



# Gaming Law 2019

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## India

### Law and Practice

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### Authors



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**Nishith Desai Associates (<https://chambers.com/law-firm/nishith-desai-associates-global-2:3212>) is an India-centric global law firm with offices in Mumbai, Bangalore, Delhi, Silicon Valley, Singapore, Munich and New York. The gaming practice comprises 11 partners and 21 qualified lawyers, and has been a pioneer in the industry, having existed almost as long as the online gaming industry has existed 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 academics in this space enables it to provide cutting-edge solutions for clients. The firm has also been instrumental in industry-wide efforts and policy advocacy, such as leading various meetings with regulators and the Law Commission of India to advocate for introducing a licensing regime for skill games in India, and making recommendations with respect to the taxation of gaming transactions.**

#### ▼ 1. Introduction

##### ▼ 1.1 Current Outlook

##### **Policy Changes**

A day after the Law Commission of India released its report entitled 'Legal Framework: Gambling and Sports Betting Including in Cricket in India ("Report")', the Commission released a press note stressing that its recommendation was to ban betting and gambling in India. However, if the Central Government or State

Governments did consider regulating it, the Report set out some positive and logical measures to combat certain industry issues. The Report is under consideration by the Government.

On the heels of the Report, the Sports (Online Gaming and Prevention of Fraud) Bill, 2018 ("Sports Bill") was introduced as a private members bill in the Lok Sabha, on 28 December 2018. The Statement of Objects and Reasons accompanying the Sports Bill has underscored that it has been introduced with the dual aims of preserving integrity in sports and introducing a regulatory regime for online sports betting.

However, the Sports Bill lapsed with the dissolution of Parliament prior to general elections, and has not been re-introduced.

The All India Gaming Federation (AIGF), a self-regulatory body for online games of skill has written to the Prime Minister of India demanding that the Enforcement Directorate investigate and take action against offshore betting websites that are illegally offering websites to Indian citizens and accepting bets from India, in contravention of the Information Technology Act, 2000 ("IT Act") and the Foreign Exchange Management Act, 1999 ("FEMA").

### **Pending Litigation**

As stated above, the question of whether sports betting is a game of skill is pending before the Supreme Court in the case of Geeta Rani v Union of India & Ors ("Geeta Rani Case"). If the judgment concludes that sports betting is a game of skill, it will be exempt from most Gaming Enactments and can be offered in most Indian states that recognise an exemption for games of skill.

Insofar as poker is concerned, an appeal is pending against the judgment of the High Court of Gujarat, which has held that poker is a game of chance/gambling activity.

Furthermore, the Telangana Gaming Act, 1974 ("Telangana Act") was recently amended to delete the exception for games of skill. The Telangana Gaming (Amendment) Act, 2017 ("Amendment Act") is currently being challenged before the High Court of Hyderabad.

In the case of Ramachandran K v The Circle Inspector of Police, the Kerala High Court has held that playing rummy for stakes would amount to the offence of gambling under the Kerala Gaming Act, 1960 ("Kerala Act"). Previously, in the landmark judgment of State of Andhra Pradesh v K Satyanarayana, the Supreme Court had held that 13-card rummy was mainly and preponderantly a game of skill. A review petition was filed against the order of the Kerala High Court, but was dismissed. The court held that whether rummy played for stakes would amount to gambling would have to be decided on a case-by-case basis. A court would need to consider the manner in which the games were conducted online, and what stakes were involved.

In a case before the High Court of Delhi, a petitioner has sought a complete ban on online gambling websites from operating in India (both Indian and foreign). The petitioner has sought certain directions from Government entities that taxes are recovered from persons engaged in such gambling activities, and that violations of FEMA are checked. This petition is targeted only at games of chance, and has named poker, nap, sports betting, fantasy sports and election result prediction-related games as an illustrative list.

As per news reports, another public interest litigation case has been filed before the High Court of Delhi seeking a complete ban on poker and similar card games, played online and offline. The petition has also reportedly sought a ban on the advertising of such games.

## ▼ 1.2 Recent Changes

As stated above, a review petition was filed against the order of the High Court of Kerala in the matter of Play Games 24X7 Pvt. Ltd v Ramachandran K & Anr. However, the court dismissed the petition, and held that whether playing rummy for stakes (including online rummy) would amount to a violation of the Kerala Act would have to be assessed on a case-by-case basis.

The dismissal of the review petition has called into question whether any games of skill can be played for stakes.

Certain self-regulatory gaming bodies in India have adopted skill charters and guidelines to ensure player protection, transparency measures, etc.

