

BRIEF OVERVIEW OF THE INFORMATION TECHNOLOGY (INTERMEDIARY GUIDELINES AND DIGITAL MEDIA ETHICS CODE) AMENDMENT RULES, 2023

I. INTRODUCTION:

The Ministry of Electronics and Information Technology (“**MEITY**”) has notified the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023 (“**Rules**”) on 6th April 2023, with a view to regulate online gaming and online real money games within India. The notification of these Rules has added India to the short list of countries that have permitted the operations of online gaming platforms through codified legislation.

II. KEY HIGHLIGHTS:

The key highlights of the notified Rules are as follows:

- **Important Terms Used:**

The Rules recognize online games as games that are offered to and are accessible by users on the Internet via computer resources or intermediaries. Further, the Rules recognise and govern online gaming platforms / intermediaries. The Rules also define key terms such as online gaming self-regulatory body, online real money game, permissible online game and permissible online real money game.

Considering that the Rules effectively legalise certain categories of online fantasy gaming, it is important to consider the definition of ‘online real money game’ which denotes an online game wherein a user makes a deposit, in either cash or kind, with the expectation of earning winnings on that deposit. A further clarification has provided that “winnings” would mean any “prize” that would be distributed to a user of an online game, based on a user’s performance. Therefore, the Rules provide legal sanction to online gaming platforms, including platforms or ‘intermediaries’ that involve the deposit of money. Pertinently, the Rules have permitted the operation of only online real money game(s) that are verified by regulatory bodies established under the Rules. These verified online real money games have been termed as “permissible online real money games”.

- **Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 extended to ‘Online Gaming Intermediaries’:**

- a) As per Rules, the obligation of due diligence to be complied with by an intermediary now also extends to an online gaming intermediary. Further, the online gaming intermediary shall also be required to inform its users of the rules, regulations, privacy policy and user agreements, which shall include the following:

- i. the policy related to withdrawal or refund of the deposit made with the expectation of earning winnings, the manner of determination and distribution of such winnings, and the fees and other charges payable by the user;
- ii. the know-your-customer procedure followed by it for verifying the identity of the users of such online game;
- iii. the measures taken for protection of deposit made by a user for such online game; and
- iv. the framework referred to in rule 4A, relating to such online game.

The online gaming intermediary is also required to inform its users of any change in the aforementioned within twenty-four hours of the said change.

- b) As per the Rules, the obligation to comply with the additional due diligence as provided under Rule 4 of Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 is now also applicable on an online gaming intermediary.
- c) An online gaming intermediary is also required to comply with the procedure provided by the Reserve Bank of India for identification and verification of a customer, before accepting any deposits in cash or kind for a permissible online real money game. However, an online gaming intermediary is not permitted, either by itself or through a third party, to finance by way of credit or enable financing for such online games.

- **Verification of Online Real Money Games:**

So as to verify online real money games as permissible online real money games, the Rules afford the Ministry of Electronics and Information Technology, Government of India (MEITY) with the power to designate by notification in the official gazette, as many online gaming self-regulatory bodies as it may consider necessary, provided they meet the criteria under Rule 4A (2).

These online gaming self-regulatory bodies have the power to declare online real money games as permissible games, provided:

- a) they are satisfied that said online real money game does not involve wagering on any outcome; and
- b) the online real money game is in compliance with the provisions of rules 3 and 4 of the Rules, the provisions of any law relating to the age at which an individual is competent to enter into a contract, and the framework made by the online gaming self-regulatory body under rule 4A (8) of the Rules.

So as to ensure the credibility of these self-regulatory bodies, the Rules make it mandatory for the board of these self-regulatory bodies to have experts in various fields such as online gaming, psychology, information and technology, educationists and policymakers.

Further, apart from credibility, these requirements boost the ability of members of self-

regulatory bodies to make independent decisions. This is to ensure that the companies and intermediaries conducting the business of online gaming do not control or dictate the self-regulatory bodies.

It would therefore be important for online gaming intermediaries to understand the ambit of the term “wagering”, so as to ensure that online games offered by them do not fall under this category. Further, online gaming intermediaries are required to approach such self-regulatory bodies only in the event their games involve the deposit of monies.

- **Framework of verification:** As per Rule 4A (8), an online gaming self-regulatory body is required to publish on its website, mobile application or both, a framework for verifying an online real money game, which shall include:
 - a) the measures to ensure that such online real money game is not against the interests of sovereignty and integrity of India, security of the State, friendly relations with foreign States and public order;
 - b) the safeguards against user harm, including self-harm and psychological harm;
 - c) the 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; and
 - 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 a user to exclude himself upon user-defined limits being reached for time or money spent.

Further, any online real money game verified under these Rules along with the online gaming intermediary which enables access to such online real money game, is required to display a demonstrable and visible mark of such verification stating that the online real money game is verified by the online gaming self-regulatory body as a permissible online real money game.

- **Suspension:** As per Rule 4A (6), an online gaming self-regulatory body has the power to suspend or revoke the verification of any applicant member, after giving an opportunity of being heard, if it is satisfied that the online real money game verified by it is not in compliance with the provisions of these Rules.
- **Grievance Redressal:** As per Rule 4A (11), an online gaming self-regulatory body is also required to publish on its website, mobile based application or both, the framework for redressal of grievances and the contact details of the Grievance Officer. An applicant aggrieved by a decision of a self-regulating body with respect to verification, may make a complaint to the Grievance Officer in respect of any matter related to such online real money game or its verification. Such a complaint must be acknowledged by the Grievance Officer within twenty-four hours and resolved within a period of fifteen days from the date of its receipt.

- **Applicability of obligations:** As per Rule 4B of the Rules, the obligations of due diligence by an intermediary and the grievance redressal mechanism to be followed by an intermediary as mentioned in the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, shall not apply to online games until the expiry of a period of three months from the date on which at least three online gaming self-regulatory bodies come to be designated under Rule 4A.

III. CONCLUSION:

The Rules are no doubt a necessary piece of legislation considering the recent boom in the online gaming industry and has been drafted in consultation with major stakeholders. The Rules have provided online gaming platforms with the long-awaited recognition that will now accelerate their growth. Our detailed review of the Rules shall follow shortly.

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