state governments to appoint individual or corporate entities as “distributors” or “selling agents” to market and sell lotteries on behalf of the organising state.

Section 294A of the Indian Penal Code 1860 (the “IPC”) specifically prohibits private lotteries. Certain states, such as Andhra Pradesh, Gujarat, Karnataka and Maharashtra, have repealed Section 294A of the IPC and enacted their own legislation banning lotteries other than non-profit lotteries. Certain other States have introduced legislation expressly banning lotteries in their states (eg, Bihar’s Ban on Lottery Act 1993).

Fantasy Sports

It can be argued that certain versions of fantasy sports games are preponderantly skill-based games. Accordingly, such games can be treated as exempt under most Gaming Enactments.

The High Courts of Punjab, Haryana, and Rajasthan have held the Dream 11 format of fantasy sports to be a game of skill and the Supreme Court has also dismissed several special leave petitions (SLPs) seeking permission to appeal against such High Court orders.

The High Court of Bombay has also recognised it as a game of skill. However, at the time of writing (October 2023), there has been a stay order imposed on the judgment of the High Court of Bombay by the Supreme Court. Accordingly, the Supreme Court may examine this issue now.

The Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act 2015 (the “Nagaland Act”) expressly recognises virtual team selection games and virtual sports fantasy league games as games of skill. If such games are to be offered online in Nagaland, a licence would be required.

Social Gaming

Social gaming refers to those games in which no prize is offered to the winner. When there is no prize of money or equivalent worth offered, the

game is not usually considered gambling under the Gaming Enactments. Similarly, if there is no money at stake but only prizes are distributed then the games are not considered as gambling. Depending on the format and content of such games, certain other issues may need to be considered, such as:

- whether the game amounts to a “prize competition” and is therefore subject to regulation under the Prize Competitions Act 1995;
- whether the content of the game would trigger any laws prohibiting certain types of content, such as:
 - (a) the IT Act, which prohibits obscene content; or
 - (b) the Indecent Representation of Women (Prohibition) Act 1986 (IRWA), which prohibits the depiction of women in a derogatory manner;
- advertising regulations applicable to in-app advertisements displayed in the game; and
- applicable data protection laws if Indian users’ data is being collected, processed and/or transferred to a foreign entity.

Further to the final point, the MeitY blocked several social gaming apps with Chinese ties after the Ministry of Home Affairs raised security concerns over Indian user data.

PUBG was one of the apps initially blocked. However, thereafter, MeitY permitted Krafton to conditionally re-launch a new app, Battlegrounds Mobile India (BGMI), subject to quarterly assessments. This may set a precedent for additional blocked apps to be re-launched in India.

Poker

It can be argued that certain variations of poker are games of skill for the purpose of most Gaming Enactments. Accordingly, offering such

games should be permitted in most Indian States that have an exemption for games of skill.

Furthermore, the Gaming Enactments/courts in certain Indian states have specifically recognised poker as a game of skill in the following instances:

- West Bengal has specifically excluded poker from the definition of “gambling” under the West Bengal Gambling and Prize Competitions Act 1957;
- the Nagaland Act has specifically categorised poker as a game of skill;
- the Karnataka High Court has also held that a licence is not required under the Karnataka Act when poker is played as a game of skill; and
- the High Court of Madras has read down the Tamil Nadu Act to the extent it sought to prohibit Poker, by holding that Poker is a game of skill, and hence any prohibition on Poker would be unconstitutional.

In the case of *Dominance Games Pvt Ltd vs State of Gujarat and Ors*, the High Court of Gujarat held that poker is a game of chance and a gambling activity under the Gujarat Prevention of Gambling Act 1887. An appeal has been filed against this order and has been pending before the Gujarat High Court since 2018.

2.2 Land-Based Betting

As discussed in [2.1 Online](#), the Supreme Court held in the *Lakshmanan Case* that betting on horse racing is a game of skill and therefore exempt from the prohibitions under most Gaming Enactments.

In the case of betting on real (physical) horse races, the conditions prescribed under the Horse

Racing Exemption would need to be met. Turf clubs regulate betting on physical horse races within their premises. One such condition under the Horse Racing Exemption requires turf clubs to conduct the betting within an enclosure that is set apart for this purpose. Accordingly, betting on physical horse races must take place within the confines of the turf clubs. Such betting would also be subject to the rules of the independent turf clubs.

Poker/Bingo/Gaming Machines/Lotteries

Please see [2.1 Online](#), which also applies to physical versions of these games.

Casino Games

Only the States of Goa, Daman and Diu, and Sikkim regulate casino games in land-based form. The casinos in Goa and Daman and Diu are regulated under the Goa, Daman and Diu Public Gambling Act 1976 (“the GDD Act”), which prescribes a licensing regime for:

- “games of electronic amusement/slot machines” in five-star hotels; and
- table games and gaming on board offshore vessels under the terms of a licence in Goa and Daman and Diu.

The casinos in Sikkim are regulated under the Sikkim Casinos (Control and Tax) Act 2002 and the Sikkim Casino Games Commencement (Control and Tax) Rules 2007 (collectively, “Sikkim Casino Laws”), which prescribe a licensing regime for casino games in five-star hotels in Sikkim.

3. Legislative Framework

3.1 Key Legislation

Please see **2.1 Online** for an overview of the PGA and Gaming Enactments.

In addition to the laws discussed in **2.1 Online**, several other laws regulate the Indian gaming industry.

Laws on Foreign Direct Investment

Under the Foreign Direct Investment Policy of India (the “FDI Policy”) issued by the Indian government’s Ministry of Commerce and Industry and as codified into law by the Foreign Exchange Management Act 1999 (FEMA) and the Foreign Exchange Management (Non-Debt Instruments) Rules 2019 (the “Non-Debt Rules”), FDI is prohibited in the following sectors:

- lottery business (including state or private lotteries and online lotteries); and
- gambling and betting (including casinos).

For violating the Non-Debt Rules, one may have to pay a penalty of:

- up to three times the sum involved where such amount is quantifiable; or
- up to INR200,000 where the amount is not quantifiable.

Where the violation is ongoing, a further penalty may extend to INR5,000 for every day on which the contravention continues.

In January 2023, the Bombay High Court held that foreign investments in entities offering games with no real-money rewards does not amount to gambling. The petitioner, Play Games 24x7 Pvt. Ltd., had been periodically receiving FDI during the period of 2006 to 2012, and had

begun offering Ultimate Teen Patti and Call it Right (the “Impugned Games”) after this period. The petitioner had delayed in complying with the reporting requirements for FDI received by them, and this required the filing of a compounding application to the Reserve Bank of India (RBI).

The RBI directed the petitioner to approach the Department for Promotion of Industry and Internal Trade (DPIIT) to seek clarification on the petitioner’s eligibility to receive FDI. The petitioner did not receive clarification for eight years and hence filed a writ petition before the Bombay High Court seeking directions to the RBI to consider and decide the petitioner’s application for the compounding of such non-compliances. The DPIIT was also made a respondent in the petition.

In the affidavit filed by DPIIT, it raised an issue in relation to the Impugned Games on the ground that they are games of chance and therefore amount to gambling, which is a prohibited sector for FDI. The Bombay High Court analysed past Supreme Court judgments to decide whether the Impugned Games amounted to gambling; and held that for a game to amount to gambling, it must be (i) predominantly of chance, and (ii) played for a reward.

Accordingly, the Bombay High Court directed the RBI to expeditiously hear and decide on the petitioner’s application for compounding of FDI-related compliances.

Exchange Control Laws

The FEMA, read with the Foreign Exchange Management (Current Account Transaction) Rules 2000, prohibits the overseas transfer of money from India in the following circumstances:

- remittance of lottery winnings;

- remittance of income from racing, riding or any other hobby; and
- remittance for the purchase of lottery tickets, banned/prescribed magazines, football pools, sweepstakes, etc.