## ▼ 2. Jurisdictional Overview

### ▼ 2.1 Online

#### **Background**

Betting and gambling is a state subject 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 (PGA) has been adopted by certain states in India, while other states have enacted their own legislation to regulate betting and gambling activities within the state ("State Enactments").

The PGA and most of the State Enactments (collectively, "Gaming Enactments") were enacted prior to the advent of virtual/online gambling and therefore primarily prohibit gambling activities taking place within physical premises, defined as a "common gaming house".

#### **Betting**

Betting on games of chance is prohibited under most Gaming Enactments. As stated above, the question of whether sports betting is a game of skill is pending before the Supreme Court in the case of Geeta Rani v Union of India & Ors. ("Geeta Rani Case").

In the case of Dr. K R Lakshmanan v State of Tamil Nadu ("Lakshmanan Case"), the Supreme Court held that betting on horse racing was a game of skill. Accordingly, betting on horse racing is treated as a game of skill and 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 ("Horse Racing Exemption"). However, the Horse Racing Exemption is subject to certain conditions under the Gaming Enactments, such as when wagering or betting takes place on the day on which the horse has run, in an enclosure that has been sanctioned by the State Government, etc. In the case of online horse racing, it would be difficult for these conditions to be met. However, one can explore arguing whether a horse racing product is a game of skill independent of the Horse Racing Exemption.

#### **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, as it is a game of chance and is prohibited in most Indian States. See below for a discussion on lotteries.

### **Casino**

Casino games are predominantly chance-based, so are treated as betting and gambling activities, and are therefore prohibited under most Gaming Enactments. This applies for both digital and land-based casino gaming.

The Sikkim Online Gaming (Regulation) Act, 2008 ("Sikkim Online Act") covers certain casino games, such as Roulette, Casino Brag and Blackjack, which may be offered through the state-wide intranet within the State of Sikkim only.

### **Lotteries**

Under the Lotteries (Regulation) Act, 1998 and the Lotteries (Regulation) Rules, 2010 ("Lottery Laws"), State Governments are empowered to organise, conduct and promote lotteries, subject to certain conditions.

Some states regulate physical lotteries (such as Sikkim), and lotteries have been banned in certain states (such as Madhya Pradesh). Some states specifically provide for online lotteries (such as Punjab).

The State Governments are empowered to appoint individual or corporate entities as "distributors" or "selling agents" to market and sell lotteries on behalf of the organising state under the Lottery Laws.

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

### **Fantasy Sports**

Certain versions of fantasy sports games can be argued to be preponderantly skill-based games in the Indian context. Accordingly, such games can be treated as exempted under the Gaming Enactments.

The High Court of Punjab and Haryana held Dream 11's format of fantasy sport to be a game of skill in the case of Shri Varun Gumber v UT of Chandigarh & Ors. ("Varun Gumber Case"). Thereafter, the High Court of Bombay also recognised that the same format of fantasy sport was a game of skill in Gurdeep Singh Sachar v Union of India.

The Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2016 ("Nagaland Act") expressly recognises virtual team selection games and virtual sport fantasy league games as games of skill. If such games are sought to be offered online in the State of Nagaland, a licence would be required.

### **Social Gaming**

Social gaming refers to those games in which no prize is offered. When there is no prize of money or money's worth offered, the game is typically not considered to be gambling under the Gaming Enactments. Depending upon the format and content of

such games, certain other laws could be triggered, such as the intellectual property laws, and laws prohibiting certain types of content, such as the IPC or the IT Act, which prohibits obscene content, or the Indecent Representation of Women (Prohibition) Act, 1986 (IRWA), which prohibits depicting women in a derogatory manner.

## **Poker**

It can be argued that certain variations of poker are games of skill for the purpose of most Gaming Enactments. Accordingly, such games should be permitted to be offered in most Indian states that have an exemption for games of skill.

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

- the State of 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; and
- the Karnataka High Court has also held that a licence is not required under the Karnataka Police Act, 1963 ("Karnataka Act") when Poker is played as a game of skill.

However, the High Court of Gujarat recently held in the case of Dominance Games Pvt. Ltd v State of Gujarat & 2 Ors that poker is a game of chance and a gambling activity under the Gujarat Prevention of Gambling Act, 1887. Accordingly, poker is currently prohibited in Gujarat. However, an appeal has been filed against this order and is pending before the High Court.

## ▼ **2.2 Land-Based**

### **Betting**

Please see **2.1 Online**.

In the case of betting on real 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, and one of the conditions to which the Racing Exemption is subject is that such betting takes place within an enclosure set apart for betting by the Turf Clubs. 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**.

