

International Comparative Legal Guides



Gambling 2020

A practical cross-border insight into gambling law

Sixth Edition

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1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling and social/skill gaming activity in your jurisdiction?

Relevant Product	Who regulates it in digital form?	Who regulates it in land-based form?	
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	<p>Casino gaming is regulated under State-wise anti-gambling laws in India (“Gaming Enactments”). Under most Gaming Enactments, casino games are treated as gambling activities in India, and are prohibited. This applies for both digital and land-based casino gaming.</p> <p>The State of Sikkim has enacted a licence regime to offer ‘online games’ through the intranet within the State of Sikkim, under the Sikkim Online Gaming (Regulation) Act, 2008 (“Sikkim Act”). This licence covers certain casino games like roulette, casino brag, and blackjack.</p> <p>The authority under the Sikkim Act is the Finance, Revenue and Expenditure Department.</p>	<p>Only the States of Goa, Daman and Diu as well as Sikkim regulate casino games in land-based form. The casinos in Goa, Daman and Diu are regulated under the Goa, Daman and Diu Public Gambling Act, 1976 (“Goa Act”). The casinos in Sikkim are regulated under the Sikkim Casinos (Control and Tax) Act, 2002 (“Sikkim Casino Act”).</p> <p>In the State of Daman and Diu, the Director of Tourism regulates ‘games of electronic amusement and slot machines’.</p> <p>In the State of Goa, the Home Department regulates ‘games of electronic amusement/slot machines’, as well as ‘table games’.</p> <p>In the State of Sikkim, the Tourism Department regulates ‘casino games’ in land-based form.</p>
	Poker	<p>Please refer to question 1.2. Skill versions of poker do not have a regulator in most Indian States.</p> <p>Only the State of Nagaland regulates online games of skill. The Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2016 (“Nagaland Act”) categorises online poker as a game of skill.</p> <p>The licensing authority in Nagaland is the Finance Commissioner. Please refer to question 1.2 for a further discussion on poker.</p>	<p>As stated in the corresponding column, poker can be argued to be a game of skill and therefore exempt from most Gaming Enactments. This exemption would apply to even poker when played on physical premises.</p>
	Bingo	<p>Depending on the exact format of bingo, it can fall within the definition of a lottery, or under the general definition of gambling under most Gaming Enactments, as it is a game of chance. In case of the latter, it would be prohibited in most Indian States.</p> <p>Please refer to the corresponding lottery column.</p>	<p>Depending on the exact format of bingo, it can fall within the definition of a lottery, or under the general definition of gambling under most Gaming Enactments, as it is a game of chance. In case of the latter, it would be prohibited in most Indian States.</p> <p>Please refer to the corresponding lottery column.</p>

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Betting	Betting	If the betting is on games of chance, this is prohibited in most Indian States. If it is: (i) betting on casino games, please refer above; (ii) sports betting or fantasy sports, please refer to the relevant column below.	Please refer to the corresponding column.
	Sports/horse race betting (if regulated separately to other forms of betting)	Betting on horse racing has been held to be a game of skill. There is no regulator for betting on horse races online. Please refer to question 1.2 below for further details. Currently, the status of sports betting as a game of skill is in question before the Supreme Court of India in the case of <i>Geeta Rani v Union of India & Ors.</i> (“ Geeta Rani Case ”). Only the State of Sikkim permits sports betting under a licence through the intranet within the State of Sikkim only, under the Sikkim Act. The authority in Sikkim is the Finance, Revenue and Expenditure Department.	Betting on physical horse races on race courses is regulated by the Turf Clubs, i.e., the race courses where physical horse races are conducted in India. These Turf Clubs operate under a licence from their respective State Governments (“ Licensing Legislations ”). Please refer to question 1.2 below.
	Fantasy betting (payment to back a ‘league’ or ‘portfolio’ selection over a period of time, for example in relation to sport or shares)	Certain skill formats of fantasy sports should be exempt from the prohibitions under most Gaming Enactments. Please refer to question 1.2 below. Only the State of Nagaland has enacted a licence regime for virtual team selection games and virtual sport fantasy league games when offered online. The licensing authority in Nagaland is the Finance Commissioner.	Please refer to the corresponding column (apart from the discussion on the State of Nagaland, which only applies to online games).
Lotteries	Lotteries	Please refer to the corresponding column (apart from the discussion on the State of Nagaland, which only applies to online games).	Please refer to the corresponding column.
Social/Skill arrangements	“Social” gaming with no prize in money or money's worth	Typically, when there is no prize of money or money's worth offered, it is not considered to be gambling. Depending upon the format and content of these games, certain other laws may be triggered, such as intellectual property laws, content laws, e.g. laws prohibiting obscenity or violent content, etc. Please refer to question 1.2. There is no regulator for such games.	Please refer to the corresponding column.
	Skill games and competitions with no element of chance	As discussed above, games of skill are exempted from the prohibitions under most Gaming Enactments. The Supreme Court has specifically recognised certain games as games of skill, as discussed in question 1.2 below. No licence as such is required to operate such games in most Indian States. Only the State of Nagaland has enacted a licence regime for online games of skill under the Nagaland Act.	Please refer to the corresponding column (except for the discussion on Nagaland, which would only apply to online games).

