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Gaming Law 2024

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Global Practice Guides

Gaming Law

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Chambers Global Practice Guides

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INDIA



Law and Practice

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Nishith Desai Associates

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INDIA LAW AND PRACTICE

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Nishith Desai Associates is an India-centric global law firm with offices in Mumbai, Bengaluru, Delhi, Silicon Valley, Singapore, Munich and New York. The gaming practice comprises three leaders and 12 qualified lawyers. The team has been a pioneer in the industry, and the gaming practice has existed almost as long as the online

gaming industry in India. The team has worked on several cross-jurisdictional investments and entry strategies for foreign clients. Nishith Desai Associates has also been instrumental in industry-wide efforts and policy advocacy on behalf of the Indian gaming industry.

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LEGAL AND TAX COUNSELING WORLDWIDE

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1. Introduction

1.1 Current Outlook and Recent Changes Policy Changes

Co-regulatory federal framework for online games shelved, proposed establishment of a government regulator for online games

In April 2023, certain amendments (“IT Rules Gaming Amendments”) to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (the “IT Rules”) sought to introduce a co-regulatory framework between the Ministry of Electronics and Information Technology (“MeitY”) and designated self-regulatory industry bodies (SRB) to regulate online gaming in India. The IT Rules Gaming Amendments sought to introduce specific regulations for permissible online real money games (PORMG) and online gaming intermediaries (OGI); ie, entities that enable their users to access one or more online games.

However, the IT Rules Gaming Amendments were never operationalised through the designation of SRBs. MeitY, the nodal Ministry for online gaming, has now reportedly rejected applications by SRBs, due to concerns over the SRBs being heavily dominated by certain industry operators.

Given that the IT Rules Gaming Amendments were not brought into effect, the authors have not discussed their provisions in these chapters.

Introduction of 30% withholding tax on net winnings for OGI

The Finance Act, 2023 overhauled the tax regime for income from online games and created a distinction between taxation of online and offline games. In this regard, Section 115BBJ was introduced in the Income Tax Act, 1961 (ITA) to provide for 30% tax on net winnings earned

by players from an “online game”. An “online game” is defined as a game that is offered on the internet and is accessible by a user through a computer resource, including any telecommunications device. Hence, this tax is applicable to all types of online games; ie, games of skill or games of chance.

Section 194BA was also introduced in the ITA to impose a withholding tax obligation on persons responsible for paying any income by way of winnings from any online game during a financial year at the rates in force. Tax is required to be withheld on the “net winnings” amount, which is computed as per the manner prescribed by the Central Board of Direct Taxes (CBDT). These provisions have been effective from 1 April 2023.

Introduction of 28% Goods and Services Tax for online gaming, casinos and horse racing

In August and September 2023, the central government amended the Central Goods and Services Tax Act, 2017 (the “CGST Amendment Act”) as well as the Central Goods and Services Tax (Third Amendment) Rules, 2023 (the “CGST Amendment Rules”) to implement goods and services tax (GST) at the rate of 28% on the full value of the amount paid, or payable to, or deposited with, the online gaming platform, starting 1 October 2023.

The tax amendments are addressed in greater detail in **12. Tax**.

Developments in Animation, Visual Effects, Gaming and Comics, and Extended Reality

In September 2024, the Union Cabinet approved the establishment of a National Centre of Excellence for Animation, Visual Effects, Gaming, and Comics and Extended Reality (AVGC – XR) in Mumbai, Maharashtra, India.

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This Centre is envisaged to promote skilling, education, industry development, research and innovation in the industry. It is also expected to act as an incubation centre for start-ups in the industry.

Additionally, the Ministry of Information and Broadcasting (MIB) has announced that a National AVGC-XR Policy will soon be implemented, along with the launch of a National AVGC-XR Mission. This will serve as a comprehensive framework to guide the sector's development. It will also provide direction to individual states, enabling them to formulate their own AVGC policies.

Telecom Regulatory Authority of India Recommendations on the MIB's National Broadcasting Policy

In April 2024, the MIB released a consultation paper seeking inputs for formulation of a draft National Broadcasting Policy. The consultation paper recognised the promising growth trajectory of the Indian online gaming industry, whilst seeking inputs on policy and regulatory aspects to (i) enhance the growth of the industry, (ii) enhance the growth of local game developers, and (iii) introduce measures to protect players.

The Telecom Regulatory Authority of India (TRAI) released its recommendations in response to the consultation paper in June 2024, recommending, amongst other things, promotion and facilitation of local Indian gaming content, incentives to attract skilled gamers, content creators and industry professionals to make India a "Gaming Content Hub".

Introduction of New Criminal Laws

The criminal laws in India have been revamped with the introduction of three new criminal statutes by the central government including the

Bharatiya Nyaya Sanhita, 2023 (BNS), with effect from 1 July 2024.

The BNS has expanded the definition of petty organised crime to include (i) unauthorised sale of tickets, and (ii) unauthorised betting or gambling by a member of a group or gang, either by themselves or jointly with others. This is punishable with imprisonment for a term not less than one year which may extend to seven years and a fine. Hence, persons engaging in unauthorised gambling as defined under the respective Gaming Enactments (as defined in **2.1 Online**), as part of a group, could be liable under this provision.

Advertising Restrictions State-specific changes

Certain state-level policy changes are expected. Currently, various states are in the process of introducing state laws to implement the newly introduced 28% GST for the gaming industry.

Tamil Nadu

The State of Tamil Nadu enacted the Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Act, 2023 (TNOGA) effective on 10 April 2023.

The TNOGA (i) prescribes registration of local online games providers and (ii) prohibits offering, playing and advertising online gambling on games of chance with stakes. Poker and rummy were categorised as games of chance.

On 9 November 2023, the High Court of Madras struck down the prohibition on rummy and poker as unconstitutional, whilst upholding the constitutionality of other provisions of the TNOGA.

In August 2023, a five-member Tamil Nadu Online Gaming Authority was constituted to reg-

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ister online games and introduce regulations for such online games, including time limits, monetary limits, age restrictions, issue show-cause notices to defaulting online games providers, and suspending/revoking registrations in certain scenarios.

Pending Litigation

There are several cases pending before the Supreme Court and High Courts in India.

Supreme Court litigation

The Karnataka High Court struck down a GST “show-cause notice” issued by the tax authorities against Gameskraft Technologies Pvt. Ltd. (“Gameskraft”), a rummy operator, on the basis that the game was not “betting and gambling”, but a game of skill. On appeal by the tax department, the Supreme Court issued a temporary stay on the order, and the matter is still pending. Several other gaming operators have received similar show-cause notices, which the operators have challenged before the respective jurisdictional High Courts. These petitions pending before the High Courts have been transferred to the Supreme Court for a consolidated hearing with the Gameskraft matter.

The question of whether sports betting is a game of skill is pending before the Supreme Court in the case of *Geeta Rani v Union of India & Others* (the “Geeta Rani Case”). If the judgment concludes that it is a game of skill, sports betting will be exempt from prohibitions under most Gaming Enactments (as defined in **2.1 Online**) and may be offered in most Indian states.

The Supreme Court has also stayed the operation of a Bombay High Court order that held that fantasy sports games are games of skill. Accordingly, the Supreme Court may take up the question of whether fantasy sports qualify as games

of skill. Notably, several other High Courts in the country have recognised fantasy sports games as games of skill. The Supreme Court has also dismissed several petitions seeking permission to appeal against these orders.

The state of Karnataka sought to introduce legislation to prohibit all online games for stakes, including games of skill. These bans were struck down as unconstitutional before the respective states’ High Courts. These appeals are pending before the Supreme Court.

State litigation

GST matters in Bombay, Gujarat, Sikkim, Delhi, Rajasthan, Punjab and Haryana

Several skill gaming operators have filed petitions in the High Courts of Bombay and Gujarat, challenging show-cause notices issued by tax authorities seeking to impose 28% GST on the entire buy-in amount. Majority High Courts have granted stays on the enforcement of the notices or orders. These petitions have now been consolidated with the Gameskraft case and are pending adjudication before the Supreme Court.

Maharashtra

A public interest litigation has been filed in Maharashtra seeking a ban on offering and advertising online rummy, claiming that it amounts to gambling. Various Indian courts have previously recognised rummy as a game of skill.

Delhi

A non-government organisation has challenged the constitutional and legislative validity of the IT Rules Gaming Amendments in a petition before the Delhi High Court. Per reports, it has been alleged in the petition that the IT Rules Gaming Enactments go beyond the rule-making powers of the Information Technology Act, 2000 (the “IT Act”). The petition further reportedly alleges

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that the Centre has issued the amendments by usurping the state's exclusive legislative competence to regulate online gaming.

