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Regulatory Roadmap for Online Real Money Gaming

Recommendations for Safe, Trusted
& Accountable Online Gaming in India

A report by Parinam Law Associates



About

Parinam Law Associates

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Executive Summary

The Indian online gaming industry, currently valued at \$3.10 billion, exhibiting a 19% growth in FY 23, with a projected CAGR of 20% from 2023 to 2028. Despite its success, the industry is considered nascent, presenting substantial growth opportunities for India's digital future. The user base, comprising 568 million gamers, engages in various gaming categories which can broadly be classified as Games of Chance and Games of Skill. This report focuses on Games of Skill more particularly Real Money Gaming (RMG).

LEGAL STATUS

Online gaming in India is regulated by the Central Government under the scheme of The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. Many State legislations and rules, have attempted to regulate online gaming, which may at times overlap or contradict the Central Laws on the subject. Thus, any evaluation of the legal status of online gaming would depend on the particular elements of a game and how they would be treated under different laws. Though generally (excluding certain States) it would not be inappropriate to state that all online games are permissible in India provided they are not games of chance.

It may be readily argued that, the power to regulate and enact legislation in relation to online games, specifically those which do not involve any form of betting/gambling/wagering is vested with the Union Legislature of India. This is established on the basis of 3 entries in List I i.e. Union List of the Seventh Schedule of the Constitution of India which when read with Article 246 of the Constitution of India provide for the matters in which the Union Legislature has exclusive jurisdiction to legislate upon. Even where there is an apparent conflict or overlapping between the entries in the Union and State list, the law laid down by the Union legislature would prevail.

States exhibit varying stances, with some explicitly exempting games of skill, while others adopt restrictive measures. Judicial precedents affirm the legality of online games of skill, distinguishing them from betting/gambling/wagering. In fact, various High Courts, and the Supreme Court have consistently ruled in favor of games of skill especially online fantasy sports, rummy, reinforcing the industry's legitimacy and restricting State Governments from prohibiting online games of skill by including them under the betting and gambling laws .

NEED FOR REGULATION

- **Safeguarding Public Interest:** by curbing predatory practices, preventing addiction, regulating advertising practices, promoting responsible gaming, protecting minors and providing for grievance redressal mechanisms.
- **Tackling Illegal Activities:** such as tax leakage, money laundering and illegal gambling by offshore & domestic platforms.
- **Increasing Ease of Doing Business by Attracting Investments, implementing Industry-Specific Self-Regulation:** A robust regulatory model ensures governance and industry growth.

Effective regulation is pivotal for ensuring the long-term sustainability, responsible development, and economic growth of India's online gaming industry. Addressing challenges and implementing recommendations such as a centralized framework and a uniform code of conduct for online games will foster a conducive environment for stakeholders, safeguarding public interest, and curbing illegal activities.

INTERNATIONAL BEST PRACTICES

The analysis covers regulatory structures, advertising guidelines, responsible gaming measures, KYC, anti-money laundering policies, and customer grievance redressal mechanisms in countries like the United Kingdom, Germany, Malta, Singapore, Denmark, the United States of America, and Australia. These best practices highlight the efficacy of central regulation, clear advertising standards, responsible gaming tools, robust KYC procedures, and user-centric grievance redressal systems. Emphasizing the need for streamlined structures aligned with global standards, these practices offer a foundation for India to ensure industry growth while safeguarding user interests under its self-regulatory framework

REGULATORY ROADMAP FOR SAFE, TRUSTED & ACCOUNTABLE GAMING IN INDIA

In India, self-regulation has gained acknowledgment from both the government and the judiciary, with instances such as the Supreme Court's endorsement of media self-regulation in cases like *Destruction of Public & Private Properties v. State of A.P. & Ors.* and *Common Cause v. Union of India*. The judicial support emphasizes the importance of ethical codes, complaint mechanisms, and independent adjudication. Examples from the media and entertainment industry, such as the Broadcasting Content Complaints Council (BCCC), showcase a move toward self-regulatory models with government approval. This trend extends to various sectors, including Over the Top (OTT) platforms, EdTech, Payment System Operators (PSO), and Securities Market, each adopting its own self-regulatory frameworks. Notably, the IT Rules establish a three-tier grievance redressal system for OTT platforms, while EdTech companies are encouraged to follow a 'code of conduct' and PSOs are required to set up a professional Self-Regulatory Organization (SRO). This multifaceted approach reflects a growing inclination towards industry-led standards with a concurrent need for government oversight to ensure responsible growth and consumer welfare.

Potential Regulatory Models for Online Gaming

Two Tier Model: The current regulatory landscape for online gaming in India involves a two-tier model, where Tier 1 mandates self-compliance and grievance redressal by the gaming intermediaries, and Tier 2 includes industry-led Self-Regulatory Bodies (SRBs) designated by the Ministry of Electronics and Information Technology (MeitY). The SRBs, registered as companies with charitable objects, play a crucial role in verifying online real money games (RMGs), maintaining lists, handling grievances, and exercising powers to suspend or revoke verifications. The government (through MeitY) retains oversight powers and can intervene in case of non-compliance, demonstrating a balance between self-regulation and governmental control. The potential benefits of this model include diversity in decision-making, innovation encouragement, and quicker dispute resolution. However, concerns include the need for effective monitoring and checks on SRBs' functions.

This report lays out additional models of regulation which may assist in creating a more robust regulatory framework with a view to building a safe, trusted and accountable online gaming industry through a stricter government oversight mechanism which is more attuned to addressing the concerns around independence and enforcement.

Three Tier Model: Another model envisions a three-tier structure, resembling the one in place for Over the Top (OTT) platforms. Tier 1 involves intermediary compliance and grievance redressal, Tier 2 comprises industry-led SRBs with expanded powers, and Tier 3 establishes a Government Oversight Committee to supervise and standardize regulations across SRBs. This model aims for checks and balances, standardization, and strong regulatory oversight. Benefits include preventing conflicts of interest, addressing negative perceptions of SRB independence, and effective handling of illegal platforms. However, potential drawbacks include increased compliance costs and concerns about the effectiveness of SRBs in achieving uniform governance standards.

Government Regulator: This model requires the creation of an independent gaming authority, assuming the functions and powers of SRBs. This authority, led by government nominees, aims to streamline decision-making, ensure consistency, and tackle illegal platforms. While this model could provide a clear regulatory approach, it might lack industry participation and specialization, potentially impeding innovation and causing a slow approval process, which could hinder the growth of the online gaming sector.

Model Code of Ethics

The proposal to prescribe a model Code of Ethics within the IT Rules for online Real Money Games (RMGs) and online gaming intermediaries seeks to establish key principles and best practices for the industry. The suggested code would cover aspects such as requiring online gaming intermediaries to have a legal entity incorporated in India, promoting responsible gaming practices, safeguarding minors through age restrictions, ensuring fair and transparent gaming mechanisms, implementing financial safeguards, adhering to responsible advertising standards, and prioritizing safe, secure, and reliable gaming experiences. The Code aims to provide clear guidelines for compliance, fostering uniformity across Self-Regulatory Bodies (SRBs) while allowing flexibility for modifications. This approach is expected to streamline governance, promote ethical behavior, and facilitate a swift response to evolving challenges within the online gaming sector.

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A Landscape of online gaming

The Indian online gaming industry has seen accelerated growth in the past few years now having an estimated revenue of \$3.10 billion in FY 23 while having grown by 19% in the year. The industry is projected to grow from 2023 to 2028 at a CAGR of 20%¹ and is a propellor of growth for India Inc., birthing 3 gaming unicorns², and has raised approximately \$2.8 billion from domestic as well as global investors. As of November 2022, the Indian gaming industry has a workforce of 50,000 employees and is estimated to create approximately two lakh jobs by 2024³. Despite the success generated for India, it is understood that the online gaming industry in India is still at a nascent stage and has great scope for growth pushing India towards a brighter and more digital future.

This unparalleled growth has been built on a user base of over 568 million gamers in India⁴ spread over various types of games. Broadly, online gaming in India can be divided into the following categories⁵:

i. Games of Chance i.e. games that have pre-ponderance of skill, for example, casinos, sports betting, lottery, satta, matka etc.

ii. Games of Skill i.e. online games that are not gambling, betting, and wagering, for example, judicially approved fantasy sports, judicially approved card games like rummy, some casual games, esports, video games etc.

¹ Lumikai, Leveling up: State of Indian Gaming FY'23, October 2023

² Game 24X7, Dream 11 and Mobile Premier League

³ TeamLease digital report, summarized here:

<https://www.fortuneindia.com/enterprise/indian-gaming-industry-to-add-1-lakh-jobs-by-fy23-report/110443>

⁴ Lumikai, Leveling up: State of Indian Gaming FY'23, October 2023

⁵ Though we have attempted to classify online games into categories, the games in the above categories can in no manner be regarded as homogenous. Each one of these categories includes a plethora of games with each one having its own distinctiveness and appeal.

Games of skill further can be classified into pay-to-play i.e Real Money Games (“RMG”), in-app purchases, software license based, free-to-play with in-app advertising. This report is majorly concerned with online RMGs, which can be classified into the following:

Fantasy Sports: Fantasy sports is a team selection format wherein users create virtual teams for an upcoming live sporting event. As a selector of the team, the user uses her sporting knowledge and skills, and does research on the past performance and present form of the players, pitch condition, etc., for player selection and team creation. The user then competes against other virtual teams for points based on the statistics generated by the on-field player's performance in one full real-life sports match.

Card Based Games: Card based games means the online equivalent of games played using playing cards like rummy & poker.

Other games: Games of skill which do not fall into any of the aforementioned categories can be grouped as casual/other games. This includes quizzes, puzzles, strategy games etc. which are usually played for entertainment and recreation. However, such games may also be offered in a competitive setting.

B Legal & Regulatory Status of Online Gaming ⁶

Online gaming in India is regulated by means of various Central and State legislations and rules, which may at times overlap or tacitly contradict each other. Thus, any evaluation of the legal status of online gaming would depend on the particular elements of a game and how they would be treated under different laws. Though generally (excluding certain States) it would not be inappropriate to state that all online games are permissible in India provided they are not games of chance.

I. Central Laws:

The *Public Gambling Act, 1867* (“**Public Gambling Act**”), a pre-independence era statute enacted during the British colonial rule prohibits gambling in public, albeit only in physical premises which are referred to as “gaming houses” or “common gaming houses”. After the introduction of the Constitution of India and states being provided legislative competence to legislate on the subject matter of gambling and betting, many states have adopted, with minor modifications, the Public Gambling Act. While Section 12 of the Public Gambling Act expressly exempts games of skill, several states such as Andhra Pradesh, Assam, Telangana and Odisha have by way of state amendments, done away with such an express exemption. Other States have enacted their own custom legislations to regulate gaming and gambling which are largely modelled on the Public Gambling Act.

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (“**IT Rules**”), which were initially enacted to govern internet intermediaries came to be amended earlier this year to include specific provisions pertaining to online games, online RMGs and online gaming intermediaries. This amendment in 2023 was in furtherance of the amendment to the Government of India (Allocation of Business) Rules, 1961 (“**AoBR**”) *vide* S.O. 6062(E) whereby matters relating to online gaming were brought under the purview of the Ministry of Electronics and Information Technology⁷. The IT Rules provide for the establishment of self-regulatory bodies (“**SRB**”) and mandate that only those RMGs which have been verified and certified by the SRB would be regarded as a

⁶ Note: This report does not attempt to evaluate the vires or correctness of the enacted legislation. This segment of the report only highlights the effect the laws have on legal and regulatory status of online gaming in India without adverting to any conflict of law principles.

⁷ Available here: https://cabsec.gov.in/writereaddata/allocationbusinessrule/amendment/english/1_Upload_3515.pdf

‘permissible online real money game’ under Rule 2(qf). The rules also prescribe due diligence measures to be followed by online gaming intermediaries as well as additional measures in respect of significant online gaming intermediaries while discharging their duties which are a condition precedent for certifying any RMG offered by such intermediaries as a ‘permissible online real money game’.