1.2 Specify: (i) the law and regulation that applies to the Relevant Products in your jurisdiction; and (ii) – in broad terms – whether it permits or prohibits the offer of Relevant Products to persons located in your jurisdiction.

Under the Constitution of India, the Indian States have been entrusted with the power to frame state-specific laws on ‘betting and gambling’. The Public Gambling Act, 1867 (“**Public Gambling Act**”) has been adopted by certain States of India. The other States in India have enacted their own legislation to regulate/prohibit gaming/gambling activities within their territory under their Gaming Enactments.

Most of these Gaming Enactments were enacted prior to the advent of virtual/online gambling and therefore primarily refer to gambling activities taking place in physical premises, defined as “gaming or common gaming houses”. It is not a settled position of law as to whether these prohibitions extend to the online medium.

These prohibitions include:

- Owning, keeping, occupying or having care and management of a gaming house/common gaming house.
- Advancing or furnishing money for the purposes of gambling to persons frequenting any such gaming house.
- Gambling in a common gaming house or present for the purpose of gambling in Common Gaming House.

In some Indian States, the activity of gaming/gambling *per se* (irrespective of the medium through which such games are offered

or played) is an offence, such as in the States of Assam or Orissa. Operators take a conservative approach and do not offer their games in these States.

The State of Sikkim has enacted a licensing regime for online games and sports games through the intranet within the State of Sikkim under the Sikkim Act and the Sikkim Online Gaming Regulation Rules, 2009 (“**Sikkim Rules**”). The State of Nagaland has enacted a licensing regime for online games of skill under the Nagaland Act and the Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Rules, 2016 (“**Nagaland Rules**”).

Most Gaming Enactments exempt games of “mere skill” from their prohibitions, either by operation of a direct provision or interpretation of the case laws. The Supreme Court of India (“**SC**”) has interpreted the words “mere skill” to include games which are preponderantly of skill. Whether a game is of chance or skill is a question of fact to be decided on the facts and circumstances of each case.

There is no licensing regime for games of skill at a federal level. These games operate under the exclusion for games of skill. Only the State of Nagaland has enacted a licence regime for online games of skill under the Nagaland Act. Certain games have been specifically recognised as games of skill under the Nagaland Act.

Further, in the State of Telangana, the Telangana Gaming Act, 1974 was recently amended *vide* the Telangana Gaming (Amendment) Act, 2017 (“**Amendment Act**”) to delete the exception for games of skill from the Telangana Act. The Amendment Act is currently under challenge before the High Court of Hyderabad. Accordingly, even games of skill cannot be offered in Telangana.