A suit was filed by a gaming operator against an app store in the High Court of Delhi, alleging that the app store discriminated against the operator by displaying a warning to users when downloading the game. The suit is currently pending final adjudication before the Delhi High Court.

Andhra Pradesh

The Andhra Pradesh Gaming Act, 1974 was amended to prohibit all online gaming activities for stakes (including games of skill). The amendments were challenged before the High Court of Andhra Pradesh, where the High Court directed the state government to form a committee to assess whether rummy, which has been held to be a game of skill, is still a game of skill in online form. The state of Andhra Pradesh appealed against the High Court's direction to appoint a committee in the Supreme Court. The Supreme Court dismissed the state's challenge to this direction and directed the High Court of Andhra Pradesh to proceed to assess the matter. There have also been certain restrictions introduced on misleading gaming advertisements and surrogate advertisements for gambling products, which are covered in **9.4 Restrictions on Advertising**.

2. Jurisdictional Overview

2.1 Online

Indian gaming laws operate at a state and a central level. There are specific Gaming Enactments (as defined below) to regulate gaming/gambling activities in each relevant state.

State Gaming Enactments

Betting and gambling are state matters under the Constitution of India, so each state has the exclusive legislative competence to enact laws relating to betting and gambling within the state. The Public Gambling Act 1867 (PGA) has been adopted by certain states in India, whereas other states have enacted their own pieces of legislation to regulate betting and gambling activities within the state (the "State Enactments") (the PGA and State Enactments are collectively referred to as "Gaming Enactments").

Most Gaming Enactments were enacted prior to the advent of virtual/online gambling and therefore primarily prohibit gambling activities within physical premises (defined as a "common gaming house"). Different states have taken different approaches with respect to whether these prohibitions apply to online operators.

Central Gaming Amendments

As discussed in **1.1 Current Outlook and Recent Changes**, the IT Rules Gaming Amendments have been shelved and the central government is considering appointing a federal (central) regulator for permitting and certifying online games instead.

Betting

Betting on games of chance is prohibited under most Gaming Enactments. The treatment of betting on sports and horse races under Indian law is discussed below.

Betting on horse races

In the case of *Dr KR Lakshmanan v State of Tamil Nadu* (the "Lakshmanan Case"), the Supreme Court held that betting on horse racing is a game of skill. Accordingly, it is exempt from the prohibitions under most Gaming Enactments.

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Most Gaming Enactments have carved out an exception for “wagering or betting upon a horse race” from the definition of gaming/gambling (the “Horse Racing Exemption”). However, the Horse Racing Exemption is subject to certain conditions under the Gaming Enactments – for example, wagering or betting must take place on the day on which the horse has run and in an enclosure that has been sanctioned by the state government. In the case of online horse racing betting, it would be difficult for these conditions to be met. However, one could argue that a horse racing bet is a game of skill independent of the Horse Racing Exemption.

During the COVID-19 pandemic, two Indian horse racing clubs (the Mumbai, and Calcutta Turf Clubs) received permission from the state governments of Maharashtra and West Bengal respectively to offer online betting on the horse races conducted in these clubs. The Hyderabad Race Club (“HRC”) also started accepting bets online with the club’s totalisator.

The state of Karnataka refused to grant a licence to the Bangalore Turf Club to conduct horse races and betting on horse races in June 2024, which has been challenged by the Bangalore Turf Club before the state High Court. The matter is still pending.

Sports Betting

The question of whether sports betting is a game of skill is pending before the Supreme Court in the Geeta Rani Case.

It can be argued that sports betting is also a game of skill based on the principles laid down in the Lakshmanan Case. However, the view held by most enforcement authorities in India is that sports betting is a gambling activity and is thus prohibited. Further, in the recent years,

there has been heightened scrutiny and enforcement action against remote gambling operators offering and advertising sports betting products in India.

Bingo

Depending upon the format, bingo may fall within the definition of a “lottery” or under the general definition of betting/gambling under most Gaming Enactments. It is a game of chance and prohibited in most Indian states. The Bharatiya Nyaya Sanhita, 2023 (BNS), which replaced the erstwhile Indian Penal Code, 1860, specifically prohibits private lotteries by prescribing that whoever keeps any office or place for the purpose of drawing any lottery, not being a state lottery or a lottery organised by the state government, will be punishable with imprisonments or fines. Accordingly, lottery products cannot be offered in most parts of India.

Only the Sikkim Online Gaming (Regulation) Act 2008 (the “Sikkim Online Act”) introduces a licensing regime for punto banco and bingo through the state-wide intranet.

Casino Games

Casino games are predominantly chance based. As such, they are treated as betting and gambling activities and are therefore prohibited under most Gaming Enactments.

The states/union territories of Goa, Daman and Diu, and Sikkim prescribe a licence regime for land-based casinos. The Sikkim Online Act covers certain casino games (eg, roulette, casino brag and blackjack) that may be offered through the state-wide intranet within Sikkim only.

Lotteries

Under the Lotteries (Regulation) Act 1998 and the Lotteries (Regulation) Rules 2010 (collective-

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ly, the “Lottery Laws”), state governments have the power to organise, conduct and promote lotteries, subject to certain conditions.

The Lottery Laws empower state governments to appoint individual or corporate entities as “distributors” or “selling agents” to market and sell lotteries on behalf of the organising state.

Some states permit and regulate state-run physical lotteries, whereas all types of lotteries have been banned in certain other states.

The BNS specifically prohibits private lotteries as stated above.

Fantasy Sports

It can be argued that certain versions of fantasy sports games are preponderantly skill-based games. Accordingly, such games can be treated as exempt under most Gaming Enactments.

The High Courts of Punjab, Haryana, and Rajasthan have held the Dream 11 format of fantasy sports to be a game of skill and the Supreme Court has also dismissed several petitions seeking permission to appeal against such High Court orders.

The High Court of Bombay has also recognised it as a game of skill. However, at the time of writing (October 2024), there has been a stay order imposed on the judgment of the High Court of Bombay by the Supreme Court. Accordingly, the Supreme Court may examine this issue now.

The Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act 2015 (the “Nagaland Act”) expressly recognises virtual team selection games and virtual sports fantasy league games as games of skill. If

such games are to be offered online in Nagaland, a licence would be required.

Social Gaming

Social gaming refers to those games in which players don’t pay money to participate, and no real-money prize in terms of money or equivalent worth is offered to the winner.

Depending on the format and content of such games, certain other issues may need to be considered, such as:

- whether the game amounts to a “prize competition” and is therefore subject to regulation under the Prize Competitions Act 1995;
- whether the content of the game would trigger any laws prohibiting certain types of content;
- advertising regulations applicable to in-app advertisements displayed in the game; and
- applicable data protection laws if Indian users’ data is being collected, processed and/or transferred to a foreign entity.

The MeitY blocked several social gaming apps with Chinese ties after the Ministry of Home Affairs raised security concerns over Indian user data.

PUBG was one of the apps initially blocked in September 2020. However, thereafter, MeitY permitted Krafton to conditionally re-launch a new app in June 2021, Battlegrounds Mobile India (BGMI), subject to quarterly assessments. The ban was later completely revoked in August 2023 after BGMI complied with the conditions set by the government. This may set a precedent for additional blocked apps to be re-launched in India.

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Poker

Arguably, certain variations of poker are games of skill for the purpose of most Gaming Enactments. Accordingly, offering such games should be permitted in most Indian states that have an exemption for games of skill.

Furthermore, the Gaming Enactments/courts in certain Indian states have specifically recognised poker as a game of skill in the following instances:

- West Bengal has specifically excluded poker from the definition of “gambling” under the West Bengal Gambling and Prize Competitions Act 1957;
- the Nagaland Act has specifically categorised poker as a game of skill;
- the Karnataka High Court has also held that a licence is not required under the Karnataka Act when poker is played as a game of skill; and
- in the Tamil Nadu TNOGA Order, the High Court of Madras has read down the TNOGA to the extent it sought to prohibit Poker, by holding that Poker is a game of skill, and hence any prohibition on Poker would be unconstitutional.

The High Court of Gujarat held that poker is a game of chance and a gambling activity. An appeal has been filed against this order and has been pending before the Gujarat High Court since 2018.

2.2 Land-Based Betting

As discussed in 2.1 Online, the Supreme Court held in the Lakshmanan Case that betting on horse racing is a game of skill and therefore exempt from the prohibitions under most Gaming Enactments.

