

# Gaming Law Wrap

April 10, 2023

## NEW DAWN FOR INDIA'S ONLINE GAMING INDUSTRY WITH INTRODUCTION OF CENTRAL RULES FOR REAL MONEY GAMES

- The Ministry of Electronics and Information Technology ("MeitY") has introduced regulations primarily for online real money games, effective April 6, 2023.
- The *Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021* ("IT Rules"), are amended to include these regulations ("Amendments")<sup>1</sup>.
- The Amendments signal a watershed moment for India's online real money gaming industry that has long sought central regulations in lieu of State-wise laws. While the Amendments provide Central-level regulations, they do not replace the State-wise anti-gambling laws. Hence, State-wise action may continue notwithstanding the Amendments.
- The Amendments propose a light-touch, co-regulatory framework between MeitY and registered self-regulatory bodies ("SRB"), in line with the Government's overall objective of reducing prescriptive laws and enhancing ease of doing business in India.
- The Amendments dilute / relax certain obligations for online gaming intermediaries ("OGI") than the earlier draft suggested by MeitY in January ("Proposed Amendments") However, certain obligations the industry had objected to under the Proposed Amendments, such as rigorous KYC norms, have been retained.
- On the downside, some of the provisions of Amendments are vague, as discussed later.

In this hotline, we will cover some of the key features of the Amendments in terms of their applicability, key obligations for gaming operators and self-regulatory bodies, and forecast their implications on the industry. We have also identified aspects that could be clarified by MeitY through FAQs.

### 1. Permissible Games

The Amendments specify certain online games as 'permissible'.

A 'permissible online game'<sup>2</sup> is defined to mean (1) *a permissible online real money game* or (2) *any other online game that is not an online real money game*.

An 'online game'<sup>3</sup> is defined as a game that is offered on the internet and is accessible by a user through a computer resource or an intermediary. In our view, in this definition the addition of the expression "*or an intermediary*" as such was not required.

Specific regulations are provided for permissible online real money games ("PORMG"). *For other online games there are limited compliances under the IT Rules. MeitY has the power to extend additional compliances applicable to online real money games to online games as well, as discussed hereafter.*

- A '*permissible online real money game*'<sup>4</sup>("PORMG"): This needs to satisfy two criteria:
  - It needs to be an '*online real money game*',<sup>5</sup> i.e. '*online game where the user makes a deposit in cash or kind with the expectation of earning winnings on that deposit*.' 'Winnings' is defined in relation to 'cash or kind'.<sup>7</sup> Thus, games where there are no deposits and winnings do not fall in this category.
  - Such online real money games need to be verified by an online self-regulatory gaming body (as explained later).

Accordingly, the Amendments treat (1) online real money games registered with self-regulatory bodies, and (2) online games which are not real-money games, (i.e., games where there is no deposit or winnings), as permissible under their scope.

Clarity is required on the meaning of '*in cash or kind*' under the definition of online real money game. Traditionally, gaming laws in India and internationally<sup>7</sup> have used the terminology of '*money or money's worth*' to include only items with real-world value. "Cash or in kind" leaves scope for ambiguity in terms of what is covered, i.e., whether points, in-game tokens, etc., which don't have value outside the game environment are included.

### 2. Power to notify apply certain obligations to online games<sup>8</sup>

The MeitY has the power to extend the following obligations as applicable to PORMG to other online games as well, in the interest of the sovereignty and integrity of India or security of the State, friendly relations with foreign States, public order, or preventing user harm.

- It may direct an OGI in respect of such online game to observe obligations under certain clauses<sup>9</sup> as if it is a PORMG, with the necessary changes;
- It may specify the period within which the OGI must observe the obligations referred to in point (a) above.

Where an online game is notified under point 2(a) above, the provisions of Rule 4A of the Amendment (i.e., verification of online real money games) shall apply to all such online games as they apply to PORMG.<sup>10</sup>

#### ■ Preventing user harm

'User harm' has been defined widely to mean any effect which is detrimental to users. This provision is vague in terms of what threshold of harm may be.

### 3. Definition of online gaming intermediary

The Amendments introduce regulations applicable to an OGI, defined as '*an intermediary*'<sup>11</sup> that enables the users of its computer resource to access one or more online games.'

■ Classification of online gaming intermediaries

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### Scope of judicial interference and burden on application for

The definition of OGI presupposes that such entities are intermediaries.

An 'intermediary' is essentially a passive transmitter of information. Intermediaries are defined under the *Information Technology Act, 2000* ("IT Act") in relation to electronic records, as *any person who on behalf of another person receives, stores, or transmits records or provides services with respect to that record*. Intermediaries include telecom service providers, social media platforms, online marketplaces, etc. Under the IT Act, intermediaries must not initiate transmissions, select receivers of transmission, and select/modify the information contained in a transmission.<sup>12</sup>

Arguably, online gaming platforms that publish their own games, and select/modify the content of their games themselves, are not 'intermediaries' to begin with. However, the Amendments treat them as intermediaries under the above definition, and extend obligations applicable to intermediaries to OGIs as well.