II. State Laws:

As stated earlier most state laws specifically exempt mere games of skill while some states such as Andhra Pradesh, Assam, Telangana and Odisha have by way of their own state amendments chosen to either dilute or do away with the express exemption provided to games of skill. Other states have enacted their own custom legislations to regulate gaming which are largely modelled on the Public Gambling Act. In the absence of a central law, the state laws continue to be in force, however, when the IT Rules are implemented after the notification of the SRB, the applicability or repugnancy of any state law remains to be evaluated to the extent they concern games of skill.

The following is an overview of the state laws that govern online gaming.

No.	State	Act	Notes
No express exemption to games of skill			
1	Andhra Pradesh	Andhra Pradesh Gaming Act, 1974 (as amended in 2020)	Clause (d) Explanation (i) to Section 2(2) includes “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” in the definition of wagering or betting.
2	Assam	The Assam Game and Betting Act, 1970	Section 2 defines betting which is wide enough to include money staked on any game and there is no exception in favour of game of skill under the Act.
3	Telangana	Telangana Gaming Act, 1974	Clause (d) Explanation (i) to Section 2(2) includes “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” in the definition of wagering or betting.
4	Odisha	Orissa Prevention of Gambling Act, 1955	As per Section 2(b), the definition of gambling includes any game played for money where a person intentionally exposes money or things of value to the risk or hazard of loss by chance

Express exemption to games of skill

5	Arunachal Pradesh	The Arunachal Pradesh Gambling (Prohibition) Act, 2012	No applicability to games of skill as Section 2(1)(i) defines gambling specific to wagering or betting.
6	Bihar, Jharkhand	Public Gambling Act, 1867	Section 12 exempts games of skill.
7	Punjab, Haryana, Manipur, Chandigarh, Himachal Pradesh	Public Gambling Act, 1867 (with minor modification and amendments)	Section 18 exempts games of skill.
8	Goa, Daman and Diu	The Goa, Daman and Diu Public Gambling Act, 1976	Section 13 exempts games of skill.
9	Uttar Pradesh, Madhya Pradesh, Uttarakhand	Public Gambling Act, 1867	Section 12 exempts games of skill.
10	Chhattisgarh	The Chhattisgarh Gambling (Prohibition Act), 2022	Section 15 exempts games of skill
11	Maharashtra and Gujarat	The Bombay Prevention Gambling Act, 1887 and (Gujarat Amendment) Act, 1964	Section 13 exempts games of skill.
12	Delhi	The Delhi Public Gambling Act, 1955	Section 13 exempts games of skill.
13	Jammu and Kashmir	The Jammu and Kashmir Public	Section 12 exempts games of skill.

		Gambling Act, 1920	
14	Karnataka	Karnataka Police Act, 1963	<ul style="list-style-type: none"> • Section 176 exempts games of skill. • The State Legislature introduced the Karnataka Police (Amendment) Act, 2021 which sought to prohibit games of skill when played for money. • The Amendment Act was later challenged and struck down by the Karnataka High Court on 14th February 2022⁸. • A SLP against the judgment of the Karnataka High Court is pending before the Supreme Court of India.
15	Kerala	Kerala Gaming Act, 1960	<ul style="list-style-type: none"> • Section 14 exempts games of skill. • Section 14A empowers the State Government to exempt certain games as games of skill if they follow certain conditions. Pursuant to Section 14A, the State Government issued notification dated 23.02.2021, whereby online rummy when played for stakes was not exempted. • This notification was challenged and struck down by the Kerala High Court⁹.
16	Rajasthan	The Rajasthan Public Gambling Ordinance, 1949	<ul style="list-style-type: none"> • Section 12 exempts games of skill. • The State Government introduced the Rajasthan Virtual Online Sports (Regulation) Bill, 2022 to provide for a regulatory framework for fantasy sports and esports in India such as licensing of formats, formulation of a self-regulatory organisation and the gaming commission, and penalties for violations. This Bill has not been enacted.
17	Tripura	Tripura Gambling Act, 1926 (Based on the Public Gambling Act, 1867)	Section 11 exempts games of skill.
18	West Bengal	The West Bengal Gambling and Prize Competitions Act, 1957 (Based on the Public Gambling Act, 1867)	Section 12 exempts games of skill.
19	Mizoram	The Public Gambling (Extension to	Section 12 of the Public Gambling Act, 1867 (which has been extended to Mizoram) exempts games of skill.

⁸ All India Gaming Federation v. State of Karnataka, 2022 SCC OnLine Kar 435

⁹ Head Digital Works (P) Ltd. v. State of Kerala, 2021 SCC OnLine Ker 3592

		Mizo District) Act, 1962	
20	Meghalaya	The Meghalaya Prevention of Gambling Act, 1970	Section 13 exempts games of skill ¹⁰ .
Regulates games of skill			
21	Tamil Nadu	Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Act, 2022	<ul style="list-style-type: none"> Prohibits online gambling and regulates online games of skill. Earlier, Tamil Nadu enacted a law prohibiting all games played for money, which was struck down by the Madras High Court as unconstitutional and arbitrary¹¹. In a recent decision¹², pertaining to the constitutionality of the Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Act, 2022, the Madras High Court partly allowed writ petitions and read down the definitions of online gambling and Section 2(l)(iv), i.e., online game of chance to be restricted to game of chance and exclude rummy and poker, which have been held by various judgments to be games of skill. The High Court also set aside the Schedule that restricted online games of rummy and poker. To this effect the Madras High Court held that the Government of Tamil Nadu cannot prohibit games of skill as they do not possess the legislative competence.
22	Sikkim	Sikkim Online Gaming (Regulation) Act, 2008	Regulates online games of skill and online games of chance through a licensing framework.
23	Nagaland	Nagaland Prohibition of Gambling and Promotion and Regulation of Gaming Act, 2016	Regulates online games of skill and online games of chance through a licensing framework.

¹⁰ Note: In 2021 Meghalaya enacted the Meghalaya Regulation of Gaming Act, 2021 to replace the previous law governing gambling. The 2021 act has subsequently been repealed by way of The Meghalaya Regulation of Gaming (Repeal) Ordinance, 2022 available here: [https://meglaw.gov.in/Notification/LL_\(B\)_46_2020_124_Dated_the_3rd_January_2023.pdf](https://meglaw.gov.in/Notification/LL_(B)_46_2020_124_Dated_the_3rd_January_2023.pdf). Hence the position of the law governing gaming/ gambling in Meghalaya is presently unclear.

¹¹ *Junglee Games India Private Limited v. State of T.N.*, 2021 SCC OnLine Mad 2762

¹² *All India Gaming Federation v. State of T.N.*, 2023 SCC OnLine Mad 6973

III. Jurisprudence:

We benefit from significant judicial precedents which clarify and declare that online games of skill are legal and protected as legitimate businesses under the Constitution of India. The High Courts as well as Supreme Court in India have on various occasions laid down binding principles some of which can be summarised as follows:

States cannot prohibit online games of skill, when played for money or otherwise.

i. [All India Gaming Federation v. The State of Tamil Nadu, W.P.No.13203 of 2023](#):¹³ On 9th November 2023, the Madras High Court struck down the Schedule to the Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Act, 2022 that prohibited rummy and poker, as they are games of skill and cannot be prohibited. Further, the Court also read down the definition of online gambling to include only games of chance and not games involving skill, viz., rummy and poker.

ii. [All India Gaming Federation v. The State of Karnataka, W.P. No. 18703/2021](#):¹⁴ On 14th February 2022, the Karnataka High Court struck down certain provisions of the Karnataka Police (Amendment) Act, 2021 that extended its scope to prohibit even games of skill when played for money or otherwise as unconstitutional and arbitrary. The High Court concurred with judgments of other High Courts as well as the Supreme Court which held that games of skill do not amount to gambling, betting and wagering. An appeal against this judgment is currently pending before the Supreme Court of India.

iii. [Head Digital Works Private Limited v. State of Kerala, WP\(C\) NO. 7785 OF 2021](#):¹⁵ On 27th September 2021, the Kerala High Court declared that the notification issued amending the exemption notification issued under Section 14A of the Kerala Gaming Act, 1960 and keeping online rummy when played for stakes outside the purview of the exemption notification is arbitrary, illegal and violative of Article 14

¹³ All India Gaming Federation v. State of T.N., 2023 SCC OnLine Mad 6973

¹⁴ All India Gaming Federation v. State of Karnataka, 2022 SCC OnLine Kar 435

¹⁵ Head Digital Works (P) Ltd. v. State of Kerala, 2021 SCC OnLine Ker 3592

and 19(1)(g) of the Constitution of India. The Court highlighted that a game played with or without stakes does not alter the nature of the game as a game of skill.

These judgments mark a watershed moment for the online gaming industry because they clarify the legislative competence of the states as it has been upheld by different Courts that the states cannot prohibit games of skill. However, the Courts have also observed that the states can regulate games of skill. In such a case, given the nature of the internet which allows an online RMG to be accessible pan India, any State law would have to be tested on the anvil of whether it impedes the ability of the online gaming intermediary to exercise its fundamental right to conduct its trade. This lack of clear direction causes the industry overall to be susceptible to increased litigation.

Games of skill are not gambling, betting or wagering

i. [State of Andhra Pradesh vs K Satyanarayana & Ors, AIR 1968 SC 825](#): On 22nd November 1967, the Supreme Court of India held that rummy is a game of skill. In its judgment it stated as follows:

“12. ... The game of rummy is not a game entirely of chance like the “three-card” game mentioned in the Madras case to which we were referred. The “three card” game which goes under different names such as “flush”, “brag” etc. is a game of pure chance. Rummy, on the other hand, requires certain amount of skill because the fall of the cards has to be memorised and the building up of Rummy requires considerable skill in holding and discarding cards. We cannot, therefore, say that the game of rummy is a game of entire chance. It is mainly and preponderantly a game of skill. The chance in Rummy is of the same character as the chance in a deal at a game of bridge. In fact in all games in which cards are shuffled and dealt out, there is an element of chance, because the distribution of the cards is not according to any set pattern but is dependent upon how the cards find their place in the shuffled pack. From this alone it cannot be said that Rummy is a game of chance and there is no skill involved in it. Of course, if there is evidence of gambling in some other way or that the owner of the house or the club is making a profit or gain from the game of rummy or any other game played for stakes, the offence may be brought home. In this case, these elements are missing and therefore we think that the High Court was right in accepting the reference it did.”

ii. [Gurdeep Singh Sachar v. Union of India, Criminal Public Interest Litigation \(St.\) NO. 22 of 2019](#):¹⁶ On 30th April 2019, the Bombay High Court dismissed a writ petition filed before it by upholding that Dream11's format of fantasy sports is not gambling. It held as follows:

"22. ... It can be seen that success in Dream 11's fantasy sports depends upon user's exercise of skill based on superior knowledge, judgment and attention, and the result thereof is not dependent on the winning or losing of a particular team in the real world game on any particular day. It is undoubtedly a game of skill and not a game of chance. The attempt to reopen the issues decided by the Punjab and Haryana High Court in respect of the same online gaming activities, which are backed by a judgment of the three judges bench of the Apex Court in K.R. Lakshmanan (supra), that too, after dismissal of SLP by the Apex Court is wholly misconceived."

It is worth noting that special leave petitions were filed against this judgment before the Supreme Court of India which were dismissed. While doing so, the Supreme Court only granted liberty to the Union of India to file a review petition before the Bombay High Court to re-consider the limited aspect of the Goods and Service Tax applicable to online games¹⁷.

iii. [Varun Gumber v. Union Territory, Chandigarh, CWP No.7559 of 2017](#):¹⁸ On 18th April 2017, the Punjab & Haryana High Court held that fantasy sports are a game of skill and do not amount to gambling, and that fantasy sports are a legitimate business activity to be protected under Article 19(1)(g) of the Constitution of India. The relevant portion of the ruling is as follows:

"9. The respondent company's website and success in Dream 11's fantasy sports basically arises out of users exercise, superior knowledge, judgment and attention. I am of the further view that the element of skill and predominant influence on the outcome of the Dream11 fantasy than any other incidents are and therefore, I do not have any hesitation in holding the any sports game to constitute the game of "mere skill" and not falling within the activity of gambling for the invocation of 1867 Act and thus, the respondent company is therefore, exempt from the application of provisions, including the penal provisions, in view of Section 18 of 1867 Act. Equally so, before I conclude, I must express that gambling is not a trade and thus, is not protected by Article 19(1)(g) of Constitution of India and thus, the fantasy games of the respondent-company cannot said to be falling within the gambling

¹⁶ Gurdeep Singh Sachar v. Union of India, 2019 SCC OnLine Bom 13059. A Special Leave Petition was filed against this judgment but the same has been dismissed

¹⁷ See order dated 31st January 2020 passed in Misc. Application 11445/2019 and the final judgment and order dated 13th December 2019 passed in SLP (Crl) No. 11445/ 2019 and SLP (Crl) 11444/2019 before the Supreme Court of India

¹⁸ Varun Gumber v. UT, Chandigarh, 2017 SCC OnLine P&H 5372

activities as the same involves the substantial skills which is nothing but is a business activity with due registration and paying the service tax and income tax, thus, they have protection granted by Article 19 (1)(g) of Constitution of India.”