In the case of betting on real (physical) horse races, the conditions prescribed under the Horse Racing Exemption would need to be met. Turf clubs regulate betting on physical horse races within their premises.

Poker/Bingo/Gaming Machines/Lotteries

Please see 2.1 Online, which also applies to physical versions of these games.

Casino Games

Only the States of Goa, Daman and Diu, and Sikkim regulate casino games in land-based form. The casinos in Goa and Daman and Diu are regulated under the Goa, Daman and Diu Public Gambling Act 1976 (the “GDD Act”), which prescribes a licensing regime for:

- “games of electronic amusement/slot machines” in five-star hotels; and
- table games and gaming on board offshore vessels under the terms of a licence in Goa and Daman and Diu.

The casinos in Sikkim are regulated under the Sikkim Casinos (Control and Tax) Act 2002 and the Sikkim Casino Games Commencement (Control and Tax) Rules 2007 (collectively, “Sikkim Casino Laws”), which prescribe a licensing regime for casino games in five-star hotels in Sikkim.

3. Legislative Framework

3.1 Key Legislation

Please see 2.1 Online for an overview of the PGA and Gaming Enactments.

In addition to the laws discussed in 2.1 Online, several other laws regulate the Indian gaming industry.

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Laws on Foreign Direct Investment

Under Indian exchange control law, being the Foreign Exchange Management (“Non-Debt Instruments”) Rules 2019 (the “Non-Debt Rules”), FDI is prohibited in the following sectors:

- lottery business (including state or private lotteries and online lotteries); and
- gambling and betting (including casinos).

For violating the Non-Debt Rules, one may have to pay a penalty of:

- up to three times the sum involved where such amount is quantifiable; or
- up to INR200,000 (approximately USD2,378) where the amount is not quantifiable.

Where the violation is ongoing, a further penalty may extend to INR5,000 (approximately USD59) for every day on which the contravention continues.

In January 2023, the Bombay High Court held that foreign investments in entities offering games with no real-money rewards does not amount to gambling under the Non-Debt Rules.

In an effort to stimulate growth and provide clarity given the existing regulatory ambiguity in the sector, the Indian government is considering a proposal to explicitly clarify 100% FDI in real money games of skill entities through the automatic route; ie, where no permission is required. In pursuance of the same, the DPIIT has sought clarity on the distinction between games of skill and games of chance from various ministries, to draft a policy permitting 100% FDI in online gaming. Discussions are reportedly underway at various levels of the government regarding the DPIIT proposal.

Exchange Control Laws

The FEMA, read with the Foreign Exchange Management (Current Account Transaction) Rules 2000, prohibits remittances from India towards the following transactions:

- remittance of lottery winnings;
- remittance of income from racing, riding or any other hobby; and
- remittance for the purchase of lottery tickets, banned/prescribed magazines, football pools, sweepstakes, etc.

The IT Act

If a game, or the manner in which it is offered, is unlawful, a court or authorised government body (such as the MeitY) may direct an intermediary platform – such as the app store (in the case of a mobile app) or (in case of a browser-based app) the internet service provider (ISP), telecommunications service provider (TSP) – to block the app or a specific game.

As per recent news reports, MeitY has directed certain Indian TSPs to block access to several offshore sports betting and gambling platforms offered remotely in India. News reports suggest that GST violations raised by GST authorities and violations of exchange control regulations raised by the Enforcement Directorate of India (ED) were contributing factors in MeitY’s decision to issue the blocking order.

As such, MeitY may have issued the order holistically in response to issues raised by several different central government ministries.

The Consumer Protection Act

The Consumer Protection Act 2019 (CPA) forms the basis of consumer protection law in India. The CPA imposes stringent measures on all service providers (including gaming operators)

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in order to prohibit unfair and restrictive trade practices, unfair contracts, deficient services and misleading advertisements. In addition, the Consumer Protection (E-Commerce) Rules impose obligations on “e-commerce entities”, which may include real-money online gaming platforms.

The Prize Competition Act

The Prize Competition Act (PCA) may also apply to certain game formats. The PCA was enacted to regulate certain types of competitions. The Supreme Court has held that the PCA would only apply to prize competitions that were of a gambling nature. However, because the types of games covered under the PCA (eg, crossword prize competitions) appear to be games of skill and not gambling, there is an anomaly in the types of games covered by the PCA.

The Digital Personal Data Protection Act

The Digital Personal Data Protection Act, 2023 (DPDPA) was enacted in August 2023 in India. However, its provisions have not been brought into effect as yet. The DPDPA introduces several compliances for collection and processing of personal data in India, as well as outside of India, if it is in connection with offering goods and services in India. The rules under the DPDPA, which will prescribe most implementation measures, are expected to be released for public consultation in the next month.

3.2 Definition of Gambling

“Gambling” or “gaming”, as per most Gaming Enactments, is understood to mean “the act of wagering or betting” for money or money’s worth. Gaming/gambling has been judicially interpreted by Indian courts to mean betting or wagering on games of chance. Typically, under most Gaming Enactments, “gambling” or “gaming” does not include:

- wagering or betting upon a horse race/dog race if such wagering or betting takes place in certain circumstances;
- games of “mere skill”; and
- lotteries.

3.3 Definition of Land-Based Gambling

Please refer to 3.2 Definition of Gambling.

3.4 Definition of Online Gambling

Only the states of Nagaland, Andhra Pradesh, Sikkim, Chhattisgarh, Tamil Nadu and Telangana have specifically extended their state enactments to the online medium (“Online States”).

The TNOGA defines “online gambling” as online wagering or betting and this includes playing any online game of chance for money (or other stakes) in any manner. “Wagering or betting” has been defined widely as including collection or solicitation of bets, receipt or distribution of winnings or prizes, and any act intended to aid or facilitate wagering or betting.

3.5 Key Offences

Under the Gaming Enactments, most offences and prohibitions are in relation to a “gaming house” or a “common gaming house”. These offences include (i) keeping charge of the common gaming house, being found in a common gaming house, having “care or management” of the gaming house, amongst others.

In states such as Assam and Orissa, the activity of gaming – irrespective of the medium or location in which it is offered – may be a punishable offence. Certain states’ laws specifically prohibit online gaming.

The Online States have specific other prohibitions and penalties.

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The BNS has prohibited petty organised crime which includes (i) unauthorised sale of tickets, and (ii) unauthorised betting or gambling by a member of a group or gang, either by themselves or jointly with others.

3.6 Penalties for Unlawful Gambling

Although the Gaming Enactments more or less prescribe fines and/or imprisonment, the amount of the fine or period of imprisonment may differ from state to state.

The PGA imposes a penalty of INR200 (approximately USD2.38) or up to three months in prison for owning, keeping or having charge of a gaming house, and an INR100 (approximately USD1.19) fine or one month in prison for being found in a gaming house.

The state-wise gaming laws also impose a punishment and imprisonment for offenders. Such punishment ranges from an imprisonment from three months to three years, and a fine that may be as high as INR2 million (approximately USD23,785) in some states.

The penalty for petty organised crime under the BNS is imprisonment for a term not less than one year which may extend to seven years and a fine.

3.7 Recent or Forthcoming Legislative Changes

Please see 1.1 Current Outlook and Recent Changes.

4. Licensing and Regulatory Framework

4.1 Regulatory Authority

There are only a small number of states in India that allow operators to conduct gambling or skill-gaming activities under a licensing regime. The regulatory authorities for issuance of licences in these states are as follows.

- Goa – the Home Department of Goa.
- Daman and Diu – the Director of the Tourism Department (for casinos, games of electronic amusement and slot machines).
- West Bengal – the Commissioner of Police.
- Nagaland – the Finance Commissioner.
- Sikkim – the authorised officer of the Finance, Revenue and Expenditure Department.
- Tamil Nadu – the TN Online Gaming Authority constituted under the TNOGA.

4.2 Regulatory Approach

Most of the Gaming Enactments are prescriptive in as much as most of the states prohibit betting/wagering involving stakes as a gambling activity, but carve out an exception for games of skill. Hence, should a game qualify as a game of skill, the prohibitions under most Gaming Enactments would not apply.

4.3 Recent or Forthcoming Changes

See 1.1 Current Outlook and Recent Changes.

4.4 Types of Licences

Game Registration Requirements

Casinos

Casino games, being games of chance, are prohibited in most Indian States. Licences for offering casino products in five-star hotels in Goa, Daman and Diu, and in Sikkim (through the intranet) are available under the GDD Act and the Sikkim Casino Laws respectively.

