

# Gaming Law Wrap

February 20, 2014

## INDIA'S LEGAL BETS & STAKES OF 2013

### Legislative Updates:

- Goa to have a gaming commission.
- Only tourists with a permit to be allowed in local casinos in Goa under proposed amendments.
- New anti-money laundering laws in Goa to impose strict KYC norms on casinos.
- Punjab to allow betting on horse racing and online lotteries.

### Case Updates:

- Karnataka High Court states that no licenses are required if poker is played as a game of skill.
- Supreme Court to decide if Rummy can be legally played for stakes.

The year 2013 had been an active and exciting year in India for gaming industry on various fronts. In this newsletter, we bring to you a snapshot of some of the key changes and developments in the gaming and gambling laws of India over the past year.

While this newsletter covers the recent developments in brief, our research paper titled "*Legal Stakes in Gaming- A Primer on Indian Laws*" will provide you a detailed insight and an broader overview of the gaming laws of India and is available [here](#). In addition to this, our publication titled "*Social & Casual Gaming in India - A Primer on Relevant Indian Laws*" which was published in collaboration with NASSCOM addresses the social gaming laws in India and is available [here](#).

### LEGISLATIVE UPDATES

#### Goa will have a gaming commission

Gaming, and gambling in particular, is regulated and even prohibited by state specific laws in most states in India<sup>1</sup>. While there is no requirement for a regulatory authority in the states that prohibit gaming, the State of Goa was the first to propose the idea of a regulatory authority for the purpose of governing gaming activities, among the states that permit and regulate gaming.

The much awaited demand for an independent gaming regulator seems to be finally materializing in the form of the Goan Gaming Commission, an independent regulatory body on the lines of various international gaming regulators, which is proposed to be set up to monitor the activities of the casinos. It is proposed that the role of the Commissioner would include keeping an overall check and otherwise exercise control over the games conducted in designated places along with issuing tourist permits to those desirous of entering gaming areas. The tourist permits have been necessitated by the Government's proposed policy of prohibiting locals from entering casinos (*discussed in detail below*). Interestingly, the proposed amendment also grants, the Commissioner, the power to order closure and to seal any place in a five-star hotel or to take custody of any vessel where gaming takes place. This section is widely worded granting discretionary power upon the Commissioner, which may lead to disputes in the future regarding the conditions in which such power may be exercised. The Goa Government has introduced this change via the **Goa Public Gambling (Amendment) Act, 2012** which is expected to be notified soon.

#### No entry! – Stricter casino regulations

The 2012 amendment in Goan law also proposes to ban the entry of local Goans into casinos and only allows tourist to enter such casinos after having obtained a tourist permit. A tourist has been defined as a person or a group of persons, who are at least 21 years old and also includes pilgrims who are on a visit to the State of Goa, and not domiciled or permanently residing in the State of Goa,

News reports suggest that new rules regulating gaming in Goa, and the formation of the Goan Gaming Commission may be notified as early as February 28, 2014<sup>2</sup>.

#### Identification please! – New anti-money laundering guidelines

The year 2013 also witnessed the issuance of further guidelines the **Goa Anti-Money Laundering and Financing of Terrorism Guidelines, 2013**<sup>3</sup> under the central legislations of Prevention of Money-Laundering Act, 2002 and the Prevention of Money-Laundering (Maintenance of Records) Rules, 2005 imposing strict Know-Your-Customer (KYC) norms on the casinos to verify the identity of their customers. The guidelines also stipulate the requirement of the casinos reporting of all cash transactions of the value of more than Rs.10 lakhs or its equivalent foreign currency, all series of cash transactions integrally connected to each other which amount to the above valuation where such

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### Analysing SEBI's Consultation Paper

series of transactions take place within one calendar month, counterfeit currency transactions and all suspicious transactions whether or not made in cash to the Financial Intelligence Unit – India, Ministry of Finance, Government of India.

