



Gaming Law 2022

i Last Updated October 18, 2022

India

Law and Practice

Trends and Developments

Law and Practice

Authors



Gowree Gokhale

(/author/details/3217a029c7d0044e/3217a029c7d0044e)



Tanisha Khanna

(/author/details/3217a029c7d0044e/3217a029c7d0044e)



Raashi Vaishya

(/author/details/3217a029c7d0044e/3217a029c7d0044e)

(/author/details/3217a029c7d0044e/3217a029c7d0044e) (2hpIFZhaXNoeWE)

Nishith Desai Associates (<https://chambers.com/law-firm/nishith-desai-associates-global-2:3212>) is an India-centric global law firm with offices in Mumbai, Bengaluru, Delhi, Silicon Valley, Singapore, Munich and New York. The gaming practice comprises four leaders and 11 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 – for example, leading various meetings with regulators and the Law Commission of India to advocate for the introduction of a licensing regime for skill games in India and making recommendations with respect to the taxation of gaming transactions.

Close All 

▼ 1. Introduction

▼ 1.1 Current Outlook

Policy Changes

Inter-Ministerial Panel proposes new federal gaming law

In May 2022, the government of India (the “central government”) set up an inter-ministerial panel (“IM Panel”) amid calls to introduce a federal law for online gaming. The IM Panel comprises representatives from various government ministries to plan the way forward for India’s online gaming industry. While the details of the IM Panel’s report have not been made public yet, news reports suggest that it calls for:

- a federal (central) law to regulate the online skill gaming industry (and new rules under existing law as an interim measure until such separate

law is introduced);

- applicability of the law to domestic gaming operators, as well as foreign operators targeting Indian users;
- the Ministry of Electronics and Information Technology (“the MeitY”) to act as the central regulator for this industry, with the exception of esports (which will be regulated by the Sports Ministry) and games of chance (which will be regulated by each state);
- the creation of a regulatory body that will determine if a game qualifies as a game of skill, and certify it as such;
- classification of gambling (ie, games of chance) as “harmful” under federal law, albeit with some flexibility for each state to decide whether to permit it within their territories;
- vesting the central government with the power to block websites that offer prohibited games (please note that the MeitY has already begun blocking offshore gambling websites, as discussed in **3.1 Key Legislation**);
- limits on the amount of money individual players spend on the game;
- reporting of suspicious transactions to the central government’s Financial Intelligence Unit.
- mandatory responsible gaming measures (eg, periodic warnings and fixing deposit and withdrawal limits):
- a three-tier dispute resolution mechanism, consisting of the gaming operator, self-regulatory organisations of gaming operators, and an oversight body led by a government ministry.

The MeitY is expected to finalise the report before sending it to the Cabinet for approval. The timelines for its introduction are not clear.

The MIB's new Animation, Visual Effects, Gaming and Comics Task Force

In April 2022, the Ministry of Information and Broadcasting (MIB) set up an Animation, Visual Effects, Gaming and Comics (AVGC) Task Force, composed of central government bodies, industry representatives and state governments, to boost industry potential through various skilling initiatives and government incentives. The terms of reference of the AVGC Task Force are:

- framing a national AVGC policy;
- recommending a national curriculum framework for graduation, post-graduation and doctoral courses in AVGC-related sectors;
- facilitating skilling initiatives in collaboration with academic institutions, vocational training centres and industry;
- boosting employment opportunities;
- facilitating promotion and market development activities to extend the global reach of the Indian AVGC industry; and
- enhancing exports and recommending incentives to attract Foreign Direct Investment (FDI) in the AVGC sector.

The report of the AVGC Task Force is expected in the next few weeks.

Group of Ministers to consider Goods and Service Tax Rate

A Group of Ministers (GoM) has been set up to suggest the Goods and Service Tax (GST) rate on casinos, race courses and online gaming. GST is applicable at a rate of 28% on games of chance and, in the skill gaming industry, at a rate of 18% GST on the commission amount or the gross gaming revenue (GGR) (ie, the fee charged by online gaming operators).

There is ongoing deliberation at the GoM level as to whether:

- GST should be charged at the rate of 28% on both skill gaming and chance gaming; and
- the tax base should be the entire amount that a player deposits for a game, or the GGR.

News reports suggest that the ministers are seeking legal opinions on the issue.

State-specific changes

Certain state-level policy changes are expected.

Telangana

Currently, offering all games for stakes (including games of chance as well as games of skill) is prohibited in Telangana. However, as per news reports, the State of Telangana may soon introduce a law to regulate online games of skill owing to difficulty in enforcing a complete ban. The draft law may establish an oversight board, comprising retired judges, government representatives and some industry representatives, which will determine whether games are games of skill or chance.

Maharashtra

In March 2022, it was reported that the State of Maharashtra is considering amending the Maharashtra Prevention of Gambling Act 1887 to address online gaming specifically.

Rajasthan

The State of Rajasthan has introduced the draft Rajasthan Virtual Online Sports (Regulation) Bill 2022. It proposes a licensing regime to regulate fantasy sports, esports and derivative formats. Other skills games (eg,

poker, virtual stock games and quiz games) are not specifically included within the regulation; however, in accordance with the state's general exemption for games of skill, such games may continue to be offered.