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Poker

Operators in India may offer skilled versions of poker without a licence in most Indian States. In Sikkim, Nagaland, and Tamil Nadu, operators may need to obtain a licence.

Sports/horse race betting

For conducting betting on physical horse races in India, a licence would be required. This is covered in 2.1 Online.

As stated in 1.1 **Current Outlook and Recent Changes**, the question of whether sports betting is a game of skill is pending before the Supreme Court in the Geeta Rani Case. The state of Sikkim offers a licence to offer sports betting through the intranet within Sikkim only.

Fantasy betting

If the fantasy sports game qualifies as a game of skill, no licence is required for offering such products under most Gaming Enactments. However, a licence must be obtained in Nagaland and Tamil Nadu.

Lotteries

Private lotteries are prohibited in most Indian States under the BNS. Under the Lottery Laws, for state-run lotteries, state governments may appoint an individual or a corporate body as a “distributor or selling agent” through an agreement to market and sell lotteries on behalf of the organising state.

Social gaming

If such games amount to prize competitions, a licence under the PCA may be required.

Skill games

Games of skill are exempted from prohibitions under most Gaming Enactments. Licences are

required in certain states like Nagaland and Tamil Nadu.

4.5 Availability of Licences

There is no limit/cap on the number of licences that may be offered, although there are restrictions – for example, Goa restricts the number of slot machines that can operate under a single licence.

4.6 Duration of Licences

The duration of the available licences is as follows.

- Nagaland – five years, and will be deemed renewed every year thereafter as long as the licence fee is paid.
- Sikkim – five years, unless cancelled or surrendered, and may be renewed via application.
- Tamil Nadu – the certificate of registration under the TNOGA is valid for three years, unless suspended or revoked.
- Goa and Daman and Diu – five years.
- West Bengal – permits are issued for specific events.

4.7 Application Requirements

Some of the key application requirements as per State Enactments are set out below.

Nagaland

The licensee:

- must be an entity that is incorporated in India, has a substantial holding stake in India, and has no criminal history;
- must not have any interest in online or offline gambling activities in India or abroad;
- must have controlling stake in India, and the executive decision-making powers of licen-

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sees are required to be performed from within the territorial boundaries of India; and

- must host their technology support (hosting of the website, management of the website, location of servers, etc) within India only.

Sikkim Casino Laws

Only a body corporate registered under the provisions of the Registration of Companies Act (Sikkim) 1961 may apply for a licence.

Sikkim Online Laws

The licensee must be a person/company/partnership firm incorporated in India.

Goa and Daman and Diu

Only land-based operators require licences in Goa and Daman and Diu.

Applicants, including individuals and persons holding key managerial positions (in case of body corporates/firms), must not have been convicted of any criminal offence with two or more years of imprisonment. Licences are cancelled if convictions occur post-approval.

Applicants are also required to submit a declaration of compliance with state Anti-money Laundering and Countering the Finance of Terrorism Regulations (“AML/CFT Regulations”).

The AML/CFT Regulations are discussed in **8. Anti-money Laundering (AML)**.

Tamil Nadu

The local online games provider may apply for a certificate of registration with the TN Gaming Authority; ie, entities whose central management and control of the service is in the State of Tamil Nadu, or whose service is hosted in the state. Out of state entities are not required to apply.

The applicant must ensure that they do not provide any online gambling service.

4.8 Application Timing

The process and timeline for licensing applications is as follows.

Nagaland

Applicants should submit their application to the licensing authority (ie, the Finance Commissioner or the “Nagaland Authority”) identifying the game and accompanied with details about promoter credentials, audited financials, software platform, business plan, and financial projections. If deemed satisfactory, a letter of intent is issued, and the application is reviewed by empanelled firms comprising of experts, who provide recommendations within 30 days. The Finance Commissioner may also consult ad hoc or expert committees for further review, with recommendations due within 14 days. Licences are typically issued within 14 days of final recommendations. Some operators have received their licence within a month or two, but in practice there is no strict timeline that is followed.

Sikkim – Casino

A licence application must be made by an Indian entity to the state government, which will examine the application.

Once it has made any necessary enquiries, the state government can grant a six-month provisional licence to set up necessary infrastructure.

When the applicant has fully complied with the terms and conditions of the licence, the state government can grant a regular licence.

Sikkim – Online Games

The licensee must make an application in the form specified by the Sikkim Online Act, along

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with the application fees. The state government will then conduct an inquiry (if it deems it appropriate) before issuing or rejecting the licence.

Goa, Daman and Diu

An application may be made by an individual/firm/body corporate to the Director of the Tourism Department. The Director appoints an inspection officer to assess the licensed premises. If satisfied, the Director recommends approval to the Administrator of Daman and Diu, who then grants or rejects the licence.

There is no guidance on timelines for grant of licence.

Tamil Nadu

Local online game service providers can apply for a certificate of registration from the TN Gaming Authority. The acceptance/rejection of the application must be decided within 15 days, ensuring the applicant is heard before any rejection.

West Bengal

An application for a permit to host games of skill in a public place must be made to the Commissioner of Police (if the permit is sought in Kolkata) or to the district magistrate or sub-divisional magistrate if the permit is sought elsewhere in the state.

4.9 Application Fees

Nagaland

A non-refundable application fee of INR50,000 (approximately USD594).

Sikkim

The casino fee is INR5,000 (approximately USD59) and the online fee is INR500 (approximately USD6).

For online gaming, a provisional fee of INR100,000 (approximately USD1,189) must be made, and once the application is approved, a licence fee of INR10 million (approximately USD118,939) has to be paid.

Tamil Nadu

The local online games providers must pay INR100,000 (approximately USD1,189) as the registration fee.

Goa, Daman and Diu

The cost of a licence is INR5 million (approximately USD59,468) for onshore and offshore casinos, regardless of the number of tables or machines installed in the licensed premises.

4.10 Ongoing Annual Fees

Nagaland

For the first three years, the annual licence fee per game is INR1 million (approximately USD11893) (or INR2.5 million (approximately USD29,733) for a range of games).

For the next two years, the annual licence fee is INR2 million (approximately USD23,786) (or INR5 million (approximately USD 59467) for a range of games). In addition, licensees are required to pay 0.5% of the gross revenue generated as a royalty.

Sikkim

For casinos, the licensee must pay gaming fees to the state government at a rate of 10% of the gross gaming yield (or INR10 million (approximately USD 11,8937), whichever is higher) for the first year. Thereafter, fees will increase incrementally by 15% per year with regard to the minimum assured revenue for each of the remaining four years.

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For online gaming, an annual fee of INR10,000 (approximately USD118) and an online gaming levy of 1% of the gross gaming yield must be paid to the state government under the Sikkim Online Act.

Goa, Daman and Diu

The fee varies based on the size of the casino, and whether it is an onshore or offshore casino, and the seating capacity of the vessel.

5. Land-Based Gambling

5.1 Premises Licensing

Please refer to 4.7 Application Requirements. The states of Sikkim, Goa, and Daman and Diu provide for premises licensing.

5.2 Recent or Forthcoming Changes

There are no specific contemplated changes.

6. Online Gambling

6.1 B2C Licences

Nagaland

As per the Nagaland Act, licences are issued for offering a variety of games of skill on online platforms.

Sikkim

The Sikkim Online Act allows for licences to be granted to offer a variety of intranet games (within Sikkim).

Tamil Nadu

Under the TNOGA, local online games providers may apply for registration to offer their online games.

Please refer to 4.7 Application Requirements for more details.

6.2 B2B Licences (Suppliers, Software, Etc)

There are no B2B licences to be obtained. The RBI requires payment processors to obtain licences under the Payment and Settlement Systems Act 2007; however, payment gateways do not need such licences.

6.3 Affiliates

Apart from contractual restrictions that may be explored, there are no measures in place to regulate the use of affiliates.

6.4 White Labels

There are no licensing/regulatory requirements that apply to the use of white-label providers.

6.5 Technical Measures

Websites that offer games of a gambling nature (ie, real-money products that are games of chance) may be blocked under certain provisions of the IT Act and the IT Rules.

6.6 Recent or Forthcoming Changes

All the proposed policy changes/pending litigation outlined in 1.1 Current Outlook and Recent Changes would impact the online gaming sector.