Depending upon the type of game, 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. vs. Union of India & Anr.*, the Supreme Court held that the PCA would only apply to prize competitions which were of a gambling nature. However, due to the types of games covered under the PCA (i.e., crossword prize competitions, etc.), there is an anomaly in the scope of the PCA, read with the Gaming Enactments, and the nature of games for which a licence is required under the PCA.

Certain other laws that would apply to gaming activities have been discussed in question 2.9 and section 3 below.

Casino

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

Only certain States have enacted licensing regimes for casino games:

- i. Goa, Daman and Diu: The Goa Act 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.
- ii. Sikkim: The Sikkim Casino Act read with Sikkim Casino Games Commencement (Control and Tax) Rules, 2007 (“**Sikkim Casino Laws**”) also prescribe a licence regime for casino games in five-star hotels in the State of Sikkim.
- iii. The Sikkim Act covers certain casino games such as roulette, casino brag, and blackjack. These games may be offered through the intranet within the State of Sikkim only.

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 with an exemption for games of skill.

The Gaming Enactments/courts in certain Indian States have specifically recognised poker as a game of skill:

- i. The State of West Bengal has specifically excluded poker from the definition of ‘gambling’ under the West Bengal Gambling and Prize Competitions Act, 1957.
- ii. The Nagaland Act has specifically categorised poker as a game of skill.
- iii. 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, recently, the High Court of Gujarat has 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.

Bingo

As stated above, depending upon the format of Bingo, it may fall within the definition of a ‘lottery’ or under the general definition of betting/gambling under most Gaming Enactments, as they are games of chance and prohibited in most Indian States. For a discussion on lotteries, please refer below.

Betting

If the betting is on games of chance, this is prohibited in most Indian States. However, if it is betting on casino games, please refer above. If it is sports or fantasy betting, please refer below.

Sports/Horse Race Betting

In the case of *Dr. K R Lakshmanan vs State of Tamil Nadu* (“**Lakshmanan Case**”), the Supreme Court held that betting on horse racing was a game of skill.

Most Gaming Enactments have carved out an exception for ‘wagering or betting upon a horse-race’ from the definition of gaming/gambling, subject to fulfilment of certain conditions (“**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 which has been sanctioned by the State Government, etc.

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. One of the conditions which the Racing Exemption is subject to is that such betting takes place within an enclosure which Turf Clubs have set apart for betting. Accordingly, betting on physical horse races must take place within the confines of Turf Clubs. Such betting would also be subject to the rules of the independent Turf Clubs.

The above conditions would be difficult to meet in the case of online betting on horse racing products. However, one can argue whether a horse racing product is a game of skill independent of the Horse Racing Exemption.

While arguably the treatment of betting on horse racing as a game of skill should apply to sports betting as well, currently the status of sports betting as a game of skill is *sub judice* in the Geeta Rani Case, as stated above.

Only the State of Sikkim permits sports betting. An operator must obtain a licence to offer such games under the Sikkim Act. Such games may be offered through the intranet within the State of Sikkim only. In most other States, law enforcement authorities seek to prosecute players engaged in sports betting.

Fantasy Betting

It can be argued that certain versions of fantasy sports games are 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 has 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 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.

Lotteries

The Lottery Laws permit State Governments to organise, conduct or promote a lottery, subject to certain conditions, as stated above. 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 individuals or corporates 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 IPC specifically prohibits private lotteries. Certain States have repealed Section 294 A of the IPC and enacted their own legislation banning lotteries apart from 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 (e.g. the State of Bihar *vide* the Bihar Ban on Lottery Act, 1993).

Social Gaming

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 intellectual property laws and laws prohibiting certain types of content – such as the IPC or the Information Technology Act, 2000 (“**IT Act**”) which prohibits obscene content, or the Indecent Representation of Women (Prohibition) Act, 1986, which prohibits depicting women in a derogatory manner.

Skill Games

As stated above, games of skill are exempted from the prohibitions under most Gaming Enactments. Arguably, such games can be offered in both land-based and digital form in all the States in which there is such an exemption. Only the Nagaland Act has enacted a licence regime to regulate the online versions of such games.