### **Casino**

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 ("GDD Act"), which prescribes a licence 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, Daman and Diu. The casinos in Sikkim are regulated under the Sikkim Casinos (Control and Tax) Act, 2002 ("Sikkim Casino Act"), which, read with the Sikkim Casino Games Commencement (Control and Tax) Rules, 2007 ("Sikkim Casino Laws"), also prescribes a licence regime for casino games in five star hotels in the State of Sikkim.

### ▼ 3. Legislative Framework

#### ▼ 3.1 Key Legislation

Please see **2.1 Online: Background**.

In addition to the laws discussed above, the Prize Competitions Act, 1955 (PCA) may also apply. The PCA was enacted to regulate certain types of competitions. In the case of *R.M.D. Chamarbaugwala & Anr. v Union of India & Anr.*, the Supreme Court held that the PCA would only apply to prize competitions that were of a gambling nature. However, due to the types of games covered under the PCA (ie, crossword prize competitions, etc), there is an anomaly in the scope of the PCA, read with the Gaming Enactments, and in the nature of games for which a licence is required under the PCA.

Furthermore, under the Foreign Exchange Management Act, 1999 (FEMA), read with the Foreign Exchange Management (Current Account Transaction) Rules, 2000 ("Current Account Rules"), remittance for the following is prohibited:

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

#### ▼ 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. However, typically, under most Gaming Enactments "gambling" or "gaming" does not include (i) wagering or betting upon a horse-race/dog-race, when such wagering or betting takes place in certain circumstances; and (ii) lotteries.

#### ▼ 3.3 Definition of Land-Based Gambling

Please see **3.2 Definition of Gambling**.

#### ▼ 3.4 Definition of Online Gambling

Only the States of Nagaland and Telangana have specifically extended their State Enactments online. The State of Sikkim has introduced a licensing regime for online games and sports games offered through the state-wide intranet under the Sikkim Act.

The State of Telangana defines "gaming" as "playing a game for winning of prizes in money or otherwise and includes playing a game of mutka or satta or online gaming with stake and lucky board and wagering or betting; except where such wagering or betting takes place upon a horse race."

In the State of Nagaland, "Gambling means and includes wagering or betting on games of chance but does not include betting or wagering on games of skill."

The State of Sikkim defines "online gaming" as "any gaming where any player enters or may enter the game or takes or may take any step in the game or acquires or may acquire a chance in any online gaming or Sport Gaming, by means of a telecommunication device including the negotiating or receiving of any bet by means of a telecommunication device."

#### ▼ 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 may be a punishable offence, irrespective of the medium or location where it is offered). The Gaming Enactments provide for various offences with respect to gaming/gambling, the liability for which usually vests upon the following:

- the owner of the gaming/common gaming house;
- the person keeping or having charge of the gaming/common gaming house;
- the person gambling or the person found in the common gaming house or possessing instruments or records of betting or suspected of gambling or possessing such instruments;
- the person "assisting" in conducting the business of any common gaming house;
- specific to Sikkim, for the provision of online games:
  - the licensee under the Sikkim Online Act for the contravention of licence terms or a provision of the Sikkim Online Act;
  - any person/operator acting on his behalf; or
  - any operator who does not obtain a licence under the Sikkim Online Act, but offers online games, sports betting or both;
- specific to Sikkim, for the provision of casino games under the Sikkim Casino Rules: a licensee for the contravention of licence terms or the provisions of the Sikkim Casino Rules; and
- specific to Nagaland, a licensee under the Nagaland Act.

### ▼ 3.6 Penalties for Unlawful Gambling

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

The Public Gambling Act 1867 imposes a penalty of INR200 (approx. USD2.9) or imprisonment for a term not exceeding three months for owning, keeping or having charge of a gaming house, and a fine of INR100 (approx. USD1.45) or imprisonment for a term of one month for being found in a gaming house.

The Bombay Prevention of Gambling Act, 1887 imposes a fine and imprisonment for offenders. A first offence is punishable with a fine of at least INR500 (approx. USD7) and imprisonment of three months; a second offence with a fine of at least INR1,000 (approx. USD14) and imprisonment of six months; and a third or subsequent offence with a fine of at least INR2,000 (approx. USD28) and imprisonment for one year. In states such as Nagaland, the fines for contravention might be significantly higher. For brevity, these have not been included.

### ▼ 3.7 Pending Legislation

As stated above, the Sports Bill was introduced as a private members bill in the Lok Sabha.

However, with the dissolution of Parliament prior to general elections, the Sports Bill lapsed, and has not been re-introduced.