7. Responsible Gambling (RG), Also Known as Safer Gambling (SG)

7.1 RG Requirements

Most Gaming Enactments prohibit gambling activities and permit games of skill; they do not prescribe any social responsibility requirements for skill gaming operators. The Nagaland Rules

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prescribe some requirements for licensed operators in the state, such as:

- ensuring that games are not offered to minors;
- taking payments through recognised payment modes;
- implementing fraud prevention mechanisms; and
- publishing a responsible gaming charter on websites/apps.

Reportedly, the TN Gaming Authority is considering introducing certain controls on online gaming in the state, such as limits on number of hours, and cash limits.

Self-regulatory gaming associations have introduced self-regulatory standards for responsible gaming, including player protection measures, self-exclusion standards, and advertising standards amongst others.

7.2 Gambling Management Tools

There are no gambling management tools or requirements prescribed under Indian law.

Certain self-regulatory bodies have introduced measures for responsible gaming, as discussed in **7.1 RG Requirements**.

7.3 Recent or Forthcoming Changes

Please see **1.1 Current Outlook and Recent Changes**.

8. Anti-money Laundering (AML)

8.1 AML Legislation

The Prevention of Money Laundering Act 2002 (PMLA) prohibits money-laundering activities. Entities carrying out “activities for playing games

for cash or kind (including casinos)” are classified as “reporting entities” and are subject to certain reporting obligations (eg, verifying the identity of clients, maintaining records and reporting suspicious transactions).

In September 2024, certain news reports suggested that online skill gaming operators would be brought within the framework of the anti-money laundering laws, as elaborated upon in **8.2 AML Requirements**.

8.2 AML Requirements

As per news reports in September 2024, the Indian government has commenced internal consultations to include online gaming entities within the ambit of the PMLA, and to introduce Know-Your-Customer (KYC) obligations and mandatory reporting of suspicious activities by such entities. These reports also suggest that India is planning to present these issues at the meeting of the global Financial Action Task Force (FATF) in the wake of several issues of money laundering to foreign jurisdictions through online gambling apps.

The state government of Goa has introduced state AML/CFT Regulations. Entities seeking a casino licence in the state are required to comply with the conditions set out, which include reporting obligations for certain entities.

8.3 Recent or Forthcoming Changes

Please see **8.1 AML Legislation**.

9. Advertising

9.1 Regulatory/Supervisory Agency

The MIB has been vested with the jurisdiction over online advertisements, which may include

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gaming advertisements. Thus far, there have been no regulations introduced by MIB.

The Advertising Standards Council of India (ASCI) is a self-regulatory industry body whose Code has been made applicable for the regulation of advertisements on television/broadcasting media.

The Central Consumer Protection Authority (CCPA) regulates violations of consumer rights, unfair trade practices, and false advertising under the CPA. It can initiate proceedings, investigate offences, refer cases to other regulators, and impose penalties on violators.

State police and judicial authorities enforce the Gaming Enactments and the BNS prohibitions.

The specific regulatory authorities in states where licences are issued have been covered in **4.1 Regulatory Authority**.

9.2 Definition of Advertising

The CPA defines an advertisement as “any audio or visual publicity, representation, endorsement or pronouncement made by means of light, sound, smoke, gas, print, electronic media, internet or website and including any notice, circular, label, wrapper, invoice or such other documents.”

9.3 Key Legal, Regulatory and Licensing Provisions

Please see **9.4 Restrictions on Advertising** for general restrictions and prohibitions on advertising. There are specific restrictions on licensees in Sikkim, Nagaland and Tamil Nadu.

9.4 Restrictions on Advertising

Most State Enactments prohibit the printing, publishing, selling, distributing or circulating in

any manner of any newspaper, news sheet or other document, or any news or information with the intention of aiding or facilitating gambling. These restrictions, however, do not apply to skill games in most states. Some state-level restrictions are covered in **9.3 Key Legal, Regulatory and Licensing Provisions**.

Under the IT Rules, intermediary platforms (including social media platforms) are required to inform users not to publish any content relating to or encouraging money laundering or gambling, which is an online game that causes user harm, is harmful to a child, or which violates any law for the time being in force, which includes the Gaming Enactments.

Advertisements of games of skill are regulated by the CPA and the Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements 2022 (the “Misleading Ads Guidelines”) introduced by the CCPA. The CPA read with Misleading Ads Guidelines prohibits misleading advertisements, surrogate advertisements, and unfair trade practices through certain types of promotional activities.

Recently, direct and surrogate advertising of foreign sports betting platforms in India has come under significant scrutiny by the MIB and the Department of Consumer Affairs. News reports suggest that the CCPA invoked provisions under the CPA to issue show-cause notices to six online betting apps for violating advertising norms by misleading consumers through surrogate advertisements. The CCPA has recently issued an advisory directed towards the entire spectrum of entities involved in advertisements (manufacturers, advertisers, publishers, intermediaries, celebrities, influencers and any other relevant stakeholders) advising them against directly or indirectly or through surrogate adver-

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tisements, promoting, endorsing or advertising unlawful betting or gambling activities.

Between June 2022 and March 2024, the MIB issued five advisories, in consultation with the Department of Consumer Affairs, warning media and influencers against promoting or endorsing online sports betting platforms and surrogate ads targeting Indian audiences. The Press Council of India also issued a warning in April 2024 for print media to follow CCPA guidelines on prohibiting unlawful activity promotions. Additionally, sporting bodies like the BCCI have banned associations with betting platforms.

TCCPR Regulations

Advertisements through SMS or voice-based communication is regulated by the Telecom Commercial Communications Customer Preference Regulations 2018 (TCCPR).

The ASCI Code and ASCI Gaming Guidelines

The ASCI Code restricts advertisements for banned products, including gaming/gambling items, and prohibits surrogate advertisements. However, legitimate brand extensions are exempt. The ASCI released the Gaming Guidelines for Online Games with Real Money Winnings. The guidelines prohibit, amongst others, ads showing minors playing for real-money winnings and require disclaimers about financial risks. ASCI focuses on regulating the content of these ads, not the legality of the games themselves.

Content-Related Restrictions

Advertising content may also be subject to content-related restrictions under the BNS, the IT Act and other legislation, which prohibit obscene content, content that hurts religious sentiments, amongst others.

Advertising of Gambling

Please see 9.4 Restrictions on Advertising for the restrictions on advertising. The TCCPR prohibits unsolicited commercial communications to persons who have opted out of receiving them. Both telemarketers (to which the sending of commercial communications is outsourced) and senders (the entity promoting the goods/services) are required to register as detailed under the TCCPR in order to send commercial communications.

9.5 Sanctions/Penalties

Under the ASCI Code, ASCI may direct members to modify their advertisement.

ASCI has partnered with CCPA to forward non-compliant ads that may violate the ASCI Code or the CPA and its guidelines.

For violations under the CPA, fines of up to INR1 million may be imposed. Every subsequent offence may be punished with up to five years in prison and a fine of up to INR5 million. The CCPA may direct misleading or surrogate advertisements to be removed.

9.6 Recent or Forthcoming Changes

There are no legislative changes contemplated with regard to gaming advertisements.

10. Acquisitions and Changes of Control

10.1 Disclosure Requirements

In the event that the transaction involves a listed company, certain regulatory disclosures (including stock exchange disclosures) will need to be made depending upon the nature of the transaction.

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There are specific disclosure requirements for acquisitions and changes of control of gaming/gambling companies under State Enactments that contain a licensing regime.

Under the Nagaland Act and the licence terms and conditions, the licence will be suspended in case of:

- change in shareholding pattern;
- change in directorship; or
- the licensee being acquired.

The licensee must approach the state licensing authority within 30 days and state the reasons for such change. Thereafter, the authority has the right to decide whether to resume the licence or suspend it.

10.2 Change of Corporate Control Triggers

Please refer to 10.1 Disclosure Requirements.

10.3 Passive Investor Requirements

There are no specific requirements for passive investors in acquisitions or changes of control under Indian law.

10.4 Recent or Forthcoming Changes

There are no recent or further changes that have been reported.

11. Enforcement

11.1 Powers

As covered in 3.6 Penalties for Unlawful Gambling, regulatory bodies (the police/judicial bodies) may impose fines or imprisonment under the Gaming Enactments.

11.2 Sanctions

Some recent cases of enforcement in this industry are as follows.

- According to the latest annual report from the Directorate General of GST Intelligence (DGGI), 658 offshore online money gaming entities have been identified by DGGI to be non-registered or non-compliant, prompting investigations against them. Additionally, the DGGI has also recommended 167 URLs/web-sites for blocking.

The ED has raided multiple states, including Goa, Maharashtra, and Punjab, investigating FEMA violations by offshore betting companies and illegal online casinos. State police have also arrested individuals linked to these online betting platforms.