A special leave petition filed against the above judgment before the Supreme Court of India being SLP (C) No. 26642/ 2017 was dismissed. Review Petition (Civil) Diary No. 5195/2022 then filed seeking a review of the order dismissing the SLP was also thereafter dismissed on merits by the Supreme Court of India¹⁹.

iv. Chandresh Sankhla v. State of Rajasthan and Ors., D.B. Civil Writ Petition No. 6653 of 2019:²⁰ On 14th February 2020, the Rajasthan High Court held that playing the online fantasy sport RMG ‘Dream 11’ is a game where success depends on a substantial degree of skill. Therefore, despite their being an element of chance, the game is a game of skill and would not be gambling. The relevant portion of the judgment is as follows:

“10. ... The respondent company's website and success in Dream 11's fantasy sports basically arises out of users exercise, superior knowledge, judgment and attention. I am of the further view that the element of skill and predominant influence on the outcome of the Dream 11 fantasy than any other incidents are and therefore, I do not have any hesitation in holding the any sports game to constitute the game of “mere skill” and not falling within the activity of gambling for the invocation of 1867 Act and thus, the respondent company is therefore, exempt from the application of provisions, including the penal provisions, in view of Section 18 of 1867 Act. ...”

The above judgment was challenged before the Supreme Court in SLP (C) No. 11794/ 2021. By an order dated 30th July 2021 dismissing the SLP the Supreme Court expressly opined that the question whether online fantasy sports are games of skill is no longer *res integra* on account of the judgment of dismissal of the special leave petitions arising out of the Bombay High Court as well as the Punjab & Haryana High Court judgments.

v. Ravindra Singh Chaudhary v. Union of India, D.B. Civil Writ Petition No. 20779/2019:²¹ On 16th October 2020, the Rajasthan High Court held that Dream11’s format of fantasy sports does not amount to gambling/betting and is a legitimate business activity entitled to protection under Article 19(1)(g) of the Constitution of

¹⁹ See order dated 9th November 2022 passed in Review Petition (Civil) Diary No. 5195/2022

²⁰ Chandresh Sankhla v. State of Rajasthan, 2020 SCC OnLine Raj 264

²¹ Ravindra Singh Chaudhary v. Union of India, 2020 SCC OnLine Raj 2688

India. The High Court also acknowledged the best practices established by the FIFS. It held as follows:

“Since the result of fantasy game depends on skill of participant and not sheer chance, and winning or losing of virtual team created by the participant is also independent of outcome of the game or event in the real world, we hold that the format of online fantasy game offered by respondent No.5 is a game of mere skill and their business has protection under Article 19(1)(g) of the Constitution of India, as repeatedly held by various Courts and affirmed by the Hon’ble Supreme Court.”

A special leave petition filed against the above judgment before the Supreme Court of India being SLP (C) No. 15791 of 2022 was dismissed²².

²² See order dated 9th September 2022 passed in SLP (C) No. 15791 of 2022

C Legislative Competence for Regulating Online Gaming

The power to enact legislation in relation to online games, specifically those which do not involve any form of betting/gambling/wagering is vested with the Union Legislature of India²³. This is established on the basis of 3 entries in List I i.e. Union List of the Seventh Schedule of the Constitution of India which when read with Article 246 of the Constitution of India provide for the matters in which the Union Legislature has exclusive jurisdiction to legislate upon. Even where there is an apparent conflict or overlapping between the entries in the Union and State list, the law laid down by the Union legislature would prevail²⁴.

i. Entry 31:

This entry confers exclusive power upon the Union Legislature to enact laws in relation to “*wireless, broadcasting and other like forms of communication*”. Considering online gaming is offered through such means of communication, the Union Legislature is competent to enact legislation regulating online gaming. This is also the view of the Law Commission of India which in its report on the legal framework for gambling and sports betting has stated that “*Since online betting and gambling are offered and played over media (telephones, wireless, broadcasting and other like forms of communication) covered under Entry 31 of List I of the Seventh Schedule to the Constitution, the Parliament has the legislative competence to enact a law(s) dealing with the same.*”²⁵. The speech of Hon’ble Minister of Information and Technology

²³ Note: Where the Union Legislature has by way of an enactment delegated the power to create rules or other forms of subordinate legislation such as under the Information Technology Act, 2000, the term ‘Union Legislature’ is to be read as including the Union Executive i.e. the Central Government of India.

²⁴ In *Sudhir Chandra Nawn v. WTO*, AIR 1969 SC 59, the Supreme Court held that:

“7. The scheme of Article 246 of the Constitution which distributes legislative powers upon the Parliament and State Legislature must be remembered. Article 246 provides:

...

Exclusive power to legislate conferred upon Parliament is exercisable, notwithstanding anything contained in clauses (2) & (3), that is made more emphatic by providing in clause (3) that the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule, but subject to clauses (1) and (2). Exclusive power of the State Legislature has therefore to be exercised subject to clause (1) i.e. the exclusive power which the Parliament has in respect of the matters enumerated in List I. Assuming that there is a conflict between Entry 86 List I and Entry 49 List II, which is not capable of reconciliation, the power of Parliament to legislate in respect of a matter which is exclusively entrusted to it must supersede pro tanto the exercise of power of the State Legislature...”

²⁵ Law Commission of India, Report No. 276: Legal Framework: Gambling and Sports Betting Including in Cricket in India, July 2018; available here:

<https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081655-1.pdf>

while moving the Technology Bill together with the Statement of Object and Reasons of Information Technology Act, 2000 clearly indicates that the Information Technology Act, 2000 was introduced with the intent to regulate all activities and services offered using the medium of internet and internet-based services.

ii. Entry 42:

The Union Legislature has the sole power to regulate all “*Inter-State trade and commerce*”. It has been recognized that the games of skill are regulated by States by virtue of Entry 26, List II of the Constitution of India which relates to “*Trade and commerce within the State*”²⁶. It is important to note that it has been held by various courts²⁷ that the State by reason of legislative action cannot confer on itself extraterritorial jurisdiction. Since online gaming platforms offer online games of skill on the internet, it is inter-state in nature as it can be offered from one state to the other. Therefore, the Union Legislature by way of legislative entry, Entry 42 of List I shall exercise its power to legislate on the subject matter of online gaming.

iii. Entry 97:

This is the residuary provision of the Union List, ordaining the Union Legislature with the power to exclusively enact legislation for “*Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists*”. As neither List II nor List III of the Constitution provide for online gaming, the Union Legislature would be competent to legislate thereupon basis Entry 97.

²⁶ This was recently held by the High Court of Karnataka in *All India Gaming Federation vs The State of Karnataka & Ors*, WP 18703/2021 and by the High Court of Madras in *Junglee Games India Private Limited v. The State of Tamil Nadu*, W.P. No. 18022 of 2020.

²⁷ *Zee Telefilms v. Union of India*, (2005) 4 SCC 649; *Narinder Batra v. Union of India*, 2009 SCCOnline Del 480.

Need for regulating online gaming

Though the internet has often been perceived as the wild west of regulation, this is no longer the case. However, the breakneck pace at which new services offered through the internet mushroom means that the regulator often has to play catchup. Today this may be regarded as the case for online gaming. This burgeoning industry, marked by its technological advancement, brings with it a host of challenges which can be overcome through effective and innovative regulatory intervention. It must be understood that regulation is not just required as a means to protect gamers but also to ensure the long-term sustainability and responsible development of this industry.

By 2022 India's gaming industry had generated a revenue of \$3.1 billion²⁸ and had over 507 million players. Despite this exponential growth, no law governing online gaming specifically was brought into force. This led to citizens filing public interest litigations and other proceedings seeking the formulation of a law governing such online games,²⁹ and raised questions regarding its legality. Subsequent to these developments, the Central government formed an Inter Ministerial Task Force composed of Secretaries from ministries of Finance, Home, MeitY, Consumer Affairs, Niti Aayog, Commerce, Sports to study the sector and recommend a regulatory framework. As per various media reports available, the task force conducted multiple consultations with various stakeholders including the industry, gamers, consumer organisations, state governments and sought their inputs. According to media reports, the task force recommended a national level regulatory framework and regulatory body for online gaming. Further, the regulatory body shall differentiate between games of skill and chance.

²⁸ Business Today, India's gaming industry's revenue to fall due to 28% GST, claims report, 2nd November 2023; available here:

<https://www.businesstoday.in/entrepreneurship/start-up/story/indias-gaming-industrys-revenue-to-fall-due-to-28-gst-claims-report-404264-2023-11-02>

²⁹ See Writ Petition (C) 8313/ 2022 filed before the Delhi High Court; See also:

<https://www.livelaw.in/news-updates/delhi-high-court-regulate-online-gambling-betting-game-of-skill-chance-200143>

As highlighted in Chapter 1, In light of the need for regulation, in December 2022 the Central Government amended the Government of India (Allocation of Business) Rules, 1961 to include matters related to online gaming under the purview of MeitY³⁰, thereby ordaining MeitY with the power and responsibility to issue appropriate regulations.

Within a fortnight of being allocated this new responsibility, MeitY uploaded the draft amendments to the IT Rules for consultations on 2nd January 2023. Meetings were then held with stakeholders on 11th, 17th January 2023 and 16th February 2023³¹. On thorough consideration of the needs and interests of the public, industry members and other stakeholders, the Central Government notified the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023 on 6th April 2023.

These recently notified rules amended the IT Rules to include provisions in relation to online gaming. India now has a regulatory framework in place which casts the responsibility of approval and compliance on the SRB designated under the IT Rules. Having evaluated India's need for regulation, through this Report we wish to highlight certain practical impediments and gaps³² which if resolved and plugged could go a long way in ensuring a sustainable future for online gaming in India- one which puts the welfare of digital nagriks at the centre of its operations and business objectives. In doing so, it is pertinent to first understand the interests that must be protected and the mischief that ought to be curbed by way of regulation.

³⁰ Available here: https://cabsec.gov.in/writereaddata/allocationbusinessrule/amendment/english/1_Upload_3515.pdf

³¹ PIB Delhi, Press Release dated 6th April 2023; available here - <https://pib.gov.in/PressReleaselframePage.aspx?PRID=1914358>

³² Please see, Chapter 4 of this Report: Potential Regulatory Models for India:

A. Safeguarding public interest

India currently has over 568 million gamers; this number is only said to grow multi-fold in the coming years. In an unregulated market, though there may be several online games which follow international best practices, there remains a risk of your average consumer falling prey to unethical or predatory gaming service providers. Thus, it is imperative that certain laws and rules be brought into place for protecting users from harm and ensuring observance of best business practices which are beneficial for all stakeholders concerned.

i. Curbing predatory practices: A regulated industry allows for consumers to distinguish those operating legally and ethically from those operating illegally or unethically and grants them the opportunity to repose their faith with informed consent absent which, the consumer is forced to navigate blindly to his detriment³³. This allows for cases where users are duped of their earnings, sometimes crores of rupees³⁴ on the basis of false promises by those operating with impunity.

ii. Preventing addiction and promoting responsible gaming: Due to the easy accessibility of online gaming, users may be subject to a risk of addiction, although this remains to be proven empirically. Nevertheless, this can quite easily be remedied by regulating the manner in which certain games advertise themselves, by providing a disclaimer or a warning to a user when they play the game, and incorporating features which allow for self-imposed checks and balances for users.

iii. Protecting minors from inappropriate content: Anyone currently can access any online game from anywhere. In the realm of the internet, it may at times be difficult to verify the age of a user. This at times allows minor users to play games which are aimed at a more mature audience. Though several online games have adopted international best practices to ensure that this does not occur, the same cannot be said for all online games. Thus, there is a need for regulation which can bring uniformity and accountability across the entire sector by implementation of appropriate age verification controls.