Tamil Nadu

i) Challenge to High Court order before the Supreme Court

In August 2021, the High Court of Madras struck down certain amendments to a law seeking to prohibit online games of skill for stakes in Tamil Nadu as unconstitutional. The state government filed an appeal against the High Court's order before the Supreme Court, which is still pending.

ii) Introduction of the Tamil Nadu Bill

In October 2022, the Governor of Tamil Nadu introduced the Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Bill 2022 ("the Tamil Nadu Bill") to replace the Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Ordinance 2022 (the "Tamil Nadu Ordinance"). The Tamil Nadu Bill will come into effect once notified by the State in the *State Gazette*. The Tamil Nadu Bill seeks to:

- regulate online gaming; and
- prohibit online gambling on games of chance, which include those games that:
 - are preponderantly of chance;
 - require superlative skill to dominate chance;
 - are presented as involving an element of chance; or
 - involve any element of random event generation (eg, cards, dice or wheel).

Poker and rummy have been specifically called out as games of chance in the Tamil Nadu Bill. Although the Tamil Nadu Bill is not currently in effect, several poker and rummy operators have begun to geo-block Tamil Nadu-based users from accessing their games.

Kerala

In September 2021, the High Court of Kerala struck down as unconstitutional a February 2021 notification introduced by the State of Kerala seeking to prohibit “online rummy when played for stakes” (ie, a game of skill). An appeal has been filed and is pending before a division (two-judge) bench of the High Court. News reports also suggest that the State of Kerala is planning to reintroduce a ban on online rummy on grounds of the rise in cases of suicide in the state.

Karnataka

In February 2022, the High Court of Karnataka struck down certain provisions introduced by the Karnataka Police (Amendment) Act 2021 that sought to prohibit all online games for stakes, including games of skill. The state government has filed an appeal against the High Court’s order before the Supreme Court, which is currently pending.

Puducherry

In October 2022, news reports suggested that Puducherry was also considering a ban on online rummy.

Meghalaya

In March 2021, the State of Meghalaya passed the Meghalaya Regulation of Gaming Act 2021 and the Meghalaya Regulation of Gaming Rules 2021 (collectively, “Meghalaya Law”), thereby introducing a licensing regime for games of skill and chance through the statewide intranet. However, in October 2022, the Chief Minister of the State of Meghalaya announced the repeal of Meghalaya Law in response to concerns from church leaders that the legislation was immoral. Subsequently in November 2022, news reports suggested that the Meghalaya government passed an ordinance to repeal the Meghalaya Law. A copy of the ordinance is not publicly available. Accordingly, the provisions of Meghalaya Law are not discussed in this chapter.

Pending Litigation

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 & Ors* (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 during the appeal hearing. 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.

Some litigations are pending in the following Indian states.

- Gujarat – an appeal is pending after a judgment of the High Court of Gujarat held that poker is a game of chance/gambling activity.
- Telangana and Andhra Pradesh – the Telangana Gaming Act 1974 and the Andhra Pradesh Gaming Act 1974 were amended to prohibit all online gaming activities for stakes (including games of skill) in these states. These amendments are being challenged before the High Courts of the respective states.

▼ 1.2 Recent Changes

Please refer to **1.1 Current Outlook** for recent changes.

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

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 PGA and most of the state enactments (collectively, “the Gaming Enactments”) were enacted prior to the advent of virtual/online gambling and therefore primarily prohibit gambling activities from taking place within physical premises (defined as a “common gaming house”). However, some courts (eg, Bombay, Rajasthan, Punjab and Haryana) have applied the

Gaming Enactments of these states to online gaming operators without specifically dealing with whether such laws can apply to online operators or the online space. Conversely, the High Courts of Gujarat and Kerala have made it clear that the Gaming Enactments of these states do not apply to the online medium.

Certain states – such as Nagaland, Telangana, Andhra Pradesh, and Sikkim – have also specifically extended their state enactments to the online medium through amendments to the Gaming Enactments. The State of Rajasthan is considering the Rajasthan Bill to regulate fantasy-based formats too, as discussed in **1.1 Current Outlook**.

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 here.

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.

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.

Recently, 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) has also started accepting bets online with the club's totalisator.

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.

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 Sikkim Online Gaming (Regulation) Act 2008 ("the Sikkim Online Act") introduces a licensing regime for punto banco and bingo through the statewide 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 Sikkim Online Act covers certain casino games (eg, roulette, casino brag and blackjack) that may be offered through the statewide intranet within the state of Sikkim only.

Lotteries

Under the Lotteries (Regulation) Act 1998 and the Lotteries (Regulation) Rules 2010 (collectively, “the Lottery Laws”), state governments have the power to organise, conduct and promote lotteries, subject to certain conditions.

Some states (eg, Sikkim) regulate physical lotteries, whereas lotteries have been banned in certain states (such as Madhya Pradesh) and other states (eg, Punjab) have online lotteries.

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.