- The central government as well as state governments have been blocking offshore online betting and casino platforms following investigations conducted by the ED and raids.
- The ED has arrested persons, and seized monies in connection with carrying out unlawful betting/gambling and routing proceeds of unlawful gambling offshore under the PMLA.

Personal Sanctions

With regard to personal liability, only a few states in India contain express provisions imposing vicarious liability upon those in charge of the company for its business (including its directors or officers).

Under Indian law, vicarious liability cannot be imposed on the directors unless:

- the statute expressly provides for it; or
- it is shown that the individual had an “active role with criminal intent”.

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There are certain other offences (eg, criminal conspiracy) for which individuals in the company could be held liable under general criminal laws, such as the BNS.

11.3 Financial Penalties

Please refer to 11.1 Powers.

11.4 Recent or Forthcoming Changes

An inter-departmental committee with representatives from various government ministries may be constituted to develop comprehensive strategies to combat unlawful gambling.

12. Tax

12.1 Tax Rate by Sector

Income Tax

As per Indian income tax laws, winnings from any crossword puzzle, card game horse races or other game are taxable at the rate of 30% (plus applicable cess and surcharge) without allowance for any deductions or expenses. A similar manner of taxation is provided for income by way of winnings from online games.

Withholding tax obligations with respect to online and offline games have been separated with effect from 1 April 2023. While withholding tax for offline games continues to be 30% (plus applicable cess and surcharge) on the winnings amount exceeding INR10,000 (approximately USD118) in the financial year, withholding tax obligations for online games is now 30% (plus applicable cess and surcharge) on “net winnings” without the INR10,000 (approximately USD118) limit. Further, the Central Board of Direct Taxes has provided guidelines and clarifications on the manner of computing such “net winnings”.

If winnings are in kind (or partly in kind), the payer must ensure tax is paid before releasing the full prize, especially if the cash component is insufficient to cover the withholding tax.

Equalisation Levy

Offshore e-commerce operators were earlier subject to an Equalisation Levy (EL) at the rate of 2% on the consideration received or receivable from “e-commerce supply or services” made or provided or facilitated by such operators to a person resident in India. However, the Finance Act 2024 brought in amendments to abolish the applicability of EL with effect from 1 August 2024. Accordingly, the issue of whether offshore online gaming operators should be subject to EL is now redundant.

Goods and Services Tax

There have been several developments in the GST regime for the gaming industry with effect from 1 October 2023.

A new concept of “online money gaming” has been introduced, covering all online games where players pay or deposit an amount with the expectation of winning rewards, regardless of whether the outcome depends on skill or chance, or if the game is legally permissible. Further, valuation rules have been introduced, inter alia, providing that the value of supply of online gaming, including supply of actionable claims involved in online money gaming, shall be the total amount paid or payable to or deposited with the supplier by way of money or money’s worth, including virtual digital assets, by or on behalf of the player. The above amendments are brought in to levy GST at the rate of 28% on the total amount deposited by a player with an online gaming operator by way of money or money’s worth regardless of the nature of such game.

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Online money gaming has been excluded from the ambit of Online Information and Data Access or Retrieval services. However, the amendments require offshore online money gaming operators to obtain mandatory GST registration. In the case of failure to obtain such registration, the GST department may block any information generated, transmitted, received or hosted in any computer resource used for supply of online money gaming by such offshore online money gaming operator.

Offline games involving betting and gambling continue to be taxed at the rate of 28% on the entire bet amount.

On the judicial front, the Karnataka High Court recently quashed a GST demand of INR21,000 crores (around USD25 million) against Gameskraft, ruling that the buy-in amount for a skill-based game like rummy should not be subject to GST. The tax department appealed this decision to the Supreme Court of India, which granted a temporary stay on the High Court's order. As a result, the GST department has started opening assessments for operators for periods before 1 October 2023, which are being challenged in various high courts. Most of these courts have issued notices and granted stays on the proceedings. Due to a transfer petition filed by the tax department, these cases are now being consolidated for hearing alongside the Gameskraft matter in the Supreme Court.

12.2 Recent or Forthcoming Changes

A provision has been inserted in the GST laws empowering the government, upon the GST Council's recommendation, to identify and waive GST on supplies where GST was not levied or short-levied because of a generally prevalent practice. The government may issue notifications to identify such supplies and waive the

entire GST amount, or any excess above the short levy of GST, as the case may be. However, no such notification has been issued to date.

This amendment could potentially relieve online gaming operators of past GST demands. However, no notification has been issued as yet.

13. Personal Approvals and Licensing

13.1 Types of Authorisations and Licences

Authorisations and Licences Applicable to Individuals

As mentioned in 4.4 **Types of Licences**, licences may be required based on the state in which the product is offered, type of product and the medium through which the product is offered. While in some states, arguably individuals can apply for such licences, in practice, licences are not issued to individuals in their personal capacity.

Casinos (Physical)

In Sikkim, there are no independent/individual licences issued for casinos. In Goa, Daman and Diu, licences may be issued to individuals for offering casino products.

Poker

In Sikkim, the licence can be given to a "person", which may technically include natural persons or corporate entities. However, in practice, individuals may not be contemplated as licensees.

Similarly, in Nagaland, an individual may not be eligible for licences. None of the 12 licences issued have been given to individuals.

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In West Bengal, an “organiser” may apply for a permit for providing a game of skill. It is not clear whether an entity or a natural person may apply.

Sports/Horse Race Betting

In Karnataka and Maharashtra, the licence for operating a horse racing course may be granted to the owner, lessee or occupier of a race course by the state government. The language of the provision is unclear as to whether the licences are issued in the name of the individual (owner, lessee or occupier) or the race course. However, in practice, licences are issued to Turfs Clubs.

Fantasy Betting

As mentioned in 4.4 Types of Licences, fantasy sports that qualify as games of skill do not require licences under most Gaming Enactments, apart from in Tamil Nadu and Nagaland (see the discussion on poker above).

Lotteries

As per the Lottery Laws, an individual may be appointed as a “distributor or selling agent” through an agreement for the lotteries conducted by the state.

Social Gaming

If a social game amounts to a prize competition, then a licence under the PCA may be required to promote/conduct it. Individuals may obtain this licence.

Skill Games

Please see the discussion on poker above.

Availability of Licences

There is no explicit limits/cap on the number of licences that may be offered. There is no distinction between licences that may be issued to individuals and to companies/firms under the GDD Act. Please see 4.5 Availability of Licences.

Duration of Licences

See 4.6 Duration of Licences.

13.2 Application Process

There is no distinction between the licences issued to individuals and to companies/firms in terms of the application requirements, timeline for such applications and the fees associated. Please see 4.7 Application Requirements, 4.8 Application Timing and 4.9 Application Fees above.

13.3 Ongoing Annual Fees

Applicable annual fees to the licences mentioned in 13.1 Types of Authorisations and Licences have been discussed in 4.10 Ongoing Annual Fees.

13.4 Ongoing Requirements

The general licence conditions discussed in 4.7 Application Requirements would apply.

13.5 Personal Sanctions

Please see 11.1 Powers.

13.6 Recent or Forthcoming Changes

There have been no major changes.

Trends and Developments

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Nishith Desai Associates is an India-centric global law firm with offices in Mumbai, Bengaluru, Delhi, Silicon Valley, Singapore, Munich and New York. The gaming practice comprises three leaders and 12 qualified lawyers. The team has been a pioneer in the industry, and the gaming practice has existed almost as long as the online gaming industry in India. The team has worked on multiple innovative and out-of-the-

box transactions in the gaming space, particularly cross-jurisdictional investments and entry strategies for foreign clients. The firm's focus on research and academic work in this area enables it to provide cutting-edge solutions for clients. Nishith Desai Associates has also been instrumental in industry-wide efforts and policy advocacy on behalf of the Indian gaming industry.

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LEGAL AND TAX COUNSELING WORLDWIDE

India represents the second-largest online gaming community, with an impressive 442 million user base. As per a study by Grant Thornton Bharat in collaboration with industry body E-Gaming Federation, the Indian gaming industry is projected to experience a whopping growth rate of 20% to reach INR231 billion in 2025, from INR220 billion in 2023. Real money skill gaming accounts for approximately 83–84% of the revenue. Prime Minister Modi heralded the role of the gaming industry in job creation and outlined the government's goal to establish India as a global leader in the gaming industry during his speech on Indian Independence Day in August 2024. This followed his interaction with top gamers earlier in 2024, where he sought to understand the regulatory issues in the industry and recognised the need for a minimal intervention approach to video gaming regulation. He stressed the importance of Indian youth leading the use of Indian culture to create innovative multiplayer games that attract global audiences, positioning India as a top game exporter.

