

LAW & POLICY UPDATE



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Draft Online Gaming Rules: Amendment to the Intermediary Guidelines

India's online gaming industry has seen explosive growth over the last several years. In order to better regulate this ecosystem and bring online gaming industry under the umbrella of the Centre for its regulation, the Ministry of Electronics and Information Technology (**MeitY**) published the Draft Amendment to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 on January 2, 2023 (**Draft Online Gaming Rules** or **Draft Rules**) in the public domain, inviting feedback from all concerned stakeholders. This note explores some of the salient aspects of the Draft Rules, and highlights some of the gaps therein that demand further consideration.

Background

- Online gaming industry can be categorized into skill-based and chance-based games. Under the Indian legal regime, purely chance-based games fall within the purview of gambling and are consequently barred in most of the Indian states, while there are no restrictions on the ideation, conduction, and promotion of skill-based games.
- Since gambling and betting are state subjects under the Constitution of India, the powers to restrict, regulate or curb such practices lie in the hands of state legislative machinery. However, only a few States like Sikkim, Karnataka, and Tamil Nadu have taken measures in an attempt to regulate this area.
- One of the constitutional provisions through which the Parliament can enact a Central law for the online gaming industry is contained under Entry 31 in List I of the Seventh Schedule of Constitution of India i.e., the Union List, which deals with '*posts and telegraphs; telephones, wireless, broadcasting and other like forms of communication*'. As per the Report dated July 05, 2018 by the Law Commission of India on '*Legal Framework: Gambling and Sports Betting Including in Cricket in India*', since online betting and gambling are offered and played over media covered under this entry, the Parliament has the legislative competence to enact a law regulating the same.
- Recently, by way of a Gazette Notification dated December 23, 2022, the Central Government, while exercising its powers under Article 77(3) of the Constitution of India, released the Government of India (Allocation of Business) (Three Hundred and Seventieth Amendment) Rules, 2022, amending the Government of India (Allocation of Business) Rules, 1961, and added the matters relating to online gaming to the list of subjects under the jurisdiction of MeitY.
- Taking the baton forward, on January 2, 2023 MeitY published the Draft Amendment to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 and invited feedback from all concerned stakeholders. The Draft Rules aim to facilitate and regulate the online gaming sector in India, particularly the platforms acting as intermediaries for online gaming and the due diligence protocols by which they have to abide.

HSA Viewpoint

The Draft Online Gaming Rules are indeed a step in the right direction and a positive development for the legal recognition and promotion of online gaming in India. The Rules reflect the governments' overall intent to better regulate the online gaming industry. The Draft Rules address several emerging risks (phishing attacks and other fraudulent scams), which will encourage the larger public to participate in online games, ultimately resulting in increased sectoral revenue. We hope that the gaps discussed in this note are adequately addressed, so that the Draft Online Gaming Rules can have a positive impact on the growth of online gaming in India.



Salient aspects of the Draft Online Gaming Rules

<p>Definitions</p>	<ul style="list-style-type: none"> ▪ 'Online game' is defined as a game that is offered on the internet and is accessible by a user through a computer resource if he makes a deposit with the expectation of earning winnings. ▪ The Draft Rules introduce Rule 6A empowering MeitY with the authority to declare any game as an 'online game' for the purpose of the said Rules by publishing a notification in the Official Gazette along with written reasons, if MeitY is of the view that such game holds potential for addiction, or causing harm among children, or may put India's sovereignty and integrity, or state security, or good ties with other countries, or public order at danger. ▪ 'Deposit' is defined as the deposit made or committed to, in cash or in kind, by the user for participating in an online game. ▪ The Draft Online Gaming Rules also define other terms such as 'intermediary', 'internet', and 'winnings.'
<p>Self-regulation</p>	<ul style="list-style-type: none"> ▪ The Draft Rules envision the creation of self-regulatory bodies which have to be registered with the MeitY, upon consideration of the following factors: <ul style="list-style-type: none"> – Number of Online Gaming Intermediaries (OGI) who are its members – Track record in promoting responsible online gaming – General repute, absence of conflict of interest and the relevance and suitability of the individuals comprising its board of directors or governing body – Presence of specified persons in the board of directors or governing body – Provisions in its articles of association or byelaws to ensure that it is functioning independently and at arm's length from its member OGI – Capacity, in terms of deployment of technology, expertise and other relevant resources, for evolving the desired framework, testing, and verifying conformity of online games with the same, and continuously updating and further evolving such framework, testing and verification protocols ▪ As per the Draft Rules, each OGI and every online game will have to register with one such self-regulatory body and such registration shall be intimated to the Central Government. ▪ Every registered self-regulatory body should also establish a mechanism for time-bound resolution of complaints of users that have not been resolved by the grievance redressal mechanism.
<p>Due diligence compliance for OGIs</p>	<ul style="list-style-type: none"> ▪ The Draft Rules mandate that OGIs must comply with a series of requirements, which are highlighted below: <ul style="list-style-type: none"> – To follow the KYC guidelines laid down by RBI when confirming a user's identification upon registration – To display a random number generation certificate and a 'no bot' certificate from a reputed certifying body for each online game – To establish a method so that all users who register from India or use its services can voluntarily verify their accounts and receive a visible mark indicating such verification – To appoint a grievance officer, chief compliance officer, and a nodal contact person who liaisons with the government and facilitates law enforcement
<p>Implementing content regulation in online gaming</p>	<ul style="list-style-type: none"> ▪ Rule 4B(6) of the Draft Rules provides that the content of the online games will be curated to safeguard the users from harm, including self-harm, preventing children from sexual and violent content, and gaming addictions. ▪ The Draft Rules mandate the self-regulatory bodies to develop a framework to secure the interests of users, undertake testing and verification to establish the conformity of online games with the framework, continuously update and further evolve such framework, testing, and verification protocols, and prominently publish the same on the website and mobile application.

Gaps that require consideration

- The broad definition of the term 'online game' is open to interpretation to even imply online games that involve gambling and betting.
- The Draft Rules neither define the term 'gambling' or 'betting', nor deal with the debate as to what kind of online games would be considered as a game of skill or a game of chance.
 - The narrowing down of the definition of 'online games' to those involving deposits indicate that the government seeks to particularly cater to such online games in which user's financial implications are likely to come into play, which will affect many of the smaller gaming platforms.
 - The introduction of a comprehensive and robust regulatory regime to govern online and virtual gaming still remains uncertain.
- The exercise of powers by the Central Government by introducing the Draft Online Gaming Rules would pose a challenge for various States due to substantive constitutional provisions for States to legislate on matters pertaining to gaming.