³³ Time of India, Threat actors creating fake play-to-earn gaming apps to steal cryptocurrency warns FBI, 10th March 2023; available here:

<https://www.thehindu.com/sci-tech/technology/threat-actors-creating-fake-play-to-earn-gaming-apps-to-steal-cryptocurrency-warns-fbi/article66603081.ece>

³⁴Hindustan Times, ED raids against online gaming app in money laundering case involving Chinese national, 3rd November 2023; available here:

<https://www.hindustantimes.com/india-news/ed-raids-against-online-gaming-app-in-money-laundering-case-involving-chinese-national-101698944127122.html>

iv. False and misleading advertising: Even today it is not uncommon to see advertisements targeted to people on all their devices, highlighting the potential winnings from playing a game or by paying for upgrades in a game. At times these advertisements make it appear that anyone who plays the game and spends accordingly has a good probability to succeed. The reality of such games and their complexities are not made clear in these advertisements which causes the public to invest their money while being ill informed of the risks involved. While the Advertising Standards Council of India (“ASCI”) guidelines exist for advertisements of online gaming, enforcement can be improved especially against the illegal platforms.

v. Grievance redressal: Grievance redressal is not only difficult but can sometimes be rendered impossible in the case of online gaming where predatory games can hide behind the veil of anonymity. Thus, effectively leaving the user remediless. Regulation is crucial to ensure that such online games exist and operate openly and within the jurisdiction and reasonable reach of enforcement agencies so that they can be held accountable in a cost effective and expeditious manner. This will in turn help build credibility and confidence among various stakeholders.

B. Illegal offshore & domestic application

From a national interest perspective, an unregulated online gaming industry can allow a faceless entity to circumvent the rigours of Indian laws having profited from the Indian market.

i. Tax leakage: The internet being a place where the world converges, it is not uncommon for entities based out of a foreign country to offer their online games to Indian consumers. These foreign entities may at times operate in a faceless manner and profit from the Indian market without disclosing their identity or pay their share of tax. A recent report by the Think Change Forum has estimated that the Indian revenue authorities are currently losing approximately Rs. 2,29,600 crore per annum due to these offshore illegal websites³⁵. This is not only a great loss for the public exchequer but also siphons money out of circulation from India, and can be curbed by regulation.

ii. Front for money laundering: Unregulated online gaming can facilitate money laundering³⁶ in various ways. Due to the nature of the internet, any person can at times create multiple accounts by which they can deposit a certain amount and then send that amount from one account to another without the requirement of any verification of identity. In an unregulated environment, there is no bar on the type of currencies that can be used by a person, including crypto currencies which the person can then convert into real money and retain in their online account for use. There are also cases where certain in-game items, which can be sold for real money, can be gifted by one player to another without it ever being reported to any relevant authority.³⁷

³⁵ Times of India, Illegal betting and gambling: Tax authorities losing Rs 2 lakh crore annually, says report, 20th October 2023; available here:

<https://timesofindia.indiatimes.com/business/india-business/illegal-betting-and-gambling-tax-authorities-losing-rs-2-lakh-crore-annually-says-report/articleshow/104556382.cms?from=mdr>

³⁶ Financial Services Committee, FBI Confirms Online Gambling Opens Door To Fraud, Money Laundering; Age Verification Software Ineffective, 3rd December 2009; available here:

<https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=227740>

³⁷ PWC, Game of chance or game of skill for money laundering vulnerabilities of online gambling, available here:

<https://www.pwc.pl/en/articles/game-of-chance-or-game-of-skill-for-money-laundering.html> ; ACAMS today, The

Potential Perils of Online Gaming, available here:

<https://www.acamstoday.org/the-potential-perils-of-online-gaming/#:~:text=Money%20laundering%20has%20become%20a,item%20to%20launder%20illegal%20funds.&text=To%20combat%20this%20issue%2C%20many,detect%20and%20prevent%20suspicious%20transactions.>

iii. Offering illegal gambling: Save some states, gambling is generally illegal in India; but foreign and domestic entities have increasingly been offering gambling games in India through their online websites. These persons may not have any physical presence in India and due to this fact operate with complete impunity on the Indian internet. In order to prevent such circumvention of Indian laws, regulation of such online games is a must such that a clear signalling mechanism is created to thwart unsafe, unlawful activities that are being carried out under the garb of online gaming.

C. Ease of doing business

As discussed earlier in chapter 1 of this report, the online gaming industry is undoubtedly an attractive investment arena for both domestic as well as global investors. As such, India is well placed to leverage the gaming revolution which promises to bring with it increased economic opportunity as well as jobs.

If this industry is to become India's growth engine it must be regulated with a view to increase the ease in doing business. As of 2020, India is ranked 63 by the World Bank in ease of doing business³⁸. Operating in a legal limbo hampers the ease of doing business in India. A regulated environment, that offers predictability on regulatory and taxation obligations, allows for investors to repose greater faith in the industry thereby increasing the scope for potential investment. To make it easier to do business, these regulations must be 'common sense' regulations formulated in a manner to keep up with the pace of the industry. This is easily achievable by providing for a robust regulatory model where the industry is governed by self-regulating bodies which are industry specific, understand the needs of the stakeholders, are agile and keep pace with the evolving scale and technology developments while being guided by the framework provided by the State and adequately supervised. This is the framework currently envisaged under the IT Rules.

While the post-regulatory landscape for online gaming has witnessed substantial improvements in the health and safety of the online gaming industry owing to the due diligence obligations and a framework for governance contained in the IT Rules, there is scope to further strengthen the legal and ethical backbone of the industry with a view to elevate growth and user safety.

i. The absence of a centralised and industry focused regulatory framework could severely hamper the growth of the online gaming industry in India. With each State enacting and enforcing its own laws to regulate online gaming, confusion among stakeholders, conflicting jurisprudence among States and an expensive compliance process for the online RMGs are bound to encumber the industry and hamper growth. Online gaming intermediaries would have to comply with the particular laws and processes of each State in India from which their website could be accessed, severely hampering their growth within the Indian domestic market itself.

³⁸ Available here: <https://archive.doingbusiness.org/en/rankings>

There may even be cases where State laws conflict with each other, as they do now, regarding the types of games that can be offered. Thereby requiring online RMGs to only offer certain games in some States from the same website which is an impractical threshold to meet. Such a disjointed regulatory approach for a pan India accessible service may severely impact ease of doing business or the online gaming market in India and lead to a negative investor sentiment.

ii. Currently there is no embargo against online gaming SRBs from framing a code of conduct as they deem fit to regulate the conduct of its members. Neither are there any model codes, guidelines or core principles laid down by the government indicating the basic structure of such a code of conduct. This creates a situation where in the case of multiple SRBs they may formulate distinct codes of conduct which would fasten different compliance obligations on online RMGS. This lack of uniformity would be of particular concern with regards to online gaming intermediaries who offer multiple types of games from the same website accessible pan India if distinct SRBs exist for different types of games which adopt varied verification mechanisms.

International Regulatory Best Practices

This chapter embarks on an examination of international best practices pertaining to regulatory models in online gaming. In the rapidly evolving landscape of this industry, the establishment and implementation of effective regulatory frameworks assume paramount importance, serving to delineate and safeguard the interests of both players and stakeholders. By way of the IT Rules, India has codified and adopted major international best practices in consultation with stakeholders as best suitable to the Indian landscape. In fact, some of the practices in this chapter may already be present in the IT Rules and are highlighted only for the benefit of the reader.

As India grapples with the complexities of regulating online gaming, the insights gleaned from these international practices assume particular significance. By synthesising these practices, this chapter seeks to distill invaluable learnings that can inform policymakers and industry stakeholders in India. While doing so it must be noted that most jurisdictions discussed may also permit and regulate gambling in addition to gaming or may not distinguish between games of skill and games of chance. As such, India is uniquely positioned at the global stage and the best practices highlighted in this chapter are purely for understanding the practices in developed jurisdictions from a regulatory and administrative perspective.

A. Regulatory Structure

In India, as discussed in the previous chapter, there are several and at times conflicting laws in relation to online gaming enacted at the state and central level. This is not only the case in India but rather appears to be the case in similar large countries having multiple states such as the United States of America and Australia. In contrast, by way of the IT Rules, India has adopted a two tier self-regulatory model for online RMGs with limited oversight of the central government. A 3-tier model has already been successfully tried and tested with

respect to over-the-top entertainment platforms (“OTT”)³⁹ where the ultimate oversight is exercised by the Ministry of Information and Broadcasting, Government of India. A brief overview of the regulatory structures in different countries are as follows.

Countries with only Central regulation:

i. One central law governing online gaming: countries where online gaming is regulated solely by the central government tend to have one composite law which covers the entire gamut of online gaming. This allows for industry members to easily understand and follow the law as well in the interest of user protection while promoting ease of doing business. *Countries such as the United Kingdom, Germany, Malta and Singapore follow this practice.*

a. United Kingdom: the main legislation governing gaming, betting and participating in a lottery is the Gambling Act, 2005⁴⁰. Unlike India, the United Kingdom has granted legal recognition to even games of chance. In fact, ‘gaming’ under the Gambling Act, 2005 is defined as “playing a game of chance for a prize.”

b. Germany: previously, gambling was regulated at a state by state level in Germany but the internet has suddenly made gambling easily accessible across state borders. Due to this in 2021 by way of the Treaty on Gambling, online gambling is now regulated at the federal level though the treaty has to be implemented through specific enactments by the states. The treaty’s main purpose is to regulate the opaque online market for gambling in a uniform manner and to curb illegal offerings⁴¹.

c. Malta: gaming in Malta is regulated under the Gaming Act, 2018⁴² and by subordinate legislation issued thereunder. Malta is considered as one of the most proactive, stable and attractive regulatory environments for online gaming. Due to its proactive view of regulation, the revenue from the industry has become a central pillar of Malta’s economy and gross domestic product⁴³.

³⁹ Time of India, ‘Self-regulation of OTT platforms has been successful’, 8th May 2023; available here:

<https://timesofindia.indiatimes.com/entertainment/hindi/bollywood/news/self-regulation-of-ott-platforms-has-been-successful/articleshow/100060762.cms?from=mdr>

⁴⁰ Available here: <https://www.legislation.gov.uk/ukpga/2005/19/contents>

⁴¹ See: <https://iclg.com/practice-areas/gambling-laws-and-regulations/germany>;
<https://www.idnow.io/glossary/gluecksspielstaatsvertrag-glustv/>

⁴² Available here: <https://legislation.mt/eli/cap/583/eng/pdf>

⁴³ See:

[https://www.mondaq.com/media-telecoms-it-entertainment/1243560/gambling-comparative-guide#:~:text=Gambling%20in%20Malta%20is%20governed,Malta%20Gaming%20Authority%20\(MGA\).](https://www.mondaq.com/media-telecoms-it-entertainment/1243560/gambling-comparative-guide#:~:text=Gambling%20in%20Malta%20is%20governed,Malta%20Gaming%20Authority%20(MGA).)

d. Singapore: Singapore has recently overhauled its gaming law regime. Passed in 2022, the Gambling Control Act⁴⁴ (“GCA”) repealed the Betting Act 1960, the Common Gaming Houses Act 1961, the Private Lotteries Act 2011 and the Remote Gambling Act 2014. Along with the GCA, the Gambling Regulatory Authority Act⁴⁵ came into force on 1 August 2022.

ii. Single regulatory body: countries where online gaming is covered by one central law also tend to have a single regulatory body governing the entire industry of online gaming. This allows for uniformity in decision-making by the regulator across the country and reduces the burden of complying with the mandates of multiple regulators within the same country. *Countries such as the United Kingdom, Malta and Singapore follow this practice.*

a. United Kingdom: there is only one regulator for online gaming in the United Kingdom being the Gambling Commission which has been established under the Gambling Act 2005. It functions as an independent, non-departmental public body. The commission is tasked with licensing operators and individuals providing a spectrum of gambling services in Britain including online gambling. It is further tasked with the role of investigating and prosecuting illegal gambling⁴⁶ as well as suspending or revoking a license or imposing a financial penalty⁴⁷ for breaches by game operators.

b. Germany: the Joint Gambling Supervisory Authority (“JGA”) is now responsible for all licensing activities in Germany replacing the previous regime comprising of 16 separate regulators⁴⁸. The JGA has been vested with enforcement powers such as issuing prohibition orders, payment blocking and ISP blocking⁴⁹. It is also tasked with the monitoring of developments in the gaming market and promoting research in the area⁵⁰.