The gaming industry also forms a critical part of India's "Digital India" initiative, which is set to transform India to a digitally empowered nation. In furtherance of this aim, the federal Cabinet

approved the establishment of a National Centre of Excellence (NCoE) for the Animation, Visual Effects, Gaming, Comics and Extended Reality (AVGC-XR) sector in September 2024. The NCoE will act as a nodal institute for skilling, research and development, IP/content creation based on India's heritage, and as an incubation centre for start-ups in the industry. There are also proposals underway to explicitly clarify that 100% foreign direct investment (FDI) is permitted in the skill gaming sector through the automatic route.

Despite the promising growth of India's online gaming industry and repeated recognition of the need to prioritise the role of the gaming industry, regulatory uncertainty continues to loom, for real money gaming in particular. Simultaneously, ongoing uncertainty around Goods and Services Tax (GST) creates further challenges to industry growth.

Scrutiny of offshore advertising and the offering of illegal gaming services continues to increase, from various Indian regulatory authorities such as the Ministry of Electronics and Information Technology (MEITY), Enforcement Directorate (ED), and Indian tax authorities.

We have discussed below some of the key trends and developments in 2024 and their potential impact on the industry in India.

Positioning India as a Global Gaming Hub: TRAI Recommendations and AVGC Policy

In April 2022, the Ministry of Information and Broadcasting (MIB) set up an Animation, Visual Effects, Gaming and Comics (AVGC) Task Force (the “AVGC Task Force”), to boost industry potential through various training initiatives and government incentives. The AVGC Task Force released its report in December 2022, which recognised the potential of the gaming industry and its contribution to the Indian economy. In furtherance of the same, in September 2024, the Union Cabinet approved the establishment of a NCoE in Mumbai to support skilling, education, industry development, research and innovation in the AVGC sector, particularly in gaming. Further, the MIB has announced that the National AVGC-XR Policy will be implemented soon, along with the introduction of a National AVGC-XR Mission. The AVGC-XR Policy is currently awaiting cabinet approval. The policy is designed to be the framework for the sector’s development and provide guidance to states, which will develop their own AVGC policies. The National AVGC-XR Mission will create an integrated plan for promotion and growth of the AVGC sector.

The Telecom Regulatory Authority of India (TRAI) released its recommendations to the National Broadcasting Policy in June 2024. The recommendations include incentives to attract skilled gamers, content creators and industry professionals to establish India as a “Gaming Content Hub”. The recommendations suggest that India consider a gaming visa similar to Dubai’s and align its AVGC Policy accordingly. It also recommended measures to unlock India’s potential as a “Gaming Content Hub” by creating and sup-

porting infrastructures such as plug and play labs, incubators and by encouraging start-ups and new players.

FDI Limits Proposed to be Explicitly Liberalised in Skill Gaming Sector

The Foreign Direct Investment Policy of India (the “FDI Policy”), as codified into law by the Foreign Exchange Management Act, 1999 and the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 (the “Non-Debt Rules”), prohibits FDI in lottery and gambling and betting (including casinos).

The terms “gambling and betting (including casinos)” are not defined under the FDI Policy/Non-Debt Rules. Due to this, the authorised dealer banks that process investments, and the Department of Industrial Policy and Promotion (DPIIT), (the Central department that provides approvals for FDI), have grappled with distinguishing between “gambling” and “games of skill” for FDI purposes.

Recently, court rulings have provided clarity on certain aspects. For instance, in a significant ruling, the High Court of Bombay has upheld that foreign investment in entities offering games with no real-money rewards does not amount to “betting and gambling” under the FDI Policy. The court interpreted past Supreme Court judgments and reiterated that the predominant element of the activity (skill or chance) would determine the character of the game. In order to constitute gambling, a game (i) must be predominantly a game of chance, and (ii) must be played for a reward. However, notwithstanding these rulings, there is a strong need for regulatory certainty in FDI in increasingly diverse and innovative games of skill.

In an effort to simplify and streamline FDI in the industry, as per news reports, the government is planning on explicitly clarifying 100% FDI in real money games of skill entities through the automatic route – ie, where no permission is required. In pursuance of the same, as per news reports, the DPIIT has sought clarity on the distinction between games of skill and games of chance from various ministries, such as MIB, MEITY and NITI Aayog, to draft a policy permitting 100% FDI in online gaming. Discussions are reportedly underway at various levels of the government regarding the DPIIT proposal. The outcome of this exercise could significantly boost regulatory certainty, and therefore investment in the already burgeoning Indian real money skill gaming industry.

Federal Self-Regulatory Approach Shelved, Establishment of Government Regulator

At the close of 2022, MEITY was appointed the federal regulator for online gaming, and the Ministry of Youth Affairs and Sports was appointed as the federal regulator for e-sports. This was a significant step towards long-sought federal regulations for the online gaming industry, hitherto governed by antiquated and inconsistent state-wide laws.

As discussed in the [India Law and Practice chapter in this guide](#), the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 were amended in April 2023, to create a federal framework to regulate online gaming (“Gaming Amendments”), which were expected to operate in parallel with the state-wide gaming legislation (“Gaming Enactments”). Some of the key features of the Gaming Amendments are set out below.

- The Gaming Amendments proposed a co-regulatory framework between designated self-regulatory bodies (SRB) and the MEITY.
- Only companies incorporated in India were eligible to apply to be an SRB.
- Two types of games were sought to be regulated: (i) permissible online real money games (PORMG) and (ii) other online games. Online gaming intermediaries offering PORMG would be overseen by SRBs.
- These SRBs would be responsible for verifying a game as permissible, PORMG, provided it met specific criteria, such as excluding any form of wagering on outcomes. As a result, games of chance, and games like sports betting were intended to be excluded from the regulatory framework.

However, notably the government has retreated from the co-regulatory framework in the Gaming Amendments, now considering the establishment of a federal government regulator instead. As per news reports dated January–February 2024, MEITY examined the proposals submitted for SRBs and concluded that they were heavily dominated by major industry players, and would not be representative of the various stakeholders. Hence, the central government shelved the proposal and per such reports has taken it upon itself to regulate gaming. It is yet to be seen what direction MEITY proposes to take with respect to the new regulations. The National Law University (NLU) Delhi, in collaboration with the E-Gaming Federation, is engaging with industry stakeholders to chart the course for future gaming regulations. NLUD was expected to submit its report to MEITY after the general elections.

In parallel, a non-governmental organisation has filed a petition before the Delhi High Court challenging the Gaming Amendments, including on the grounds that the Centre has issued the

amendments by usurping the state's exclusive legislative competence to regulate online gaming. The matter is still pending before the court.

States are continuing to regulate the gaming industry at a state level by considering addressing various forms of user harm, including gaming addiction amongst children under the Gaming Enactments. For example, Tamil Nadu is considering introducing daily usage and monetary caps for online gaming and ban on gaming during certain hours (between midnight and 5AM).

Supreme Court to Examine Constitutionality of Bans on Skill Games

Under most Gaming Enactments, offering or playing games of chance for money is prohibited, while games of skill are generally exempt. Offering and playing games of skill has been recognised as a constitutionally protected activity by the Supreme Court and various state High Courts. A few states such as Nagaland, Sikkim and Tamil Nadu, have opted to regulate such games through licensing regimes, while others have attempted to ban even games of skill, when played for monetary stakes. However, High Courts in certain states have ruled these prohibitions unconstitutional.

- Kerala – the Kerala High Court overturned a ban on online rummy for stakes in 2021, and that decision is now under appeal before a larger bench before the High Court.
- Tamil Nadu – in April 2023, Tamil Nadu introduced the Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Act, 2022, which aimed to ban games like poker and rummy. While physical versions of games like rummy and poker have been recognised as games of skill, the Tamil Nadu government sought to ban the same on the basis that the online versions of these games

were games of chance, due to the manner in which the games were played online. In November 2023, the Madras High Court struck down the restrictions on rummy and poker as unconstitutional. The court also notably held that the same level of brain activity would be required to play poker and rummy online as it would be required to play these games offline. The Court however did uphold the constitutionality of other provisions of the Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Act, 2023, which sought to regulate, not prohibit, online games of skill. The Tamil Nadu government has since filed a Special Leave Petition (SLP), a petition seeking permission to appeal before the Supreme Court challenging the Madras High Court's ruling.