The IT Act

If the offering of the game or the content of a game is unlawful, a court or authorised government body may direct an intermediary platform – such as the app store or (in case of a browser-based app) the internet service provider (ISP), telecommunications service provider (TSP), network service provider, etc – to block the app or a specific game.

As discussed at **2.1 Online**, the IT Act also empowers the MeitY to direct intermediary platforms to block a game or an app if considered necessary in the interest of “the sovereignty and integrity of India, defence of India, security of the State, friendly relations with foreign States, or public order – or for preventing incitement to the commission of any cognisable offence relating to these grounds”.

Intermediaries are also required to inform users through their terms and conditions not to publish certain information, including information that:

- causes user harm;
- is in the nature of surrogate ads;
- promotes online games that are not permissible online games nor verified as such;
- is harmful to a child;
- infringes any intellectual property rights;
- is false, misleading or misinformation;
- impersonates another person;
- relates to or encourages money laundering or gambling; and
- violates any law for the time being in force.

As per recent news reports, MeitY has directed certain Indian TSPs to block access to several offshore sports betting and gambling platforms offered remotely India. The grounds on which MeitY has ordered the blocking of these websites remain unclear. However, news reports suggest that GST violations raised by GST authorities and violations of exchange control regulations raised by the Enforcement Directorate of India (ED) were contributing factors in MeitY’s decision to issue the blocking order. Online and TV advertisements of offshore betting platforms have also come under scrutiny from the MIB and Department of Consumer Affairs.

As such, MeitY may have issued the order holistically in response to issues raised by several different central government ministries. MeitY has recently issued blocking orders against 22 offshore betting apps and websites. The action follows investigations conducted by the ED against illegal betting app syndicates.

The Consumer Protection Act

The Consumer Protection Act 2019 (CPA) forms the basis of consumer protection law in India. The CPA imposes stringent measures on all service providers (including gaming operators) in order to prohibit unfair and restrictive trade practices, unfair contracts, deficient services and misleading advertisements. In addition, the Consumer Protection (E-Commerce) Rules impose obligations on “e-commerce entities”, which may include real-money online gaming platforms.

The Prize Competition Act

The Prize Competition Act (PCA) may also apply to certain game formats. The PCA was enacted to regulate certain types of competitions. In the case of RMD Chamarbaugwala vs Union of India, the Supreme Court held that the PCA would

only apply to prize competitions that were of a gambling nature. However, because the types of games covered under the PCA (eg, crossword prize competitions) appear to be games of skill and not gambling, there is an anomaly in the types of games covered by the PCA.

The Digital Personal Data Protection Act

The Digital Personal Data Protection Act, 2023 (DPDPA) was enacted in August 2023 in India. However, its provisions have not been brought into effect as yet. The DPDPA introduces several compliances for collection and processing of personal data in India, as well as outside of India, if it is in connection with offering goods and services in India. The rules under the DPDPA, which will prescribe most implementation measures, are yet to be introduced.

3.2 Definition of Gambling

“Gambling” or “gaming”, as per most Gaming Enactments, is understood to mean “the act of wagering or betting” for money or money’s worth. Gaming/gambling has been judicially interpreted by Indian courts to mean betting or wagering on games of chance. Typically, under most Gaming Enactments, “gambling” or “gaming” does not include:

- wagering or betting upon a horse race/dog race if such wagering or betting takes place in certain circumstances;
- games of “mere skill”; and
- lotteries.

3.3 Definition of Land-Based Gambling

Please refer to **3.2 Definition of Gambling**.

3.4 Definition of Online Gambling

Only the states of Nagaland, Andhra Pradesh, Sikkim, Chhattisgarh, Tamil Nadu and Telangana

have specifically extended their State enactments to the online medium.

The Tamil Nadu Act defines “online gambling” as online wagering or betting and this includes playing any online game of chance for money (or other stakes) in any manner. “Wagering or betting” has been defined widely as including collection or solicitation of bets, receipt or distribution of winnings or prizes, and any act intended to aid or facilitate wagering or betting.

3.5 Key Offences

Under the Gaming Enactments, most offences and prohibitions are in relation to a “gaming house” or a “common gaming house” – except in states such as Assam and Orissa, where the activity of gaming – irrespective of the medium or location in which it is offered – may be a punishable offence, and states where the law covers online gaming. These Gaming Enactments provide for various offences in relation to gaming/gambling. The liability for offences under the Gaming Enactments usually rests with:

- the owner of the gaming/common gaming house;
- the person keeping or in charge of the gaming/common gaming house – although the Gaming Enactments in a few states specifically provide for liability for the company’s directors (ie, persons in charge of the company and responsible for the conduct of its business), the remaining Gaming Enactments do not have these specific provisions;
- the person gambling/found in the common gaming house or in possession of instruments or records of betting (or who is suspected of gambling or possessing such instruments);
- the person who has the “care” or management of – or who in any manner “assists” in

- conducting – the business of any common gaming house;
- the person who advances or furnishes money for the purpose of gaming with persons frequenting such a house, room or place;
- the person who advertises gambling activities;
- under the Chhattisgarh Gambling (Prohibition) Act, 2022, the person who aids or abets in indulging anyone in online gambling or abets dissemination of information for the purpose of gambling;
- under the Tamil Nadu Act, the non-local persons who provide online gambling service or allow playing of online games of chance contrary to the law;
- with regard to the provision of online games in Sikkim:
 - (a) a licensee under the Sikkim Online Act for the contravention of licence terms or a provision of the Sikkim Online Act;
 - (b) any person/operator acting on their behalf; or
 - (c) an operator that does not obtain a licence under the Sikkim Online Act, but offers online games, sports betting, or both;
- with regard to the provision of casino games in Sikkim, a licensee for the contravention of licence terms or the provisions of the Sikkim Casino Rules; and
- specifically in Nagaland, a licensee under the Nagaland Act.

3.6 Penalties for Unlawful Gambling

Although the Gaming Enactments more or less prescribe fines and/or imprisonment, the amount of the fine or period of imprisonment may differ from state to state.

The PGA imposes a penalty of INR200 or up to three months in prison for owning, keeping or having charge of a gaming house, and an

INR100 fine or one month in prison for being found in a gaming house.

The state-wise gaming laws also impose a punishment and imprisonment for offenders. Such punishment ranges from an imprisonment from three months to three years, and a fine that may be as high as INR20 lakh in some states.

3.7 Recent or Forthcoming Legislative Changes

As discussed in **1.1 Current Outlook and Recent Changes**, a federal law has been introduced to regulate OGLs. In addition, the introduction of 28% GST rate on the total amount deposited by the player or on behalf of the player with the operator by way of money or money's worth for online gaming has been introduced. Further, the states mentioned in **1.1 Current Outlook and Recent Changes** are contemplating amendments or have introduced new laws to their state law to regulate or prohibit certain types of online gaming activity, as discussed. In addition, the DPDPA has been introduced (see **1.1 Current Outlook and Recent Changes**).

4. Licensing and Regulatory Framework

4.1 Regulatory Authority

There are only a small number of states in India that allow operators to conduct gambling activities under a licensing regime. The regulatory authorities for these states are as follows.

- Goa – the Home Department of Goa is the regulatory authority for casinos.
- Daman and Diu – the Director of the Tourism Department is the regulatory authority for casinos, games of electronic amusement and slot machines.

- West Bengal – the Commissioner of Police grants permits for conducting games of skill in a public place, such as a public market, fair, carnival or street.
- Nagaland – the Finance Commissioner is the licensing authority for offering games of skill online.
- Sikkim – the authorised officer of the Finance, Revenue and Expenditure Department is the regulatory authority for issuing licences for online games provided through the state-wide intranet (under the Sikkim Online Act) and for issuing licences for casinos (under the Sikkim Casino Laws).
- Tamil Nadu – the Tamil Nadu Online Gaming Authority is constituted under the Tamil Nadu Act and rules, and will issue certificate of registration to local online games providers, in accordance with which they can provide online game services.