⁴⁴ Available here: <https://sso.agc.gov.sg/Act/GCA2022>

⁴⁵ Available here: <https://sso.agc.gov.sg/Act/GRASA2022>

⁴⁶ See:

<https://www.gamblingcommission.gov.uk/licensees-and-businesses/guide/page/what-powers-does-the-gambling-commission-have>

⁴⁷ See:

<https://www.gamblingcommission.gov.uk/policy/licensing-compliance-and-enforcement-under-the-gambling-act-2005/5-regulatory-enforcement>

⁴⁸ See: <https://www.taylorwessing.com/en/insights-and-events/insights/2023/09/german-gambling-law>

⁴⁹ See: <https://www.legal500.com/guides/chapter/germany-gambling-law/>

⁵⁰ See:

<https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2021/07/new-german-interstate-treaty-on-gambling-entered-into-effect.pdf>

c. **Malta:** the Malta Gaming Authority (“MGA”) is the sole gaming regulatory authority for the entirety of Malta. The MGA holds the responsibility for overseeing and regulating all gaming and gambling activities in Malta. Its extensive powers encompass regulating activities under the Gaming Act, advocating for player protection, ensuring fair and responsible gaming advertisements, investigating and facilitating the resolution of player complaints, monitoring the gaming sector, and issuing guidelines for interpreting the Gaming Act.

d. **Singapore:** the Gambling Regulatory Authority (“GRA”) is the main authority involved in regulating the gambling sector in Singapore. As per the GCA, the GRA may grant different types of licences based on specified kinds of gambling, betting operations, conduct of gaming or conduct of lotteries, gaming machines, gambling articles or prizes on payment of the applicable licence fee/ renewal fee.

Countries with Centre + State Regulation:

i. **Overlapping of central and state law:** countries where online gaming is regulated by both the centre and the state governments require them to comply with both central and state law. Where an online platform would operate in more than one state it may have to comply with several state laws as well as the central law, even if the laws contradict each other. *Countries such as the United States of America and Australia follow this practice.*

a. **United States of America:** online games (including fantasy sports contests⁵¹) of all formats and durations must comply with the general laws of all states in which they operate (some states have laws specific to fantasy sports), as well as with all applicable federal laws⁵² such as the Unlawful Internet Gambling Enforcement Act of 2006 (“UIGEA”) as well as the Interstate Wire Act of 1961. Thus, an online game which seeks to operate across the country, with over 50 states each having its own law, would have to undertake a mammoth compliance task. Having multiple conflicting laws are ultimately detrimental to the economy⁵³.

b. **Australia:** regulation of gaming and gambling in Australia is decentralized, occurring at the state, territory, and federal levels. With over 53 laws governing the

⁵¹ It is worth noting that under the UIGEA online fantasy sports RMGs are specifically excluded from the embargo under the act and are not considered gambling.

⁵² Mark Edelman, Regulating Fantasy Sports: A Practical Guide to State Gambling Laws, and a Proposed Framework for Future State Legislation, 2017 Indiana Law Journal; available here: <https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=11245&context=ilj>

⁵³ New York Time, U.S. Law Causing Turmoil in Online Gambling Industry, 1st November 2006; available here: <https://www.nytimes.com/2006/11/01/business/01gamble.html>

subject, each of the eight mainland states and territories in Australia independently oversees and regulates gambling activities within its jurisdiction.⁵⁴ Furthermore, specific aspects of gambling activity across the nation are addressed by a series of federal statutes.⁵⁵

ii. Multiple regulators for a country-wide accessible online service: as such countries leave the licensing, enforcement and ancillary regulatory activities to individual States, each State has its own regulator for online gaming. An online game which by its very nature needs to be accessible to users across the country would have to artificially limit its access based on location or comply with the local regulation of each State regulator. *Countries such as the United States of America and Australia follow this practice.*

a. United States of America: there is no federal regulatory body for gaming in the United States, apart from the National Indian Gaming Commission which relates only to gaming activities in American Indian (i.e. Native American) reservations⁵⁶. Each individual state has its own regulatory body⁵⁷ which issues licenses and governs the operation of gaming entities within its territory. This creates an area of conflict where the state authorities may legalise and allow all types of gaming and gambling activities, whereas the federal enforcement agencies crack down on online gambling as illegal⁵⁸.

b. Australia: has multiple state/ territory regulators for the gaming and gambling industry⁵⁹ in addition to the Australian Communications and the Media Authority

⁵⁴ A non-exhaustive list of the 53 laws governing gaming in Australia is available here:

<https://www.mondaq.com/australia/media-telecoms-it-entertainment/1243550/gambling-comparative-guide>

⁵⁵ See: https://www.theiaga.org/assets/SENET%20-Gambling_And_Gaming_Law_And_Regulation_Australia_2021.pdf

⁵⁶ See: <https://www.nigc.gov/commission/about-us>

⁵⁷ A non-exhaustive list of the regulators in the United States are as follows: Arizona Department of Gaming, California Bureau of Gambling Control, California Gambling Control Commission, Delaware Division of Gaming Enforcement, Illinois Gaming Board, Illinois Racing Board, Kentucky Horse Racing Commission, Maryland Racing Commission, Michigan Gaming Control Board, Minnesota Alcohol and Gambling Enforcement Division, Missouri Gaming Commission, National Indian Gaming Commission, Nevada Gaming Commission, Nevada Gaming Control Board, New Jersey Casino Control Commission, New Jersey Division of Gaming Enforcement, New York State Gaming Commission, Ohio Casino Control Commission, Pennsylvania Gaming Control Board, South Dakota Commission on Gaming, Washington State Gambling Commission, West Virginia Lottery.

⁵⁸ See:

<https://www.law.cornell.edu/wex/gambling#:~:text=See%20%C2%A7%201081.,the%20United%20States%20is%20illegal> ;
https://archives.fbi.gov/archives/news/stories/2007/june/gambling_060607

⁵⁹ Australian Capital Territory Gambling and Racing Commission, the New South Wales Office for Liquor, Gaming and Racing, the North Territory Racing Commission and Department of Industry, Tourism and Trade, the Queensland Office of Liquor and Gaming Regulation, the South Australia Independent Gambling Authority, the Tasmania Department of Treasury and Finance, the Victorian Commission for Gambling and Liquor Regulation, and the Western Australia Department of Racing, Gaming and Liquor.

which acts as the federal regulator. This multiplicity of laws and regulators creates a burdensome compliance scenario and further, hinders the growth and progress of industry. Arguably, such a structure serves as an antithesis to the concept of ease of doing business.

B. Advertising

The Government of India recently issued its 'Guidelines for Online Gaming for Real Money Winnings' dated 24.11.2020⁶⁰ whereby the Ministry of Information and Broadcasting, Government of India put in place certain guidelines for the advertising of online RMGs. These guidelines primarily relate to the protection of minors and the non-projection of such games as an alternative source of income. The best practices with regards to advertising in other jurisdictions are as follows.

i. Formulation of category specific guidelines: Formulation of category-specific guidelines for different classifications of online games make the guidelines and their intent more effective. *Countries like the United Kingdom⁶¹ and Denmark⁶² follow this practice.*

ii. Online games depicted for entertainment value: ensuring that advertisements portray all online games as games for pure recreational purposes or entertainment value can potentially reduce the risk of users viewing online games as a source for generating income. *Countries like Denmark⁶³ follow this practice.*

iii. Only permissible games to advertise: when advertisements clearly highlight that the online RMG is verified as a permissible online RMG and specify the details of its verification, it helps build user confidence and filters out non-permissible RMGs. *Countries like Germany⁶⁴ follow this practice; in fact, they do not allow non-permissible games to advertise themselves.*

iv. Educational messaging: advertisements that mandatorily contain educational messaging on responsible gaming generally help the industry build credibility and contain user harm. *Countries like Malta⁶⁵ follow this practice.*

⁶⁰ See:

https://mib.gov.in/sites/default/files/Advisory%20on%20online%20betting%20advertisements%2013.06.2022%282%29_0.pdf; These guidelines also form a part of the ASCI code, available here:

https://www.ascionline.in/wp-content/uploads/2023/11/Code_Book_Webready.pdf

⁶¹ See:

<https://www.gamblingcommission.gov.uk/licensees-and-businesses/guide/advertising-marketing-rules-and-regulations>

⁶² See: <https://practiceguides.chambers.com/practice-guides/gaming-law-2022/denmark/trends-and-developments>

⁶³ See: <https://practiceguides.chambers.com/practice-guides/gaming-law-2022/denmark/trends-and-developments>

⁶⁴ See: <https://www.gamblinginsider.com/magazine/277/germany-new-gambling-advertising-rules>

⁶⁵ See: <https://www.mga.org.mt/app/uploads/Commercial-Communications-Committee-Guidelines.pdf>

C. Responsible gaming

Responsible gaming is the touchstone for framing regulations to protect gamers overall as well as minors and other vulnerable members of society from being misled and suffering distress. In Chapter 4 of this Report, we have provided our recommendations with respect to the formulation of a Code of Ethics for online gaming intermediaries to enable responsible gaming among other things. This is based on certain international best practices highlighted below which are already in place in more developed gaming jurisdictions.

i. Age/ Location detection tools: appropriate age and location detection tools prevent unauthorized access by minors or users from restricted territories. *Countries such as the United Kingdom⁶⁶ also require operators to have location detection tools, whereas Germany⁶⁷, Malta⁶⁸ and Denmark⁶⁹ require operators to deploy age-verification tools.*

ii. Separation of free to play games: free-to-play and pay-to-play models of games offered by the same intermediary set-up graphically separate areas on their platform for identifying each model. *Countries like Germany follow this practice.*

iii. Setting time and spend limits: providing users an option to set time and/or net loss limits on their platform and notifying them when they have (or are about to) crossed these limits curbs user harm. *Countries such as the United Kingdom⁷⁰, Germany⁷¹, and Malta⁷² also follow this practice.*

iv. Self-exclusion mechanism: users are provided a mechanism to self-exclude themselves from the platform for a designated period. Throughout the self-exclusion period, the games do not make any attempts to induce the self-excluded users, through emails/notifications/SMS or otherwise, to either withdraw their self-exclusion requests or continue using the platform in any manner. *Countries like Malta⁷³, Denmark⁷⁴, and the United Kingdom⁷⁵ follow this practice.*

⁶⁶ See: <https://www.gamblingcommission.gov.uk/public-and-players/page/why-am-i-being-asked-for-proof-of-address>

⁶⁷ See: <https://www.jumio.com/2021-new-age-restrictions-europe/>

⁶⁸ See: <https://www.egba.eu/uploads/2022/02/Consumer-Protection-in-EU-online-gambling-overview-tables-BLUE.pdf>

⁶⁹ See: <https://www.egba.eu/uploads/2022/02/Consumer-Protection-in-EU-online-gambling-overview-tables-BLUE.pdf>

⁷⁰ See: <https://www.gamblingcommission.gov.uk/licensees-and-businesses/lccp/condition/3-3-4-remote-time-out-facility;>
<https://www.gamblingcommission.gov.uk/standards/remote-gambling-and-software-technical-standards/rts-12-financial-limits>

⁷¹ See: <https://practiceguides.chambers.com/practice-guides/gaming-law-2022/germany>