#### b) Applicability to other intermediaries

The current definition of '*online gaming intermediary*'<sup>13</sup> suggests that intermediaries that do not publish games themselves, but *enable users to access online games* offered by gaming platforms through their computer resource will also be treated as OGIs and regulated as such under the Amendments.

Several intermediaries may play a role in the accessibility of an online game to a user, such as the internet service provider, the telecom service provider, web hosting service providers, cloud service providers, social media platforms hosting clickable links/redirection to online gaming platforms.

Under the current definition, all the above platforms can be argued to '*enable users to access online games*' and be treated as OGIs under the IT Rules. This does not appear to be MeitY's intention, in view of the obligations applicable to OGIs which have a direct relationship with the user to offer their games, discussed subsequently. However, this aspect could be clarified through FAQs.

#### 4. Verification of Users<sup>14</sup>

OGIs are required to identify users and verify their identities before accepting any deposit in cash or kind from any user for a PORMG.

The proviso to the rule prescribes that the procedure to carry out such identification and verification shall be the Master Direction – Know Your Customer (KYC) Direction, 2016<sup>15</sup> ("**KYC Master Directions**").

##### a) Trigger for KYC

The Proposed Amendments had prescribed that the trigger for KYC was at the *time of commencement of the account-based relationship* between the OGI and the user. However, concerns were raised by the industry that the trigger should be at the time of first deposit, as operators may offer free to play games, and such operators should not be subject to rigorous KYC.

The Amendments have therefore allowed the KYC to be carried out *before accepting any deposit in cash or kind*.

##### b) Threshold for carrying out KYC

The KYC Master Directions prescribe onerous customer identification, due diligence and monitoring procedures for 'regulated entities', which are banks, financial institutes, NBFCs, PSPs, etc. However, OGIs do not operate in the same manner as such regulated entities. They simply provide wallet functionality for users to make deposits and earn winnings.

Hence, it appears inappropriate to introduce onerous obligations applicable to such regulated entities such as banks, etc., in relation to OGIs.

It was also expected<sup>16</sup> that the graded approach followed for pre-paid payment instruments ("**PPIs**") under the RBI's Master Directions on Prepaid Payment Instruments may be adopted instead, wherein limited KYC was carried out for PPI holders of Small PPIs (i.e., PPIs upto INR 10,000), and full KYC is only carried out in case of PPIs beyond the threshold amount of 10,000.

However, it appears these recommendations have not been adopted.

#### 5. Grievance Redressal Mechanism of OGI

OGIs are required to appoint a grievance officer who must be resident in India.<sup>17</sup>

The OGI is required to prominently publish<sup>18</sup> the name of the grievance officer ("**GO**") and their contact details, as well as the mechanism to make a complaint in relation to certain specified obligations, in a clearly visible manner on their home page, home screen, or web page or app screen directly accessible from the home page/home screen.<sup>19</sup>

##### a) Nature of grievances

Users may make grievances about the following matters:<sup>20</sup>

- Non-compliance by the intermediary to appoint a GO;
- The requirement for OGIs to include specific information in their terms and conditions;
- The requirement for OGIs to identify users and verify identity prior to acceptance of deposits;
- Financing provided by the OGI, or enabling of financing by third parties of OGIs to play online games, in violation of the prohibition in this respect;
- Any other grievance related to the computer resource made available by the OGI.

The GO must also receive and acknowledge any order, notice, or direction issued by Government bodies and courts.

##### b) Timeline for grievances

The GO must acknowledge a complaint within 24 hours and resolve it within 15 days from the date of its receipt.<sup>21</sup>

##### c) Appeals from Grievance Officer

Persons aggrieved by the decisions of the GOs of the OGI, or whose grievances are not resolved within the timeline specified, may appeal to a Grievance Appellate Committee ("**GAC**") established by the Central Government, within 30 days from date of receipt of communication from the GO.<sup>22</sup>

Currently, three GACs have been established by the Central Government.<sup>23</sup>

GACs are required to deal with appeals expeditiously and endeavor to resolve appeals finally within thirty calendar days from the date of receipt of the appeal.

OGIs and SRBs are required to comply with the orders of the GAC and upload a report to that effect on their websites.<sup>24</sup>

Interestingly, appeals from decisions of the GO of the OGI are directly heard by the GAC, instead of by the SRB at the first instance. The Proposed

appeals from decisions of the GO or the OGI are directly heard by the SRB, instead of by the GAC at the first instance. The Proposed Amendments have required SRBs to hear appeals against decisions of the GO of their OGI members<sup>25</sup>. It is unclear why this process has been changed under the Amendments.

The grievance redressal mechanism of publishers under the IT Rules as well contemplate a three-tier grievance redressal mechanism with (1) publishers at the first instance, (2) self-regulating bodies at the second instance, and (3) the Oversight Mechanism by the Central Government at the third instance.<sup>26</sup>

The hearing of appeals by the GAC directly may result in lengthier grievance redressal resolution for users, as the GAC also hears appeals from the GO of the SRB, as well as grievances against intermediaries' GO<sup>27</sup>. In addition, there is no strict time period for grievance redressal by the GAC.