The Supreme Court of India has recognised certain games as games of skill, such as betting on horse racing and the game of Rummy. The Supreme Court has also dismissed a special leave petition against the order in the Varun Gumber Case.

2 Application for a Licence and Licence Restrictions

2.1 What regulatory licences, permits, authorisations or other official approvals (collectively, “Licences”) are required for the lawful offer of the Relevant Products to persons located in your jurisdiction?

Depending upon the type of product, and the medium through which the Relevant Product is sought to be offered, licences may be required for certain products. We have mentioned these below:

- **Casino:** Licences for offering casino products in five-star Hotels in Goa, Daman, Diu and Sikkim are available under the Goa Act and the Sikkim Casino Laws, respectively. Licences for offering

casino products offshore in Goa, Daman and Diu are available under the Goa Act.

- **Poker:** Operators in India may offer skilled versions of Texas Hold'em and Omaha Hold'em 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.
- **Bingo:** Please refer to the lottery section below.
- **Betting:** If it is betting on games of chance, this is prohibited in most Indian States. In the case of betting on casino games, please refer above. In the case of betting on sports/horse races, please refer below.
- **Sports/Horse Betting:** In the case of betting on physical horse races, a licence would be required. This does not include foreign horse races.

In so far as betting on horse races online is concerned, there are also no licences required. 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. Further, 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 State of Nagaland has enacted a licence regime for online games of skill under the Nagaland Act.

2.2 Where Licences are available, please outline the structure of the relevant licensing regime.

There are only a small number of States in India that allow operators to conduct gambling activities under a licensing regime. For brevity, we have only highlighted key points below:

Goa, Daman and Diu

- **Scope:** The Government of Goa issues casino licences to operators that conduct gambling activities in five-star hotels and on offshore vessels. The Goa Act 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 licence can only be applied for a maximum of 20 slot machines.
- **Fees:** The cost of a licence is INR 20,00,000 (approx. USD 28150) 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:

- About INR 250,00,000 (approx. USD 351,875) *per annum*, per 100 square metres for land-based casinos in five-star hotels.
- INR 700,00,000 (approx. USD 985,250) for offshore casinos. These licence fees are subject to annual increases.

Sikkim

- **Scope:** The Government of Sikkim regulates and licenses operators that wish to organise gambling activities under the Sikkim Casino Act and Rules. Licensees can only conduct gambling operations in five-star hotels. Sikkim has also enacted the Sikkim Act and Rules under which licences are granted to offer intranet games of: (a) roulette; (b) blackjack; (c) pontoon; (d) punto banco; (e) bingo; (f) casino brag; (g) poker; (h) poker dice; (i) baccarat; (j) chemin-de-fer; (k) backgammon; (l) keno; (m) super pan 9; and (n) other sports games which 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.
- **Fees:** Annual fee of INR 1 Lakh under the Sikkim Act and Rules (approx. USD 1,414), and an online gaming levy of 1% of the gross gaming yield to the State Government.

West Bengal

- **Scope:** An operator can apply for a permit to organise games of skill in a public market, fair, carnival or in the street, or in any place that the public can access.
- **Fees:** The cost of a permit in West Bengal is INR 10 (approx. USD 0.14).

Nagaland

- **Scope:** As per the Nagaland Act, licences are issued for offering games of skill on online media: (a) chess; (b) sudoku; (c) quizzes; (d) binary options; (e) bridge; (f) poker; (g) rummy; (h) nap; (i) spades; (j) auction; (k) solitaire; (l) virtual golf; (m) virtual racing games (including horse and car racing); (n) virtual sports (including soccer, cricket, archery, snooker, bridge, and pool); (o) virtual fighting; (p) virtual wrestling; (q) virtual boxing; (r) virtual combat games; (s) virtual adventure games; (t) virtual mystery and detective games; (u) virtual stock/monopoly games; (v) virtual team selection games; and (w) virtual sport fantasy league games. The licensees must be entities incorporated in India, have a substantial holding stake in India, and have no criminal history; and the license is only issued to those entities which have no interest in online or offline gambling activities in India or abroad.
- **Fees:** First three years – annual licence fee per game: INR 10 Lakhs (approx. USD 14119), or INR 25 Lakhs (approx. USD 35,297) for a bouquet of games per annum; next two years: INR 20 Lakhs (approx. USD 28,238), or INR 50 Lakhs (approx. USD 70,595) for a bouquet of games per annum. In addition, licensees are required to pay an amount of 0.5% of the gross revenue generated as royalty.