Section 294A of the Indian Penal Code 1860 (IPC) specifically prohibits private lotteries. Certain states, such as Andhra Pradesh, Gujarat, Karnataka and Maharashtra, have repealed Section 294A of the IPC and enacted their own legislation banning lotteries other than non-profit lotteries. Certain other states have introduced legislation expressly banning lotteries in their states (eg, the state of Bihar's Bihar Ban on Lottery Act 1993).

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 special leave petitions (SLPs) 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 2022), 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 2016 (“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 the state of Nagaland, a licence would be required.

Social Gaming

Social gaming refers to those games in which no prize is offered to the winner. When there is no prize of money or equivalent worth offered, the game is not usually considered gambling under the Gaming Enactments. 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, such as:
 - the Information Technology Act (“the IT Act”), which prohibits obscene content; or
 - the Indecent Representation of Women (Prohibition) Act 1986 (IRWA), which prohibits the depiction of women in a derogatory manner;
- 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.

Further to the final point, the MeitY recently blocked several social gaming apps with Chinese ties after the Ministry of Home Affairs raised security concerns over Indian user data.

Poker

It can be argued that 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:

- the state of 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
- the High Court of Madras also recognised, in August 2021, that poker is a game of skill as it involves considerable memory and working out of percentages, as well as the ability to follow the cards on the table and constantly adjust to the changing possibilities of the unseen cards.

However, in the case of *Dominance Games Pvt Ltd v State of Gujarat and Ors*, the High Court of Gujarat held that poker is a game of chance and a gambling activity under the Gujarat Prevention of Gambling Act 1887. 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. One such condition under the Horse Racing Exemption requires turf clubs to conduct the betting within an enclosure that is set apart for this purpose. Accordingly, betting on physical horse races must take place within the confines of the turf clubs. Such betting would also be subject to the rules of the independent turf clubs.

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, the “Sikkim Casino Laws”), which prescribe a licensing regime for casino games in five-star hotels in the state of 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.

Laws on Foreign Direct Investment

Under the Foreign Direct Investment Policy of India (“the FDI Policy”) issued by the Indian government's Ministry of Commerce and Industry and as codified into law by the Foreign Exchange Management Act 1999 (FEMA)

and 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 where the amount is not quantifiable.

Where the violation is an ongoing one, a further penalty may extend to INR5,000 for every day after the first day on which the contravention continues.

Exchange Control Laws

FEMA, read with the Foreign Exchange Management (Current Account Transaction) Rules 2000, prohibits the overseas transfer of money from India in the following circumstances:

- 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.

Skill games may be covered under the above prohibitions, especially under the heading “any other hobby”.

The IT Act

If the offering of the game or the content of a game is unlawful, a court or authorised government body may direct an intermediary platform – such as the App store or (in case of a browser-based app) the ISP, telecommunications service provider (TSP), network service provider, etc – to block the app or a specific game.

As discussed earlier, the IT Act also empowers the MeitY to direct intermediary platforms to block a game or an app if considered necessary in the interest of “the sovereignty and integrity of India, defence of India, security of the State, friendly relations with foreign States, or public order – or for preventing incitement to the commission of any cognisable offence relating to these grounds”.

Intermediaries are also required to inform users through their terms and conditions not to publish certain information, including information “relating to or encouraging money laundering or gambling”.

As per recent news reports, MeitY has directed certain Indian TSPs to block access to several offshore sports betting and gambling platforms offered remotely India. The grounds on which MeitY has ordered the blocking of these websites remain unclear. However, news reports suggest that GST violations raised by GST authorities and violations of exchange control regulations raised by the Enforcement Directorate of India were contributing factors in MeitY’s decision to issue the blocking order. Online and TV advertisements of offshore betting platforms have also come under scrutiny from the MIB and Department of Consumer Affairs.

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

According to news reports, the government is also considering blocking further websites.

Consumer Protection Act

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

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. In the case of *RMD Chamarbaugwala v Union of India*, the Supreme Court 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.

▼ **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, Tamil Nadu and Telangana have specifically extended their state enactments to the online medium.

The Tamil Nadu Bill 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” – except in states such as Assam and Orissa, where the activity of gaming – irrespective of the medium or location in which it is offered – may be a punishable offence, and states where the law covers online gaming. These Gaming Enactments provide for various offences in relation to gaming/gambling. The liability for offences under the Gaming Enactments usually rests with the following parties:

- the owner of the gaming/common gaming house;
- the person keeping or in charge of the gaming/common gaming house – although the Gaming Enactments in a few states specifically provide for liability for the company’s directors (ie, persons in charge of the company and responsible for the conduct of its business), the remaining Gaming Enactments do not have these specific provisions;
- the person gambling/found in the common gaming house or in possession of instruments or records of betting (or who is suspected of gambling or possessing such instruments);
- the person who has the “care” or management of – or who in any manner “assists” in conducting – the business of any common gaming house;
- the person who advances or furnishes money for the purpose of gaming with persons frequenting such a house, room or place;
- with regard to the provision of online games in Sikkim:
 - a licensee under the Sikkim Online Act for the contravention of licence terms or a provision of the Sikkim Online Act;
 - any person/operator acting on their behalf; or
 - an operator that does not obtain a licence under the Sikkim Online Act, but offers online games, sports betting, or both;
- with regard to the provision of casino games in Sikkim, a licensee for the contravention of licence terms or the provisions of the Sikkim Casino Rules; and
- specifically in Nagaland, a licensee under the Nagaland Act.