⁷² See: <https://www.mga.org.mt/licensee-hub/compliance/player-protection/>

⁷³ See: <https://www.mga.org.mt/player-hub/self-barring/>

⁷⁴ See: <https://www.spillemyndigheden.dk/en/rofus#-rofus->

⁷⁵ See: <https://www.gamblingcommission.gov.uk/public-and-players/page/self-exclusion>

v. **Access to help:** each online gaming platform provides a mechanism for users to connect with experts that specialize in helping users with excessive gaming issues. *Countries like Malta⁷⁶ and Denmark⁷⁷ follow this practice.*

vi. **Monitoring potential harm:** to protect users platforms have systems in place to identify where players are exhibiting behaviours which could indicate potential harm to the players and trigger an interaction with them. *Countries like the United Kingdom⁷⁸ follow this practice.*

vii. **Prohibition of credit:** to avoid excessive spending by users on online games, the online platforms are prohibited from providing any credit to the gamers. *Countries like Malta⁷⁹ follow this practice.*

viii. **Compliance report:** online platforms submit a quarterly report to the concerned Self-Regulatory Body certifying their compliance with all responsible gaming conditions as may be prescribed. *Countries like Malta⁸⁰ also follow this practice.*

ix. **Access to responsible gaming information:** online platforms ensure that all information related to responsible gaming mentioned under the advertising guidelines/ code is readily available to all users visiting its platform, including all details about the online platform itself in a clear and intelligible format. *Countries like Malta⁸¹ and the United Kingdom⁸² also follow this practice.*

⁷⁶ See: <https://www.mga.org.mt/national-gambling-helpline-1777-launched-by-responsible-gaming-foundation/>

⁷⁷ See: <https://www.spillemyndigheden.dk/en/stopspillet-stopgambling-helpline-about-responsible-gambling>

⁷⁸ See:

<https://www.gamblingcommission.gov.uk/consultation-response/remote-customer-interaction-consultation-response/proposal-2-our-position-on-identifying-customers-at-risk-of-harm>

⁷⁹ Article 15 of the Malta Gaming Act; available here - <https://legislation.mt/eli/cap/583/eng/pdf>

⁸⁰ See:

<https://www.mga.org.mt/licensee-hub/compliance/licensees-information-reporting-requirements/reporting-requirements/>

⁸¹ See: <https://www.mga.org.mt/licensee-hub/compliance/player-protection/>

⁸² See: <https://www.gamblingcommission.gov.uk/licensees-and-businesses/lccp/condition/3-3-1-responsible-gambling-information>

D. KYC and anti-money laundering

It is widely accepted that online gaming can potentially be used as a front for money laundering and other illegal activities if left uncontrolled. These issues can be addressed by formulating policies which centre around user on-boarding, risk mitigation, user verification and transaction monitoring. India already has in place the KYC regulations to tackle such issues, though for the purposes of this report, we may benefit from studying the best practices set up in countries which also cover these issues.

i. Reporting of suspicious activity: due to the nature of the Internet and the manner in which multiple transactions can take place within a single day at the behest of a single anonymous person, online gaming intermediaries keep track of all the transactions being undertaken by its users and make note of any suspicious activity or transactions that its users may be partaking in. Transactions where suspicious activity is detected are then reported. *Countries such as the United Kingdom⁸³, Denmark⁸⁴ and Malta⁸⁵ follow this practice.*

ii. Regulating acceptance of deposits: online gaming intermediaries only accept user deposits of real money from a licensed bank or authorised payment system. *Countries such as the United Kingdom⁸⁶ and Denmark⁸⁷ also follow this practice.* Further, online gaming intermediaries do not accept cash deposits from any user. *Countries such as Germany⁸⁸ and Denmark⁸⁹ also follow this practice.*

iii. Training of employees: online gaming intermediaries have an internal process to train their employees and service providers on KYC and Anti-money laundering requirements and equip them to monitor and track suspicious activities on the platform. This allows them to adequately comply with the applicable regulations. *Countries like the United States⁹⁰ also follow this practice.*

⁸³ See:

<https://www.gamblingcommission.gov.uk/licensees-and-businesses/page/how-to-submit-suspicious-activity-reports-sars>

⁸⁴ See:

<https://www.spillemyndigheden.dk/uploads/2022-06/The%20DGAs%20guidance%20on%20preventive%20measures%20against%20money%20laundering%20of%20criminal%20proceeds%20and%20financing%20of%20terrorism%20version%201.2.pdf>

⁸⁵ See: <https://www.mga.org.mt/app/uploads/FAQs-Suspicious-Betting-Reporting-April-2023.pdf>

⁸⁶ See:

<https://www.gamblingcommission.gov.uk/licensees-and-businesses/lccp/condition/5-1-2-payment-methods-services>

⁸⁷ See: <https://iclg.com/practice-areas/gambling-laws-and-regulations/denmark>

⁸⁸ See: <https://iclg.com/practice-areas/gambling-laws-and-regulations/germany>

⁸⁹ See: <https://iclg.com/practice-areas/gambling-laws-and-regulations/denmark>

⁹⁰ See: <https://www.americangaming.org/wp-content/uploads/2022/07/AGA-AML-Best-Practices-Guide-2022.pdf>

iv. Internal audit system: online intermediaries have an appropriate internal audit system to verify their compliance with the relevant KYC regulations. Further, all online gaming intermediaries formulate an Anti Money Laundering policy and prepare a quarterly audit report to record its compliance with the same. *Countries like the United Kingdom⁹¹ also follow this practice.*

E. Customer grievance redressal

Currently, the IT Rules provide for a mechanism for gamers/consumers to raise their grievances against an online gaming intermediary under Rule 3(2) of the IT Rules. The system envisaged under the IT Rules is akin to the grievance redressal systems adopted by foreign jurisdictions. Some of the best practices available for the benefit of the consumers in foreign jurisdictions for a global perspective are as follows.

i. Users provided a copy of their complaint: Users are furnished with a copy of the complaint filed by them with the online gaming intermediary or the regulatory body, as applicable, and provided with the means to track the status and progress of their complaint. *Countries like United Kingdom⁹² and Malta⁹³ also follow this practice.*

ii. Free of charge dispute resolution: The grievance redressal mechanism is free of charge for the users, allowing them to seek the redressal of their grievances without fear of burdensome costs. *Countries like United Kingdom⁹⁴ also follow this practice.*

iii. Information on grievance redressal: All information regarding the customer grievance redressal mechanism is published in a clear, fair, easy to understand language. *Countries like United Kingdom⁹⁵ and Malta also follow this practice.*

iv. Language of information: All information regarding the customer grievance redressal mechanism is available in English as well as the local language for the benefit of the users.

⁹¹ See:

<https://www.gamblingcommission.gov.uk/guidance/the-prevention-of-money-laundering-and-combating-the-financing-of-terrorism/prevention-of-ml-and-combating-the-financing-of-terrorism-part-4-4-internal>

⁹² See: <https://www.gamblingcommission.gov.uk/statistics-and-research/publication/understanding-consumer-complaints>

⁹³ Article 18 of the Malta Gaming Act; available here - <https://legislation.mt/eli/cap/583/eng/pdf>

⁹⁴ <https://www.gamblingcommission.gov.uk/licensees-and-businesses/lccp/condition/6-1-1-complaints-and-disputes>

⁹⁵ See: <https://www.gamblingcommission.gov.uk/licensees-and-businesses/lccp/condition/6-1-1-complaints-and-disputes>

The above international regulatory best practices in online gaming yields crucial insights for India's evolving regulatory landscape. The chapter's key takeaways emphasize the need for streamlined regulatory structures, user-centric advertising norms, responsible gaming frameworks, vigilant KYC and anti-money laundering practices, and effective customer grievance redressal mechanisms. These practices can offer a guiding path for the designation and role of SRB's in the future under the extant self-regulatory framework for SRBs in India. These international benchmarks provide a substantive foundation for India to implement globally aligned regulations, with a view to ensure the industry's growth while safeguarding user interests.

Regulatory Roadmap for Safe, Trusted & Accountable Gaming in India

Evaluation of the legal jurisprudence and global best practices for regulation of online gaming, points to the dynamic nature of the industry and the need to ensure a safe, trusted and accountable online gaming ecosystem in India. This chapter shall first study in detail the prevailing self-regulatory models in place in India followed by a discussion on the following regulatory models that may be considered for the regulation of online gaming in India:

i. 2-Tier Regulatory Model:

Industry Self Regulatory Body & Platform Regulation

ii. 3 Tier Regulatory Model:

Government oversight body, Industry Self Regulatory Body & Platform Regulation

iii. Government Regulator

Self-Regulatory Models in India

In India, self-regulation has gained recognition by the government as well as the approval of the judiciary. It has often been noticed that the self-regulatory regimes have been instrumental in driving the growth of industry in a responsible manner and where possible, even Indian courts have endorsed such an approach.

i. In *Destruction of Public & Private Properties v. State of A.P. & Ors.*, W.P. (Crl.) No. 77 of 2007⁹⁶, the Supreme Court of India accepted the recommendations of the Nariman Committee of the need for self-regulation in the media at the industry level and observed that the appropriate authorities should take steps for implementation.

ii. In *Common Cause v. Union of India*, W.P (C) No. 387 of 2000⁹⁷, the Supreme Court of India upheld the self-regulatory mechanism (IBF, ASCI, NBA) in place against television and radio programmes. It is clear from the ratio of this judgment that the legality of the SRO was not contested, in fact it was observed that there was an

⁹⁶ *Destruction of Public & Private Properties v. State of A.P.*, (2009) 5 SCC 212

⁹⁷ *Common Cause v. Union of India*, (2018) 13 SCC 440

existing mechanism to resolve consumer grievances; it only needed adequate publication to make the public aware of the same. The court thus directed the Central Government to deliberate on the issue, take conscious decision and finalise a statutory framework to formalise the self regulating mechanism with respect to consumer disputes along with the concerned statutory authority that shall adjudicate upon the same, including the appellate and other redressal mechanism, leading to final conclusive determination.

iii. In *Indraprastha People Vs. Union of India (2013) 200 DLT (CN)*⁹⁸, a division bench of the Delhi High Court in the context of the Cable Television Networks (Regulation) Act, 1995 and the rules thereunder held that under self-regulation the media voluntarily commits to uphold a code of ethics that it itself drafts; it establishes a complaints mechanism to which the public can complain about perceived breaches of the Code and an independent council adjudicates on the complaints and enforces the code of practice. It was held that compliance with the Code is voluntary and the media does so out of a desire to secure the credibility of its profession and the trust of the public. Self-regulation was held to be a combination of standards setting out the appropriate code of behaviour for the media that are necessary to support freedom of expression and process how those behaviours will be monitored or held to account. The advantages and disadvantages of self-regulation were expounded upon.

iv. In *Star India Private Limited vs. Union of India, W. P. (C) 879/2010*⁹⁹, the Delhi High Court acknowledged that industries in India are moving towards a self-regulatory model with the approval of the government. It observed as follows:

“20. There has recently been a conscious move by the media, as part of a self-regulatory exercise, to address this problem. The Indian Broadcasting Federation (‘IBF’) has set up a Broadcasting Content Complaints Council (‘BCCC’) which is a thirteen-member body at present chaired by a retired Chief Justice of a High Court. It has twelve other members of which four are eminent persons, four are members of national level statutory commissions and four Broadcast members. The complaint against a television programme telecast by a broadcast service provider (‘BSP’), who is a member of the IBF, is referred first to the BCCC which hears the parties before ordering measures wherever warranted. The BCCC examines if the programme complained against violates the ‘Self Regulatory Content Guidelines for non-news and current affairs television channels’ (‘SRGC’). The directive issued by the BCCC is binding on the members of the IBF. In exceptional cases, where a BSP does not carry out the BCCC’s directives, the BCCC may recommend the case to the I&B Ministry for appropriate action against the BSP, as per law. It is not in dispute that the impugned warning was issued to the SPC prior to the constitution of the BCCC. However,

⁹⁸ *Indraprastha People v. Union of India*, 2013 SCC OnLine Del 1380

⁹⁹ *Star India Private Limited v. Union of India*, 2011 SCC OnLine Del 4245

subsequent to the constitution of the BCCC, the I&B Ministry has itself been referring the complaints made to it to the BCCC. This is a tacit acknowledgement by the I&B Ministry that the complaints received by it about objectionable content of television programmes require to be examined by a broad-based expert body."