### Destination Punjab – betting on horse races and online lottery allowed

News reports suggest that the government of Punjab has cleared the decks for allowing betting on horse racing in Punjab by passing the **Punjab Horse Race (Regulation and Management) Bill, 2013** which awaits notification<sup>4</sup>. The government intends to start a turf club in the Public Private Partnership (PPP) model and also the Punjab Turf Club Regulatory Authority to oversee operations of the race course operations. The state cabinet had also approved the online lottery system<sup>5</sup>, to be regulated as per the provisions of the central Lotteries Regulation Act, 1998 and Punjab State Lotteries Rules, 1998, becoming only the third Indian state to do so after Goa and Sikkim.

However, it seems that the move to launch online lottery has failed to yield desired results, with lottery companies staying away from the bidding process citing “tough” conditions set by the state government and seeking relaxation of conditions pertaining to license fee and bid processing charges<sup>6</sup>.

### Beware of Bitcoins

Internationally more and more gaming websites are accepting bitcoins and such other virtual currencies. However, the Indian banking regulator, the Reserve Bank of India, has cautioned users of such virtual currencies against the “*potential financial, operational, legal, customer protection and security related risks*”, while highlighting the lack of a regulatory authority or regulatory approvals required for the transfer and acceptance of these currencies<sup>7</sup>. The position on virtual currencies is yet to get crystallised in India.

### CASE SUMMARIES

#### Hold'em not! – playing poker as a game of skill

There is no requirement for a license under the applicable laws in the state of Karnataka, to run a society or a recreational club, for the conduct of skill based games, for the benefit of “members” of such society or recreational club.<sup>8</sup> However, as and by way of abundant caution, societies and recreational clubs have in the past approached the police and other relevant authorities in order to inform them of their intention to conduct such skill based games, and obtain a written certificate from the authorities, stating that they have no objection to the opening of the club and conduct of such games.

Karnataka High Court in the case of **Indian Poker Association and Ors. v. State of Karnataka and Ors.**<sup>9</sup> confirmed that in the state of Karnataka “*if the game of poker is played as a game of skill, license is not contemplated*”. The Court did not go into the substantial merits of whether poker *per-se* is a game of skill under Indian laws. While on one hand the court said that no specific license or permission required in Karnataka for conducting the game of poker if it played as a game of skill, on the other hand it clarified that the enforcement authorities (concerned Police Departments) have all rights to take appropriate action under law if it is found that members and / or the club are indulging in illegal activities under the guise of recreational activities.

Given the large number of online poker websites offering their services to Indian customers or looking to offer the same, such decisions are helpful to gauge the mindset of the India judiciary while evaluating the activities of clubs and websites hosting poker tournaments.

#### Can you take stakes in rummy? – Supreme Court to decide

The issue of whether profit can be made from offering the game of Rummy (which is a game of skill, and consequently from other games of skill) may finally be settled by the Supreme Court in a matter that has come before it in **Mahalakshmi Cultural Association v. State of Tamil Nadu**<sup>10</sup> (“*Mahalakshmi Cultural Association case*”).

This is an appeal filed against the order of the Madras High Court before the Supreme Court by Mahalakshmi Cultural Association (“Association”). To give a brief background, the Inspector of Police, Chennai raided the premises of Association on the grounds that the premise of the Association was being used for gambling and that the members were playing Rummy with stakes. A case was accordingly registered against the Association. Aggrieved, the Association filed a Writ petition for seeking directions to forbear the police from *inter alia* interfering with the activities of the Association in any manner, including playing 13 cards Rummy with or without stakes. The said writ petition was disposed of by the court in favor of the Association, on the grounds that Rummy is a skill based game and hence is not illegal. Certain directions were also issued to the police in this case. It was this order of the single judge that had been challenged by the Appellants (Police) in the writ appeal before the Madras High Court, where the court has *inter alia* held that in the event the club / association allows its members or guests to play Rummy with stakes or make any profit or gain out of such play, the police has the authority to invoke the provision of Chennai City Police Act.

Pending the hearing of the appeal on merits, the operation of the relevant contentious parts of the Madras High Court Order was stayed by the Supreme Court, which means that the Madras High Court order is not effective as of date. It is expected that the Supreme Court will pronounce its final judgment in 2014. Once the matter is decided, the judgment of the Supreme Court, being the apex court, will be binding on all states which have adopted a gaming legislation similar to the gaming legislation interpreted by the Supreme Court in the Mahalakshmi Cultural Association case.