▼ **3.6 Penalties for Unlawful Gambling**

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

The PGA imposes a penalty of INR200 or up to three months in prison for owning, keeping or having charge of a gaming house, and a INR100 fine or one month in prison for being found in a gaming house.

The Bombay Prevention of Gambling Act 1887 imposes a fine and imprisonment for offenders. A first offence is punishable with a fine of at least INR500 and three months in prison, a second offence with a INR1,000 fine and six months in prison, and a third or subsequent offence with a INR2,000 fine and a year in prison. The fines for a contravention might be significantly higher in certain states (eg, Nagaland) but, for brevity, these have not been included.

▼ 3.7 Recent or Forthcoming Legislative Changes

As discussed in **1.1 Current Outlook**, a federal law is being considered by the IM Panel. In addition, the GoM is considering the GST rate on casinos, race courses and online gaming, both in terms of the taxable amount and the tax rate. Further, the states mentioned in **1.1 Current Outlook** are contemplating amendments to their state law to regulate or prohibit certain types of online gaming activity, as discussed. The Meghalaya government also passed an ordinance to repeal the Meghalaya Act (see **1.1 Current Outlook**).

▼ 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 activities under a licensing regime. The regulatory authorities for these states are as follows:

- Goa – the Home Department of Goa is the regulatory authority for casinos;
- Daman and Diu – the Director of the Tourism Department is the regulatory authority for casinos, games of electronic amusement and slot machines;
- West Bengal – the Commissioner of Police grants permits for conducting games of skill in a public place, such as a public market, fair, carnival or street;
- Nagaland – the Finance Commissioner is the licensing authority for offering games of skill online; and
- Sikkim – the authorised officer of the Finance, Revenue and Expenditure Department is the regulatory authority for issuing licences for online games provided through the statewide intranet (under the Sikkim Online Act) and for issuing licences for casinos (under the Sikkim Casino Laws).

▼ **4.2 Regulatory Approach**

The Gaming Enactments are prescriptive in as much as most of the states prohibit gaming/gambling 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**

As discussed in **1.1 Current Outlook**, a federal law to regulate online gaming is being considered. In addition, the State of Rajasthan is contemplating a licensing regime to regulate fantasy sports, esports and derivative forms of

fantasy sport. The State of Tamil Nadu has introduced the Tamil Nadu Bill, which introduces a licensing regime for certain online games and the registration of online games providers. News reports suggested that Puducherry is also considering a ban on online rummy. In addition, Meghalaya government has also passed an ordinance to repeal the Meghalaya Act (see **1.1 Current Outlook**).

▼ 4.4 Types of Licences

Depending upon the type of product, and the medium through which the relevant product is to be offered, licences may be required. The most common are set out here.

Casinos

Licences for offering casino products in five-star hotels in Goa, Daman and Diu, and Sikkim are available under the GDD Act and the Sikkim Casino Laws respectively. Licences for offering casino products offshore in Goa and Daman and Diu are available under the GDD Act. As mentioned in **2.2 Land-Based**, the GDD Act contains provisions for the operation of licensed electronic amusement/slot machines in five-star hotels, as well as tables and games on board offshore vessels. However, a licence can only be applied to a maximum of 20 slot machines. Furthermore, as mentioned in **3.1 Key Legislation**, FDI is prohibited in entities that are involved in gambling and betting (including casinos).

Poker

Operators in India may offer skilled versions of poker without a licence in all Indian states except Telangana, Andhra Pradesh and Gujarat (offline poker). In Sikkim and Nagaland operators would need to procure a licence to offer such games.

Sports/Horse Race Betting

For conducting and betting on physical horse races in India, a licence would be required. During the COVID-19 pandemic, two Indian horseracing clubs (the Mumbai and Calcutta Turf Clubs) received permission from the states of Maharashtra and West Bengal to offer online betting on horse racing conducted in these clubs. As mentioned in **2.1 Online**, it appears the HRC has also started accepting bets online with the HRC Totalisator only.

As far as betting on horse races online is concerned, it can be argued based on the Lakshmanan Case that such games are games of skill and therefore exempt under most Gaming Enactments (see **2.1 Online**). Innovative structures can be put in place for a foreign operator to offer such games.

In the case of betting on physical horse races, the conditions under the Horse Racing Exemption would need to be fulfilled (see **2.1 Online**). Furthermore, permissions/authorisations may need to be obtained from the relevant turf club.

As stated in **1.1 Current Outlook**, 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 the state of 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 for offering such games in Nagaland, under the Nagaland Act.

Lotteries

Under the Lottery Laws, 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. Such persons would need to obtain authorisation from the state governments. Private lotteries are prohibited in most Indian states under the IPC.