#### 6. Prohibition on providing Financing and enabling Third-Party Financing<sup>28</sup>

OGIs are prohibited from financing through credit, or enabling financing to be offered by a third party, for playing online games.

It appears this prohibition has been introduced to curb users taking loans and financially overextending themselves while playing online games.

#### 7. Designation of self-regulatory bodies

The MeitY is empowered to designate as many SRBs as it may consider necessary for the purpose of verifying online games as PORMG under the IT Rules as also discharge functions such as grievance redressal for members, ensuring reporting by members, maintaining a list of verified PORMG and members list, as subsequently discussed<sup>29</sup>

SRBs are required to:

- a) Be company registered under Section 8 of the Companies Act, 2013 (i.e., non-profit companies)<sup>30</sup>;
- b) Have membership representative of the gaming industry<sup>31</sup>;
- c) Have members who have been offering and promoting online games in a responsible manner<sup>32</sup>;
- d) Have a board of directors comprised of individuals of repute and *do not have conflict of interest*, and possess special knowledge / practical experience suitable for the performance of functions of the SRB. The Amendments also prescribe what type of experience/qualifications members of the board must have<sup>33</sup>.

MeitY may, for reasons to be recorded in writing, suspend or revoke the designation of the SRB after providing it with an opportunity of being heard.<sup>34</sup>

However, in such case, MeitY is also empowered to give any interim directions it believes necessary at the same time or at any subsequent time, to an intermediary, or a class of intermediaries, in respect of online games verified by SRB, in the '*interest of the users of any online game*'.<sup>35</sup>

The SRBs charter documents, i.e., the memorandum of association and articles of association, are also required to contain certain provisions:

- a) The performance of functions of SRB, including grievance redressal, in a manner *free from conflict of interest*, and *at an arm's length from its members*<sup>36</sup>;
- b) Disclosure and reporting by, and accountability of members in relation to online games verified by the SRB<sup>37</sup>;
- c) Clear and relevant criteria consistent with the IT Rules for acceptance and continuation of members, and revoking/suspension of members after giving the member an opportunity of being heard<sup>38</sup>;
- d) The requirement that any amendments to the above terms being carried out only with the approval of the MeitY<sup>39</sup>;

The entity must also have sufficient capacity, including financial capacity, to perform its functions as an SRB under the IT Rules.<sup>40</sup>

#### ■ *Members representative of online gaming industry*<sup>41</sup>

The SRBs are required to have members *representative of the gaming industry*. It is unclear whether an OGI itself can be a member or organizations representing the gaming industry may be members. Separately, '*representative of the gaming industry*' could relate to either the number of OGIs or OGIs representing a variety of games.

#### ■ *Conflict of interest of Board of Directors; SRBs operating at arm's length from members*<sup>42</sup>

One of the key concerns raised by the operators during the stakeholder consultations following the release of the Proposed Amendments was the SRBs remain impartial, and not be controlled by other industry players. Operators highlighted concerns with submitting confidential game formats to SRBs for verification, which may be controlled by competitors.

It appears that in recognition of these concerns, the Amendments require the board of directors not to have conflicts of interest, and the SRB operating in a manner free from conflicts of interest and '*at an arm's length*' from its members.

#### 8. Framework of SRB<sup>43</sup>

SRBs are also required to publish their framework for verifying an online real money game, which must include the following:

- a) The measures to ensure that such online real money games are not against the sovereignty and integrity of India, security of the State, friendly relations with foreign States or public order<sup>44</sup>;
- b) The safeguards against user harm, including self-harm and psychological harm<sup>45</sup>;
- c) Measures to safeguard children, including measures for parental or access control and classifying online games through age-rating mechanism, based on the nature and type of content<sup>46</sup>;
- d) The measures to safeguard users against the risk of gaming addiction, financial loss and financial fraud, including repeated warning messages at higher frequency beyond a reasonable duration for a gaming session and provision to enable users to exclude themselves upon user-defined limits being reached or money spent.<sup>47</sup>

#### 9. Timeline for compliance

OGIs are not required to comply with the obligations under the IT Rules until the expiry of three months from the date on which at least three SRBs have been designed by MeitY.<sup>48</sup>

#### 10. Verification of online games; suspension/revocation of verification

On application being made by OGLs, the registered SRBs are required to verify online real money games as PORMG<sup>49</sup> after being satisfied th

a) The online real money game does not involve wagering on any outcome;<sup>50</sup> and

b) The OGI and the online game are in compliance with (1) the obligations under Rule 3 and Rule 4, (2) provisions of law relating to minors' competency to contract, and (3) framework of the SRB.<sup>51</sup>

The SRBs are vested with the discretion to allow release of online real money games immediately for a period of three months based on initial information furnished by applicants, pending a more detailed inquiry.<sup>52</sup>

After completion of the inquiry during the 3 month period, the SRB will either declare the online real money game as a PORMG, or inform the applicant with reasons in writing that the online games do not meet the criteria under the IT Rules.<sup>53</sup>

