



Indian update

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Gambling in India is a highly restricted and regulated business. While the gambling legislations are state-specific, there are a number of legal and regulatory developments which have an impact on such business countrywide. Provided below is a snapshot of selected recent legal and regulatory updates which affect the gambling industry in India.

The ripple effect of the Mahalakshmi Case – legality of playing online rummy for stakes

Games of skill are not considered to fall under the prohibitions of Indian gaming legislations. However, in the Mahalakshmi Case, the Madras High Court, in 2012, held that though rummy is a game of skill, if played with stakes would amount to gambling. The matter then went on appeal before the Supreme Court of India and a stay was granted on the operative part of the Madras High Court order. The outcome of this case is still awaited.

The Mahalakshmi Case has had a ripple effect impact on other similar recent cases.

The Andhra Pradesh High Court recently refused to grant relief to clubs which allowed its members and guests to play rummy with stakes that sought interim protection from authorities closing their club premises. Whilst denying relief to the clubs in the case, the Court specified that in view of the findings in the Mahalakshmi Case, this case would also require a detailed examination to determine whether playing rummy with stakes is legal. It is interesting to note that the same High Court in previous cases has relied on the landmark Satyanarayana Case and held that rummy was a game of skill and hence collection of a fee from players is not prohibited. However, since the Mahalakshmi Case is now sub-judice before the Supreme Court, the Andhra Pradesh High Court seems to have taken a guarded view in the current case.

Initially, the arguments in the Mahalakshmi Case related only to brick-and-mortar rummy clubs. However, certain online rummy websites intervened in the matter as these websites were facing issues receiving payments through online systems. The intervening

parties urged the Supreme Court to specifically deal with the issue of the legality of online gaming websites providing rummy played for stakes. It was explained to the Supreme Court that these websites were not making profits from fees charged to players, as they only took a facilitation fee from players which was approximately 10% of the amount won in a game of rummy.

Since there were a number of issues on central laws like the Information Technology Act, 2000 and various anti-money laundering laws that concerned online gaming businesses, the federal government of India was impleaded as a party in the matter. However, it is unlikely that the federal government will express its views on these matters. The Addnl. Solicitor General representing the federal government at the hearing in September last suggested that since gaming and gambling fell within the state list under the Constitution of India, the state would be the appropriate authority to legislate and take decisions on these matters.

The matter is tentatively listed for 12 August and the gaming community will keep a close

watch on developments. The outcome of this case will impact on the method by which one can make profits from a game of skill.

Sikkim government issues 'go live' licences for online gaming

'Go live' licences were recently issued by the Sikkim Government to three entities holding provisional licences under the Sikkim Online Gaming (Regulation) Act, 2008 and rules ("Sikkim Gaming Laws"). The Sikkim Gaming laws permit online games such as roulette, blackjack, pontoon, punto banco, bingo, casino brag, poker, poker dice, baccarat, chemin-de-for, backgammon, keno, super pan 9 and sports betting to be conducted by licence holders. Additional games may also be offered if due approval is taken from the Sikkim Government.

The entities said to have reportedly received the full licence to carry out online gaming operations are Best & Co. (a subsidiary of Future Gaming Solutions Private Limited), Maarm International Private Limited and a member of the Essel Group (that runs Playwin Lotteries in Sikkim).

The licence, it seems, restricts online operations and services to people within the geographical region of Sikkim, as it mandates that such online gaming services be offered within the state through an intranet connection. Potential players in the market and provisional licence holders will keep a keen eye on the profitability of carrying out such operations in Sikkim. Applicants would have invested large sums and are committed under the terms of the licence to pay a minimum of INR 50m (approx. USD \$786,500) per annum as a 'gross gaming yield'. These 'go live' licence holders are in the midst of setting up their technology and infrastructure to commence operations, but have reportedly been instructed by the Sikkim Government not to commence operations, probably until certain legislative

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amendments have been made. One would need to wait as to whether such amendments proposed by the Sikkim Government would pertain to the intranet requirement.

SIT's interim report cites cricket betting as a source of black money

Towards the end of 2014, a Special Investigation Team ("SIT"), led by a former judge of the Supreme Court, was set up by the Court to monitor the probe into untaxed or 'black' money hoarded in foreign bank accounts.

The SIT submitted its third interim report to the Supreme Court on 12 May 2015 on the matter. Although the report was submitted in sealed cover, an executive summary was made available to media houses. The report cited cricket betting as a key source of black money in India, worth approximately INR 3 trillion (approx. USD \$47bn) as per the Federation of Indian Chambers of Commerce and Industry ("FICCI") report titled "A Study on Widening of Tax Base and Tackling Black Money".

The FICCI report, released in February 2015, valued the betting market in India at INR 3 trillion (approx. USD \$47bn) and stated that if taxed at a rate of 20%, the Indian government could earn revenue of INR 120bn (approx. USD \$1.8bn) to INR 190bn (approx. USD \$3bn) per annum. The FICCI report cited that the Indian Premier League, a yearly cricket tournament featuring celebrated cricketers from around the globe, has been "marred by betting and spot-fixing scandals and involvement of huge amount of black money". The FICCI report further suggested that legalising sports betting

in India could be seen as an "effective measure to reduce the element of black money and help the government raise the tax revenue receipts".

Post these recommendations, it will be interesting to see if the new government in India takes cognisance of this and revives the discussions around legalising and regulating sports betting.

Interestingly, the Narendra Modi-led federal government, which has recently finished a year at the realms, has been on a drive to unearth and tax residents' black money stowed away in foreign tax havens. A new law to this effect has been formulated –the Undisclosed Foreign Income and Assets (Imposition of Tax) Bill, 2015 which has been recently passed by both houses of parliament and is awaiting the President's assent.

PIL filed to enforce legislation on casinos in Maharashtra

A public interest litigation was filed on 25 February 2015 before the Bombay High Court seeking a writ of mandamus directing the Maharashtra government to enforce the Maharashtra Casinos (Control and Tax) Act, 1976 ("Maharashtra Casinos Act"). Having never been notified or enforced to date, the State Legislative Assembly passed the Maharashtra Casinos Act, which also received the Governor's assent in July 1976. The Maharashtra Casinos Act, which, if enforced, would have licensed and regulated casinos in the State, was initiated as a move to promote tourism and increase state revenue.

The Maharashtra Casinos Act aimed to "provide for the control and regulation of casinos, and to impose a tax on betting in casinos, in the state of Maharashtra". The Maharashtra Casinos Act defines 'casino games' as "all or any of such games of wagering or betting, including games of chance played by means of any machines or instrument, as may be prescribed from time to time". The Maharashtra Casinos Act restricted casino games being played, organised or exhibited by a person at any public place, except at a casino in respect of which a licence is granted.

The Bombay High Court passed an order on 17 March 2015 directing the state government to consider the question of whether it should bring the provisions of the Maharashtra Casinos Act into force even though it may not be up to the court to direct the state government to enforce a statute. According to the said statute, the date on which it should be brought into force is left to the state government's discretion. ◀

