

Gaming Law Wrap

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NEW LAW PASSED IN THE STATE OF NAGALAND IN INDIA TO REGULATE ONLINE GAMING

The Legislative Assembly of the State of Nagaland in India, as per reports, recently passed *The Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Bill, 2015* (“**Bill**”). The Bill was reviewed by a Committee set-up by the Government of Nagaland. The Committee recommended the passing of the proposed law without any significant changes. The Bill is awaiting the assent of the Governor of the State of Nagaland, in order to be enacted as a law in the State. This update is provided on the basis of the version of the Bill as was presented before the Legislative Assembly.

The primary objective of the Bill is to prohibit gambling, and to regulate and promote “online games of skill” in the State. The Bill proposes a license regime under which licensees may provide wagering or betting on online “games of skill” or make profits by providing a medium for playing “games of skill”. Providing such online games of skill will not be construed as gambling so long as they are provided in territories and are accessed by players in territories where such games are not construed as gambling or are prohibited.

Some of the key highlights of the Bill are:

I. GAMES OF SKILL

The Bill adopts the “preponderance of skill” test laid down by the Supreme Court of India (“**Supreme Court**”) and proposes that a “game of skill” would include all games where there is a preponderance of skill over chance, including where the skill relates to (i) strategizing the manner of placing wagers or placing bets, (ii) selection of a team or virtual stocks based on analysis, or (iii) the manner in which the moves are made, whether through deployment of physical or mental skill and acumen. Further, certain games such as chess, bridge, poker, rummy, nap, auction, virtual sports fantasy sports leagues and virtual team selection games have been explicitly enlisted in the Schedule to the Bill as “games of skill”.

To ensure the contemporaneity of the statute, games that have been declared as, or determined to be “games of skill” by Indian or international courts or other statutes; or games for which domestic and international competitions and tournaments are conducted, or games which can be determined to be “games of skill” may get included in the Schedule to the proposed law. The Schedule may be updated by the State Government either on its own motion or on representation made by a party. Thus, potential operators may make a representation to the Government that a certain game should be classified as a “game of skill” and accordingly, the State Government may at its discretion classify such game as a “game of skill” and/or issue a license to the operator for offering such game.

II. STAKES AND PROFITS

The Bill explicitly permits the licensee to offer “games of skill” on their website, mobile platform, television or any other online media and also to earn a revenue by means of advertising or by taking a percentage of winnings of gameplay or charging a fixed fee for membership or for downloading a game. Thus, profiteering by the licensee on games of skills is permitted.

The Bill also clarifies that if players play games of skill for stakes under the license, this would not amount to gambling.

However, there seems to be a contradiction in the definitions of “wagering” / “betting” and “stake”. The definition of “wagering or betting” contemplates staking of money or virtual currency, however, the definition of “stake” specifically does not include virtual currency. Hopefully, this discrepancy would be addressed in the final version of the Bill that is enacted.

III. LICENSES

A license may be granted to a person, company or limited liability company incorporated in India, and having a substantial holding and controlling stake in India. Further, the executive decision making powers and processes would be required to be performed from within India and the technology support, including hosting and management of the website, placement of the servers would need to be within India.

Although the text of the Bill is ambiguous on the subject, it is clear that the intention of the Government of Nagaland is to issue licenses to persons in India or companies incorporated in India. Even if an Indian company applying for a licensee, would have an amount of foreign investment, the Bill would require that the majority / controlling stake of the company should vest with another Indian company and not a foreign company. Further, it has been made clear that technology support, maintenance and hosting of the website, and placement of the servers may be done anywhere in the territory of India and not necessarily in the territory of the State of Nagaland. This ought to bring comfort to potential operators, unlike in the case of operators under the Sikkim license regime.

Further, a license would only be granted to a licensee which has “no interest” in any online or offline gambling activities in India or overseas. This may pose challenges to established players in the Indian gaming industry that

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have wide-ranging operations in multiple States.

The Bill proposes that the licensing authority is required to make a decision within 6 months from the date of receipt of an application, on whether or not to issue a license to an applicant. Hence, unnecessary delays on the State Government's behalf may be avoided.

IV. GAMES OF SKILL OFFERED PAN INDIA

A license holder would be permitted to offer "games of skill" for which it holds a license for, in other States in India where such games are not classified as gambling and hence prohibited. Further, where a the Government of another State in which such games are being offered by a licensee, is of the opinion that a licensee is operating in such State in violation of the Bill or local laws of the respective State, it may inform the Nagaland Government of such alleged violation.

This provision seems to be in consonance with the fact that State Governments have been entrusted with the power to frame state specific laws on 'betting and gambling' within their state. Consequently, permissibility of such activities by a Nagaland licensee in other states falls within the purview of such state.

V. PENALTIES

In case a licensee was found to be engaging in "games of chance or gambling activities", it would be liable to a fine of INR 20,00,000 (approx. USD 30,000) in the first instance and may be extended to simple imprisonment in case of a repeat offender.

In comparison with The Sikkim Online Gaming (Regulation) Act, 2008 along with its rules ("Sikkim Online Gaming Law") which imposes a fine of only INR 10,000 for violation of the terms of the license; the Bill imposes a monetary penalty of a much higher amount. Although the Bill does not specify, it is likely that imprisonment would extend to directors and other officers in charge of the company in the event of a repeated offence.

VI. RULES

The Bill contemplates issuance of rules which will prescribe the manner and format for applications for a license, or the terms and conditions under which a license may be issued. Such rules may also address aspects such as license fees payable and annual fees payable by operators to the State Government. One must wait and watch as to when rules may be framed under the Bill to address such aspects.

VII. LICENSING AUTHORITY

The Bill provides that the State Government may designate an authority or body to monitor and regulate activities of the licensees to ensure compliance under the Bill, and to settle disputes arising out of the licensees' activities.

ANALYSIS

The Bill is definitely a positive step towards not only clearing the ambiguity on what constitutes "games of skill" but also towards a promising license regime for potential operators to set up shop.

One cannot but help make a comparison to the Sikkim Online Gaming Laws, as it is presently the only other online license regime in the country. Two main concerns of operators under the Sikkim Online Gaming Laws license regime, were the (i) high fees payable to the State Government for procuring the license along with the high amount of online annual gaming levy, and (ii) the restriction on offering of games within the boundaries of the State of Sikkim and through intranet gaming terminals. Gaming laws of most states of India do not apply to games of skill. Since the Bill contemplates licenses of only games of skill, the licensee may be able to offer such games almost in all states of India, unless states object to certain specific games not being games of skill. There are certain states which have more restrictive prohibitions than the other states, where the licensee may not be able to offer even the games of skill.

As the online fantasy sports market continues to develop rapidly in India, owing to technological advancements and rise in popularity of sports such as Kabaddi and Football, along with the existing popularity of cricket, the inclusion of online fantasy sports within the ambit of the license only makes it a dream match-day up ahead for potential operators that have a keen eye on India.

— Mithun Verghis, Aaron Kamath & Gowree Gokhale
You can direct your queries or comments to the authors

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