The eligibility above should be read in conjunction with the criteria covered in question 2.9.

2.3 What is the process of applying for a Licence for a Relevant Product?

For brevity, we have highlighted only key points below:

Sikkim

- **Casino** – A licence application must be made by Indian entities to the State government, who will examine the application. After making any inquiry it considers necessary, and on satisfac-

tion that the applicant has a five-star hotel with capabilities to operate a casino, the State government can grant a six-month provisional licence on payment of a fee of INR 1,00,000 (approx. USD 1,411). 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 on payment of a fee of INR 500,00,000 (approx. USD 705,940).

- **Online Games** – The licensee is to make an application using the form as specified in the Sikkim Act and Rules along with an application fee of INR 500 (approx. USD 7). The State Government will then conduct an inquiry if it deems it appropriate before issuing/rejecting the licence.

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. Currently, under the framework of different applicable laws, an Indian operator would be in the best position to apply.

Nagaland

- An application must be made to the licensing authority, i.e. the Finance Commissioner (“**Nagaland Authority**”), identifying the games for which the licence is being sought, and 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. A non-refundable application fee of INR 50,000 (approx. USD 700) is to accompany the application.

The Nagaland Authority will forward the application to certain ‘Empanelled Firms’ (lawyers/financial experts, etc.) who assist the State government in scrutinising all applications. The Empanelled Firms will then revert with either their certification or recommendations to the applicant within 30 days. The Nagaland Authority 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 two weeks. The Nagaland Authority will then issue the licence to the application within 14 days of receipt of certification of the Empanelled Firms.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

For brevity, we have only highlighted key points below:

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 apply bearing in mind the application of the other laws described in this chapter.

Nagaland

- should the licensees offer games under the licence in other States in violation of the provisions of the Nagaland Act or their local statutes, it may bring these violations to the notice of the Nagaland Authority;
- operations and technology support are controlled and maintained in India; and
- the games must be offered only to those above the age of 18.

Sikkim – Online

- i. the licensee must provide certain details of the licence on their website/online portal;
- ii. the ‘OGS’ or the computer/system through which the games are conducted are to be certified by the State Government; and
- iii. the games must be offered only to those above the age of 18.

2.5 Please give a summary of the following features of any Licences: (i) duration; (ii) vulnerability to review, suspension or revocation.

For brevity, we have only highlighted key points below:

Duration:

- **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. The delay in payment of the licence fee would result in a penalty of 12% per annum.
- **Sikkim:** The licence (unless cancelled or surrendered) will be valid for five years. The licence may be renewed on an application being made.
- **Goa, Daman and Diu:** Five years.
- **West Bengal:** Permits are issued for specific events. The duration of a permit can be as short as a single day.

Vulnerability to Review/Suspension/Revocation:

For states, such as Nagaland, Sikkim, West Bengal and Goa Daman and Diu, the licences would be suspended/terminated on a contravention of the licence terms, or of the law under which they were issued. Additional points to note are as follows:

- **Nagaland:** In the event of a breach, the Nagaland Authority shall issue a show cause as to why the licence should not be cancelled, and the licence holder has the right to make a written as well as an oral representation. However, the violation shall be compounded if the breach is remedied in 30 days.
- **Sikkim:** On a breach, the state government may suspend or cancel the licence after giving the licensee a reasonable opportunity to be heard.

2.6 By Relevant Product, what are the key limits on providing services to customers? Please include in this answer any material promotion and advertising restrictions.