4.2 Regulatory Approach

The Gaming Enactments are prescriptive in as much as most of the states prohibit gaming/gambling but carve out an exception for games of skill. Hence, should a game qualify as a game of skill, the prohibitions under most Gaming Enactments would not apply. The IT Rules introduce a co-regulatory mechanism between MeitY and SRBs, as discussed above in **1.1 Current Outlook and Recent Changes**.

4.3 Recent or Forthcoming Changes

As discussed in **1.1 Current Outlook and Recent Changes**, various states have introduced legislations to specifically prohibit or regulate online gaming. In addition, the IT Rules have been amended by the Gaming Amendments, to now regulate OGLs and online games offered by them. Importantly, a 28% GST on the amount paid or payable to or deposited with the online gaming platform and a 30% withholding tax

on net winnings from ‘online game’ have been implemented. Additionally, Rajasthan is contemplating a licensing regime to regulate fantasy sports, esports and derivative forms of fantasy sport. Tamil Nadu has introduced the Tamil Nadu Act, which introduces a licensing regime for certain online games and the registration of online games providers (see **1.1 Current Outlook and Recent Changes**).

4.4 Types of Licences

Game Registration Requirements

OGLs are required to become members of designated SRBs and seek registration of their online games under the IT Rules. PORMGs need to be verified by SRBs subject to several conditions prescribed under the IT Rules. Some of the key criteria are that the games:

- do not involve wagering on any outcome;
- are not harmful to any child;
- do not contain surrogate ads;
- do not violate any law for the time being in force;
- comply with provisions relating to minors’ competency to contract; and
- comply with the framework of the SRB.

Furthermore, depending upon the type of product, and the medium through which the relevant product is to be offered, licences may be required. The most common are set out here.

Casinos

Licences for offering casino products in five-star hotels in Goa, Daman and Diu, and Sikkim are available under the GDD Act and the Sikkim Casino Laws respectively. Licences for offering casino products offshore in Goa and Daman and Diu are available under the GDD Act. As mentioned in **2.2 Land-Based**, the GDD Act contains provisions for the operation of licensed electron-

ic amusement/slot machines in five-star hotels, as well as tables and games on board offshore vessels. However, a licence can only be applied to a maximum of 20 slot machines. Furthermore, as mentioned in **3.1 Key Legislation**, FDI is prohibited in entities that are involved in gambling and betting (including casinos).

Poker

Operators in India may offer skilled versions of poker without a licence in all Indian states except states in which it is prohibited, being Telangana, Andhra Pradesh and Gujarat (offline poker). In Sikkim and Nagaland operators would need to procure a licence to offer such games.

Sports/Horse Race Betting

For conducting and betting on physical horse races in India, a licence would be required. During the COVID-19 pandemic, two Indian horsing racing clubs (the Mumbai and Calcutta Turf Clubs) received permission from the States of Maharashtra and West Bengal to offer online betting on horse racing conducted in these club. As mentioned in **2.1 Online**, it appears the HRC has also started accepting bets online with the HRC Totalisator only.

As far as betting on horse races online is concerned, it can be argued based on the Lakshmanan Case that such games are games of skill and therefore exempt under most Gaming Enactments (see **2.1 Online**). Innovative structures can be put in place for a foreign operator to offer such games.

In the case of betting on physical horse races, the conditions under the Horse Racing Exemption would need to be fulfilled (see **2.1 Online**). Furthermore, permissions/authorisations may need to be obtained from the relevant turf club.

As Stated in **1.1 Current Outlook and Recent Changes**, the question of whether sports betting is a game of skill is pending before the Supreme Court in the Geeta Rani Case. The State of Sikkim offers a licence to offer sports betting through the intranet within Sikkim only.

Fantasy Betting

If the fantasy sports game qualifies as a game of skill, no licence is required for offering such products under most Gaming Enactments. However, a licence must be obtained for offering such games in Nagaland, under the Nagaland Act and in Tamil Nadu, under the Tamil Nadu Act.

Lotteries

Under the Lottery Laws, state governments may appoint an individual or a corporate body as a “distributor or selling agent” through an agreement to market and sell lotteries on behalf of the organising State. Such persons would need to obtain authorisation from the State governments. Private lotteries are prohibited in most Indian States under the IPC.

Social Gaming

No licences are required for such games in most Indian states. However, if such games amount to prize competitions, a licence under the PCA may be required.

Skill Games

Under the IT Rules, skill gaming operators would need to obtain registration of their games from the designated SRBs.

As stated earlier, games of skill are exempted from prohibitions under most Gaming Enactments. Only Nagaland has enacted a licensing regime specific to online games of skill under the Nagaland Act. Sikkim has a broader set of games covered under the Sikkim Act that can

be offered via the intranet within Sikkim. Tamil Nadu Act requires registration of local online games providers with the Tamil Nadu Online Gaming Authority, for all kinds of online games including skill games. However, certain Indian states specifically prohibit online games of skill when played for stakes (such as Telangana and Andhra Pradesh).

4.5 Availability of Licences

There is no limit/cap on the number of licences that may be offered, although there are restrictions – for example, Goa restricts the number of slot machines that can operate under a single licence.

There have been news reports indicating that Goa is likely to introduce new rules to streamline and regulate casino operations.

There are no permanent licences issued yet for Daman and Diu therefore, the effectiveness of the licensing provisions has been practically tested.

4.6 Duration of Licences

The duration of the available licences is as follows.

- Nagaland – the licence will be valid for five years, subject to compliance with any prescribed conditions, and will be deemed renewed every year thereafter as long as the licence fee is paid.
- Sikkim – the licence both for casinos and online games will be valid for five years, unless cancelled or surrendered, and may be renewed via application.
- Tamil Nadu – the certificate of registration under the Tamil Nadu Act is valid for three years, unless suspended or revoked.

- Goa and Daman and Diu – the licence is valid for five years.
- West Bengal – permits are issued for specific events.

There is no specific duration for PORMG registration under the IT Rules.

4.7 Application Requirements

Some of the key application requirements as per State Enactments are set out below.

Nagaland

The licensee must be an entity that is incorporated in India, has a substantial holding stake in India, and has no criminal history. A licence is only issued to those entities that have no interest in online or offline gambling activities in India or abroad.

As per the Nagaland Act, the controlling stake must be in India, and the executive decision-making powers of licensees are required to be performed from within the territorial boundaries of India. The Nagaland Act unfortunately does not provide any guidance on a threshold for this requirement to be met.

The licensee has to provide a dashboard with a username and password to the Nagaland Authority (as defined in **4.8 Application Timing**) to supervise the activities of the licensee.

The licensee may be required to set up an office in Nagaland within 12 months of the date the licence was issued.

The licensee's technology support (hosting of the website, management of the website, location of servers, etc) is to be within India only.

Licences are only for games of skill offered through online platforms, as further elaborated on in **6.1 B2C Licences**.

Licensees should not have a criminal history.

Sikkim Casino Laws

Only a body corporate registered under the provisions of the Registration of Companies Act (Sikkim) 1961 may apply for a licence.

Sikkim Online Laws

The licensee must be a company/partnership firm incorporated in India.

The Sikkim Online Act uses potentially confusing terminology and introduced references to the “intranet” and “intranet gaming terminals”. Thus, the Sikkim Online Act restricts the offering and playing of “online games and sports games” to the physical premises of gaming parlours through intranet gaming terminals within the territory of the State.

Goa and Daman and Diu

Only land-based operators require licences in Goa and Daman and Diu.

Tamil Nadu

The local online games provider may apply for a certificate of registration with the Tamil Nadu Online Gaming Authority. Foreign entities are not required to apply. The applicant must ensure that they do not provide any online gambling service. Additionally, the applicant must not be indulged in playing any online game in contravention of the law.

