

## ERGO

*Analysing developments impacting business*

### PROPOSED AMENDMENT TO IT RULES 2021 | ONLINE GAMING

6 January 2023

#### INTRODUCTION

On 23 December 2022, the Ministry of Electronics and Information Technology (MeitY) was notified as the nodal ministry for all matters related to the online gaming industry. On the heels of this development, MeitY on 2 January 2023, released the draft amendment (Proposed Amendment) to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 (IT Rules 2021), to bring in online games and online gaming intermediaries within the ambit of the IT Rules 2021. MeitY has invited feedback on the Proposed Amendment by 17 January 2023.

#### SUMMARY OF THE KEY PROPOSED AMENDMENTS

1. Definitions: The Proposed Amendment introduces some new definitions in the IT Rules 2021, such as 'online game', 'internet', 'deposit', 'winnings' and 'online gaming intermediary'.
  - 'Online game' is defined as a game offered on the internet and is accessible by a user through a computer resource, if such user makes a deposit / commit to making a deposit, in cash or in kind, with an expectation to win a prize, in cash or in kind, distributed / intended to be distributed to such user based on the performance of the user and rules of such online game.
  - 'Online gaming intermediary' is defined as an intermediary that offers 1 (one) or more than 1 (one) online games.
2. Due diligence requirements: Online gaming intermediaries are required to comply with all due diligence requirements applicable to intermediaries in general under IT Rules 2021. Certain additional compliances for online gaming intermediaries are as follows:
  - (a) Registration: Online gaming intermediaries will be required to register each online game offered by them with a self-regulatory body (SRB) and display the registration mark on all online games.
  - (b) Informing users of policies: Users will need to be informed of: (i) online games offered by the online gaming intermediary; (ii) policy for refund / withdrawal of user's deposit; (iii) policy for distribution of winnings; (iv) other fees and charges payable by users; (v) risk of financial loss and

associated addiction; (vi) KYC procedure for user account registrations; (vii) measures taken for protecting the deposit made by users; and (viii) framework of the SRB of which the online gaming intermediary is a member.

- (c) Certification: Online gaming intermediaries will need to obtain and publish a: (i) random number generation certificate; and (ii) no bot certificate, from a reputed certifying authority, for each online game offered.
  - (d) Verification of user identity: Identity of users creating user accounts will need to be verified as per the directions of Reserve Bank of India. Users may also voluntarily verify their accounts; in which case such users shall be provided with a demonstrable and visible mark of verification.
  - (e) Appointment of Officers: Each online gaming intermediary is required to appoint a grievance officer, a chief compliance officer, and a nodal contact person—all of whom will need to be employees of the online gaming intermediary and residents in India.
  - (f) Physical contact address: Each online gaming intermediary will need to have a physical contact address in India, to be clearly published on the mobile application / website.
  - (g) Grievance redressal: Online gaming intermediaries will need to put in place a grievance redressal mechanism enabling users to track the status of a complaint by way of a unique ticket number. Reasons should be provided to a complainant in the event no action is taken on a complaint filed by a user.
  - (h) Information and assistance to the Government: Online gaming intermediaries are required to provide information and assistance to lawfully authorised government agencies for verification of identity, or for prevention, detection, investigation and prosecution of offences or for cyber security incidents, no later than 24 (twenty four) hours of receiving a written order.
3. Obligations of intermediaries: Certain proposed amendments will apply to all intermediaries:
- (a) Compliance with applicable laws: Intermediaries will be required to take reasonable efforts to ensure that users do not host, share, upload, store or modify any information that: (i) is an online game not in conformity with applicable laws, including laws relating to gambling or betting or of a legal age; and (ii) violates any law for the time being in force.
  - (b) Hosting or Advertising: Before hosting or advertising an online game for a consideration, intermediaries will be required to confirm with the relevant online gaming intermediary and the relevant SRB, if such online game is registered and display the fact of registration on its website and/or mobile based application.
4. Power to notify non-deposit accepting games as 'online games': MeitY has reserved the authority to notify any game accessible on the internet by a user without making any deposit, as an 'online game' and bring it within the ambit

of the amended IT Rules 2021, if MeitY is satisfied that such game may be harmful to children or may risk the sovereignty, integrity, security of India or friendly relations with foreign States or public order.