SRBs may also, after giving applicant member an opportunity of being heard and for reasons communicated in writing, suspend or revoke verification, if satisfied that the online real money games are not in compliance with the IT Rules.<sup>54</sup>

In addition, where the MeitY believes that a verification of a PORMG is not in conformity with the IT Rules, it may provide the SRB with an opportunity of being heard, and thereafter communicate the fact of such non-conformity to the SRB, and direct them to rectify the same.<sup>55</sup>

a) Criteria for verification of online real money games

■ *Wagering on outcomes of games*<sup>56</sup>

One of the criteria for verification of online real money games is that such game '*does not involve wagering on any outcome.*' This expression is not further defined. The dictionary meaning of the term wager is in relation to uncertain events, i.e., '*something (such as a sum of money) risked on an uncertain event*<sup>67</sup>, and '*an amount of money that you risk in the hope of winning more, by trying to guess something uncertain, or the agreement that you make to take this risk.*<sup>68</sup>

Accordingly, it can be argued that the above criteria must be read to mean staking money on uncertain events only.

Else, certain games recognized as games of skill by Indian courts could arguably involve wagering on outcomes (albeit through the exercise of user skills).

For instance:

■ **Betting on horse racing:** Betting on horse racing involves betting on the performance of a horse. This has been held to be a game of skill by the Supreme Court<sup>69</sup>.

The language of the above criteria appears to bar the above-mentioned games of skill from being registered by SRBs. Accordingly, this language should be clarified. The possible language could have been "The online real money game does not involve gambling".

■ *Online games in compliance with Rule 3*<sup>61</sup>

Online games are required to be in compliance with the obligations under Rule 3. Rule 3(1) requires that online games do not '*violate any law for the time being in force.*' This must be read to include State laws that prohibit betting/wagering on games of chance. Accordingly, OGLs will not register games of chance.

1. Providing a demonstrable and visible mark of verification<sup>62</sup>

The Amendments require that OGLs display a demonstrable and visible mark of verification stating that the game is verified by the SRB as permissible under the IT Rules.

12. Blocking by MeitY

The MeitY may issue a blocking order in respect of a PORMG in exercise of its powers under Section 69A of the IT Act if it believes necessary in the interest of the sovereignty and integrity of India, defence of India, security of the State, friendly relations with foreign States, public order, or prevention of incitement of offences relating to these grounds.

MeitY has previously blocked gaming apps under Section 69A<sup>63</sup>.

However, in such cases, it will take into account the list of verified PORMG published by the SRB on its website and the details of verification.

13. Grievance Redressal Mechanism of SRB

SRBs are required to appoint grievance officers and to publish their framework for grievance redressal and the contact details of their GO in the same manner as OGLs discussed in point 5 above.<sup>64</sup>

Applicants aggrieved by SRBs' decisions with respect to verification of games, or any other matter related to such online real money game may make a complaint to the GO.<sup>65</sup>

The complaints are required to be acknowledged by the GO within 24 hours and resolved within 15 days from its receipt. GOs are also required to receive and acknowledge orders, notices, or directions issued by Government authorities or competent courts.<sup>66</sup>

Applicants who are aggrieved by the decision of the SRB's GO, or whose grievances are not resolved within the required time period, may appeal to the GAC within 30 days from receipt of communication from the GO.<sup>67</sup>

14. Furnishing of information to MeitY by SRB<sup>68</sup>

The MeitY may require an SRB to furnish information to the MeitY or disclose information on the SRBs' website/mobile application, or both.

15. Other obligations of SRBs

The Amendments require SRBs to publish and maintain on its website, mobile application or both<sup>69</sup>:

a) an updated list of all permissible real money games;

b) details of all such online games including the details of applicant, the dates and period of validity of the verification;

c) the reasons of verification of such online games;

d) the details of suspension or revocation, if any, of verification of any online real money game;

an updated list of all its present and former members;

f) the dates of their acceptance as member;

g) their corporate or business-related identity number;

h) other details of suspension or revocation of membership of any member.

In relation to (b), it is not clear whether the details of the format of the games will also need to be published. Often, the games offered by different OGLs may consist of similar generic names, but formats / game rules may be different. It is also unclear whether once a game format has been verified, whether operators offering the same game format can rely on the list published by the SRB.

#### 16. Applicability of due diligence obligations to OGLs under Rule 3, 3A, and Rule 4

The Amendments apply some of the due diligence obligations applicable to intermediaries to OGLs. Some of these obligations appear inappropriate in relation to OGLs.

##### a) Obligation to inform users not to publish, etc., certain information

Rule 3(1)(b) requires intermediaries, and OGLs, to inform users not to publish, share etc., certain specified information via their rules and regulations, privacy policy, and user agreements ("**User Terms**"), and make '*reasonable efforts, by itself, and to cause the user*' not to publish such information.