West Bengal

Although the wording of the law in West Bengal does not expressly prohibit a foreign operator from applying for a permit, an Indian entity

would be best placed to apply (bearing in mind the application of the foreign exchange control regulations and FDI policy regulations described in this chapter).

4.8 Application Timing

The process and timeline for licensing applications is as follows.

Nagaland

The applicant should submit an application to the licensing authority (ie, the Finance Commissioner or the “Nagaland Authority”), identifying the games for which the licence is being sought. The application must be accompanied by documents in support of the promoters’ credentials, audited financials, the software technology platform, a proposed business plan, and financial projections.

Should the Finance Commissioner be prima facie satisfied with the application, they may issue a letter of intent to the applicant. The Finance Commissioner will then forward the application to certain empanelled firms (lawyers, financial experts, etc) that assist the state government in scrutinising all applications. The empanelled firms will then respond to the applicant with their certification or recommendations within 30 days.

The Finance Commissioner will also have the right to refer the application to an ad hoc committee or an expert committee to determine whether the recommendations of the empanelled firms must be adopted. These committees are required to make their recommendations within 14 days. Once the Finance Commissioner receives the recommendations, they issue the licence within 14 days.

Some operators have received their licence within a month or two, but in practice there is no strict timeline that is followed.

Sikkim – Casino

A licence application must be made by an Indian entity to the State government, which will examine the application.

Once it has made any necessary enquiries and is satisfied that the applicant has a five-star hotel with the capabilities to operate a casino, the State government can grant a six-month provisional licence upon payment of a fee.

A provisional licence is issued to enable the licensee to set up the necessary infrastructure to commence the operation of casino games at any time within that period. When the applicant has fully complied with the terms and conditions of the licence, the state government can grant a regular licence upon payment of a fee.

Sikkim – Online Games

The licensee must make an application in the form specified by the Sikkim Online Act, along with the application fees. The state government will then conduct an inquiry (if it deems it appropriate) before issuing or rejecting the licence.

Daman and Diu

An application may be made by an individual/firm/body corporate to the Director of the Tourism Department. The Director will then appoint an inspection officer to inspect the licence premises. Once the Director is satisfied with the inspection, they will make a recommendation to the Administrator of Daman and Diu, who will then grant or reject the licence. Please refer to **4.5 Availability of Licences**. There is unfortunately no guidance on how long this licence takes to come through.

Tamil Nadu

The application may be made by the local online games service providers for the grant of certificate of registration to the Tamil Nadu Online Gaming Authority in the prescribed form. Upon receipt of such application, the Online Gaming Authority may accept or reject it within 15 days. The application would not get rejected unless the applicant is given an opportunity to be heard.

West Bengal

An application for a permit to host games of skill in a public place must be made to the Commissioner of Police (if the permit is sought in Kolkata) or to the district magistrate or sub-divisional magistrate if the permit is sought elsewhere in the state. In practice, under the framework of other applicable Indian laws (eg, the FDI Policy and the exchange control regulations), an Indian operator would currently be in the best position to apply. However, there is no guidance on how long this permit takes to come through.

4.9 Application Fees

Nagaland

A non-refundable application fee of INR50,000 must accompany the application.

Sikkim

The casino fee is INR5,000 and the online fee is INR500.

Tamil Nadu

The local online games providers must pay INR100,000 as the registration fee for the grant of certificate of registration from the Tamil Nadu Online Gaming Authority.

Goa

The cost of a licence is INR2 million for onshore and offshore casinos, regardless of the number of tables or machines installed in the licensed

premises. The following annual licence fees are payable.

Onshore casinos

The fee varies based on the size of the casino. Fees ranging from INR100 million to INR400 million are prescribed for casinos between 100 square metres to 10,000 square metres.

Offshore casinos

The fee varies based on the passenger capacity of the vessel. The fee for a vessel with a passenger capacity of up to 200 is INR250 million, whereas for a vessel with a passenger capacity of between 200 and 400 it is INR300 million and for a vessel with a passenger capacity of more than 400 it is INR400 million.

Daman and Diu

Five-star hotels must pay an application fee of INR2 million for a set of up to 20 machines/stages/tables. A refundable deposit of INR300,000 is to be paid, which will be refunded on the expiry of the licence.

4.10 Ongoing Annual Fees

Nagaland

For the first three years, the annual licence fee per game is INR1 million (or INR2.5 million for a range of games).

For the next two years, the annual licence fee is INR2 million (or INR5 million for a range of games). In addition, licensees are required to pay 0.5% of the gross revenue generated as a royalty.

Sikkim

For casinos, the licensee must pay gaming fees to the state government at a rate of 10% of the gross gaming yield (or INR10 million, whichever is higher) for the first year. Thereafter, fees will

increase incrementally by 15% per year with regard to the minimum assured revenue for each of the remaining four years.

For online gaming, an annual fee of INR10,000 and an online gaming levy of 1% of the gross gaming yield must be paid to the State government under the Sikkim Online Act.

Goa

The annual licence fee is INR25 million per 100 square metres for land-based casinos in five-star hotels and INR 70 million for offshore casinos.

Daman and Diu

The annual licence fee is INR2 million for a set of up to 20 machines/stages/tables on board offshore casinos. Furthermore, there is a fee of INR8,000 for the “mother machine” and INR6,000 per additional stage of electronic amusement/slot machines in five-star hotels.

5. Land-Based Gambling

5.1 Premises Licensing

Please refer to 4.7 Application Requirements. The states of Sikkim, Goa, and Daman and Diu provide for premises licensing.

5.2 Recent or Forthcoming Changes

The state government of Goa has restricted the entry of local residents into land-based casinos. There have also been news reports that the Goan government may be planning to shift offshore casinos, which are currently on the Mandovi River, to a designated gaming/entertainment zone within the state.

6. Online Gambling

6.1 B2C Licences

Nagaland

As per the Nagaland Act, licences are issued for offering a variety of games of skill on online platforms.

Sikkim

The Sikkim Online Act allows for licences to be granted to offer a variety of intranet games (within Sikkim). As per the Sikkim Online Act, the licensee must be a company that is incorporated in India and must operate only in Sikkim.

Tamil Nadu

Under the Tamil Nadu Act, local online games providers may apply for registration to offer their online games.

Please refer to **4.7 Application Requirements** for more details.

6.2 B2B Licences (Suppliers, Software, Etc)

There are no B2B licences to be obtained. The RBI requires payment processors to obtain licences under the Payment and Settlement Systems Act 2007; however, payment gateways do not need such licences. Software developers do not generally require licences, unless they have set up in a special economic zone or a software technology park in India, which have their own registration and compliance requirements.

6.3 Affiliates

Apart from contractual restrictions that may be explored, there are no measures in place to regulate the use of affiliates.

6.4 White Labels

There are no licensing/regulatory requirements that apply to the use of white-label providers.

6.5 Recent or Forthcoming Changes

All the proposed policy changes/pending litigation outlined in **1.1 Current Outlook and Recent Changes** would impact on the online gaming sector.

6.6 Technical Measures

At the outset, please note that only the states of Nagaland and Tamil Nadu have introduced a licensing regime for online games of skill. Most of the online games being offered in India are not regulated/licensed. Such games are exempt from the prohibitions under most Gaming Enactments because they are games of skill.

Websites that offer games of a gambling nature (ie, real-money products that are games of chance) may be blocked under certain provisions of the IT Act and the IT Rules.

7. Responsible Gambling (RG), Also Known as Safer Gambling (SG)

7.1 RG Requirements

The IT Rules require OGI to adhere to the frameworks of the SRBs. The frameworks of the SRBs are required to include several measures, including:

- safeguards against user harm, including self-harm and psychological harm;
- measures to safeguard children, including measures for parental or access control and classifying online games through age-rating mechanism, based on the nature and type of content; and

- measures to safeguard users against the risk of gaming addiction, financial loss and financial fraud, including repeated warning messages at higher frequency beyond a reasonable duration for a gaming session and provision to enable a user to exclude himself upon user-defined limits being reached for time or money spent.