Social Gaming

No licences are required for such games in most Indian states. However, if such games amount to prize competitions, a licence under the PCA may be required.

Skill Games

As stated earlier, games of skill are exempted from prohibitions under most Gaming Enactments. There is no licensing regime for such games at a federal level. Only the state of Nagaland has enacted a licensing regime specific to online games of skill under the Nagaland Act. Sikkim has a broader set of games covered under the Sikkim Act that can be offered via the intranet within the state of Sikkim. However, certain Indian states specifically prohibit online games of skill when played for stakes (such as Telangana and Andhra Pradesh).

▼ 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.

There have been news reports indicating that Goa is likely to introduce new rules to streamline and regulate casino operations.

There are no permanent licences issued yet for Daman and Diu; therefore, the effectiveness of the licensing provisions has been practically tested.

▼ 4.6 Duration of Licences

The duration of the available licences is as follows:

- Nagaland – the licence will be valid for five years, subject to compliance with any prescribed conditions, and will be deemed renewed every year thereafter as long as the licence fee is paid;
- Sikkim – the licence both for casinos and online games will be valid for five years, unless cancelled or surrendered, and may be renewed via application;
- Goa and Daman and Diu – the licence is valid for five years; and
- West Bengal – permits are issued for specific events.

▼ 4.7 Application Requirements

Some of the key licence application requirements 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. A licence is only issued to those entities that have no interest in online or offline

gambling activities in India or abroad.

As per the Nagaland Act, the controlling stake must be in India, and the executive decision-making powers of licensees are required to be performed from within the territorial boundaries of India. The Nagaland Act unfortunately does not provide any guidance on a threshold for this requirement to be met.

The licensee has to provide a dashboard with a username and password to the Nagaland Authority (as defined in **4.8 Application Timing**) to supervise the activities of the licensee.

The licensee may be required to set up an office in Nagaland within 12 months of the date the licence was issued.

The licensee's technology support (hosting of the website, management of the website, location of servers, etc) is to be within India only.

Licences are only for games of skill offered through online platforms, as further elaborated on in **6.1 B2C Licences**.

Licensees should not have a criminal history.

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 company/partnership firm incorporated in India.

The Sikkim Online Act uses potentially confusing terminology and introduced references to the “intranet” and “intranet gaming terminals”. Thus, the Sikkim Online Act restricts the offering and playing of “online games and sports games” to the physical premises of gaming parlours through intranet gaming terminals within the territory of the state.

Goa and Daman and Diu

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

West Bengal

Although the wording of the law in West Bengal does not expressly prohibit a foreign operator from applying for a permit, an Indian entity would be best placed to apply (bearing in mind the application of the foreign exchange control regulations and FDI policy regulations described in this chapter).

▼ **4.8 Application Timing**

The process and timeline for licensing applications is as follows.

Nagaland

The applicant should submit an application to the licensing authority (ie, the Finance Commissioner or the “Nagaland Authority”), identifying the games for which the licence is being sought. The application must be accompanied by documents in support of the promoters' credentials, audited financials, the software technology platform, a proposed business plan, and financial projections.

Should the Finance Commissioner be prima facie satisfied with the application, they may issue a letter of intent to the applicant. The Finance Commissioner will then forward the application to certain empanelled firms (lawyers, financial experts, etc) that assist the state government in scrutinising all applications. The empanelled firms will then respond to the applicant with their certification or recommendations within 30 days.

The Finance Commissioner will also have the right to refer the application to an ad hoc committee or an expert committee to determine whether the recommendations of the empanelled firms must be adopted. These committees are required to make their recommendations within 14 days. Once the Finance Commissioner receives the recommendations, they issue the licence within 14 days.

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 and is satisfied that the applicant has a five-star hotel with the capabilities to operate a casino, the state government can grant a six-month provisional licence upon payment of a fee.

A provisional licence is issued to enable the licensee to set up the necessary infrastructure to commence the operation of casino games at any time within that period. When the applicant has fully complied with

the terms and conditions of the licence, the state government can grant a regular licence upon payment of a fee.

Sikkim – Online Games

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

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

Daman and Diu

An application may be made by an individual/firm/body corporate to the Director of the Tourism Department. The Director will then appoint an inspection officer to inspect the licence premises. Once the Director is satisfied with the inspection, they will make a recommendation to the Administrator of Daman and Diu, who will then grant or reject the licence. Please refer to **4.5 Availability of Licences**. There is unfortunately no guidance on how long this licence takes to come through.

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. In practice, under the framework of other applicable Indian laws (eg, the FDI Policy and the exchange control regulations), an Indian operator would currently be in the best position to apply. However, there is no guidance on how long this permit takes to come through.

▼ 4.9 Application Fees

Nagaland

A non-refundable application fee of INR50,000 must accompany the application.

Sikkim

The casino fee is INR5,000 and the online fee is INR500.

Goa

The cost of a licence is INR2 million for onshore and offshore casinos, regardless of the number of tables or machines installed in the licensed premises. The following annual licence fees are payable.