## ▼ 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 State Government of Goa (for casinos);
- Daman and Diu: the Director (Tourism) of Daman and Diu (for casinos);
- West Bengal: permits (for conducting games of skill in a public place) are issued by the Commissioner of Police;
- Nagaland: the Nagaland Act appoints the Finance Commissioner of the state as the "Licensing Authority" for offering skill games online; and
- Sikkim: the regulatory authority under the Sikkim Online Act (for issuing licences for online games provided within the state-wide intranet of the State of Sikkim) and the Sikkim Casino Laws (for issuing licences for casinos) is the authorised officer under the Finance, Revenue and Expenditure Department of the Government of Sikkim.

#### ▼ 4.2 Regulatory Approach

The Gambling Enactments are prescriptive in so much as most of the states prohibit gaming/gambling, but carve out an exception for games of skill. Therefore, the prohibitions under the Gaming Enactments would not apply if a game qualifies as a game of skill (please see **3 Legislative Framework** for more details).

#### ▼ 4.3 Types of Licences

Depending on the type of product and the medium through which it is sought to be offered, licences may be required for certain products, as follows:

- Casino: licences for offering casino products in five star hotels in Goa, Daman, Diu and Sikkim are available under the GDD Act and the Sikkim Casino Laws, respectively. Licences for offering casino products offshore in Goa, Daman and Diu are available under the GDD Act, which contains provisions on the operation of licensed games of electronic amusement/slot machines in five star hotels as well as table and games on board offshore vessels. However, a single licence can only be applied for a maximum of 20 slot machines.
- Poker: operators in India may offer skilled versions of poker without a licence in all Indian States except Sikkim, Nagaland, Telangana and Gujarat. In Nagaland, operators would need to procure a licence to offer such games.
- Sports/horse betting: a licence is required for betting on physical horse races; this does not include foreign horse races.

No licences are required for betting on horse races online. Based on the Lakshmanan Case, it can be argued that such games are games of skill and exempt under most Gaming Enactments. 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, and permissions/authorisations may need to be obtained from the relevant Turf Club.

As stated above, the question of whether sports betting is a game of skill is pending before the Supreme Court in the Geeta Rani Case. Only the State of Sikkim offers a licence to offer sports betting through the intranet within the State of Sikkim only.

- Fantasy betting: if the fantasy sport 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.
- Lotteries: under the Lottery Laws, State Governments may appoint an individual or a corporate 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 should be required for such games in most Indian states.
- Skill games: as stated above, games of skill operate under the exclusion for such games under most Gaming Enactments. There is no licensing regime for such games at a federal level. Only the States of Nagaland have enacted a licence regime specific for online games of skill under the Nagaland Act. Sikkim has a broader set of games covered under the Sikkim Act, under which the games can be offered via the intranet within the state of Sikkim.

#### ▼ 4.4 Availability of Licences

As per the Gaming Enactments, there is no limit on the number of licences that may be offered, although there are restrictions vis-à-vis the number of slot machines, etc, that can operate under a single licence.

However, in Goa, there have been news reports indicating that the renewal of casino licences may be an issue. Further, with regards to casino licences granted in the state of Daman and Diu, a subsidiary of Delta Corp (a leading casino operator in India) has filed a petition before the Bombay High Court seeking a direction to the Daman and Diu Government to grant a licence under the GDD Act. No permanent licences have yet been issued for Daman and Diu, and the effectiveness of the licensing provisions have therefore not been tested in practice.

#### ▼ 4.5 Duration of Licences

Nagaland: the licence will be valid for five years, subject to compliance with any prescribed conditions, and will be deemed to be renewed every year thereafter as long as the licence fee is paid.

Sikkim: for both casinos and online games (unless cancelled or surrendered), the licence will be valid for five years, and may be renewed upon an application being made.

Goa, Daman and Diu: the licence is valid for five years.

West Bengal: permits are issued for specific events.

#### ▼ 4.6 Application Requirements

The key licence application requirements include the following:

- Nagaland:
  - The licensee must be an entity incorporated in India, with a substantial holding stake in India and no criminal history; the 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 licensees' executive decision-making powers 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 technology support (hosting of the website, management of the website, location of servers, etc) of the licensee is to be within India only.
- Licences are offered only for games for skill offered on online media, as elaborated in **6.1 B2C Licences**.
- Licensees must have no interest in offline gaming activities in India or abroad, and must not be engaged in gambling.
- Licensees should not have a criminal history.
- Sikkim Casino Laws: only a body corporate registered under the provisions of the Registration of the Companies Act, Sikkim 1961 may apply for a licence.
- Sikkim Online Laws: the licensee must be a company/partnership firm incorporated in India.
- Goa, Daman and Diu: only land-based operators require licences in Goa, and Daman and Diu.
- West Bengal: while the wording of the law does not expressly prohibit a foreign operator from applying for a permit, an Indian entity would be best placed to bear in mind the application of the foreign exchange control regulations and foreign direct investment policy regulations described in the chapter.