The information specified under this rule includes:

- Online games that causes user harm<sup>70</sup>;
- Is in the nature of an online game that is not verified as a permissible online game<sup>71</sup>;
- Is in the nature of an advertisement or surrogate advertisement or promotion of an online game that is not a permissible online game, or of any OGL offering such online game<sup>72</sup>;
- Violates any law for the time being in force.<sup>73</sup>
- Compliance with this rule by other intermediaries

The current language of Rule 3(1)(b) to make '*reasonable efforts, by itself, and to cause the user*' suggests that the obligation is for intermediaries to *preclude* users not to publish certain content / pre-censor content. Intermediaries cannot be required to pre – moderate content, or determine the legality of content, as this would contradict the very concept of intermediaries as passive transmitters of information.

In addition, intermediaries cannot be made liable to determine the legality of offering and advertising games (which are governed by State-specific laws) on their platforms. These involve complex determinations of fact and law, such as:

- Whether the online game has been verified as a permissible online game;
- Whether the online game is in compliance with applicable law;
- Whether the advertisement is a prohibited surrogate advertisement for a game that is *not* a permissible online game, or a valid brand extension;
- Whether a particular online game is being offered and advertised in only those Indian States where it is permitted;
- Whether claims being made with respect to eligibility, deposits, winnings, etc. are misleading in nature, or amount to an unfair trade practice, in contravention of the Consumer Protection Act, 2019 ("**CPA**") and the *Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022*, ("**Misleading Ads Guidelines**").

An intermediary will also be unable to determine whether a particular online game causes 'user harm,' which has been defined widely as '*any effect which is detrimental to a user or child, as the case may be.*'

##### b) Take down requests from State Governments

The information specified under Rule 3(1)(b) includes online games that causes user harm<sup>74</sup>, and information that violates any law for the time being in force.

Rule 3(1)(d) requires intermediaries to take down unlawful information stored, hosted or published on their platforms, upon receipt of notice from the '*Appropriate Government or its agency*' under Section 79(3)(b) of the IT Act.

The IT Act defines '*appropriate Government*' as the State Government with respect to any matter in the State List of the Constitution of India.<sup>75</sup> 'Betting and gambling'<sup>76</sup> is a State subject under the Constitution. Certain High Courts have also recognized that States may regulate games of skill.<sup>77</sup>

Certain State laws, such as Telangana and Andhra Pradesh treat even offering games of skill as a prohibited gambling activity<sup>78</sup>. Further, States may take different views on what is regarded as online games that '*cause users harm*,' due to the wide wording under the Amendments. Some States may apply a low threshold of harm.

Accordingly, even OGLs that register their games with the self-regulatory bodies may receive a take down order from a State Government under these provisions if the games are offered in those States. State Governments may point to the inclusion of the above categories of information under Rule 3(1)(b) as the source of their jurisdiction to seek takedown.

##### c) Appointment of multiple officers

Rules 4(1) (a), (b) and (c) of the Amendments require OGLs to appoint grievance officers, nodal contact person, and chief compliance officers.

- The chief compliance officer is responsible for ensuring compliance with the IT Rules. The chief compliance officer is required to be a key managerial personnel or other senior employee of the OGL and must be resident in India.
- The nodal contact person is responsible for 24X7 coordination with law enforcement agencies and officers to ensure compliance with order/requisitions made under law. The nodal contact person is also required to be resident in India.
- The resident grievance officer is responsible for receipt of complaints by the OGL. The grievance officer must also be resident in India.

However, it appears that the roles of Chief Compliance Officer, Grievance Officer and nodal contact person can be fulfilled by one person. This is because, in case of significant social media intermediaries, the rule specifies that the Chief Compliance Officer must be distinct from the nodal contact person.<sup>79</sup> However, there does not appear to be a similar restriction in case of OGLs.

In the case of social media intermediaries, the obligation to appoint such officers is limited to SSMLs with over fifty lakh registered users. However, for OGLs such appointments are required right from inception.

##### d) Other obligations for OGLs

The Amendments impose other obligations as well as also extend the other obligations applicable to intermediaries under Rule 3 and Rule 4 of the IT Rules to OGLs as well. Some of the key obligations are summarized below:

1. To display a demonstrable and visible mark of verification of such online games by an online gaming SRB<sup>80</sup>;
2. To inform the user of its rules and regulations, privacy policy, terms of service and user agreements as well as the following information relating to all such online games<sup>81</sup>:
  - policy related to withdrawal or refund of deposits<sup>82</sup>;
  - manner of determination and distribution of winnings<sup>83</sup>;
  - any other fees or charges payable by the user<sup>84</sup>;
  - the know-your-customer procedure followed by it to verify users' identities<sup>85</sup>;
  - the measures taken for protection of users' deposits<sup>86</sup>;
  - the framework for verifying an online real money game.<sup>87</sup>
1. To publish the physical contact address in India on its website, mobile application or both for the purposes of receiving communication<sup>88</sup>;
2. To implement an appropriate mechanism for receipt of complaints and grievances which enables the complainant to track the status of such complaints and grievances by providing a unique ticket number for the same<sup>89</sup>;
3. To enable users<sup>90</sup> to voluntarily verify their accounts by using an appropriate mechanism, including the active Indian mobile number of such users, and upon verification of such users' accounts, provide such user with a demonstrable and visible mark of verification visible to all users of the service<sup>91</sup>;
4. To identify and verify the identity of a user before accepting any deposit in cash or kind for a PORMG<sup>92</sup>;
5. To inform users periodically, and at least once every year, of their User Terms. If there is any change, then the same has to be informed, within 24 hours of such change being effective<sup>93</sup>;
6. To provide information under their control or possession to authorized Government agencies not later than 24 hours for the purpose of verification of identity or prevention, detection, investigation, or offences under law, or cyber security incidents<sup>94</sup>;
7. To not host, store, or publish and remove access to any unlawful information<sup>95</sup> prohibited under law within 36 hours of receiving actual knowledge in the form of a court order or on being notified by the appropriate government<sup>96</sup>;
8. To retain the user information collected for registration for a period of 180 days after any cancellation or withdrawal of such registration<sup>97</sup>;
9. To take all reasonable measures to secure its computer resource and information as prescribed in the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Information) Rules, 2011<sup>98</sup>;
10. To publish periodic compliance reports containing the details of complaints received and actions taken<sup>99</sup>;
11. To report cyber security incidents and share related information with the Indian Computer Emergency Response Team in accordance with the *Information Technology (The Indian Computer Emergency Response Team and Manner of Performing Functions and Duties) Rules, 2013*<sup>100</sup>;
12. To take reasonable measures to ensure accessibility of its services to users along with reasonable expectation of due diligence, privacy and transparency<sup>101</sup>;
13. To respect all the rights accorded to the citizens under the Constitution, including in the articles 14, 19 and 21.<sup>102</sup>

#### Proof in the Pudding: Implementation by SRB

The Amendments are not prescriptive in nature, and largely leave the regulation of online real money games to the SRBs. Hence, the success of the IT Rules will depend upon the extent to which SRBs introduce and enforce their frameworks. For instance, the Proposed Amendments required OGLs to obtain no-bot certificates and Random Number Generation (RNG) certificates and publish them on their websites. However, the Amendments have deleted this obligation, likely because the expectation will be for SRBs to introduce such measures.

While the introduction of the Amendments is a welcome development, they do not replace the State-wise anti-gambling laws. Hence, State-wise action may continue. As per reports, the industry has sought clarity in this respect, i.e., how the Amendments will safeguard operators from State action.<sup>103</sup> It appears that certain States are proceeding with enacting laws to prohibit skill gaming notwithstanding the Amendments.

— Raashi Vaishya, Tanisha Khanna & Gowree Gokhale

You can direct your queries or comments to the authors

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<sup>1</sup> See: <https://www.meity.gov.in/content/gazette-notification-vide-gsr-275e-dated-642023-regarding-amendments-it-intermediary>

<sup>2</sup> Rule 2(1)(qe)

<sup>3</sup> Rule 2(1)(qa)

<sup>4</sup> Rule 2(1)(qf)

<sup>5</sup> Rule 2(1)(qd)

<sup>6</sup> 'Winnings' is defined to mean '*any prize, in cash or kind, which is distributed or intended to be distributed to a user of an online game based on the performance of the user and in accordance with the rules of such online games.*'

<sup>7</sup> For instance, Singapore's Gambling Control Act 2022 uses the terminology "money or money equivalent" (Section 14). The UK's Gambling Act, 2005, defines 'prize' in relation to gaming to mean "money or money's worth."

<sup>8</sup> Rule 4C(1)

<sup>9</sup> The obligations under sub-clauses (ix) and (x) of clause (b) of sub-rule (1) of rule 3 and sub-rules (1), (5), (6), (7), (10) and clause (d) of sub-rule (11) of rule 4.



<sup>10</sup> Rule 4C(2)

<sup>11</sup> Rule 2(1)(qb)

<sup>12</sup> Section 79 - Exemption from liability of intermediary in certain cases

1[(1) Notwithstanding anything contained in any law for the time being in force but subject to the provisions of sub-sections (2) and (3), an intermediary shall not be liable for any third party information, data, or communication link made available or hosted by him.

(2) The provisions of sub-section (1) shall apply if-

(a) the function of the intermediary is limited to providing access to a communication system over which information made available by third parties is transmitted or temporarily stored or hosted; or

(b) the intermediary does not-

(i) initiate the transmission,

(ii) select the receiver of the transmission, and

(iii) select or modify the information contained in the transmission;

(c) the intermediary observes due diligence while discharging his duties under this Act and also observes such other guidelines as the Central Government may prescribe in this behalf.

(3) The provisions of sub-section (1) shall not apply if-

(a) the intermediary has conspired or abetted or aided or induced, whether by threats or promise or otherwise in the commission of the unlawful act

(b) upon receiving actual knowledge, or on being notified by the appropriate Government or its agency that any information, data or communication link residing in or connected to a computer resource controlled by the intermediary is being used to commit the unlawful act, the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner.

Explanation.-For the purposes of this section, the expression "third party information" means any information dealt with by an intermediary in his capacity as an intermediary.