In addition to our response to question 2.4, most gambling state enactments prohibit the printing, publishing, selling, distributing or circulating in any manner 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 IPC prohibits advertisements for lotteries, unless they comply with the provisions of the Lottery Laws. 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:

- i. The IPC, IRWA and IT Act penalise obscene content.
- ii. The Consumer Protection Act, 1986, is soon to be replaced by the Consumer Protection Act, 2019 (“CPA”). The CPA classifies the offering of prizes with the intention of not providing them as offered/the conduct of a contest, lottery, game of chance or skill for the purpose of promoting a product/business interest as an ‘unfair trade practice’.
- iii. 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 that have obtained a licence from the Telecom Regulatory Authority of India. The Advertising Standards Council of India (“ASCI”) has released a self-regulatory code which is binding on the television/broadcasting industry; and, therefore, gambling advertisements on television. This code prohibits the propagation of products, the use of which is banned under the law.

- **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:
 - i. Include the address of the online gaming operator’s website, which must include certain prescribed information.
 - ii. Not be indecent or offensive.
 - iii. Be based on facts.
 - iv. Not be directed at any person under the age of 18.
 - v. 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 they are allowed to display the fact that they hold licences from the government of Nagaland.

2.7 What are the tax and other compulsory levies?

As per the Indian income tax laws, any income, by way of winnings from any lottery or crossword puzzle or card game and other game of any sort, exceeding INR 10,000, is subject to a withholding tax of 30% (exclusive of applicable surcharge and cess). However, in cases 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, then 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. is taxable at the rate of 28%. Further, GST at the rate of 28% is applicable on the betting or gambling services provided by casinos on the transaction value of the betting.

In the event a gaming activity does not fall in the nature of betting or gambling (i.e. 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 to ascertain the rate of taxation, the exact nature of the product offering should be analysed.

2.8 What are the broad social responsibility 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 stake 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 All India Gaming Federation (“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.
- Financial integrity, i.e., regulating the funds deposited by the player, requirements to maintaining records of transactions, etc.

2.9 How do any AML, financial services regulations or payment restrictions restrict or impact on entities supplying gambling? Does your jurisdiction permit virtual currencies to be used for gambling and are they separately regulated?

- **Prevention of Money Laundering Act, 2002 (“PMLA”)**
In India, the 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. 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.
- **Foreign Exchange Management Act, 1999 (“FEMA”)**
Under the FEMA, read with Foreign Exchange Management (Current Account Transaction) Rules, 2000 (“**Current Account Rules**”), remittance for the following is prohibited.
 - a) Remittance out of lottery winnings.
 - b) Remittance of income from racing/riding, etc., or any other hobby.
 - c) Remittance for purchase of lottery tickets, banned/prescribed magazines, football pools, sweepstakes, etc.
 Skill games may be covered under the above prohibitions, especially under the heading ‘*any other hobby*’.
- **Payment and Settlement Systems Act, 2007 (“PSS Act”)**
Payment systems, both traditional and electronic in India, are regulated by the PSS Act. Processing functions typically involve clearing, payment and settlement, which constitute the core functions of a payment system as per the definition under the PSS Act. These functions are highly regulated by the Reserve Bank of India (“**RBI**”) as well as various statutes. Accordingly, payment service providers offering services to gaming operators may need to obtain authorisation from the RBI depending upon the types of functions that they undertake. Payment gateways and closed loop wallets are not treated as payment systems.
- **Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (“Black Money Act”)**
The Central Board of Direct Taxes (“**CBDT**”) had released a circular with certain “clarifications on tax compliance for undisclosed foreign income and assets” (“**Circular**”) under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (“**Black Money Act**”).
The Circular clarified that a person having funds subject to tax in India, but on which tax was not paid, lying in offshore e-wallets/virtual card accounts maintained with online gaming/poker websites and having made profits therefrom is required to disclose to the Indian tax authorities all the details in relation to these accounts. The Circular stated that that an e-wallet/virtual card account would be considered similar to a bank account where inward and outward cash movement takes place. Hence, the same valuation and declaration of such accounts should be made by persons as in the case of a bank account, in order to comply with certain tax compliance requirements under the Black Money Act.