#### ▼ 4.7 Application Timing

The process and timeline of applying is as follows:

- Nagaland:
  - The applicant should submit an application to the Finance Commissioner identifying the games for which the licence is sought. The application must be accompanied by documents in support of the credentials of the promoters, audited financials, the software technology platform, a proposed business plan, and financial projections.
  - If the Finance Commissioner is 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), who assist the state government to scrutinise all applications. The Empanelled Firms will then come back with either their certification or recommendations to the applicant, 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 are required to be adopted. These committees are required to make their recommendations within 14 days. Once the Finance Commissioner receives the recommendations, he/she is to issue the licence within 14 days.
  - Timeline – some operators have received the licence in 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.
  - After making any inquiry it considers necessary, and upon being satisfied that the applicant has a five star hotel with capabilities to operate a casino, the

state government can grant a six-month provisional licence upon the payment of the fee (as mentioned in **4.8 Application Fees**).

- 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 fully complies with the terms and conditions of the licence, the Government of Sikkim can grant a regular licence upon the payment of the fee (as mentioned in **4.8 Application Fees**).
- Sikkim – Online Games:
  - The licensee is to submit an application in the form specified in the Sikkim Act and Rules, along with the application fees (as mentioned in **4.8 Application Fees**).
  - The State Government will then conduct an enquiry 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 (Tourism) of Daman and Diu, who will then appoint an "Inspection Officer" to inspect the licence premises. Once the Director is satisfied with the inspection, he will recommend to the Administrator of Daman and Diu that the licence should be granted; the Administrator will then grant or reject the licence. Please see **4.4 Availability of Licences**. There is unfortunately no guidance on how long this licence takes to come through.
- West Bengal: an application for a permit to host games of skill in a public place must be submitted 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. Currently, under the framework of other applicable Indian laws (like the foreign direct investment policy and the exchange control regulations), practically, an Indian operator would be in the best position to apply. There is no guidance on how long this permit takes to come through.

#### ▼ **4.8 Application Fees**

Nagaland: a non-refundable application fee of INR50,000 (approx. USD700) is to accompany the application.

Sikkim:

- Casino: the fee is INR5,000 (approx. USD70).
- Online: the fee is INR500 (approx. USD7).

Goa: the cost of a licence is INR2 million (approx. USD28,000) 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 as of 2019:

- Onshore casinos: the fee varies according to the size of the casino. For example, the fees for a casino up to 100 sq m is INR100 million (approx. USD1,397,600); for a casino above 1,000 sq m, the fee is INR400 million (approx. USD5,591,200).
- Offshore casinos: the fee varies according to the passenger capacity of the vessel. For example, the fee for a vessel with a passenger capacity up to 200 is INR250 million (approx. USD3,493,450); for a vessel with passenger capacity above 400, the fee is INR400 million (approx. USD5,591,200).

Daman and Diu: there is an application fee of INR2 million (approx. USD28,000) for a set of 20 machines/stages/tables or less for five star hotels. A refundable deposit of INR300,000 must also be paid (which will be refunded on the expiry of the licence).

West Bengal: the cost of a permit in West Bengal is INR10 (approx. USD0.14).

#### ▼ 4.9 Ongoing Annual Fees

Nagaland: for the first three years, the annual licence fee per game is INR10 Lakhs (approx. USD14,119), or INR25 Lakhs (approx. USD35,297) for a bouquet of games per annum. For the next two years, the fee is INR20 Lakhs (approx. USD28,238), or INR50 Lakhs (approx. USD70,595) for a bouquet of games per annum. Licensees are also required to pay an amount of 0.5% of the gross revenue generated as royalty.

Sikkim:

- Casino: the gaming fees payable by the licensee to the State Government is 10% of the gross gaming yield or INR1 crore (approx. USD114,111), whichever is higher, for the first year and thereafter with incremental increases of 15% per year in respect of the minimum assured revenue for each of the remaining four years.
- Online: there is an annual fee of INR1 Lakh under the Sikkim Act and Rules (approx. USD1,414), and an online gaming levy of 1% of the gross gaming yield to the State Government.

Goa: there is an annual licence fee of INR25 million (approx. USD351,875) per annum, per 100 square metres for land-based casinos in five star hotels, and INR70 million (approx. USD985,250) for offshore casinos.