Onshore casinos

The fee varies based on the size of the casino. Fees ranging from INR100 million to INR400 million are prescribed for casinos between 100 square metres to 10,000 square metres.

Offshore casinos

The fee varies based on the passenger capacity of the vessel. The fee for a vessel with a passenger capacity of up to 200 is INR250 million, whereas for a vessel with a passenger capacity of between 200 and 400 it is INR300 million and for a vessel with a passenger capacity of more than 400 it is INR400 million.

Daman and Diu

Five-star hotels must pay an application fee of INR2 million for a set of up to 20 machines/stages/tables. A refundable deposit of INR300,000 is to be paid, which will be refunded on the expiry of the licence.

▼ **4.10 Ongoing Annual Fees**

Nagaland

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

For the next two years, the annual licence fee is INR2 million (or INR5 million 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, 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.

For online gaming, an annual fee of INR10,000 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

The annual licence fee is INR25 million per 100 square metres for land-based casinos in five-star hotels and INR70 million for offshore casinos.

Daman and Diu

The annual licence fee is INR2 million for a set of up to 20 machines/stages/tables on board offshore casinos. Furthermore, there is a fee of INR8,000 for the “mother machine” and INR6,000 per additional stage of electronic amusement/slot machines in five-star hotels.

▼ 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

The state government of Goa has restricted the entry of local residents into land-based casinos. There have also been news reports that the Goan government may be planning to shift offshore casinos, which are currently on the Mandovi River, to a designated gaming/entertainment zone within the state.

▼ 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 the state of Sikkim). As per the Sikkim Online Act, the licensee must be a company that is incorporated in India and must

operate only in Sikkim.

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 Reserve Bank of India requires payment processors to obtain licences under the Payment and Settlement Systems Act 2007; however, payment gateways do not need such licences. Software developers do not generally require licences, unless they have set up in a Special Economic Zone (SEZ) or a Software Technology Park of India (STPI), which have their own registration and compliance requirements.

▼ **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 Recent or Forthcoming Changes**

All the proposed policy changes/pending litigation outlined in **1.1 Current Outlook** would impact upon the online gaming sector.

▼ **6.6 Technical Measures**

At the outset, please note that only the state of Nagaland has introduced a licensing regime for online games of skill. Most of the online games being offered in India are not regulated/licensed. Such games are exempt from

the prohibitions under most Gaming Enactments because they are games of skill.

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 Information Technology (Intermediaries Guidelines and Digital Media Ethics Code) Rules.

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

▼ 7.1 RG Requirements

Although 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 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;
- having fraud prevention mechanisms to protect players' financial integrity; and
- publishing a charter for responsible gaming on the operators' websites/apps.

In the absence of regulation in most other Indian states, the gaming industry in India has taken the initiative to self-regulate and prescribe standards for social responsibility. Certain self-regulatory industry associations – such as the All India Gaming Federation (AIGF), the E-Gaming Federation and the Federation of Indian Fantasy Sport (FIFS) – have prescribed such standards in their skill charters.

These requirements include:

- player protection measures such as options for self-exclusion, timeout facilities and deposit limits;
- informing users of self-exclusion measures;
- providing users with access to self-administered tests for gaming addiction and contact details of treatment centres for addiction;
- provisions to regulate the content, duration and targeted audience of gaming advertisements; and
- financial integrity (eg, regulating the funds deposited by the player and requirements to maintain records of transactions).

▼ **7.2 Recent or Forthcoming Changes**

As discussed in **1.1 Current Outlook**, news reports state that the IM Panel's report may recommend certain responsible gaming measures, such as:

- limiting the amount of money individual players can spend in a game;
- mandatory requirement to incorporate measures such as periodic warnings;
- fixing deposit and withdrawal limits; and
- a grievance redressal mechanism for consumers.

▼ **7.3 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**.

▼ **8. Anti-money Laundering (AML)**

▼ **8.1 AML Legislation**

In India, the Prevention of Money Laundering Act 2002 (PMLA) prohibits money-laundering activities. Under the PMLA, entities carrying out “activities for playing games for cash or kind (including casinos)” (ie, entities offering games of chance) are classified as “reporting entities” and are subject to certain reporting obligations (eg, verifying the identity of clients, maintaining records and reporting suspicious transactions). The PMLA also requires such reporting entities to furnish information to the Director of the FIU, as and when required.

In April 2022, certain news reports suggested that KYC obligations were likely to be introduced for online skill gaming operators in an attempt to curb money laundering.

▼ **8.2 Recent or Forthcoming Changes**

As discussed in **8.1 AML Legislation**, certain news reports in April 2022 suggested that KYC obligations were likely to be introduced for online skill gaming operators in order to curb money laundering.

▼ **8.3 AML Requirements**

As per Section 12 of the PMLA, reporting entities are required to maintain records of transactions and provide documents that prove the identity of their clients.

▼ **9. Advertising**

▼ **9.1 Regulatory/Supervisory Agency**

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

Under the CPA, the Central Consumer Protection Authority (CCPA) is the relevant regulator in matters relating to violation of consumer rights, unfair trade practice, and false and misleading advertisements. The CCPA may initiate proceedings directly or on the basis of complaints. It is also authorised to investigate offences, refer matters to other regulators, and issue penalties and directions to violators of the CPA rules.

