

# NEW REGULATIONS FOR ONLINE GAMING IN INDIA

An early milestone in a long journey



# Background

## Analysis on the recent developments with regard to regulation of online gaming in India

Online gaming can be reasonably considered as one of the major growing sectors in the media and entertainment industry of India. It has been estimated that the Indian gaming market shall tentatively achieve four-fold in the gaming sector by in the coming years.

The gaming sector has major contribution towards the growth of India's economy in the recent years. However, there are also certain consequences pertaining to such growth such as increase in financial fraud through online gaming apps, cyber-crimes, gaming addiction among the masses etc.

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules 2023 ("IT Rules, 2023") is an amendment to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules 2021 ("IT Rules, 2021").

IT Rules, 2023 make stringent provisions relating to the conduct of the intermediaries connected with the online gaming arena and tries to rectify the complications connected with it.

The origin of IT Rules, 2021 can be traced back to section 87 of the Information Technology Act, 2000 wherein it could be understood that The IT Rules, 2021 is a combination of draft Intermediaries Rules, 2018 and the OTT Regulation and Code of Ethics for Digital Media and that the amendment of IT Rules, 2021 was imperative to deal with the problems associated with the sector.

IT Rules, 2023 provides better means and medium through which fraud, addiction etc can be effectively tackled.



# Classification of Online Game Providers as Intermediaries

The Amendment Rules classify a provider of online games as an “intermediary” under the Information Technology Act, 2000 (the “IT Act”), thereby creating a separate classification called “Online Gaming Intermediary.”

Earlier, in 2021, the government introduced the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (the “Intermediary Guidelines”).

The Intermediary Guidelines superseded the erstwhile Information Technology (Intermediary Guidelines) Rules, 2011, and brought in significantly stricter provisions to regulate digital media and social media platforms.

Inclusion of Online Gaming Intermediaries as an “intermediary” is, therefore, a significant development, which gives the government overreaching powers to direct any Online Gaming Intermediary to block public access to any online game (the interest of the sovereignty, integrity, defence or security of India, India’s friendly relations with foreign states, public order or to prevent user harm) and provide any required information to law enforcement authorities (in relation to investigations, prosecutions, or cybersecurity incidents) within a prescribed time period.



# Key Amendments brought in by the IT Rules, 2023



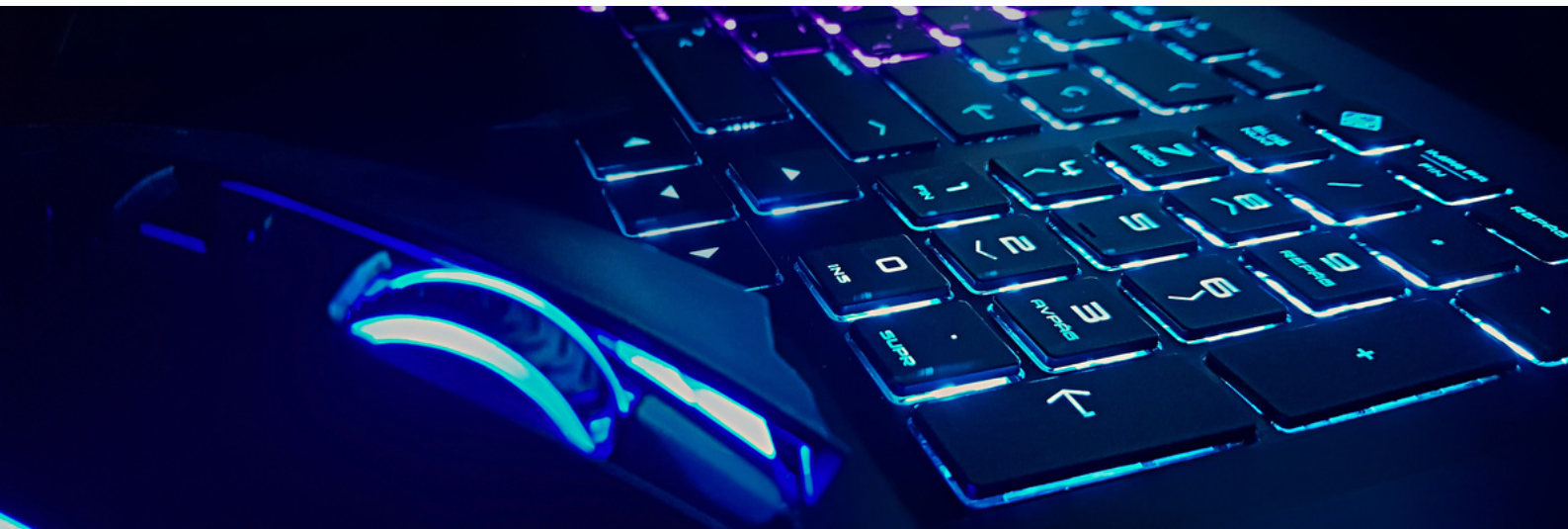
The following are the key amendments brought in by the IT Rules, 2023 in order to efficiently regulate online gaming industry in India:

## **1. Introduction of new definition pertaining to online gaming:**

The IT Rules, 2023 has introduced definition for “online game”, “online real money games”, “permissible online games”, “permissible online real money games” and “online gaming intermediaries”. Some of these key definitions are as follows:

- Rule 2q(a) of the IT Rules, 2023 defines 'online game' as 'a game that is offered on the internet and is accessible by a user through a computer resource or an intermediary.' The definition of online game under Rule 2q(a) includes, within its ambit, both online real money games and online games which are not real money games. This rule further elucidates the definition of various terms such as internet, deposit, and winnings in order to enhance the ease of understanding these rules.
- Rule 2q(b) defines 'online gaming intermediary' as 'any intermediary that enables the users of its computer resource to access one or more online games'. An online gaming intermediary according to the rules is someone who provides more than one online game to the users of its computer resource.
- Rule 2q(d) defines 'online real money game' as 'an online game where a user makes a deposit in cash or kind with the expectation of earning winnings on that deposit.' For the purpose of this rule, 'winnings' has been defined 'any prize, in cash or kind, which is distributed or intended to be distributed to a user of an online game based on the performance of the user and in accordance with the rules of such online game' This definition has been criticized for not including the scope of games which include wagering or betting.
- Rule 2q(e) define 'permissible online game' as 'a permissible online real money game or any other online game that is not an online real money game'.
- Rule 2q(f) defines 'permissible online real money game' as 'an online real money game verified by an online gaming self-regulatory body under rule 4A'.

Pursuant to aforementioned Rule 2q(e) and Rule 2q(f), it can be observed that permissible online games consist of both online real money games and online games which are not real money games. The permissibility of a game is contingent on the approval by the SRB. The definitions provided under Rule 2 of the IT Rules, 2023 remove the irregularities that was previously present in the IT Rules,2021 by enhancing the understanding of the terms explained above.



# Establishment of Self-Regulatory Bodies

Rule 4A of the IT Rules, 2023 mandates establishment of the Self-Regulatory Bodies (“SRB”) whose primary purpose shall be to verify the permissibility of an online game, and to keep a check whether any game includes wagering and betting in their ambit.

The aforesaid Rule 4A envisages that the Central Government can designate as many online gaming self-regulatory bodies as it may consider fit to verify an online real money game as a permissible online real money game under the Rules.

In order for the SRB to declare an online real money game as a permissible online real money game, the following conditions has been specified under the IT Rules, 2023:

- That the online real money game in question does not involve wagering or betting.
- That the game is in compliance with rules 3 and 4 of the IT rules, 2023.
- That the game follows all provisions of the law concerning the eligibility to enter into a contract.
- That both the intermediary and the game follow the guidelines laid down by the SRB.