Daman and Diu: there is an annual licence fee of INR2 million (approx. USD28,171) for a set of 20 machines/stages/tables or less onboard offshore casinos. There is a further fee of INR8,000 for the "mother machine" and INR6,000 "per additional stage of electronic amusement/slot machine" in five star hotels.

### ▼ 5. Land-Based Gambling

#### ▼ 5.1 Premises Licensing

Please see **4.6 Application Requirements**. The States of Sikkim, Goa, and Daman and Diu provide for premises licensing.

#### ▼ 5.2 Recent or Forthcoming Changes

With respect to land-based casinos, there have been reports in the media of the Government of Goa's intention to introduce legislation to ban locals from accessing the state's casinos, and to shift the offshore casinos in the River Mandovi to a designated gaming/entertainment zone in the state.

### ▼ 6. Online Gambling

#### ▼ 6.1 B2C Licences

Nagaland: as per the Nagaland Act, licences are issued for offering games of skill on online media, including

- chess;
- sudoku;
- quizzes;
- binary options;
- bridge;
- poker;
- rummy;
- nap;

- spades;
- auction;
- solitaire;
- virtual golf;
- virtual racing games (including horse and car racing);
- virtual sports (including soccer, cricket, archery, snooker, bridge, and pool);
- virtual fighting;
- virtual wrestling;
- virtual boxing;
- virtual combat games;
- virtual adventure games;
- virtual mystery and detective games;
- virtual stock/monopoly games;
- virtual team selection games; and
- virtual sport fantasy league games.

Sikkim: the Sikkim Act and Rules allow for licences to be granted to offer intranet games (within the State of Sikkim) of:

- roulette;
- blackjack;
- pontoon;
- punto banco;
- bingo;
- casino brag;
- poker;
- poker dice;
- baccarat;
- chemin-de-fer;
- backgammon;
- keno;
- super pan 9; and
- other sports games that involve the prediction of results of sporting events and placing a bet on the outcome, in part or whole, of such sporting event.

As per the Sikkim Act and Rules, the licensee must be a company incorporated in India, and must operate only in Sikkim.

Please see **4.6 Application Requirements** for more details.

#### ▼ **6.2 B2B Licences (Suppliers, Software, etc)**

There are no such licences to be obtained. The Reserve Bank of India requires payment processors to obtain licences under the Payment and Settlement Systems Act, 2007, though payment gateways do not need such licences. Software developers do not generally require licences, unless they have set up in a zone such as a Special Economic Zone (SEZ) or a Software Technology Park of India (STPI), which have their own registration and compliance requirements.

#### ▼ **6.3 Affiliates**

While there are no specific measures to regulate affiliates, the business of the affiliates may be caught under the general provisions of the PMLA (as defined below), and marketing and advertising restrictions as discussed under **8 Anti-money**

**Laundering** and **9 Advertising**. Also, under the Gaming Enactments, the activities undertaken by the affiliate may be caught under the offences as covered in **3.5 Key Offences**, depending on their nature and manner. However, this must be evaluated under the facts and circumstances of each case.

#### ▼ 6.4 White Labels

There are no such licensing/regulatory requirements.

#### ▼ 6.5 Recent or Forthcoming Changes

Please see **1.1 Current Outlook**. All of these proposed policy changes/pending litigations would have an impact upon the online gaming sector.

#### ▼ 6.6 Technical Measures

At the outset, please note that only the State of Nagaland has 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 excluded from the prohibitions under most Gaming Enactments as they are games of skill.

However, under the Information Technology (Intermediary Guidelines) Rules, 2011, issued under the IT Act, internet intermediaries are required not to knowingly host/publish information "relating to or encouraging gambling". Any intermediary that is notified by a court order/order of a Government agency that such content is being hosted on its platform is required to disable such information within 36 hours.

### ▼ 7. Responsible Gambling

#### ▼ 7.1 RG Requirements

Most Gaming Enactments do not prescribe social responsibility requirements for gaming operators, since they have been enacted to prohibit gaming activities. The Nagaland Rules prescribe some requirements for online games of skill offered within the state, such as by prescribing that only players above the age of 18 are permitted to play for stakes on operators' platforms.

However, in the absence of regulation, the gaming industry in India has taken the initiative to self-regulate and prescribe standards for social responsibility. Certain self-regulatory industry associations, such as the AIGF and the Indian Federation of Sports Gaming (IFSG), have prescribed such standards in their Skill Charters.

These requirements include:

- player protection measures such as options for self-exclusion, age-gating, etc;
- transparency requirements such as disclosing the terms and conditions on gaming platforms, as well as the mechanics and rules of all games;
- provisions to regulate the content, duration and targeted audience of gaming advertisements; and
- financial integrity – ie, regulating the funds deposited by the player, requirements to maintain records of transactions, etc.