Certain self-regulatory industry associations which have applied for SRB designation – such as the All India Gaming Federation (AIGF), the E-Gaming Federation and the Federation of Indian Fantasy Sport (FIFS) – already include standards in their skill charters.

These requirements include:

- player protection measures such as options for self-exclusion, timeout facilities and deposit limits;
- informing users of self-exclusion measures;
- providing users with access to self-administered tests for gaming addiction and contact details of treatment centres for addiction;
- provisions to regulate the content, duration and targeted audience of gaming advertisements; and
- financial integrity (eg, regulating the funds deposited by the player and requirements to maintain records of transactions).

Although most Gaming Enactments prohibit gambling activities and permit games of skill, they do not prescribe any social responsibility requirements for skill gaming operators. The Nagaland Rules prescribe some requirements for licensed operators in the state, such as:

- ensuring that games are not offered to minors;

- taking payments through recognised payment modes;
- having fraud prevention mechanisms to protect players' financial integrity; and
- publishing a charter for responsible gaming on the operators' websites/apps.

7.2 Recent or Forthcoming Changes

Please see 1.1 Current Outlook and Recent Changes regarding establishing a grievance redressal mechanism for users.

7.3 Gambling Management Tools

There are no gambling management tools or requirements prescribed under Indian law.

Certain self-regulatory bodies have introduced measures for responsible gaming, as discussed in 7.1 RG Requirements.

8. Anti-money Laundering (AML)

8.1 AML Legislation

In India, the Prevention of Money Laundering Act 2002 (PMLA) prohibits money-laundering activities. Under the PMLA, entities carrying out “activities for playing games for cash or kind (including casinos)” (ie, entities offering games of chance) are classified as “reporting entities” and are subject to certain reporting obligations (eg, verifying the identity of clients, maintaining records and reporting suspicious transactions). The PMLA also requires such reporting entities to furnish information to the Director of the Financial Intelligence Unit – India, as and when required.

In April 2022, certain news reports suggested that KYC obligations were likely to be introduced for online skill gaming operators in an attempt to curb money laundering.

8.2 Recent or Forthcoming Changes

As discussed in 8.1 AML Legislation, certain news reports in April 2022 suggested that KYC obligations were likely to be introduced for online skill gaming operators in order to curb money laundering.

8.3 AML Requirements

As per Section 12 of the PMLA, reporting entities are required to maintain records of transactions and provide documents that prove the identity of their clients.

9. Advertising

9.1 Regulatory/Supervisory Agency

The MIB has been vested with the jurisdiction over online advertisements, which may include gaming advertisements. Thus far, there have been no regulations introduced by MIB yet.

The Advertising Standards Council of India (ASCI) is a self-regulatory industry body whose Code has been made applicable for the regulation of advertisements on television/broadcasting media.

Under the CPA, the Central Consumer Protection Authority (CCPA) is the relevant regulator in matters relating to violation of consumer rights, unfair trade practice, and false and misleading advertisements. The CCPA may initiate proceedings directly or on the basis of complaints. It is also authorised to investigate offences, refer matters to other regulators, and issue penalties and directions to violators of the CPA rules.

With regard to prohibitions under the Gaming Enactments, the relevant police/judicial authorities in the respective states implement and enforce the Gaming Enactments. The specific

regulatory authorities in states where licences are issued have been covered in 4.1 Regulatory Authority.

9.2 Definition of Advertising

The ASCI has issued a Code for Self-Regulation of Advertising Content in India (the “ASCI Code”), which provides the following definition of an advertisement: “A paid-for communication, addressed to the public or a section of it, the purpose of which is to influence the opinions or behaviour of those to whom it is addressed. Any communication that in the normal course would be recognised as an advertisement by the general public would be included in this definition, even if it is carried free-of-charge for any reason.”

The CPA defines an advertisement as “any audio or visual publicity, representation, endorsement or pronouncement made by means of light, sound, smoke, gas, print, electronic media, internet or website and including any notice, circular, label, wrapper, invoice or such other documents.”

9.3 Key Legal, Regulatory and Licensing Provisions

Please see 9.4 Restrictions on Advertising for general restrictions and prohibitions on advertising. The specific restrictions on licensees in Sikkim, Nagaland and Tamil Nadu are as follows.

Sikkim

In Sikkim, licensees can advertise online games, provided that they comply with certain requirements. Advertisements of online games must:

- include the address of the online gaming operator’s website, which must include certain prescribed information;
- not be indecent or offensive;

- be based on facts;
- not target any person under the age of 18; and
- not target any jurisdiction in which online games are prohibited.

Nagaland

The Nagaland Act permits the licensee to advertise on online and offline mediums, and they are allowed to display the fact that they hold licences from the government of Nagaland.

Tamil Nadu

The Tamil Nadu Act prohibits advertisements in any media (including electronic media) that directly or indirectly induce any person to indulge in online gambling or play any online game of chance for money or stakes.

9.4 Restrictions on Advertising

Most State Enactments prohibit the printing, publishing, selling, distributing or circulating in any manner of any newspaper, news sheet or other document, or any news or information with the intention of aiding or facilitating gambling. These restrictions, however, do not apply to skill games in most states. Some state-level restrictions are covered in **9.3 Key Legal, Regulatory and Licensing Provisions**.

Under the IT Rules, intermediary platforms (including social media platforms) are required to inform users not to publish any advertisement or surrogate advertisement of an online game which is not a PORMG, or of any OGI offering such games.

In relation to games of skill, while advertising such games is permitted in most Indian states, it is regulated by the CPA and the Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements

2022 (the “Misleading Ads Guidelines”) introduced by the CCPA. The CPA read with Misleading Ads Guidelines prohibits misleading advertisements, surrogate advertisements, and unfair trade practices through certain types of promotional activities.

Recently, direct and surrogate advertising of foreign sports betting platforms in India has come under significant scrutiny by the MIB and the Department of Consumer Affairs. News reports suggest that the CCPA invoked provisions under the CPA to issue show-cause notices to six online betting apps for violating advertising norms by misleading consumers through surrogate advertisements.

In consultation with the Department of Consumer Affairs, the MIB has issued five advisories between June 2022–August 2023 to newspapers, TV channels, digital news publishers, intermediaries, and over-the-top (OTT) platforms, strongly advising them against showing:

- advertisements of online sports betting platforms; and
- surrogate advertisements for offshore sports betting platforms in the guise of sports news websites (and targeting such advertisements toward Indian audiences).

The advisory contained examples of such online advertisements, specifically illustrating several prominent offshore sports betting platforms.

The advisory indicated that such advertisements are prohibited under the CPA and the Misleading Ads Guidelines. It also suggests that the MeitY has the power to direct intermediary platforms to take down such advertisements if they appear on such platforms.

In relation to the advisory issued to private TV channels, the MIB has cautioned that such advertisements contravene the advertising code under the Cable TV Network (Regulation) Act 1995 and Cable Television Network (Amendment) Rules 2021, which also prohibit advertisements of prohibited products.

Accordingly, such advertisements may be taken down imminently by the relevant Indian regulators (eg, the MIB, the MeitY and the Department of Consumer Affairs).

Further, there have been advisories regarding association with betting platforms. For instance, the Board of Control for Cricket in India advised the Women's Premier League franchises against partnership/association with entities involved in betting and gambling, while allowing branding in relation to fantasy sports.

The ASCI Code and ASCI Gaming Guidelines

The ASCI Code restricts certain advertisements relating to products whose use is banned under law. Advertisements for gaming/gambling products may fall within this prohibition.