The SRB must maintain at all times, a roll of all the games that are permissible and update them accordingly.



# Structure for the formation of SRB



The following is the structure for the formation of SRB:

- SRBs must be set up in the form of a non-profit company, under section 8 of the Companies Act, 2013.
- The members of the board are the representatives of the gaming industry.
- The board of directors will consist of people who are highly reputable and possess the necessary knowledge required to discharge the duties of the board.
- The board should include people from different sectors such as an educationist, psychologist, child rights, communication technology etc.
- The Articles of Association (AOA) and Memorandum of Association (MOA) of the SRBs should contain detailed provisions regarding its working, functioning, grievance redressal mechanisms and finances. The MOA and AOA can only be amended with prior approval of the IT Ministry. The SRBs must always maintain an updated roll of members.

# Due Diligence by an Intermediary



- Online Gaming Intermediaries ("OGIs") shall be responsible for performing due diligence on games on its platform. It has been mandated that all online real-money gaming intermediaries must verify the identity of the users before accepting deposits from such a person.
- The procedure for verification shall be the same as the process followed by banks and financial institutions regulated by RBI. Further, OGI cannot financially aid its users by the way of credit or enable third-party finance for playing.
- The OGI has obligation to periodically, and at least once in a year, inform its users of its rules and regulations, privacy policy or user agreement or any change in the rules and regulations, privacy policy or user agreement.
- OGIs are now required to ensure that they do not host:
  - 1.any online game not verified as a permissible online game; and
  - 2.advertisements and/or promotional content (including surrogate advertisements) of any online game that cannot be considered a permissible online gaming and any online gaming intermediary which hosts such games.



# Additional compliances to be followed by the Online Real Money Intermediaries

Rule 4 of IT Rules, 2023 provides for the following additional requirements that is needed to be followed by the online gaming intermediaries:

- The OGIs must have a physical contact address in India.
- Every real money OGI must make sure that they have proper mark of registration. This would signify that they are permissible online real money games and verified by an authorised SRB.
- They must distinctly mention in their website about the redressal mechanism and the contact details of the grievance officer.
- The OGIs must inform the user about the terms and conditions, user agreement etc., along with the steps that are taken to protect the deposits made by the gamer, policy related to withdrawal of the money, the know your customer (KYC) policy followed by them and the procedure of approval of online real money games.
- The OGIs must follow the prescribed RBI guidelines in order to verify the user's identity before accepting deposits from users.
- The OGIs must inform the users regarding any change in their privacy policy, user agreement or rules and regulations within a period of 24 hours from such change.
- Rule 4 also prohibits the online gaming intermediaries from financing users to play games on their platforms and to make sure that no third-party finances them to do so.
- With respect to real online non money games rule 4B states that rule 3 and 4 of the IT Rules, 2021 will be applicable only after expiry of a period of 3 months.
- Real non-money games may be altered up to the extent the Government deems fit. If the government finds such games to threaten the sovereignty and integrity of the country, or has harmful effect on the users.





## Conclusion

IT Rules, 2023 may reasonably provide an impetus to the growth of online gaming. By the introduction of this rules, the Central Government aimed to combat the following issues associated with online gaming which cause deleterious effect on today's youth:

- To tackle the problem of addiction effectively, by providing the users the liberty to switch out of the game if the time limit or the monetary limit exceeds.
- To ensure that effective steps are taken, so that financial fraud or cyber fraud is not perpetrated through online games, by means of due verification of one's identity is done before one makes any payments in the apps.
- To make it mandatory for parental consent mechanisms to be installed in the games, in order to prevent children from having access to games that can have an adverse impact on their minds.
- To deal with the psychological harm associated with online gaming.
- To help attract foreign investors in the gaming market.

The gaming industry has played a crucial role in contributing to the economy of our country and the IT Rules, 2023 will further help in enhancing the impact caused to this industry. The stakeholders associated in this sector have welcomed these changes with the dire hope that it will increase the scope of online gaming in India.

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