With regard to prohibitions under the Gaming Enactments, the relevant police/judicial authorities in the respective states implement and enforce the Gaming Enactments. The specific regulatory authorities in states where licences are issued have been covered in **4.1 Regulatory Authority**.

▼ **9.2 Definition of Advertising**

The ASCI has issued a Code for Self-Regulation of Advertising Content in India (“the ASCI Code”), which provides the following definition of an advertisement: “A paid-for communication, addressed to the public or a section of it, the purpose of which is to influence the opinions or behaviour of those to whom it is addressed. Any communication that in the normal course would be recognised as an advertisement by the general public would be included in this definition, even if it is carried free-of-charge for any reason.”

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. The specific restrictions on licensees in Sikkim, Nagaland and Tamil Nadu are as follows.

Sikkim

In the state of Sikkim, licensees can advertise online games, provided that they comply with certain requirements. Advertisements of online games must:

- include the address of the online gaming operator's website, which must include certain prescribed information;
- not be indecent or offensive;
- be based on facts;
- not target any person under the age of 18; and
- not target any jurisdiction in which online games are prohibited.

Nagaland

The Nagaland Act permits the licensee to advertise on online and offline mediums, and they are allowed to display the fact that they hold licences from the government of Nagaland.

Tamil Nadu

The Tamil Nadu Bill prohibits advertisements in any media (including electronic media) that directly or indirectly induce any person to indulge in online gambling or play any online game of chance (such as poker or rummy) for money or stakes.

▼ **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.**

While advertising skill games is permitted in most Indian states, it is regulated by the CPA and the Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements 2022 (“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.

In consultation with the Department of Consumer Affairs, the MIB issued separate advisories in October 2022 to TV channels, digital news publishers and OTT platforms, strongly advising them against showing:

- advertisements of online sports betting platforms; and
- surrogate advertisements for offshore sports betting platforms in the guise of sports news websites (and targeting such advertisements toward Indian audiences).

The advisory contained examples of such online advertisements, specifically illustrating several prominent offshore sports betting platforms.

The advisory indicates that such advertisements are prohibited under the CPA and the Misleading Ads Guidelines. It also suggests that the MeitY has the power to direct intermediary platforms to take down such advertisements if they appear on such platforms .

In relation to the advisory issued to private TV channels, the MIB has cautioned that such advertisements contravene the advertising code under the Cable TV Network (Regulation) Act 1995 and Cable Television Network (Amendment) Rules 2021, which also prohibit advertisements of prohibited products.

Accordingly, such advertisements may be taken down imminently by the relevant Indian regulators (eg, the MIB, the MeitY and the Department of Consumer Affairs).

The MIB had previously issued a similar Advisory on Advertisements of Online Betting Platforms on 13 June 2022. It was addressed to newspapers, TV channels and publishers of news and current affairs content, and copied to social media intermediaries.

The ASCI Code and ASCI Gaming Guidelines

The ASCI Code restricts certain advertisements relating to products whose use is banned under law. Advertisements for gaming/gambling products may fall within this prohibition.

Surrogate advertisements are also prohibited under the ASCI Code. The ASCI has released *Guidelines for Qualification of Brand Extension Product or Service* (“ASCI Qualification Guidelines”), which lay down objective

criteria for determining the genuineness of the “unrestricted” brand extension of purported prohibited products (in terms of sales turnover, purchase orders, investments, etc). If a brand extension does not meet the qualification criteria, it would be considered a surrogate created to advertise a restricted category rather than a genuine brand extension.

Recently, the ASCI released the *ASCI Guidelines for Online Gaming for Real Money Winnings* (“ASCI Gaming Guidelines”). In a press release dated 4 December 2020, the MIB advised all cable broadcasters to adhere to the ASCI Gaming Guidelines with regard to advertisements on television.

The ASCI Gaming Guidelines state in the preamble that it is not within ASCI’s jurisdiction to decide the legality of real-money games (ie, whether it amounts to a “product, the use of which is banned under law”) and such issues must be taken up with the concerned regulators. The preamble further states that ASCI will only process complaints about advertising content concerning such games. As such, it appears from the preamble to the ASCI Gaming Guidelines that ASCI will not determine the legality of the game itself.

The ASCI Gaming Guidelines ban gaming advertisements from depicting persons under the age of 18 engaged in playing online games for real-money winnings. Additionally, all such advertisements must carry disclaimers to the effect that such games carry an element of financial risk and that users should play such games at their own risk. Furthermore, specific requirements should be met for displaying this disclaimer, depending on whether the advertisement is in print or in audio/video mode.

The advertising of prize competitions is prohibited, unless it has been duly authorised by the relevant authority.

Content-Related Restrictions

Games and gaming websites in India, and gambling operators' websites in the states of Nagaland and Sikkim, are subject to content-related laws. The IPC, IRWA and IT Act penalise obscene content, for example, and the IPC prohibits advertisements for lotteries unless they comply with the provisions of the Lottery Laws.