#### ▼ 7.2 Gambling Management Tools

Aadhaar is a unique 12-digit identification number used in India for availing and accessing a variety of services. It relies on the collection of an individual's biometric and demographic data. The Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 ("Aadhaar Act") was introduced to give statutory backing to the Aadhaar scheme.

Certain gaming operators have required players to provide their Aadhar numbers to carry out Know Your Customer (KYC) processes.

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

## ▼ 8. Anti-money Laundering

### ▼ 8.1 AML Legislation

In India, the Prevention of Money Laundering Act, 2002 (PMLA) prohibits money laundering activities. Under the PMLA, entities carrying out the activities for playing games for cash or kind (including casinos) are also required to adhere to the provisions of the PMLA. Such entities are classified as "reporting entities" under the PMLA.

### ▼ 8.2 AML Requirements

As per Section 12 of the PMLA, reporting entities are required to maintain records of transactions and documents evidencing the identity of their clients, in accordance with the Rules.

## ▼ 9. Advertising

### ▼ 9.1 Regulatory/Supervisory Agency

The Advertising Standards Council of India (ASCI) is a self-regulatory industry body that has been set up for the regulation of advertisements on television/broadcasting. With regards to prohibitions under the Gaming Enactments, the relevant police authorities/judicial authorities in the respective states implement and enforce the Gaming Enactments. Please see **4.1 Regulatory Authority** regarding the specific regulatory authorities in states where licences are issued.

### ▼ 9.2 Definition of Advertising

ASCI has released a Code for Self-Regulation of Advertising Content in India ("ASCI Code"), which defines an advertisement as "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 which 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."

There are two content-specific laws that have also defined advertising: the Cigarettes & Other Tobacco Products (Prohibition of Advertisement Regulation of Trade & Commerce, Production, Supply & Distribution) Act, 2003 defines an advertisement to include "any visible representation by way of notice, circular, label, wrapper or other document and also includes any announcement made orally or by any means of producing or transmitting light, sound, smoke or gas", and the Drugs and Magic Remedies (Objectionable Advertisement) Act 1954 very similarly defines an advertisement as "any notice, circular, label, wrapper or other document, and any announcement made orally or by any means of producing or transmitting light, sound or smoke."

### ▼ 9.3 Key Legal, Regulatory and Licensing Provisions

Please see **9.4 Restrictions on Advertising** regarding the general restrictions and prohibitions on advertising. The specific restrictions on licensees in Sikkim and Nagaland are as follows:

- Sikkim: in the state of Sikkim, licensees can advertise online games, provided that they comply with certain requirements. For example, 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 be directed at any person under the age of 18; and
  - not be directed at any jurisdiction in which online games are prohibited.
- Nagaland: the Nagaland Act and Rules permit the licensee to advertise on online and offline mediums, and to display the fact that they hold licences from the Government of Nagaland.

#### ▼ 9.4 Restrictions on Advertising

Under the ASCI Code, advertisements that are in breach of the law or that (directly or indirectly) propagate products that are banned under law are prohibited.

Most gambling 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, should not apply to skill games.

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

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

- the IPC, IRWA and IT Act penalise obscene content, and the IPC prohibits advertisements for lotteries, unless they comply with the provisions of the Lottery Laws;
- the Consumer Protection Act, 1986, is soon to be replaced by the Consumer Protection Act, 2019 (CPA), which classifies 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, as "unfair trade practices"; and
- the Copyright Act 1957, the Trade Marks Act 1999 and the Patents Act 1970 govern IP issues related to games (such as the use of trade marks, copyright, design rights and patent rights in the technology infrastructure of web operators).

The advertising of gambling is regulated by the Telecom Commercial Communications Customer Preference Regulations 2010, which prohibit unsolicited commercial communications to persons that have opted out of receiving them. These regulations also provide that telemarketing can only be carried out by operators who obtain a licence from the Telecom Regulatory Authority of India. ASCI has released a self-regulatory code that is binding on the television/broadcasting industry, and therefore applies to gambling advertisements on television. This code prohibits the propagation of products whose use is banned under the law.

#### ▼ 9.5 Sanctions/Penalties

Under the ASCI Code, complaints may be filed by the general public, or suo moto initiated by 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 may be imposed, which may extend to INR1 million (approx. USD14,090). Every subsequent offence may be punished with imprisonment for a term that may extend to five years, and with a fine that may extend to INR5 million (approx. USD70,450).