Though the Supreme Court is yet to give its final verdict, the Karnataka High Court has in a recent judgment in the case of **Kirana S. and Ors. v. State of Karnataka and Anr.**<sup>11</sup> reaffirmed the position that collection of commission/stakes in Rummy is not prohibited and ordered the quashing of criminal proceedings against those playing Rummy with stakes.

While the said appeal pending before the Supreme Court pertains to playing Rummy with stakes in physical premises, certain online platforms offering Rummy have also filed Special Leave Petitions before the Supreme Court challenging the Madras High Court order and the said cases have also been combined with the appeal pending before the Supreme Court.

### Winning ticket – liberal treatment of lotteries

In the state of Punjab, the Punjab and Haryana High Court has adopted a liberal view regarding the organisation of lottery schemes by the State in **Santokh Singh v. State of Punjab and Ors.**<sup>12</sup>. The question arose with regard to the interpretation of the Lotteries (Regulation) Act, 1998 and the rules thereunder, where the petitioners argued that a State should not be allowed to conduct more than one lottery scheme per day, keeping in line with the public policy objectives of the legislation. The court found that while the conduct of lotteries is regulated, it is not prohibited, and allowed the state of Punjab to conduct 28 weekly lottery schemes.

The High Court of Sikkim while hearing a case challenging the applicability of service tax on lotteries, held in the case of **Future Gaming Solutions Private Ltd. v. Union of India**<sup>13</sup> that a lottery is not a tangible thing but only a chance for a prize and, therefore, sale of a lottery ticket is only a sale of that chance. The court further held that virtue of a lottery being an 'actionable claim' the same would be excluded from the definition of 'service' and would thus not be subject to service tax.

*[Note: Under the Constitution of India, the central legislature has the power to enact laws with respect to lotteries. Lotteries have been expressly excluded from the purview of the Gaming Legislations and are governed by the central law Lotteries (Regulation) Act, 1998 under which the Lottery (Regulation) Rules 2010 ("Central Lottery Laws") and state specific rules have been framed ("Lottery Laws"). The Central Lottery Laws allow the state governments to organize, conduct or promote a lottery, subject to the conditions specified in the Central Lotteries Laws. The 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 organizing State. However, Lottery is banned in certain states in India, for example Madhya Pradesh.]*

– **Smitha Krishna Prasad, Kartik Maheshwari, Ranjana Adhikari & Gowree Gokhale**

You can direct your queries or comments to the authors

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<sup>1</sup> The states where gambling is legal are Goa, Sikkim and the Union Territory of Daman and Diu.

<sup>2</sup> <http://www.financialexpress.com/news/govt-to-ban-local-goans-from-entering-casinos/1214675>.

<sup>3</sup> <http://www.fiuindia.gov.in/downloads/GoaNotification.pdf>.

<sup>4</sup> <http://www.tribuneindia.com/2013/20131102/main2.htm>.

<sup>5</sup> <http://www.thehindu.com/todays-paper/tp-national/tp-newdelhi/punjab-cabinet-allows-online-lotteries/article4761306.ece>

<sup>6</sup> <http://www.thehindubusinessline.com/news/states/online-lottery-system-fails-to-attract-interest-in-punjab/article5038574.ece>.

<sup>7</sup> [http://rbi.org.in/scripts/BS\\_PressReleaseDisplay.aspx?prid=30247](http://rbi.org.in/scripts/BS_PressReleaseDisplay.aspx?prid=30247)

<sup>8</sup> Blue Line Video Games Associates v. State of Karnataka and Ors., Writ Petition No. 3415 of 2013 (GM-Police); Balaji Recreation Association v. State of Karnataka and Ors., Writ Petition No. 2419 of 2013 (GM-Police).

<sup>9</sup> Writ Petition Nos. 39167 to 39169 of 2013 decided on October 8, 2013.

<sup>10</sup> SLP (Civil) 15371/2012.

<sup>11</sup> Criminal Petition No. 7648 of 2013.

<sup>12</sup> Civil Writ Petition No.3575 of 2013 decided on October 29, 2013.

<sup>13</sup> Writ Petition (Civil) No. 32 of 2012 before the Sikkim High Court.

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