<sup>13</sup> Rule 2(1)(qb)

<sup>14</sup> Rule 4(12)

<sup>15</sup> See: [https://www.rbi.org.in/Scripts/BS\\_ViewMasDirections.aspx?id=11566](https://www.rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=11566)

<sup>16</sup> [https://www.business-standard.com/article/economy-policy/meity-likely-to-approve-demand-for-graded-kyc-for-gaming-platforms-123022701218\\_1.html](https://www.business-standard.com/article/economy-policy/meity-likely-to-approve-demand-for-graded-kyc-for-gaming-platforms-123022701218_1.html)

<sup>17</sup> Rule 4(1)(c)

<sup>18</sup> Explanation to Rule 3(2)(a)(ii) - *"prominently publish" shall mean publishing in a clearly visible manner on the home page of the website or the home screen of the mobile based application, or both, as the case may be, or on a web page or an app screen directly accessible from the home page or home screen.*

<sup>19</sup> Rule 3(2)(a)

<sup>20</sup> Ibid

<sup>21</sup> Rule 3(2)(a)(i)

<sup>22</sup> Rule 3A

<sup>23</sup> [https://pib.gov.in/PressReleasePage.aspx?PRID=1894258#:~:text=The%20Grievance%20Appellate%20Committee%20\(GAC,unsatisfactorily%20addressed%20by%20Internet%20Intermediaries.](https://pib.gov.in/PressReleasePage.aspx?PRID=1894258#:~:text=The%20Grievance%20Appellate%20Committee%20(GAC,unsatisfactorily%20addressed%20by%20Internet%20Intermediaries.)

<sup>24</sup> Rule 3(3A)(7)

<sup>25</sup> Rule 4B(8) Every self-regulatory body registered under this rule shall establish a mechanism for timebound resolution of such complaints of users that have not been resolved by the grievance redressal mechanism of its member online gaming intermediary under sub-rule (2) of rule 3, and the provisions of rule 3A shall apply in respect of a complaint relating to an online gaming intermediary that is a member of such a self-regulatory body only after such a user has exhausted the opportunity to resolve it under such mechanism

<sup>26</sup> Rule 9(3), IT Rules

<sup>27</sup> See: [https://www.business-standard.com/india-news/grievance-appellate-committees-to-hear-plaints-against-gaming-srb-123040300991\\_1.html](https://www.business-standard.com/india-news/grievance-appellate-committees-to-hear-plaints-against-gaming-srb-123040300991_1.html)

<sup>28</sup> Rule 4(13)

<sup>29</sup> Rule 4A(1)

<sup>30</sup> Rule 4A(2)(a)

<sup>31</sup> Rule 4A(2)(b)

<sup>32</sup> Rule 4A(2)(c)

<sup>33</sup> Rule 4A(d) - The Board must consist of following members:

(i) an individual having special knowledge of or practical experience in the online gaming industry;

(ii) an individual having experience in promoting the interests of users of online games;

(iii) an educationist;

(iv) an expert in the field of psychology or mental health or such other relevant field;

(v) an individual having special knowledge of or practical experience in the field of information and communications technology;

- (vi) an individual who is or has been a member or officer of an organisation dealing with the protection of child rights;
- (vii) an individual having practical experience in the field of public policy or public administration or law enforcement or public finance or other relevant field, to be nominated by the Ministry; and
- (viii) such other individuals as may be appointed with the previous approval of the Ministry;

<sup>34</sup> Rule 4A(13)

<sup>35</sup> Proviso to Rule 4A(13)

<sup>36</sup> Rule 4A(2)(e)(i)

<sup>37</sup> Rule 4A(2)(e)(ii)

<sup>38</sup> Rule 4A(2)(e)(iii)

<sup>39</sup> Rule 4A(2)(e)(iv)

<sup>40</sup> Rule 4A(2)(e)(v)

<sup>41</sup> Rule 4A(2)(b)

<sup>42</sup> Rule 4A(2)(d)

<sup>43</sup> Rule 4A(8)

<sup>44</sup> Rule 4A(8)(a)

<sup>45</sup> Rule 4A(8)(b)

<sup>46</sup> Rule 4A(8)(c)

<sup>47</sup> Rule 4A(8)(c)

<sup>48</sup> Rule 4B

<sup>49</sup> Rule 4A(3)

<sup>50</sup> Rule 4A(3)(a)

<sup>51</sup> Rule 4A(3)(b)

<sup>52</sup> Proviso no. 1 to Rule 4A(3)

<sup>53</sup> Proviso no. 2 to Rule 4A(3)

<sup>54</sup> Rule 4A(6)

<sup>55</sup> Rule 4A(12)

<sup>56</sup> Rule 4A(3)(a)

<sup>57</sup> <https://www.merriam-webster.com/dictionary/wager>

<sup>58</sup> <https://dictionary.cambridge.org/us/dictionary/english/wager>

<sup>59</sup> *Dr. K.R. Lakshmanan v. State Of Tamil Nadu And Anr.*, 1996 AIR 1153