## ▼ 10. Acquisitions and Changes of Control

### ▼ 10.1 Disclosure Requirements

There are no specific disclosure requirements for acquisitions and changes of control in gaming/gambling companies under Indian law. These requirements are largely driven by the transaction structure and the change of control clauses as agreed in company contracts.

In addition, if the transaction involves a listed company, certain regulatory disclosures (including stock exchange disclosures) will need to be made, depending on the nature of the transaction.

### ▼ 10.2 Change of Corporate Control Triggers

Please see **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, if a passive investor wants to have some minimum oversight over the conduct of the company, they may consider appointing an observer on the board of such company. This is not mandated under law but can be considered, depending on 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

There are no sanctions in the gaming/gambling sector over and above the penalties already noted. The majority of the Gaming Enactments are archaic, and were enacted before the internet gained popularity. In the context of brick and mortar gaming houses, these fines and prohibitions have been enforced over a period of time. In the context of online gaming, since the industry has been only around for a couple of years, there is not sufficient record of enforcement from which to draw conclusions. While there are certain cases pending in courts (as highlighted through this chapter), not all cases are reported in the public domain. From the information that is available today and matters that are on public record, it can be understood that most cases are being heard and disposed of at the trial stage.

However, because of the increasing popularity of online gaming sites, authorities have become more active over a period of time. By way of example, earlier in 2019, the Jaipur police arrested two individuals for facilitating bets on betfair.com by using virtual private networks (VPNs), thereby circumventing the geo-blocking measures Betfair had put in place for Indian customers.

### ▼ 11.3 Financial Penalties

There are several modes of executing decrees and awards of damages or financial penalties in India.

Indian courts may execute an award/decreed for realisation of the amounts through the following methods:

- disclosure of the judgment debtor's assets;
- delivery of any property specifically decreed;
- attachment and sale, or sale without attachment, of any property;
- arrest and detention in prison (including Directors of the Company where the judgment debtor is a corporate entity);
- appointing a receiver; and
- any other manner as the nature of the relief granted may require.

## ▼ 12. Recent Trends

### ▼ 12.1 Social Gaming

There are no recent trends.

### ▼ 12.2 eSports

"PlayerUnknown's Battlegrounds" (PUBG) is a new e-Sport game that has caused much controversy in India due to its apparent harmful effects on the youth.

The Police in Rajkot City, Gujarat have prohibited playing PUBG within the precincts of Rajkot City, and have reportedly arrested people for playing the game. The game was banned for a short duration in Ahmedabad as well. While a few of these bans have reportedly now been lifted, the Central Reserve Police Force very recently banned their officers from playing the game, stating that it affected their "operational capabilities".

A PIL (public interest litigation) has been filed before the Bombay High Court, by an 11-year-old from Mumbai, Ahad Nizam, stating that PUBG promotes immoral conduct such as violence, murder, aggression, looting, gaming addiction and cyber bullying, so should be banned.

The Bombay High Court consequently issued a direction to the Ministry of Electronics and Information Technology (MEITY) to assess and review online game PUBG and take action if any "objectionable content" is found.

### ▼ 12.3 Fantasy Sports

Please see **1.1 Current Outlook** and **1.2 Recent Changes**.

### ▼ 12.4 Skill Gaming

Please see **1.1 Current Outlook** and **1.2 Recent Changes**.

### ▼ 12.5 Blockchain

While blockchain technology has been spoken about widely in the international gaming context, token-based implementations have not taken off so far in India, primarily due to an April 2018 regulatory prohibition on financial institutions facilitating "virtual currency" activity. This prohibition is currently under challenge in the Supreme Court of India.

#### ▼ 12.6 Reform

Please see **1.1 Current Outlook** and **1.2 Recent Changes**.

#### ▼ 13. Tax

##### ▼ 13.1 Tax Rate by Sector

As per the Indian income tax laws, any income by way of winnings from any lottery, crossword puzzle or card game or other game of any sort that exceeds INR10,000, is subject to a withholding tax of 30% (exclusive of applicable surcharge and cess). However, where the winnings are wholly in kind or partly in cash and partly in kind and 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 at the above rate is paid before the release of the whole winnings to the payee.

Under the Goods and Services Tax (GST) laws, services by way of admission to entertainment events or access to casinos, etc, are taxable at a rate of 28%. Furthermore, GST at the rate of 28% is applicable on betting or gambling services provided by casinos on the transaction value of the betting.

If a gaming activity does not fall into the category of betting or gambling (ie, in case of a game of skill), no GST may be levied. However, GST may be levied on the consideration amount payable/collected for the supply of goods or services, or both, on a gaming platform at the rate of 18%. Please note that the exact nature of the product offering should be analysed in order to ascertain the rate of taxation.

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