The regulatory landscape in India has been consistently moving towards self-regulatory mechanisms consisting of SRBs in various sectors that prioritize consumer welfare. Some of the sectors where the SRB self-regulatory models have been adopted are as follows:

i. Over The Top (OTT) Platforms

The IT Rules¹⁰⁰ provide for a SRB model for ensuring that OTT platforms observe and adhere to the code of ethics as well as for addressing the grievances made by users in relation to the content publishers. A three-tier grievance redressal system has been implemented which is as follows.

Level I – Self-regulation by publishers

Level II – Self-regulation by the self-regulating bodies of the publishers

Level III – Oversight mechanism by the Central Government.

Level II of the regulatory framework consists of various SRBs and these SRB's include members from the legal fraternity, experts from the media and the entertainment industry and experts in the child or minority rights field.

ii. EdTech Platforms

An advisory issued to citizens regarding the use of caution against EdTech Companies¹⁰¹ by the Ministry of Education mentions the need for Self-regulation by EdTech companies to observe and adhere to a common 'code of conduct' and establish a two-tier grievance redressal mechanism.

Tier I – Internal Complaint Forum by IEC member

Tier II – Self-regulation by independent grievance review board

The India EdTech Consortium (IEC)¹⁰² has come forward as an independent and autonomous body of EdTech entities. 'India Edtech Consortium Management Committee' ('IECMC') is responsible for constituting SRBs at Tier II called the

¹⁰⁰ See: <https://www.dpcgc.org/static/ca51f6a44da8752f00830ad4814ddd24/531310fb39e2e00e79e462218c3e9d42.pdf>

¹⁰¹ See: <https://pib.gov.in/PressReleasePage.aspx?PRID=1784582>

¹⁰² See:

https://www.indiaedtech.in/images/new%20India%20Edtech%20Consortium_Memorandum_MoE_04.02.2022_r1.pdf

'Independent Grievance Review Board' for adherence to the functions as laid down in this memorandum.

iii. Payment System Operators (PSO)

The Framework issued by the Reserve Bank of India¹⁰³ ("RBI") for recognition of a SRBs for PSOs, requires a group of PSOs (banks or non-banks) to set-up a non-governmental organization, which is managed professionally. The board of directors and management is expected to have expertise in the payment ecosystem. At least one third of members in the Board of directors should be independent and not associated with member organizations. Its functions include-

- representing members in public discussions or with RBI;
- establishing minimum benchmarks, ethical, and behavioral standards;
- keeping a check on violations of the Payments and Settlements Systems Act, 2007 and inform RBI;
- establishing a uniform grievance redressal and dispute resolution framework; and
- conducting & promoting research and development for creating a secure and safe payment ecosystem.

iv. Securities Market

The Securities and Exchange Board of India ("SEBI")¹⁰⁴ is the regulatory authority established under the Securities and Exchange Board of India Act, 1992 and is the principal regulator for stock exchanges in India. SEBI's primary functions include protecting investor interests, promoting and regulating the Indian securities markets. All financial intermediaries permitted by their respective regulators to participate in the Indian securities markets are governed by SEBI regulations, whether domestic or foreign. With this view, SEBI recognized Association of Merchant Bankers of India (AMBI), Association of Mutual Funds of India (AMFI), Association of Custodial Agencies of India (ACAI), and Registrars Association of India (RAIN)¹⁰⁵ to regulate various securities market.

Analysis of potential regulatory models for Online Gaming

¹⁰³See: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11986&Mode=0>

¹⁰⁴ See:

[https://www.sebi.gov.in/sebi_data/commondocs/sroregu_h.html#:~:text=\(k\)%20%22Self%20Regulatory%20Organization,bu t%20excludes%20a%20stock%20exchange.](https://www.sebi.gov.in/sebi_data/commondocs/sroregu_h.html#:~:text=(k)%20%22Self%20Regulatory%20Organization,bu t%20excludes%20a%20stock%20exchange.)

¹⁰⁵ See: https://www.sebi.gov.in/sebi_data/commondocs/pt3d_h.html

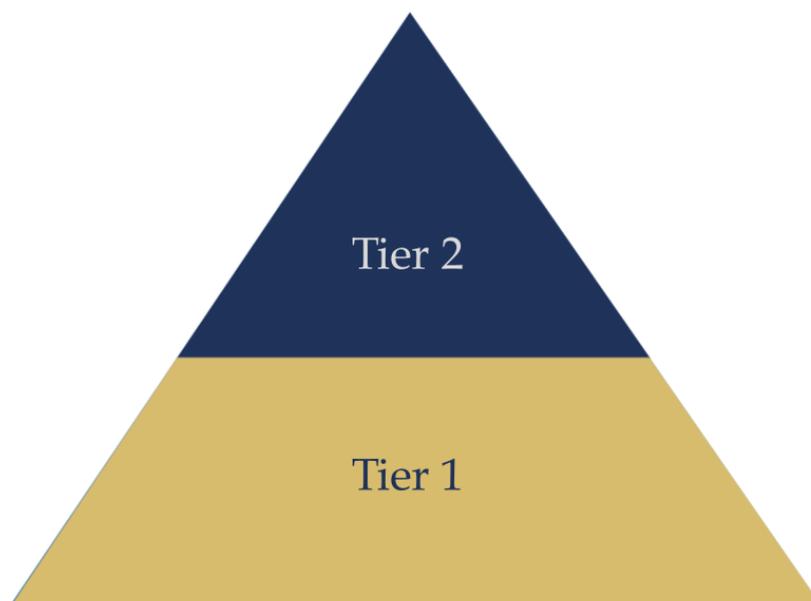
A. 2-Tier Regulatory Model: Industry SRB & Platform Regulation

Tier 1:

Self-compliance, due diligence, and grievance redressal by online gaming intermediary

Tier 2:

SRBs designated by MeitY with limited Government oversight



Currently, the IT Rules prescribe a two – tier regulatory model for online gaming in India. Tier 1 entails self-compliance, due diligence and grievance redressal by the online gaming intermediary itself. Tier 2 consists of SRBs designated by MeitY who shall function with limited Government oversight by the Ministry i.e. MeitY. While it may not be considered as an additional tier, the IT Rules also give the power to MeitY to suspend or revoke the designation of an SRB or direct an SRB to rectify its decision if it has granted verification to any online game which does not conform to the letter and spirit of the IT Rules.

Structure of SRBs:

As per the IT Rules, an SRB must be registered as a company with charitable objects under the Companies Act, 2013.¹⁰⁶ Its membership must be representative of the gaming industry and its members should have been offering and promoting online games in a responsible manner¹⁰⁷. It must be headed by a board of directors composed of individuals of repute, who, pertinently, do not have any conflict of interest and must possess special knowledge or practical experience suitable for the performance of the functions of such an SRB. The rules provide that its board of directors should consist of¹⁰⁸

¹⁰⁶ Rules 4A(2)(a), Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

¹⁰⁷ Rules 4A(2)(b) & (c), Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

¹⁰⁸ Rules 4A(2)(d), Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

- i. an individual having special knowledge of or practical experience in the online gaming industry;
- ii. an individual having experience in promoting the interest of users of online games;
- iii. an educationalist;
- iv. an expert in the field of psychology or mental health or other relevant field;
- v. an individual having special knowledge of practical experience in the field of information and communications technology;
- vi. an individual who is or has been a member or officer of an organization 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 by the previous approval of the ministry.

Its memorandum of association and articles of association must contain provisions relating to (i) the performance of its function under the rules, including redressal of grievances in a manner free from conflict of interest and at arm's-length from its members; (ii) the disclosure and reporting by and accountability of its members in relation to the online games verified by such body; (iii) the clear and relevant criteria consistent with the rules for the acceptance and continuation of a person as its member and for revoking or suspending such membership after giving such person an opportunity of being heard; (iv) the requirement that any amendment in the memorandum of association and articles of association in relation to any of the aforesaid matters is carried out with the previous approval of the Ministry i.e. MeitY¹⁰⁹.

¹⁰⁹ Rules 4A(2)(e), Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

Roles and Responsibilities:

The key roles and responsibilities of SRBs have been prescribed under the IT Rules, and can be summarized as follows.

i. Verification of online RMGs:

a. Upon an application made to it by its member, the SRB may, after making such enquiry as deemed fit, declare an online real money game as a permissible online real money game. It would only do so after it is satisfied that the online real money game does not involve wagering on any outcome, and the online gaming intermediary and such online game is in compliance with the due diligence requirements prescribed in the IT Rules¹¹⁰ and other policies of the SRB which are prescribed in furtherance to Rule 4A(8) of the IT Rules

b. To this end, The SRB is required to publish on its website or mobile based application, a framework for verifying an online real money game in accordance with the IT Rules¹¹¹. In this regard, the IT Rules lay down the following basic criteria that the framework must address:

- 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;
- safeguards against user harm, including self-harm and psychological harm;
- 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
- 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.

ii. Power to suspend or revoke verification:

The SRB has the power to suspend or revoke the verification of any online real money game verified by it if it is satisfied that such game is not in compliance with the provisions of the IT Rules¹¹².

¹¹⁰ Rules 4A(3), Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

¹¹¹ Rules 4A(8), Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

¹¹² Rules 4A(6), Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

iii. Maintaining a list of such games and its members on its website/ mobile application:

a. The SRB is required to publish and maintain an updated list of all permissible online real money games, verified and declared so by it. This list would also include details of the applicant, the dates and period of validity of the verification, the reasons of such verification and the details of the suspension or revocation of the verification¹¹³.

b. The SRB is required to publish and maintain an updated list of all of its members (past and present), the dates of their acceptance as members, their corporate or business-related identity number and other details, as well as the details of any suspension or revocation of membership¹¹⁴.

iv. Grievance Redressal:

The SRB is required to also prominently publish on its website/ mobile application, the framework for redressal of grievances and the contact details of the grievance officer to which an applicant aggrieved by a decision of the SRB may make a complaint in respect of any matter relating to such online real money game or its verification¹¹⁵.

As highlighted above, it is pertinent to note that MeitY would also have significant oversight of the activities of the SRB with respect to verification of online real money games. For example, if MeitY is of the view that any verification of a permissible online real money game by the SRB is not in conformity with the IT Rules it may after giving the SRB an opportunity of being heard communicate the fact of such non-conformity and direct it to take measures to rectify the same¹¹⁶. The ministry is also empowered to de-notify the designation of the self-regulatory body in case it is necessary to do so. Further, there is also a requirement of at least one Board of Director to be nominated by the ministry.

¹¹³ Rules 4A(4), Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

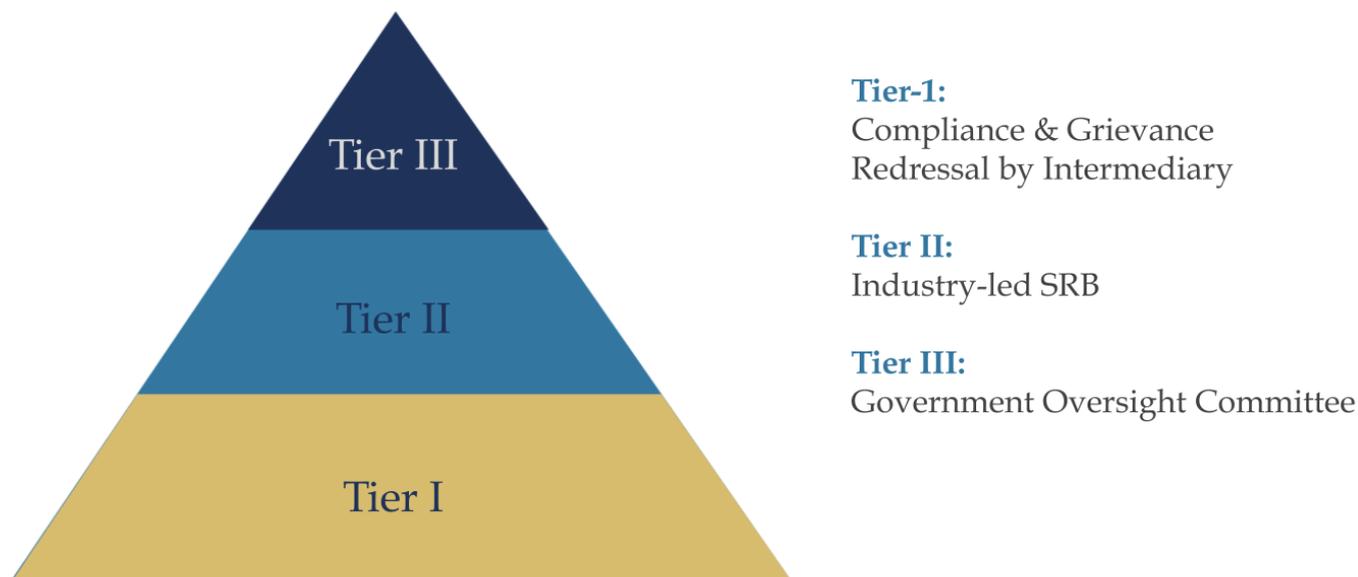
¹¹⁴ Rules 4A(5), Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