3 Online/Mobile/Digital/Electronic Media

3.1 How does local law/regulation affect the provision of the Relevant Products in online/mobile/digital/electronic form, both from: (i) operators located inside your jurisdiction; and (ii) operators located outside your jurisdiction?

For operators located within India:

- **Under the Gaming Enactments:** The Gaming Enactments in India are State-specific. Most Gaming Enactments prohibit gambling activities in physical premises termed ‘common gaming houses’. Some States specifically prohibit/regulate such games in online form. Whether online games are prohibited/regulated within the State would need to be tested under the Gaming Enactment of each specific State.
- **Under the Lottery Laws:** The Lottery Laws and Section 294 A of the IPC should apply to domestic operators.
- **Under the PCA:** The PCA should apply to domestic operators.
- **Under the IT Act:** The IT Act applies to the internet medium and allows the Government and the courts the power to order the blocking of websites hosting unlawful content. Under the Information Technology (Intermediary Guidelines) Rules, 2011, internet intermediaries are required not to knowingly host/publish information ‘relating to or encouraging gambling’.
- **Under FEMA:** Since there would be no remittance of money by the Indian player offshore, FEMA and the Current Account Rules would not be attracted.
- **Under PMLA:** The requirements under PMLA discussed above would apply to operators located within India.
- **Under the PSS Act:** The PSS Act discussed above would apply to payment service providers located within India.

For operators located outside India:

- **Under the Gaming Enactments, the PCA, and the Lottery Laws:** The extra-territorial applicability and enforcement of these laws against foreign entities is debatable. It would need to be tested under each State law in which such products are sought to be offered. However, practically, enforcement against foreign operators would be a challenge.
- **Under the IT Act:** Websites offered by foreign operators may be blocked by Indian Governmental authorities and courts, as discussed above.
- **Under FEMA:** FEMA and the Current Account Rules prohibit gambling-related outward remittances as discussed above. Accordingly, FEMA applies to outward remittances to offshore gaming operators.
- **Under PMLA:** Entities incorporated or established abroad should not be covered as reporting entities under the PMLA.
- **Under the PSS Act:** The licensing regime for payment systems under the PSS Act does not cover foreign payment providers when they provide services in relation to offshore merchants.

3.2 What other restrictions have an impact on Relevant Products supplied via online/mobile/digital/electronic means?

Please refer to our response to question 3.1. All of the laws above, especially the IT Act, would be applicable.

Excluding the Nagaland and Sikkim Acts, the Gaming Enactments are pre-internet pieces of legislation and were not amended after the advent of the internet. In these enactments, gaming in a common gaming house is prohibited, and they do not distinguish between physical and online offerings. There are primarily two schools of thought:

- (1) Penal statutes such as these must be interpreted strictly as not being applicable to online offerings.
- (2) The approach would be that all technological advancements should be read within the scope of the Gaming Enactments, which would hence be applicable.

3.3 What terminal/machine-based gaming is permitted and where?

As discussed in our response to question 1.2, the states of Goa, Daman and Diu, and Sikkim allow for terminal/machine-based gaming.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

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, may be a punishable offence). These Gaming Enactments provide for various offences with respect to gaming/gambling. The liability for offences under the Gaming Enactments usually vests upon:

- i. The owner of the gaming/common gaming house.
- ii. The person keeping or having charge of the gaming/common gaming house.
- iii. The person gambling/person found in the common gaming house or possessing instruments or records of betting or suspected of gambling or possessing such instruments.
- iv. The person 'assisting' in conducting the business of any common gaming house.
- v. Specific to Sikkim, (a) a licensee under the Sikkim Act, (b) any person/operator acting on his behalf, or (c) an operator who does not obtain a licence under the Sikkim Act, but offers online games, sports betting, or both.
- vi. Specific to Nagaland, a licensee under the Nagaland Act.

