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MEGHALAYA REGULATION OF GAMING ORDINANCE

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INTRODUCTION

Following the footsteps of its sister states – Nagaland and Sikkim – Meghalaya has become the third state to regulate gaming and gambling under a license-based regime. This step has been taken by the Government of Meghalaya at a time when the gaming industry is facing heat on account of legislative prohibition or court action across India. The Honourable Governor of Meghalaya has promulgated the Meghalaya Regulation of Gaming Ordinance 2021 (Meghalaya Ordinance #1 of 2021) (Ordinance) on 13 February 2021. The Ordinance seeks to regulate both 'games of skill' and 'games of chance' involving betting or wagering. The Ordinance has been notified and published for general information on 17 February 2021. However, the Ordinance is not in force as on date.

The Meghalaya Prevention of Gambling Act, 1970 will continue to remain in force, but the provisions thereof will not be applicable to 'games of skill' and 'games of chance' licensed under the Ordinance. Additionally, the Ordinance will not be applicable to the games regulated under Meghalaya Regulation of the Game of Arrow Shooting and the Sale of Teer Tickets Act, 2018 and the lotteries regulated under Meghalaya Lottery (Regulation) Rules, 2019.

KEY FEATURES

Key features of the Ordinance are set out below:-

- Meghalaya Gaming Commission (Commission) is proposed to be constituted under the Ordinance. The Commission will be an independent regulatory body monitoring all gaming activities in the state including: (a) issuing policy directions for regulating games of skill and games of chance to be played in a fair and transparent manner; (b) to monitor and submit periodical reports to the Government of Meghalaya on the activities of the licensees from a compliance perspective; and (c) to act as a dispute redressal body for disputes between players and the operators (licensees). Policy directions issued by the Commission, upon approval of the Government of Meghalaya, will be binding. The Commission will comprise of: (a) a retired judge of the High Court who shall act as the chairperson of the Commission; (b) a person having vast experience in gaming industry; and (c) a person from civil society organization / non-governmental organization. The term of the chairperson and the other members

will be three years (extendable up to another three years or until attainment of sixty-five years of age);

- The Ordinance defines games of skill as such games where there is a preponderance of skill over chance. This definition has been further elaborated to include skill relating to (a) strategizing the manner of placing wagers or placing bets; (b) team selection or selection of virtual stocks based on analysis; or (c) manner in which the moves are made, whether through deployment of physical or mental skill and acumen, where the success in game depends on the existence of superior knowledge, training, attention, experience and adroitness of a player. Schedule A of the Ordinance lists various games as games of skill including: (a) rummy; (b) poker; (c) fantasy sports gaming; (d) betting on horse racing; and (e) teen patti. The list can be extended by the Government of Meghalaya from time to time. Additionally: (a) games declared to be 'games of skill' by law or judicial decisions; (b) games that are part of domestic or international competitions or tournaments; or (c) games that can otherwise be determined to be games of skill can be included in Schedule A of the Ordinance. It is unclear whether the foregoing are automatically added to the list provided in Schedule A or the Government of Meghalaya can update Schedule A on this basis. Lastly, the Ordinance clarifies that games of skill can be card-based games, or games based on action or virtual sports or adventures or mysteries or calculation-based, strategy-based or quiz-based games;
- Games of chance is defined to include all games where there is a preponderance of chance over skill. Schedule B of the Ordinance provides for an exhaustive list of games played online that are considered games of chance including: (a) baccarat; (b) big six wheel; (c) flush; (d) roulette; and (e) slots. The list can be extended by the Government of Meghalaya from time to time;
- Licenses will be granted by the Government of Meghalaya in writing to eligible licensees for operating games of skill or games of chance, without which no such games involving betting or wagering of money or money's worth will be permitted at any place in the State of Meghalaya including through telecommunication devices, non-restricted geo fenced internet, instruments of gaming at a physical premises or through any other mode. The Government of Meghalaya will by notification prescribe the manner and format for the applications for license including the terms and conditions of the license. Licenses can be issued only to citizens of India or entities incorporated in India. The term of licenses will be for a period of five years from the date of grant. Licenses can be further renewed if the conditions prescribed for renewal are fulfilled and the renewal fee is paid. A royalty as a percentage of money of gross gaming revenue will be required to be paid to the Government of Meghalaya. Such percentage will be notified by the Government of Meghalaya from time to time. Gross gaming revenue has been defined to mean the amount that is equal to (a) total amount of all bets made plus (b) all revenue generated from advertising, marketing and promotion activities in accordance with the Ordinance minus (c) value of all winnings and prizes, bonuses, discounts, cashbacks and payment gateway and banking charges. Licensees will also be required to pay security deposits;
- Obligations of the licensee include: (a) intimating the state government of all promotional activities; (b) seeking prior approval of the state government for conducting tournaments and competitions; (c) exhibiting a copy of license at the approved website and the physical premise where the game is being conducted; (d) maintaining accounts pertaining to gaming and furnishing the same to the state government or authorized officer in such form and such

intervals as prescribed by the state government; and (e) complying to any other Central and State acts and rules;

- Licenses can be transferred with the prior approval of the Government of Meghalaya;
- Licenses can be suspended or cancelled in case of any violation of the Ordinance, rules or the conditions of the license. In case of cancellation, the security deposit and the balance fees can be forfeited;
- Various offences and their penalties with relation to a contravention of the Ordinance, rules of the conditions of license have also been provided. Applicable fines do not exceed INR 200,000 (US\$ 2850) generally. However, operating a game without a license is punishable with imprisonment of a maximum period of two years along with a maximum fine of INR 1,000,000 (US\$ 14,000). Players are also subject to fines (of INR 10,000 (US\$ 140)) if they breach any conditions of the license of the game they are involved in or the rules of such game. In case of fourth violation, players can be debarred from participation in any games for at least three years. Additionally, any losses incurred by the Government of Meghalaya on account of any contravention of the Ordinance, rules or the terms of the license can be recovered from the person responsible for such contravention.
- The Ordinance provides for compounding of offences for which imprisonment is not a prescribed punishment. Compounding fees of up to 75% of the fine may be leviable. In case of delay in payment of license fees, such delay can be compounded by payment of license fee along with a penalty at the rate of 18% per annum.
- The Ordinance has a provision to address offences by companies. In case of offences by companies, the company, and any persons responsible for the conduct of the business of the company will be deemed to be guilty and liable for punishment unless such person can prove that the contravention took place without his / her knowledge and that they exercised all due diligence to prevent such contravention. Further, if an offence is committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect of any director, manager, secretary or any other officer of the company, such director, manager, secretary or any other officer will be deemed guilty of that offence.

COMMENTS

The Ordinance is positive news for the industry especially after the recent knee-jerk reactions of various state governments that have banned online games for stake. We have been arguing that regulation, and not prohibition, is the way forward for the gaming industry that has so much potential to generate employment and government revenues. Prohibition only hurts the legitimate operators who want to operate within the bounds of law and has little impact on the fly-by-night operators.

The Ordinance provides for a wide range of matters for which rules have to be framed by the Government of Meghalaya. We hope that a progressive approach is followed by the authorities in framing the fine print of the rules for implementing the Ordinance. Similarly, the policy directions of the Commissions should be guided by the interests of all the stakeholders –operators, players, state and the public and society at large.

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