¹¹⁵ Rules 4A(11), Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

¹¹⁶ Rules 4A(12), Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

Potential Benefits	Potential Limitations
<ul style="list-style-type: none"> ● Given the diversity of formats within the online gaming industry, a SRB can provide for more diverse perspectives in the decision-making process, potentially leading to more comprehensive, pragmatic and inclusive regulation. ● This model encourages innovation with faster and agile decision making. ● There will be quicker resolution of disputes and reducing burden on courts. ● Since a SRB comprises a body of experts, they have the benefit of having technical and business understanding of its members, that enables them to promote ethical ways of doing business and often serve as a watchdog for unprofessional industry practices 	<ul style="list-style-type: none"> ● Monitoring, checks and balances on the functioning of the SRBs. While this may be considered as a potential limitation, it is to be noted that the Rules provide for a robust grievance redressal mechanism which is controlled ultimately by a government appointed committee i.e the Grievance Appellate Committee. ● There could be a perception of credibility and scope for conflict of interest as they are industry funded. However, this concern is negated on account of the power that MeitY has, to override the decision of any SRB insofar as it relates to the verification of an online RMG. ● Lack of uniformity across SRBs on governance & standards: While this may be a valid concern, the IT Rules substantially empower MeitY to rectify any decision of the SRB which may not meet the object and purpose of the rules. ● Lack of effectiveness in tackling illegal offshore & domestic platforms. However, this could be overcome with clear blocking orders for all non-permissible online RMG's.

B. 3 – Tier Model



Based on our analysis of the aforementioned successful models in India, the following 3 tier model is envisaged for Online Gaming in India. In this model, online RMG's and online gaming intermediaries are regulated at three levels beginning with the intermediary itself at the bottom of the pyramid and ending with the Government Oversight Committee atop the pyramid.

As discussed previously, such a 3 tier regulatory structure has been tried and tested successfully, being akin to what is currently in place for OTT platforms under the IT Rules. The OTT regulatory framework consists of 3 tiers. Level 1 is self-regulation by the publishers. Level 2 is self-regulation by the self-regulating bodies of the publishers and Level 3 is the government oversight mechanism. Today, the Ministry of Information & Broadcasting has designated 11 SRBs for OTT platforms and news media¹¹⁷. This regulatory structure has played a key role in the success of OTT platforms in India and has admittedly changed the scenario for the better¹¹⁸.

¹¹⁷ See: <https://mib.gov.in/self-regulatory-bodies>

¹¹⁸ Times of India, 'Self-regulation of OTT platforms has been successful', 8th May 2023; available here: <https://timesofindia.indiatimes.com/entertainment/hindi/bollywood/news/self-regulation-of-ott-platforms-has-been-successful/articleshow/100060762.cms?from=mdr>

Tier-1: Compliance & Grievance Redressal by Intermediary

In the 3-tier model, the role of the online gaming intermediary is limited to:

- i. providing on an annual basis, a self-declaration regarding its compliance with the obligations under the IT Rules; and
- ii. appointing one of its employees as a Grievance Officer to deal with the grievances raised by consumers and discharging the same functions as a Grievance Officer appointed under Rule 3(2) of the IT Rules.

Tier II: Industry-led SRB

These SRBs may be constituted in a manner akin to the board of directors of an SRB under the Rule 4A(2)(d) of the IT Rules, and may be empowered with appropriate administrative, regulatory and enforcement powers similar and in addition to the powers vested with an SRB under the present IT Rules. Every online gaming intermediary shall be required to secure, in a time bound manner, approval from an SRB for it to be certified as a permissible online RMG. Such approval shall be granted only if the intermediary meets the standards and framework prescribed by the concerned SRB which have received the prior approval of the Government Oversight Committee. Along with the powers and functions already provided to SRB under the current IT Rules, the SRB may also be empowered to:

- i. *suo moto* report any non-compliance by an online gaming intermediary to the Government Oversight Committee for suitable action;
- ii. decide and direct online gaming intermediaries to take remedial action on grievances in response to appeals from users against the decision of a Grievance Officer appointed by an intermediary;
- iii. *suo moto* or on a complaint decide and review the verification of an online RMG as a permissible online RMG.

Tier III: Government Oversight Committee

To supervise and ensure compliance with legal and ethical provisions, a Government Oversight Committee, being the apex regulatory body for online gaming may be formed and constituted as follows:

- i. a Chairperson who may be a former Judge or Secretary to the Government of India;

- ii. 2 representatives from MeitY and the Ministry of Information and Broadcasting or specialized autonomous bodies such the National Commission for Women and the National Commission for Protection of Child Rights;
- iii. 2 representatives from the Ministry of Home Affairs and the Ministry of Finance respectively;
- iv. 2 technical experts with practical experience in statistics, law, technology, policy or behavioural sciences; and
- v. 1 expert on online gaming.

The Government Oversight Committee may be empowered to perform the following roles and responsibilities:

- i. approve frameworks of the SRBs for verification of online RMGs thereby standardizing the manner of verification across the industry;
- ii. publish and/or modify common code of conduct for online gaming SRBs;
- iii. *suo moto* or on a complaint initiate an investigation into or review one or more decisions of any SRB passed in appeal against the decision(s) of the Grievance Officer of an online gaming intermediary, and prescribe remedial measures;
- iv. *suo moto* or on an appeal by an online gaming intermediary, review the decision of any SRB with respect to the verification of the online gaming intermediary;
- v. *suo moto* or on a complaint initiate an investigation into or review one or more decisions of any SRB, not being those referred to in points ii and iii above, and prescribe remedial measures;
- vi. in exercise of the aforesaid powers, the committee may:
 - a. approve or reject one or more decisions of the concerned SRB including the decision to grant verification to an online RMG;
 - b. modify one or more decisions of the concerned SRB after providing reasonable opportunity (*for example, if a format of an online game is granted a certification, the Government Oversight Committee may make the continuance of such certification conditional to meeting certain additional obligations which may include, inter alia, platform due diligence, tweaks to the gameplay format, addition/removal of a feature, additional user controls with a view to protect users from risk of addiction, financial loss, and harm*);
 - c. prescribe financial penalties or penal action against errant or non-compliant online gaming intermediaries;
 - d. de-recognize the SRB for non-compliance; and
 - e. recommend blocking of a format of any online RMG
- vii. Seek and consider the views and recommendations of various States and Union Territories of India regarding the regulation of online gaming in India.

Potential Benefits	Potential Limitations
<ul style="list-style-type: none"> ● System of checks and balances: A 3-tier model ensures there are enough checks and balances in place, thus reducing the risk of concentration of power. ● Standardization of regulation, governance across SRBs. ● Strong regulatory oversight to prevent conflict of interests & impose checks & balances on functioning of SRBs ● This model encourages innovation with faster and agile decision making. ● Addresses negative perception on independence of SRBs. ● Different tiers can focus on different aspects of regulation, allowing for more nuanced and targeted approaches to various user harm related issues within the online gaming industry. ● This model allows for the consideration of diverse perspectives, potentially leading to more comprehensive, pragmatic and inclusive regulation. ● This model can effectively tackle illegal offshore & domestic platforms. ● This model facilitates coordination with law 	<ul style="list-style-type: none"> ● An oversight mechanism may increase compliance costs significantly for startups in the online gaming sector. However, it is to be noted that given the risks emanating from the space, a more streamlined system of checks and balances may be required.

C. Government Regulator

Another potential model that may be envisaged is the creation of an independent gaming authority. This authority may consist of members akin to the board of directors for an SRB under the Rule 4A(2)(d) of the IT Rules and will assume all the functions and powers of the SRB under the IT Rules. The Government nominee may act as the Chairperson and enjoy veto rights on every decision to ensure that the independence of the body and the standards created by it are upheld at all times.

In addition to the powers conferred upon an SRB under the IT Rules, such an authority may also be conferred the power to prescribe specific measures while verifying an online RMG as a permissible online RMG, in addition to those contained within the framework that is envisaged to be published in accordance with the IT Rules. This would facilitate and ensure user protection from addiction, harm and financial loss. Such powers may be exercised depending on the format of a particular online RMG with due regard to the pre legislative consultation policy of the Government of India.

Benefits	Limitations
<ul style="list-style-type: none">● Having a single, independent body could streamline the decision-making process.● A single regulator can help avoid potential conflicts that could otherwise arise from multiple regulatory bodies.● A single regulator can ensure a consistent approach to regulation and decision making, thus reducing ambiguity and providing clearer guidelines for platforms and its users.● This model can effectively deal with illegal offshore & domestic platforms	<ul style="list-style-type: none">● A single regulator without industry participation will not be conducive for innovation.● This model would suffer from a lack of specialization & expertise from industry to evaluate game formats.● Slow process of approvals may significantly hamper ease of doing business & growth of the nascent sector.● A single decision making body could result in longer pendency of disputes/litigations.

Prescribe within the IT Rules, a model Code of Ethics to be followed by online RMGs and online gaming intermediaries.

To ensure uniformity in compliance and enforcement of frameworks across SRBs, it is imperative that SRBs act as enablers for the online gaming industry while also ensuring that certain key principles and best practices are followed uniformly by online RMGs and online gaming intermediaries. This will be easily achieved if the Government prescribes a model Code of Ethics to be adopted by SRBs as part of their respective frameworks with suitable modifications as may be deemed necessary by the SRBs without disturbing the intent of the prescribed Code. Such a model Code of Ethics may provide for the following key principles and best practices:

i. Indian entity: that every online gaming intermediary must have a legal entity incorporated under the laws prevalent in India.

ii. Responsible gaming: that every online gaming intermediary must follow best practices for responsible gaming such as informing every present and past user about responsible gaming and safety guidelines, allowing users to set time or spending limits for themselves, offering a self-exclusion feature to users so that they can willingly suspend their access to an online game for a chosen period, etc.

iii. Safeguarding minors: that games involving real-money prizes are not offered or advertised to users who are less than 18 years old; and clearly communicating age restrictions by prominently displaying the '18+ only' signage across all the platforms for such online RMGs.

iv. Fair and trusted online gaming: that every online gaming intermediary publishes on its website and platform a comprehensive set of policies, terms and conditions as well as a breakdown of the online game(s), mechanics and rules for the understanding of the public; and that every online RMG must only consist of real players and not include competition from or the assistance of any artificial intelligence, computer or computer-based programming.

v. Financial safeguard: that every online gaming intermediary must undertake KYC processes as per applicable law, endeavor to detect unlawful activities being committed on its website, prevent the use of its platform for money laundering or any other unlawful activities, only accept payments from authorized payment

systems and ensure that payments when deposited are utilized only for playing games on the platform.

vi. Responsible advertising: that intermediaries must employ advertising and marketing campaigns in conformity with applicable Indian laws, regulations and guidelines; the advertising and promotion of such games including any endorsements must be fair, truthful, not induce or entice minors to play online games, contain necessary disclaimers and warnings, not misrepresent winning probabilities, and not portray or suggest that such online games are a pathway to sound financial and educational decisions.

vii. Safe, secure, and reliable gaming: that every online gaming intermediary must ensure that its games take reasonable measures to ensure the cyber security of its users as well as their data and information; and that such digital personal and non-personal data is processed and stored in compliance with the applicable data protection laws of India.

A model Code of Ethics can provide clear guidelines for online gaming platforms, making it easier for them to comply with the regulations. Further, a Code of Ethics will enable uniformity in standards as well as consistency in decision making at every level of the governance model. A Code of Ethics provides a more seamless mechanism compared to notified regulations, thus allowing for quicker responses to emerging challenges within the online gaming industry and fostering a culture of responsible and ethical behavior within the industry.