Under FEMA, the onus of compliance is on the Indian resident party making the remittance outside India and not the foreign party receiving the remittance.

Under the IPC, the abetment of offences is also prohibited. Abetment has been defined as intentionally aiding such offences, whether by acts or illegal omissions.

4.2 What form does enforcement action take in your jurisdiction?

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

The Public Gambling Act imposes a penalty of INR 200 (approx. USD 2.9) or imprisonment for a term not exceeding three months for owning, keeping or having charge of a gaming house, and a fine of INR 100 (approx. USD 1.45) 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 and imprisonment of at least INR 500 (approx. USD 7.2) and three months respectively; a second offence with a fine and imprisonment of at least INR 1,000 (approx. USD 14.4) and six months respectively and a third or subsequent offence with a fine and imprisonment of at least INR 2,000 (approx. USD 28.7) and imprisonment for one year, respectively. In states such as Nagaland, the fines for contravention might be significantly higher. For brevity, these have not been included.

Please refer to our response to question 3.1 for enforcement action under other laws.

4.3 Do other non-national laws impact upon liability and enforcement?

Please note that this chapter refers only to the impact of Indian laws on activities overseas (including in India). Readers should refer to the laws of other countries for the impact of those laws on activities overseas.

4.4 Are gambling debts enforceable in your jurisdiction?

No, under Section 30 of Indian Contract Act, 1872, wagering contracts are void and cannot be enforced. There are certain exemptions provided under said Section.

4.5 What appetite for and track record of enforcement does your local regulatory authority have? Have fines, licence revocations or other sanctions been enforced in your jurisdiction?

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 around only for a couple of years, there isn't enough of a record of enforcement on which to draw conclusions. While there are certain cases pending in courts (which we have 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, we understand 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 which Betfair had put in place for Indian customers.

5 Anticipated Reforms

5.1 What (if any) intended changes to the gambling law/regulations are being discussed currently?

Policy Changes

- The Law Commission of India released its report entitled 'Legal Framework: Gambling and Sports Betting Including in Cricket in India' ("Report") on July 5, 2018. A day after releasing the 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 December 28, 2018, the Sports (Online Gaming and Prevention of Fraud) Bill, 2018 ("Sports Bill") was introduced as a private members' bill in the Lok Sabha. The Sports Bill was introduced on the heels of the Report. The Statement of Objects and Reasons accompanying the Sports Bill has underscored that it has been introduced with the dual aims of (i) preserving integrity in sports, and (ii) introducing a regulatory regime for online sports betting. However, with the dissolution of Parliament prior to general elections, the Sports Bill lapsed. It has not been re-introduced.

- The AIGF 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 IT Act and FEMA.

Pending Litigation

Some of the key pending litigation cases are highlighted below.

- As stated above, the question of whether sports betting is a game of skill is pending before the Supreme Court. 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 which recognise an exemption for games of skill.
- In so far 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.
- Further, as has been stated, the Telangana Gaming Act, 1974 was recently amended to delete the exception for games of skill from the Telangana Act *vide* the Telangana Gaming (Amendment) Act, 2017 (“**Amendment Act**”). The Amendment Act is currently being challenged before the High Court of Hyderabad.
- The Kerala High Court in the case of *Ramachandran K v The Circle Inspector of Police* has held that playing Rummy for stakes would amount to the offence of gambling under the Kerala Gaming Act, 1960. 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 this order, but this petition was dismissed. The court held that whether Rummy, when 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 the stakes involved were.
- 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 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.



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The gaming practice group at Nishith Desai Associates sits within the larger TMT practice group. The gaming practice at NDA has been a pioneer in the industry, and has 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. Research is the DNA of NDA, and our focus on research and academics in this space has allowed us to provide cutting-edge solutions for our clients.

We have also been instrumental in industry-wide efforts and policy advocacy. For example, we have led various meetings with regulators and the Law

Commission of India to advocate for introducing a licensing regime for skill games in India, and to make recommendations with respect to taxation of gaming transactions.

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