Surrogate advertisements are also prohibited under the ASCI Code. The ASCI has released its Guidelines for Qualification of Brand Extension Product or Service which lay down objective criteria for determining the genuineness of the "unrestricted" brand extension of purported prohibited products (in terms of sales turnover, purchase orders, investments, etc). If a brand extension does not meet the qualification criteria, it would be considered a surrogate created to advertise a restricted category rather than a genuine brand extension.

Recently, the ASCI released the ASCI Guidelines for Online Gaming for Real Money Winnings (the

"ASCI Gaming Guidelines"). In a press release dated 4 December 2020, the MIB advised all cable broadcasters to adhere to the ASCI Gaming Guidelines with regard to advertisements on television.

The ASCI Gaming Guidelines state in the preamble that it is not within ASCI's jurisdiction to decide the legality of real-money games (ie, whether it amounts to a "product, the use of which is banned under law") and such issues must be taken up with the concerned regulators. The preamble further states that ASCI will only process complaints about advertising content concerning such games. As such, it appears from the preamble to the ASCI Gaming Guidelines that ASCI will not determine the legality of the game itself.

The ASCI Gaming Guidelines ban gaming advertisements from depicting persons under the age of 18 engaged in playing online games for real-money winnings. Additionally, all such advertisements must carry disclaimers to the effect that such games carry an element of financial risk and that users should play such games at their own risk. Furthermore, specific requirements should be met for displaying this disclaimer, depending on whether the advertisement is in print or in audio/video mode.

The advertising of prize competitions is prohibited, unless it has been duly authorised by the relevant authority.

Content-Related Restrictions

Games and gaming websites in India, and gambling operators' websites in the states of Nagaland and Sikkim, are subject to content-related laws.

Under the IT Rules, online gaming intermediaries must not publish content which is, among others, obscene, pornographic, paedophilic, relating or encouraging money laundering or gambling, content which causes user harm or is harmful to children, among others.

The IPC, IRWA and IT Act penalise obscene content, for example, and the IPC prohibits advertisements for lotteries unless they comply with the provisions of the Lottery Laws.

The CPA classifies the following as “unfair trade practice”:

- the offering of prizes with the intention of not providing them as offered; and
- the conduct of a contest, lottery, game of chance or skill for the purpose of promoting a product/business interest.

The Consumer Protection (General) Rules, 2020 clarified that permitted lotteries under the Lotteries Act, and games of skill would be exempt from the prohibition on unfair trade practices.

The CPA also introduces certain penalties for making misleading advertisements for entities such as traders, manufacturers endorsers, advertisers and publishers.

The Copyright Act 1957, the Trade Marks Act 1999 and the Patents Act 1970 govern IP issues relating to games (such as the use of trade marks, copyright, design rights and patent rights in the technology infrastructure of web operators).

Advertising of Gambling

Please see the section **9.4 Restrictions on Advertising** for the restrictions on advertising. The advertising of products (including gaming products) through SMS or voice-based commu-

nication is regulated by the Telecom Commercial Communications Customer Preference Regulations 2018 (TCCCPR). The TCCCPR applies to communication that is SMS- or voice-based, rather than communication via the internet such as email or OTT messaging services (eg, WhatsApp). The TCCCPR prohibits unsolicited commercial communications to persons who have opted out of receiving them. Both telemarketers (to which the sending of commercial communications is outsourced) and senders (the entity promoting the goods/services) are required to register as detailed under the TCCCPR in order to send commercial communications.

9.5 Sanctions/Penalties

Under the ASCI Code, complaints may be filed by the general public or suo moto by the ASCI itself. If an advertisement is found to be in violation of the ASCI Code, then the agency/media vehicle concerned, and the relevant self-regulatory bodies are notified that the advertisement contravenes the ASCI Code. In serious violations, the media vehicle may be directed to suspend the advertisement.

For violations under the CPA, fines of up to INR1 million may be imposed. Every subsequent offence may be punished with up to five years in prison and a fine of up to INR5 million. The CCPA may direct misleading or surrogate advertisements to be removed.

9.6 Recent or Forthcoming Changes

There are no legislative changes contemplated with regard to gaming advertisements. However, as mentioned in **9.4 Restrictions on Advertising**, the Misleading Ad Guidelines were introduced in June 2022, which prohibit misleading and surrogate advertisements.

There is greater scrutiny of such advertisements – in particular, surrogate advertisements for off-shore sports betting platforms (as discussed in **9.4 Restrictions on Advertising**). The MIB has recently issued an advisory to TV channels, digital news publishers and OTT platforms that strongly advises them against showing advertisements of sports betting platforms and surrogate advertisements for such platforms. Furthermore, the government may introduce new norms for advertisements of online gaming platforms under the IT Rules. In September 2023, the draft of Guidelines for the Prevention and Regulation of Dark Patterns, 2023 (the “Dark Pattern Guidelines”) was introduced. While the Dark Pattern Guidelines are still in draft form, once brought into force, they would prohibit persons and platforms (including gaming operators) from engaging in dark patterns. Practices like “forced action”, “false action”, etc, would constitute dark patterns for the purpose of the Guidelines.

10. Acquisitions and Changes of Control

10.1 Disclosure Requirements

There are specific disclosure requirements for acquisitions and changes of control of gaming/gambling companies under State Enactments that contain a licensing regime.

Under the Nagaland Act and the licence terms and conditions, the licence will be suspended in case of:

- change in shareholding pattern;
- change in directorship; or
- the licensee being acquired.

The licensee must approach the state licensing authority within 30 days and state the reasons

for such change. Thereafter, the authority has the right to decide whether to resume the licence or suspend it.

Additionally, in the event that the transaction involves a listed company, certain regulatory disclosures (including stock exchange disclosures) will need to be made depending upon the nature of the transaction.

10.2 Change of Corporate Control Triggers

Please refer to **10.1 Disclosure Requirements**.

10.3 Passive Investors Requirements

There are no specific requirements for passive investors in acquisitions or changes of control under Indian law. However, should a passive investor wish to have a minimum degree of oversight over the running of a company, they may consider appointing an observer on the board of such companies. This is not mandated under law but may be considered, depending upon the commercial understanding between the parties.

11. Enforcement

11.1 Powers

As covered in **3.6 Penalties for Unlawful Gambling**, regulatory bodies (the police/judicial bodies) may impose fines or imprisonment under the Gaming Enactments.

11.2 Sanctions

Some recent cases of enforcement in this industry are as follows.

- The Directorate General of Goods and Services Tax Intelligence (DGGI) has issued notices of up to INR280 billion to some of the largest online skill gaming platforms. As

discussed in **1.1 Current Outlook and Recent Changes**, these notices are being challenged before courts.

- The ED has conducted raids in various states like Goa, Chhattisgarh, Maharashtra, Punjab, Karnataka and West Bengal for investigations related to FEMA violations by offshore betting companies and online casino operators that were reported to be running an online business, and various other locations linked to cases involving illegal betting platforms. The state police departments have also been conducting raids and arresting the individuals involved in the operations of such online betting platforms.
- The central government as well as state governments have been blocking offshore online betting and casino platforms following investigations conducted by the ED and raids.

11.3 Financial Penalties

Please refer to **11.1 Powers**.

11.4 Personal Sanctions

With regard to personal liability, only a few states in India contain express provisions imposing vicarious liability upon those in charge of the company for its business (including its directors or officers). Most other states provide for both imprisonment and fines for:

- “whoever” opens, occupies, uses any premises as a “common gaming house”; and
- “whoever” assists in conducting the business of such a house.

Under Indian law, vicarious liability cannot be imposed on the directors unless:

- the statute expressly provides for it; or
- it is shown that the individual had an “active role with criminal intent”.

In the latter scenario, prosecutors would need to demonstrate through evidence the individual’s active role in connection with the prohibited activity in the relevant state.

There are certain other offences (eg, criminal conspiracy) for which individuals in the company could be held liable under general criminal laws such as the Indian Penal Code 1860.