- Karnataka – petitions were brought before the Karnataka High Court to challenge the provisions of the Karnataka Police (Amendment) Act, 2021, which sought to ban all online games involving stakes, including skill-based games. The Karnataka High Court ruled these provisions unconstitutional. The Karnataka government has also filed an SLP against this decision.

Accordingly, the SLPs seeking permission to appeal the judgements from Tamil Nadu and Karnataka have been combined and are currently pending before the Supreme Court.

In addition, writ petitions were filed in the Telangana High Court challenging the Telangana Gaming (Amendment) Act, 2017, which sought to ban skill-based games played for stakes. Following Tamil Nadu and Karnataka, the Telangana government filed a transfer petition to have the case heard alongside the other appeals in the Supreme Court. The case is yet to be clubbed with the other petitions.

Thus, there are five matters now before the Supreme Court. The outcome of these cases will play a critical role in determining whether states can ban skill-based games, with the Supreme Court's decision being binding on all Indian states.

These High Court rulings suggest increasing recognition of the constitutional right to offer and play skill-based games by the Indian court, but the final outcome of the ongoing special leave petitions before the Supreme Court will lay the question to rest.

GST on Online Gaming

With effect from 1 October 2023, the GST laws were amended to levy 28% GST, on the total deposit amount. These amendments have significantly impacted the sector since their introduction, leading to layoffs and the closure of some start-ups due to the tax burden. The industry had earlier been paying 18% GST on the service fee charged by the platforms. A survey of gaming companies indicate that most companies prefer that the GST be applied to the gross gaming revenue, instead of the deposit amount.

Retrospective GST notices

While the GST amendments are operational from 1 October 2023, Indian real money gaming operators have received a slew of notices from GST authorities in India seeking to implement the 28% GST on the deposit amount retrospectively for previous years (March 2017 – July 2023) as well. Operators have challenged the issuance of the show cause notices before the High Courts. In many instances, the relevant High Courts have granted a stay on the operation of the show cause notices to the gaming operators. These cases have been consolidated and are currently awaiting adjudication before the Supreme Court. In these matters the operators have challenged

the legal provisions on the basis of which the show cause notices were issued. The matter was next listed on 5 November 2024.

Amendments could bring relief for retrospective GST dues

Through a recent amendment introducing Section 11 A to the Central Goods and Services Tax Act, 2017, the government is considering softening its stance on levying GST in certain cases. This provision empowers the government, on the recommendations of the GST Council, to allow regularisation of non-levy or short levy of GST, where tax was being short paid or not paid due to generally prevalent practices. The government is empowered to implement this relief by notifying such practices upon recommendations of the GST Council. However, no notification has been issued to date.

Since the real money gaming industry was paying GST at the rate of 18% on the service fee as a general practice, this provision is expected to provide relief to the industry. However, the benefit cannot be confirmed in the absence of a notification to this effect. Despite the 28% GST implication, investor sentiment remains strong in the gaming industry, with deal activity reflecting confidence in the sustained potential of the industry.

GST registration for offshore operators

The amendments also require compulsory GST registration for offshore gaming operators and blocking of gaming platforms in case of non-compliance. The GST authorities have urged MEITY to block over 170 offshore online gaming platforms for non-compliance with the registration requirement under the GST laws. Tax collection from online gaming has been reported to have increased by 412% owing to the GST amendments.

Increased Scrutiny of Offshore Gambling Operators Targeting India

As mentioned above, games of chance like casino, sports betting, etc, are prohibited under Indian gaming enactments. In addition, Indian foreign exchange control laws prohibit the remittance of money by Indian users abroad for gaming activity, including lottery and sweepstakes, amongst others.

However, offshore operators usually offer gambling products remotely, often in violation of Indian anti-money laundering and exchange control laws by routing funds through cash transfers, hawala transactions or other complex methods.

Indian regulators and enforcement authorities have increased scrutiny and enforcement action against such operators. The local/domestic industry has also been vocal against such operators and sought to distinguish themselves from the offshore “gambling” industry.

Blocking of websites

MEITY had directed certain Indian telecoms service providers to block access to several offshore sports betting and gambling platforms offered remotely in India. Based on news reports, the blocking appears to have been triggered by various violations, including non-compliance with exchange control and money laundering laws and GST violations raised by GST authorities. As of December 2023, MEITY is reported to have blocked around 174 betting and gambling applications.

Attachment orders and arrests by ED in connection with money laundering

The ED under the Prevention of Money Laundering Act, 2002 is continually cracking down on illegal and offshore gambling operators. Recently, the ED issued an attachment order for proper-

ties worth around INR260 million (approximately USD3,093,493), including assets in cryptocurrency wallets. This was in a case of fraud involving an app, “Fiewin” linked to a Chinese national, where the amount in question was around INR4 billion (approximately USD47,592,200). The ED also issued an attachment order. In another investigation linked to money laundering by another unlawful online gaming app “E-Nugget”, the ED seized nearly INR900 million (approximately USD10,708,243) from cryptocurrency wallets of exchanges. In the infamous Mahadev betting app case involving large-scale money laundering from illegal betting activities, the ED has frozen assets over around INR5.8 billion (approximately USD69,008,678).

Advisories against surrogate advertisements

The Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022 (the “Misleading Ads Guidelines”) issued under the Consumer Protection Act, 2019 (CPA) prohibit the advertisement of goods, products or services, whose production, sale or provision, are prohibited under law. Most state gaming enactments have specific prohibitions against the advertisement of gambling or games of chance. The Misleading Ads Guidelines also prohibit the surrogate advertisement or indirect advertisement of goods or services whose advertising is otherwise prohibited or restricted by law.

Offshore operators have been continually engaged in advertising sports betting entities under the guise of news platform (on several occasions, MIB has noted that the logos of such surrogate news websites bear a striking resemblance to those of betting platforms). The Advertising Standards Council of India (ASCI) flagged and reported 700 advertisements from illegal betting and gambling companies to the

MIB between April and August 2024. This was reportedly prompted by the rampant advertising by offshore betting platforms during the Indian Pro Kabaddi League.

The MIB, the federal Ministry responsible for online advertisements, has issued an advisory directing social media platforms and online advertisement intermediaries to refrain from publishing and broadcasting direct and surrogate advertisements of offshore online betting platforms. The Central Consumer Protection Authority (CCPA) has also issued an advisory expressing concerns on the endorsement and promotion of betting activities by celebrities and influencers. The advisories also advise against targeting such content towards Indian audiences and requiring social media intermediaries to conduct sensitisation efforts such that users refrain from posting such content.

The Press Council of India has asked print media as well to adhere to the directives issued by the CCPA.

Domestic skill gaming industry seeks to distinguish itself from offshore gambling operators

As of August 2024, various stakeholders from the real money gaming industry met with senior officials of MIB to discuss, among other things, the possibility of MIB certification/seal for legitimate games, to distinguish them from illegal offshore betting apps. Domestic operators have approached MIB with this concern owing to their struggles with tax burden and profitability, while illegal foreign players continue to expand their user base.

Rules Under the Data Protection Law to be Issued

India introduced its first comprehensive data protection law in the form of the Digital Personal Data Protection Act, 2023 (DPDPA) on 11 August 2023. However, the DPDPA is yet to be brought into effect. It will be made effective once its provisions are operationalised through detailed implementation rules.

As per the statements made by the Cabinet Minister for the MEITY in August 2024, the rules were expected to be released for public consultation in September 2024. The rules are yet awaited. Once brought into force, the DPDPA will be applicable to the collection and processing of personal data by online gaming operators.

The DPDPA borrows several features of the General Data Protection Regulation (GDPR), in terms of key stakeholders (data principal, data fiduciary, and data processor), notice and consent requirements, security measures, key rights of data principals, and certain grounds for processing. However, there are also marked differences in terms of obligations for cross-border data transfers, data breach reporting requirements, aspects of grievance redressal and quantum of penalties, amongst others.

One of the notable features of the DPDPA is the consent requirement for processing children's data. Under the DPDPA, verifiable consent of the parent must be taken before the personal data of a child is processed. The DPDPA also prohibits data fiduciaries from processing the data of child in a manner that is likely to have a "detrimental effect" on their well-being, and from undertaking tracking or behavioural monitoring or targeted advertisements directed at children. There may be certain exceptions from verifiable parental consent and the prohibition on tracking,

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13.6 Recent or Forthcoming Changes

There are currently no recent or forthcoming changes to Colorado personal approvals and licensing.

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