<sup>60</sup> Punjab and Haryana High Court (*Shri Varun Gumber v Union Territory of Chandigarh and others* CWP No. 7559 of 2017); Bombay High Court (*Gurdeep Singh Sachar v. Union of India*, Bombay High Court, Criminal Public Interest Litigation Stamp No.22 Of 2019.); Rajasthan High Court (*Chandresh Sankhla S/o Jagdish Singh v. The State of Rajasthan* D.B. Civil Writ Petition No.6653/2019, *Ravindra Singh Chaudhary v. Union of India & Ors D.B. Civil Writ Petition (PIL) No. 20779/2019, Mohan Lal Nama W/o Late Shri Murlidhar Nama v. Union of India & Ors* DB Civil Writ Petition No. 11122/2020, *Saahil Nalwaya v. State of Rajasthan DB Civil Writ Petition No. 2026/2021*)

<sup>61</sup> Rule 3A(3)(b)

<sup>62</sup> Rule 4(10)

<sup>63</sup> See: <https://g2g.news/online-gaming-laws/betway-dafabet-lotus365-and-many-more-betting-websites-banned-by-government-know-more/>; <https://g2g.news/online-gaming-laws/exclusive-government-to-block-220-more-domains-of-offshore-gambling-websites/>; <https://g2g.news/online-gaming-laws/exclusive-leading-offshore-gambling-websites-not-accessible-due-to-ban-under-it-act-2000/>

<sup>64</sup> Rule 4A(11)

<sup>65</sup> Ibid

<sup>66</sup> Ibid

<sup>67</sup> Rule 3A(3)

<sup>68</sup> Rule 4A(9)

<sup>69</sup> Rules 4A(4) and (5)

<sup>70</sup> Rule 3(1)(b)(ii)

"user harm" and "harm" mean any effect which is detrimental to a user or child, as the case may be

<sup>71</sup> Rule 3(1)(h)(ix)



Rule 3(1)(b)(x)

<sup>72</sup> Rule 3(1)(b)(x)

<sup>73</sup> Rule 3(1)(b)(xi)

<sup>74</sup> “user harm” and “harm” mean any effect which is detrimental to a user or child, as the case may be

<sup>75</sup> Section 2 (e) “appropriate Government” means as respects any matter,—

(i) enumerated in List II of the Seventh Schedule to the Constitution;

(ii) relating to any State law enacted under List III of the Seventh Schedule to the Constitution,

the State Government and in any other case, the Central Government;

<sup>76</sup> Entry 34, List II, Constitution of India

<sup>77</sup> In a recent judgement, the Madras High Court has held that the State’s legislative competence under this entry had to be read to be confined to betting on games of chance, as ‘gambling’ had been judicially interpreted to mean betting or wagering on games of chance. However, the Court observed that the State may derive legislative competence to regulate games of skill under the alternative entries of Public Order, Trade and Commerce, or Entertainment and Amusements.

(*Junglee Games India Pvt. Ltd. & Anr. v The State of Tamil Nadu & Ors.*, WP Nos.18022, 18029, 18044, 19374, 19380 of 2020, 7354, 7356 and 13870 of 2021).

<sup>78</sup> Vide the Andhra Pradesh Gaming Act, 1974 and Telangana Gaming Act, 1974, which treat ‘any act of risking money, or playing stakes or otherwise on the result of a game or an event including on a game of skill’ as a gambling activity. e.

<sup>79</sup> The explanation to Rule 4(1)(a) states: Explanation.—In this clause, “nodal contact person” means the employee of— (i) a significant social media intermediary, other than its Chief Compliance Officer; or (ii) an online gaming intermediary,

<sup>80</sup> Rule 4(10)

<sup>81</sup> Rule 4(11)

<sup>82</sup> Rule 4(11)(a)

<sup>83</sup> Ibid

<sup>84</sup> Ibid

<sup>85</sup> Rule 4(11)(b)

<sup>86</sup> Rule 4(11)(c)

<sup>87</sup> Rule 4(11)(d)

<sup>88</sup> Rule 4(5)

<sup>89</sup> Rule 4(6)

<sup>90</sup> As per Rule 4(7), such users are those who (1) register for their services from India, or (2) use their services in India.

<sup>91</sup> Rule 4(7)

<sup>92</sup> Rule 4(12)

<sup>93</sup> Rule 3(1)(f)

<sup>94</sup> Rule 3(1)(j)

<sup>95</sup> As stated under Rule 3(1)(b) of the IT Rules

<sup>96</sup> Proviso to Rule 3(1)(d)

<sup>97</sup> Rule 3(1)(h)

<sup>98</sup> Rule 3(1)(i)

<sup>99</sup> Rule 4(1)(d)

<sup>100</sup> Rule 3(1)(l)

<sup>101</sup> Rule 3(1)(m)

<sup>102</sup> Rule (3)(1)(n)

<sup>103</sup> <https://g2g.news/online-gaming-laws/online-gaming-companies-seek-clarification-on-new-rules-during-meeting-with-meity/>

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