

January 2024



ONLINE GAMING

Rules to Regulate the Sector

MeitY introduced new rules to regulate online real money games in India.

Key features:

- Certain online games allowed – (i) permissible online real money game (PORMG), i.e., a game where a user deposits cash or kind with the expectation of earning winnings on the deposit, or (ii) any other online game that is not an online real money game.
- Regulations introduced for PORMG and online gaming intermediaries, ie, entities that enable their users to access one or more online games.
- Vest MeitY with the power to extend such regulations applicable to PORMG to other online games as well.
- Designating Self-Regulatory Bodies (“SRB”) for approving online real money games after being satisfied that the game is not involved in wagering, and the game and the intermediary are adhering to prescribed obligations.
- However, MeitY has currently halted the process of designating SRBs.

Our detailed analysis on this subject is available, click [here](#) and [here](#).

Central Government Notifies 28% Goods and Services Tax (GST) on Online Gaming

India imposed a 28% GST on online gaming, casinos and horse racing via an amendment in tax regulations.

Key features:

- 28% GST applicable to full face value of the amounts paid, payable to, or deposited with, the online gaming platforms (irrespective of the nature of the game). Multiple states have notified the implementation of the GST rate in the respective states.
- Amendment applicable to Indian as well as foreign gaming operators. Foreign operators need to register with Indian GST authorities. Failure to obtain such registration may result in blocking of the websites of foreign operators.
- Implementation of GST is prospective.
- Several gaming companies in India have received notices for short payment of GST in the past, for tax prior to notifying date of the 28% GST. Some of these tax notices have been challenged, awaiting the final decision on the validity of such retrospective tax demands.

Our detailed analysis on this subject is available, click [here](#).



DATA PROTECTION

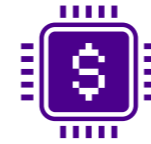
India’s First Comprehensive Data Protection Law

India enacted Digital Personal Data Protection Act, 2023. It establishes a comprehensive framework for processing (including collection and storage) of digital personal data.

Key features:

- Currently not in effect. Rules and regulations yet to be framed.
- Applies to processing of all digital “personal data” within India. “Personal data” is any data about an individual who is identifiable by or in relation to such data.
- Applicable to processing outside of India if such processing is in connection with any activity related to offering of goods or services to Data Principals (data subjects) within the territory of India.
- Prescribes notice and consent requirements.
- Rights of data principals – Right of access to your personal information, right of correction and erasure, grievance redressal, right to nominate.
- Special provisions for children’s personal data.

Our detailed analysis on this subject is available, click [here](#).



FINTECH

Key Regulatory Updates in India’s Fintech Sector

Several regulatory developments were introduced in India’s fintech landscape.

Key updates:

- A new framework for regulating cross-border payments for e-commerce transactions by introducing the Regulations for Payment Aggregators – Cross Border.
- RBI issued Master Directions on Outsourcing of Information Technology Services to regulate outsourcing activities by RBI-regulated entities such as banks, non-banking finance corporations, and certain other financial institutions.
- The Ministry of Finance extended the scope of the Prevention of Money Laundering Act, 2002 to virtual assets service providers. The extended scope applies to exchanging virtual digital assets with fiat currencies, transferring and safekeeping of cryptocurrencies, and participating in any financial services related to virtual digital assets.
- RBI released draft directions consolidating and harmonizing the existing directions, guidelines and any other instructions relating to outsourcing services in financial services. It is likely to be released in 2024.

Our 2023 Fintech Wrap is available [here](#).



OTHERS

Guidelines on Prevention and Regulation of Dark Patterns

India implemented Guidelines on Prevention and Regulation of Dark Patterns, 2023.

Key features:

- Prohibit the use of any dark patterns which, in simple words, is the practice of designing the user interface to mislead or trick users into doing something they originally did not intend or want to do, amounting to a misleading advertisement or unfair trade practice or violation of consumer rights.
- Applicable to all the platforms (including foreign platforms) that systematically offer goods or services in India.
- Lists specified dark patterns – False Urgency, Basket Sneaking, Confirm Shaming, Forced Action, Subscription Trap, Interface Interference, Bait and Switch, Drip Pricing, Disguised Advertisement, Nagging, Trick Question, SaaS Billing and Rogue Malware.

New Telecom Law

India enacted the Telecommunications Act, 2023 (“Telecom Act”).

Key features:

- Applicable to any person who intends to provide telecom services, establish, operate, maintain or expand telecommunication network, or possess radio equipment.
- The term “telecommunication” refers to transmission of ANY messages, including transmission by wire, radio, optical or electro-magnetic systems.
- The Indian Telecom Minister clarified that the over-the-top communication services will not be covered by the Telecom Act, However, the scope of the Telecom Act is broad enough for the Central Government to do so without amending the law.
- The Telecom Act is extra-territorial.

Smoking Warnings on OTT Platforms

The Cigarettes and Other Tobacco Products Rules, 2004 were amended mandating OTT platforms to display anti-tobacco warnings, health spots, and disclaimers in any program depicting smoking.



Watch List 2024

Draft Broadcasting Services (Regulation) Bill, 2023 to be Passed in Parliament

Ministry of Information and Broadcasting have released a draft version of Broadcasting Services (Regulation) Bill, 2023 in November 2023.

Key features:

- Consolidates legal framework for the broadcasting sector.
- Provides obligations for OTT platforms as well.
- Creates Content Evaluation Committees and a Broadcast Advisory Council for adhering to self-regulation, program code and advertisement code for different Broadcasting Network Operators.
- Lays down penalty structure linked to the financial capacity of the entity to ensure equity and fairness.
- Provides accessibility guidelines to address concerns related to the specific needs of persons with disabilities.

Guidelines on Greenwashing

The Ministry of Consumer Affairs is working on guidelines on greenwashing to curb the practice of unsubstantiated environmental claims.

Digital India Act

The government is likely to bring in a comprehensive law dealing with the digital ecosystem, currently being termed the Digital India Act (DIA).

Still in the early stages of drafting, the following features are likely to be reflected in the DIA:

- The objective is to ensure online safety, trust and accountability, open internet, and regulations for future emerging technologies (such as artificial intelligence and blockchain technologies).
- Reports have surfaced that DIA may do away with the concept of “safe harbour” for intermediaries (exemption from liability provided to platforms for hosting third-party content).

Regulation of Deepfakes

With concerns relating to misuse of deepfakes growing, India is considering amending certain provisions of Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

It will specifically include provisions requiring social media companies to make reasonable efforts to act against deepfakes.

Regulation of Digital Competition

In 2023, Committee on Digital Competition Law (DCA) was set up to prepare a report on whether a special law is required to regulate competition issues pertaining to Bigtech companies.

The report is expected to be finalized soon:

- DCA aims to identify and regulate Systemically Important Digital Intermediaries (SIDIs).
- DCA will establish an ex-ante regulatory framework to prevent SIDIs from engaging in anti-competitive practices.

E-Commerce Policy

The E-Commerce Policy has been in the works for some time and is in the final stages of approval.

E-Commerce Policy is likely to:

- Equipped to prepare strategies for providing a conducive environment for e-commerce sector with a streamlined regulatory framework.
- Address six areas of the ecommerce ecosystem: data, infrastructure development, e-commerce marketplaces, regulatory issues, stimulating the domestic digital economy, and export promotion through e-commerce.