12. Tax

12.1 Tax Rate by Sector Income Tax

As per Indian income tax laws, any income by way of winnings from any crossword puzzle, card game horse races or other game are considered as “income” in the hands of the players and taxable at the rate of 30% (plus applicable cess and surcharge) without allowance of any deductions or expenses. Similar manner of taxation is provided for income by way of winnings from online games.

Withholding tax obligations with respect to online and offline games have been separated with effect from 1 April 2023. While withholding tax on offline games continue to be 30% (plus applicable cess and surcharge) on the winnings amount exceeding INR10,000 in the financial year, withholding tax obligations for online games is now 30% (plus applicable cess and surcharge) on “net winnings” without the INR10,000 limit. Further, the Central Board of Direct Taxes has provided guidelines and clarifications on the manner of computing such “net winnings”.

Additionally, in cases where the winnings are wholly in kind – or partly in cash and partly in kind (but the cash component is insufficient to

honour the withholding obligation in respect of the whole of the winnings) – the payor is required to ensure that the tax is paid at the aforementioned rate before releasing the whole winnings to the payee.

Equalisation Levy

Offshore e-commerce operators are now subject to Equalization Levy (EL) at the rate of 2% on the consideration received or receivable from “e-commerce supply or services” made or provided or facilitated by such operators to a person resident in India. The question of whether this tax applies to offshore gaming operators may arise. However, considering the specific facts of the operator’s model, it may be possible to argue that EL should not apply. There are certain de minimis thresholds, below which the gross income is not subject to EL.

Goods and Services Tax

There have been several developments in the GST regime for the gaming industry with effect from 1 October 2023.

A new concept of “online money gaming” has been introduced, which constitutes all online games in which the players pay or deposit an amount with the expectation of winning rewards, regardless of whether (i) the outcome of game is dependent on skill or chance, or (ii) such games are permissible under any law for the time being in force. Further, valuation rules have been introduced, inter-alia, providing that the value of supply of online gaming, including supply of actionable claims involved in online money gaming, shall be the total amount paid or payable to or deposited with the supplier by way of money or money’s worth, including virtual digital assets, by or on behalf of the player. It is further provided that any amounts refunded or returned by the supplier to the players (for any reasons what-

soever) will not be deductible from the value of supply of online money gaming.

Online money gaming has been excluded from the ambit of Online Information and Data Access or Retrieval services. However, the amendments require offshore online money gaming operators to obtain mandatory GST registration. In the case of failure to obtain such registration, the GST department may block any information generated, transmitted, received or hosted in any computer resource used for supply of online money gaming by such offshore online money gaming operator.

The above amendments are brought in to levy GST at the rate of 28% on the total amount deposited by a player with an online gaming operator by way of money or money’s worth regardless of the nature of such game. Offline games involving betting and gambling continue to be taxed at the rate of 28% on the entire bet amount.

On the judicial front, the Karnataka High Court, in the case of Gameskraft, quashed a huge GST demand of INR21,000 crores by holding that the buy-in amount received by the rummy operator, being a game of skill, should not be subject to GST. The GST department appealed the decision before the Supreme Court of India. Recently, the tax department’s petition against the Gameskraft decision was heard before a three-judge bench of the Supreme Court, where the Court granted an ad-interim stay on the order of the Karnataka High Court. This move has led to the opening of assessments by the GST department for several operators, which are now being challenged by the operators before various jurisdictional high courts.

13. Anticipated Reform

13.1 Anticipated Reform

Please refer to **1.1 Current Outlook and Recent Changes**.

Trends and Developments

Contributed by:

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Nishith Desai Associates

Nishith Desai Associates is an India-centric global law firm with offices in Mumbai, Bengaluru, Delhi, Silicon Valley, Singapore, Munich and New York. The gaming practice comprises four leaders and 12 qualified lawyers. The team has been a pioneer in the industry, and the gaming practice has existed almost as long as the online gaming industry in India. The team has worked on multiple innovative and out-of-the-

box transactions in the gaming space, particularly cross-jurisdictional investments and entry strategies for foreign clients. The firm's focus on research and academic work in this area enables it to provide cutting-edge solutions for clients. Nishith Desai Associates has also been instrumental in industry-wide efforts and policy advocacy on behalf of the Indian gaming industry.

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Introduction

The year 2023 was a turning point for the Indian gaming industry, which brought about some of the regulatory certainty that was hoped for. As per industry report by Lumikai, the Indian gaming industry was worth USD3.1 billion in 2023 and is estimated to grow to USD7.5 billion by 2028. The report pegs India's gaming industry to have 568 million gamers, including 25% paying users. The industry is popularised by real money skill games, casual and social games, and e-sports, among others.

Some key legal, regulatory and tax changes may impact the industry upon product offerings, revenue and user churn in the next year. However, despite these challenges, there continue to be significant market opportunities for investors and operators. Discussed below are some of the key changes and likely impacts for each type of game. There have also been a series of amendments and clarifications to applicable tax laws affecting the gaming sector.

Games of Skill

As discussed in the India Law and Practice chapter, offering games of skill for stakes are excluded from gambling-related prohibitions

and can be offered in most Indian states. Indian courts have also recognised that offering and playing games of skill are a constitutionally protected activity in India. Games like rummy, fantasy sport, certain formats of poker and betting on horse racing are recognised as games of skill by Indian courts and certain gaming regulations.

Such games of skill are regulated at (i) a state level, under the state-wise anti-gambling laws (the "Gaming Enactments") – in some states there is a licensing regime, while in others, games of skill are a permissible activity; and at (ii) a central level, under the recently amended Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (the "IT Rules").

Implementation of IT Rules in limbo

The IT Rules primarily regulate real money games and operators offering such games, termed online gaming intermediaries (OGI). Under the IT Rules, a co-regulatory framework between the Ministry of Electronics and Information Technology (MeitY) and designated self-regulatory industry bodies (SRBs) has been introduced, whereby the SRBs verify online real money games as permissible, subject to certain speci-

fied criteria being satisfied. One of these criteria is that the OGI ensure that they comply with all applicable laws in India. Since the Gaming Enactments prohibit games of chance, it is likely that only games of skill will be eligible for registration. In addition, OGI are required to adhere to the frameworks of the SRBs, which prescribe several regulations for registered games.

As mentioned in the India chapter, the obligations under the IT Rules are effective after the expiry of three months from the date on which at least three online gaming self-regulatory bodies have been designated. The All India Gaming Federation, the Esports Player Welfare Association and jointly the E-Gaming Federation and the Federation of Indian Fantasy Sports have submitted three applications for designation as an SRB. However, despite the lapse of eight months since the introduction of the IT Rules in April 2023, no SRB has been designated as yet.

However, it has been reported in the news that MeitY, the central regulator appointed in charge of online gaming, is now considering dissolution of the plan to establish SRBs for certification of games. The reports suggest that the government has concerns about market leading operators influencing the independence of the SRBs. In addition, it has been reported that there have been further deliberations among different ministries, namely the Ministry of Finance, the Ministry of Law and the MeitY in relation to the SRB framework.

In view of this, it appears that the designation of SRBs, and hence, the implementation of the regulations under the IT Rules, are in limbo.

Recent reports also suggest that an interministerial committee is revisiting this framework.

High Courts grant protection to skill games; state appeals remain pending

Under most Gaming Enactments, offering and playing games of chance for stakes is prohibited, whilst games of skill are exempt from these prohibitions. Only certain states regulate these games through a licensing regime. A small number of states have sought to prohibit such games, however some High Courts have held these bans to be unconstitutional.

The High Courts of Karnataka and Tamil Nadu have struck down prohibitions on games of skill introduced in these states as unconstitutional. The state governments have filed appeals against these orders before the Supreme Court.