5. Self-regulatory Bodies. The Proposed Amendment envisages setting up of 'self-regulatory bodies' or SRBs for the online gaming industry, which will need to be registered with the Central Government. Online gaming intermediaries and each online game offered by them will need to be registered with an SRB.
  - (a) *Role*: The key role of a registered SRB is to create a framework to secure the interests of users of online games; including suitable measures for inter alia safeguarding: (A) users against harm; (B) children; (C) users against gaming addiction and financial loss; and (D) against risk of financial frauds.
  - (b) *Registration of online games with SRBs*: Registered SRBs may register an online game after considering the following in respect of an online game: (i) that it is offered by a member of the SRB; (ii) it does not contain anything against the interest of sovereignty, integrity, defence of India, security of the state, friendly relations with foreign states, or public order, or incites commission of a cognizable offence; and (iii) it is in compliance with applicable laws, including those laws in relation to betting and gambling or the permissible legal age for a user. SRBs will need to report each registered online game to the Central Government.
  - (c) *Membership for online gaming intermediaries with SRBs*: Registered SRBs may grant membership to online gaming intermediaries after considering the following: (i) adherence to due diligence requirements under the amended IT Rules 2021; (ii) track record in offering online games which secure sovereignty, integrity, defense and security of India as referred to in Section 69A of the Information Technology Act 2000 (which allows the Central Government to block websites, applications etc., in the interest of the nation); and (iii) the online games offered are registered with the SRBs.
  - (d) *Grievance Redressal Mechanism*: Registered SRBs are required to establish a time-bound grievance redressal mechanism for user grievances that remain unresolved by an online gaming intermediary. Users may finally appeal before the grievance appellate committee set-up by the Central Government.
  - (e) *Powers of MeitY*: MeitY may notify a registered SRB of non-compliance by such SRB along with instructions to rectify such non-compliance and is also empowered to suspend the SRB's registration after a hearing with respect to such non-compliance.
6. Non-Compliance. Given that online gaming platforms are brought under the framework applicable to intermediaries under the IT Rules 2021, any contravention with the IT Rules 2021 will result in online gaming intermediaries losing their safe harbour protection under the Information Technology Act 2000. The intermediary may also be liable for punishment under any law including the Information Technology Act, 2000 and the Indian Penal Code, 1860.

**COMMENT**

The online gaming industry in India is touted to grow at a 27% CAGR to USD 8.6 billion by financial year 2027. As such, a robust regulation aiming at a more standardised regime across gaming platforms is a welcome step. The Proposed Amendment, with an overall light touch approach, leaning largely towards self-regulation, appears to be aimed at protecting interests of users playing online games which may have financial implications. Self-regulatory bodies envisaged under the Proposed Amendment are entrusted with greater responsibility to ensure compliance by online gaming intermediaries. Further, while the online gaming industry in India as such is not new to self-regulation, some compliance requirements under the Proposed Amendment such as, identification and verification procedure for all users like those made applicable by the Reserve Bank of India to financial entities, appear disproportionate, and may be operationally challenging. Finally, the Proposed Amendment does not address legality of online games in terms of games of skill versus games of chance. Given that gaming and gambling is a state subject in India, the issue of state-wise regulatory fragmentation governing the gaming industry—which the gaming industry has been hoping for the Government to solve, remains open. Overall, the Proposed Amendment and appointment of MeitY as the nodal agency paves the way for the gaming industry to have a standardised regime across platforms. While there are some concerns in the regime proposed by MeitY, it will be interesting to see how the regulations evolve through the consultative process.

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