

ERGO

Analysing developments impacting business

NEW RULES OF THE GAME | ONLINE GAMING

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Over the past year, the Union Government has taken incremental steps towards regulating online gaming with 'real money'. The Ministry of Electronics and Information Technology (MEITY) was made the nodal ministry for online gaming and e-sports as part of multi-sports events. MEITY initiated a consultation process on 2 January 2023 and published draft amendments to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 (IT Rules 2021) enacted under the Information Technology Act 2000 (IT Act). Our earlier newsletter on the draft amendments proposed by MEITY can be accessed [here](#).

On 6 April 2023, MEITY notified amendments (Amendment) to the IT Rules 2021 which largely relate to the online gaming industry. Most notably, the Amendment: (i) provides a self-regulatory structure for the online gaming industry; (ii) introduces specific categories / definitions of 'online games', 'online real money games', 'permissible online games', and 'permissible online real money games'; (iii) will come into force after 3 months from MEITY designating at least 3 self-regulatory bodies (unless MEITY notifies such applicability earlier); and (iv) empowers MEITY to notify a fact checking unit for identifying false or misleading information being hosted across any intermediary. A summary of the Amendments is broadly set out below.

1. Classification of Online Games and Online Gaming Intermediaries

- (I) An 'online game' is a game that is offered on the internet and is accessible by a user through a computer resource or an intermediary. Further, an 'online real money game' is an online game where a user makes a deposit in cash or kind with the expectation of earning winnings on that deposit. An 'online gaming intermediary' is an intermediary which enables users to access one or more games offered on the internet (OGI(s)).
- (II) 'Online game' and 'online real money game' are further classified into 'permissible online game' and 'permissible online real money game'. 'Permissible online game' has been defined to mean a 'permissible online real money game' or any other online game that is not an 'online real money game'. Further, 'permissible online real money games' (Permissible ORMG(s)) are games verified by an online gaming self-regulatory body under the 2023 Amendment.
- (III) OGIs have been permitted to offer only those 'online real money games' which are verified by an online gaming self-regulatory body (SRB(s)).

2. Due diligence: OGI(s) are required to observe all due diligence, content monitoring and user protection requirements applicable to intermediaries under Rule 3 of the IT Rules 2021. An intermediary is required by itself and to cause users to not host prohibited content under the IT Rules 2021. Contravention of this Rule 3 may result in an intermediary losing its 'safe-harbour' protection under Section 79 of the IT Act.
3. Prohibited Content: Users are prohibited from posting any content which: (i) constitutes gambling and is an online game which causes 'user harm', where 'user harm' is any effect which is detrimental to a user or child; (ii) is identified as fake or false or misleading by the fact checking unit of the Union Government, in respect of any business of the Union Government; (iii) is not a permissible online game; and (iv) is an advertisement or surrogate advertisement or promotes any game that is not a permissible online game, or of any online gaming intermediary offering such online games. Interestingly, while MEITY in the 2023 Amendment has restricted advertising of online games that are not permissible; in parallel, the Ministry of Information and Broadcasting also issued an advisory on 6 April 2023, urging media platforms (newspapers, TV channels, digital news media and online advertising intermediaries) to refrain from publishing advertisements of betting platforms.
4. Update to policies: The 2023 Amendment has amended Rule 3(1)(f) of the IT Rules 2021, which required intermediaries to publish, and inform users periodically (and at least once in a year) of its rules and regulations, privacy policy or user agreement (Platform Policies) or any change thereof for OGIs. OGIs are required to inform users of change in its policies not later than 24 hours from the change.

OGIs hosting permissible online real money game are also required to ensure that Platform Policies include: (i) policy and measures related to withdrawal / refund / protection of the deposit made by users, manner of determination and distribution of winnings, and the fees and other charges payable by the user; (ii) know-your-customer (KYC) procedure followed by the OGIs for verifying the identity of the users of such online game basis the Reserve Bank of India's Master Direction on KYC Directions 2016 (KYC Master Directions); (iii) a Verification Framework (*discussed below*) relating to such online game.

5. Takedown: Rule 3(1)(j) of the IT Rules 2021 requires intermediaries to provide information within 72 hours on receipt of government orders. This has been amended for the OGIs, who are required to provide relevant information requested by the Government within 24 hours if such OGI offers any permissible online real money games.
6. Additional Obligations: Over and above obligations imposed on significant social media intermediaries, OGIs offering Permissible ORMG are required to:
 - (I) display a demonstrable and visible mark of verification of such online game by an SRB;
 - (II) verification of user's identity before accepting any deposit in cash or kind; and
 - (III) prohibition on financing, by way of credit or enabling third party financing of a user for the purpose of playing such online game.
7. Grievance Redressal: OGIs are required to establish the grievance redressal mechanism applicable to intermediaries in Rule 3(2) and 3A of IT Rules 2021. Further,

OGIs are required to deploy mechanism for (i) receipt of complaints and ability to track such complaints; and (ii) voluntary verification of users.

8. SRBs and Verification of Online Real Money Games: Every Permissible ORMG is required to be verified by a SRB designated by the MEITY. SRBs are tasked with verification of online real money games. Upon receipt of an application, a SRB is required to conduct an inquiry and may give verification if it is satisfied that the online real money game complies with the verification framework (Verification Framework) adopted by the SRB.
 - (I) The Verification Framework should be published on the SRB's website and/or mobile-based application and should include measures to ensure that the ORMG does not involve any wagering; is not against India's sovereignty, integrity and friendly relations with foreign States; has built-in safeguards against user harm, addiction and harm to children; and that the IT Rules 2021 are being complied with.
 - (II) An SRB is required to publish and maintain on its website and/or mobile-based application an updated list of all Permissible ORMGs and all its members, as well as details for grievance redressal.
 - (III) MEITY has the power to require an SRB to furnish or disclose information as MEITY may require.
9. Transition Provisions and Applicability: Obligations of an OGI under the 2023 Amendment would not apply, until expiry of 3 months from the date on which at least 3 SRBs are designated, unless the Union Government notifies otherwise. The Union Government may also notify obligations for OGIs under the 2023 Amendments to an online game other than an online real money game.

Conclusion

The online gaming industry in India has been keeping its head above regulatory waters. Regulation of gaming in India has been highly contested and the subject of several landmark judicial decisions. Gaming is a state subject under the Constitution of India and therefore various states have their own legislations to regulate betting, gambling and online gaming. Given this regulatory fragmentation, the online gaming industry had been urging for a centralized regulatory regime for several years. With the 2023 Amendments, the Central Government has thrown the industry a life raft in the form of self-regulation by industry bodies and certain standards to adhere to; even though the question around legality of games of skill versus games of chance across various Indian states remains unaddressed. However, with more legal certainty on the horizon and a more standardized regulatory playing field for industry-players, we foresee continued growth of the online gaming industry in India.

- Ganesh Prasad (Partner), Surbhi Kejriwal (Partner), Tanu Banerjee (Partner), Supratim Chakraborty (Partner) and Harsh Walia (Partner)

For any queries please contact: editors@khaitanco.com

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