In parallel, pending the appeal, the State of Tamil Nadu introduced the Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Act, 2023 (the “Tamil Nadu Act”) in April 2023, which sought to prohibit certain games, including games of skill such as poker and rummy. Subsequently, in November 2023, the High Court of Madras struck down the prohibition on rummy and poker as unconstitutional. The High Court also held that the prohibitions under the Tamil Nadu Act were to be read to apply to only games of chance, and not games of skill.

In September 2021, the High Court of Kerala also struck down a ban on online rummy for stakes as unconstitutional. The State of Kerala has appealed against this decision before a larger bench of the High Court, where it remains pending.

It appears therefore that High Courts in different states are upholding the constitutional right to offer games of skill, and regularly recognising that games of skill cannot be prohibited. It remains to be seen how the appeals will pan out.

Foreign Direct Investment in skill games and games without rewards

Under the Foreign Direct Investment Policy of India (the “FDI Policy”) issued by the Indian government’s Ministry of Commerce and Industry and as codified into law by the Foreign Exchange Management Act, 1999 (FEMA) and the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 (the “Non-Debt Rules”), foreign direct investment (FDI) is prohibited in lottery business (including state or private lotteries and online lotteries) and gambling and betting (including casinos).

The terms “gambling and betting (including casinos)” are not defined under the FDI Policy/Non-Debt Rules. However, in a significant ruling, the High Court of Bombay has upheld that foreign investment in entities offering games with no real-money rewards does not amount to “betting and gambling” under the FDI Policy. The Court interpreted past Supreme Court judgments and the Court reiterated that the predominant element of the activity (skill or chance) would determine the character of the game. In order to constitute gambling, (i) a game must be predominantly a game of chance, and (ii) must be played for a reward.

Games of Chance

As mentioned above, most Gaming Enactments prohibit offering and playing games of chance for stakes.

Since the Gaming Enactments prohibit games of chance, it is likely that only games of skill will be eligible for registration under the IT Rules as well. Games of chance may include casino games and bingo games. Sports betting is also regarded as a game of chance by Indian authorities.

When such games are offered remotely from offshore, foreign remittances by Indian users to participate in such games also contravenes Indian exchange control laws. In addition, such operators have been receiving notices for evasion of goods and services tax (GST) from GST authorities. Several SRBs have been active in pointing out issues of such offshore operators offering their products to Indian users, and Indian users remitting funds to participate in such games, to relevant regulators.

There has been a slew of enforcement actions against the offering and advertising of such games in India in the last few months. These have been summarised below.

MeitY blocks access to offshore gambling websites

MeitY has directed certain Indian telecoms service providers (TSP) to block access to several offshore sports betting and gambling platforms offered remotely India. The grounds on which MeitY has ordered the blocking of these websites remain unclear. However, news reports suggest that GST violations raised by GST authorities, violations of exchange control regulations, and contraventions of money-laundering laws were factors involved in MeitY’s decision.

Scrutiny of advertisements

Recently, direct and surrogate advertising of foreign sports betting platforms in India has come under significant scrutiny by the Ministry of Information and Broadcasting (MIB) and the Department of Consumer Affairs. In consultation with the Department of Consumer Affairs, the MIB has issued five advisories between June 2022 to August 2023 to newspapers, TV channels, digital news publishers, intermediaries, and over-the-top (OTT) platforms, advising them against showing advertisements of online sports betting

platforms, and surrogate advertisements for offshore sports betting platforms in the guise of news websites. Such advertisements have been targeted towards Indian audiences.

The advisory contained examples of such online advertisements, specifically illustrating several prominent offshore sports betting platforms.

Sporting authorities have also cautioned athletes from associating with betting platforms. For instance, the Board of Control for Cricket in India advised the Women's Premier League franchises against partnership/association with entities involved in betting and gambling.

Raids and arrests by the Enforcement Directorate

The Enforcement Directorate (ED), the authority responsible for administering India's exchange control and anti-money laundering laws, has been conducting raids in various states like Goa, Chhattisgarh, Maharashtra, Punjab, Karnataka and West Bengal for investigations related to FEMA violations by offshore betting companies and online casino operators.

Casual/Social Games

Social gaming refers to those games in which there is no buy-in and no prize is offered to the winner. When there is no prize of money or equivalent worth offered, the game is not usually considered gambling under the Gaming Enactments.

As per industry reports, the online gaming industry's growth will be spurred primarily due to growth of in-app purchases in casual games, and in-game advertising revenues. Hence, these games remain popular in the Indian market.

Government allows re-launch of certain blocked social games

In 2020–2021, MeitY blocked several social gaming apps, including Free Fire and Player Unknown Battlegrounds in India. National security concerns about the location of Indian user data, addiction concerns among youth and concerns over in-app purchases were reported reasons for such blocking.

However, thereafter, MeitY permitted Krafton to conditionally re-launch a new app, Battlegrounds Mobile India (BGMI), subject to quarterly assessments. As per the reports, Garena is also seeking to re-launch Free Fire in India.

This may set a precedent for additional blocked apps to be re-launched in India.

Advertising

In-app advertising revenues remains a primary reason for the growth of social games in the Indian market. Hence, the legality of the content of such advertisements must be ensured at the time of showcasing advertisements.

E-Sports

With the GST amendments affecting the real money gaming sector, there has been increased interest in e-Sports. The Esports Federation of India (ESFI) has clarified that the amendments would not impact on e-sports offerings.

In December 2020, the Ministry of Youth Affairs and Sports was appointed as the nodal ministry for E-sports. However, thus far, no specific central regulations have been introduced for e-sports specifically. One industry self-regulatory body, the Esports Player Welfare Association, has applied for designation as an SRB under the IT Rules.

Certain states have taken steps towards encouraging e-sports. For instance, as per news reports, the government of Uttar Pradesh has entered into a memorandum of understanding with Garena to encourage the growth of e-sports in the state and conduct e-sports tournaments and events in the state. The State of Madhya Pradesh and Uttar Pradesh are also setting up e-sports academies in the state.

Tax

Income Tax

As per Indian income tax laws, any income by way of winnings from any lottery, crossword puzzle, card game, horse races or other game exceeding INR10,000 is subject to a withholding tax and considered as “income” in the hands of the players and taxable at the rate of 30% (plus applicable cess and surcharge), without allowance of any deductions or expenses.

In April 2023, amendments were introduced to the Income Tax Act, 1961 (ITA) prescribing that an OGI was required to deduct income tax on the net winnings at the rate of 30% from any online game from a user account. The ITA overhauled the tax regime for income from online games and created a distinction between taxation of online and offline games. Subsequently, the Central Board Direct Taxes prescribed the manner of computation of net winnings through guidelines.

These changes introduced much-needed clarity on tax deduction obligations and guidance on computation of net winnings for the industry.

Goods and Services Tax

The GST regime for the online gaming industry has been overhauled with effect from 1 October 2023 through a series of amendments. These amendments were brought in to levy GST at the rate of 28% on the total amount deposited by a player with an online gaming operator by way of money or money’s worth, regardless of the nature of such game (ie, skill or chance). Offline games involving betting and gambling constitute the supply of goods subject to GST and continue to be taxed at the rate of 28% on the entire bet amount.

Industry reports suggest that while online real money gaming (RMG) revenue grew by USD500 million in 2023, this may slow in coming months due to, among other reasons, the amendments to GST regime.

Data Protection

Most gaming businesses are data-driven, and collect, process and store vast amounts of user data. In August 2023, India introduced a piece of landmark legislation, the Digital Personal Data Protection Act, 2023 (DPDPA). However, its provisions have not been brought into effect as yet. The DPDPA introduces several conditions for the collection and processing of personal data. The DPDPA has extra-territorial effect and also applies to processing of personal data of users located in India, outside of India, if it is in connection with offering goods and services in India.

Hence, several Indian, or India-focused gaming businesses are evaluating whether their practices comply with the DPDPA.

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