The CPA was notified to come into force in July 2020 to replace the Consumer Protection Act 1986. The CPA classifies the following as “unfair trade practice”:

- the offering of prizes with the intention of not providing them as offered; and
- the conduct of a contest, lottery, game of chance or skill for the purpose of promoting a product/business interest.

The CPA also introduces certain penalties for making misleading advertisements for entities such as endorsers, advertisers and publishers.

The Copyright Act 1957, the Trade Marks Act 1999 and the Patents Act 1970 govern IP issues relating to games (such as the use of trade marks, copyright, design rights and patent rights in the technology infrastructure of web operators).

Advertising of Gambling

The advertising of products (including gaming products) through SMS or voice-based communication is regulated by the Telecom Commercial Communications Customer Preference Regulations 2018 (TCCCPR). The TCCCPR applies to communication that is SMS- or voice-based, rather than communication via the internet such as email or OTT messaging services (eg, WhatsApp). The TCCCPR 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 TCCCPR in order to send commercial communications.

▼ **9.5 Sanctions/Penalties**

Under the ASCI Code, complaints may be filed by the general public or suo moto by the ASCI itself. If an advertisement is found to be in violation of the ASCI Code, then the agency/media vehicle concerned and the relevant self-regulatory bodies are notified that the advertisement contravenes the ASCI Code. In serious violations, the media vehicle may be directed to suspend the advertisement.

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. However, as mentioned in **9.4 Restrictions on Advertising**, the Misleading Ad Guidelines were introduced in June 2022, which prohibit

misleading and surrogate advertisements.

There is greater scrutiny of such advertisements – in particular, surrogate advertisements for offshore sports betting platforms (as discussed in **9.4 Restrictions on Advertising**). The MIB has recently issued an advisory to TV channels, digital news publishers and OTT platforms that strongly advises them against showing advertisements of sports betting platforms and surrogate advertisements for such platforms.

▼ 10. Acquisitions and Changes of Control

▼ 10.1 Disclosure Requirements

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.

Additionally, 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.

▼ 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. However, should a passive investor wish to have a minimum degree of oversight over the running of a company, they may consider appointing an observer on the board of such companies. This is not mandated under law but may be considered, depending upon the commercial understanding between the parties.

▼ **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.

- As per news reports, the Central Board of Direct Taxes (CBDT) is scrutinising earnings by players on fantasy gaming apps and online gaming platforms and the non-filing of income tax returns in this respect. The reports suggest that the department has uncovered earnings amounting to INR58,000 million in the past three years.
- A first information report, which marks the commencement of criminal proceedings, has been registered against a prominent opinion trading platform on the grounds of carrying out prohibited sports betting activity. The platform invited bids to binary questions such as “*Will team will win the match?*”

- In Hyderabad (Telangana), Hyderabad Police busted an online betting racket carried out via Chinese gambling apps and have arrested three persons (a Chinese national and two local Indian citizens). Reportedly, a Chinese company by the name of Beijing T Power was organising these online gaming activities. The reports also state that large amounts (nearly INR110 million) were remitted offshore by the organisers. The Enforcement Directorate of India has registered a case under the PMLA against these individuals. The Enforcement Directorate also conducted raids across the country and froze bank accounts worth INR46 million in connection with this case.
- In addition, criminal proceedings have been instituted against persons involved in laundering money abroad through a poker application. The accused were reportedly creating online gaming clubs through the app for players to participate and play online poker. The settlement of the commission amounts and the betting was carried out through hawala operators in cash or through anonymous crypto accounts.

▼ **11.3 Financial Penalties**

Please refer to **11.1 Powers**.

▼ **11.4 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). Most other states provide for both imprisonment and fines for:

- “whoever” opens, occupies, uses any premises as a “common gaming house”; and
- “whoever” assists in conducting the business of such a house.

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”.

In the latter scenario, prosecutors would need to demonstrate through evidence the individual’s active role in connection with the prohibited activity in the relevant state.

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 Indian Penal Code 1860.

▼ 12. Recent Trends

▼ 12.1 Social Gaming

Social gaming refers to games that do not involve any monetary rewards. This category of games is separate from real-money gaming and may not fall within the scope of Gaming Enactments as it does not fulfil the criteria for betting/wagering.

India has the second-largest number of online casual gamers in the world, with 420 million. Factors such as increased smartphone and internet penetration, young population, scope of Indian studios to develop content, and the adoption of augmented/virtual reality and AI technology have propelled the growth of India’s casual gaming market. The COVID–19 pandemic also significantly increased the consumption of casual gaming in India, as virtual social interactions replaced physical interactions. Some key legal issues to be considered regarding social/casual gaming are discussed in **2.1 Online**.

▼ 12.2 Esports

There is no definition of esports under Indian law. It is typically understood to mean online versions of physical sports. However, it may also include competitive video gaming. Esports in India are regulated by multiple voluntary associations/federations (eg, the Esports Federation of India, the AIGF, the National Esports Federation and the Esports Development Association of India), which are self-regulatory bodies that do not have any legislative backing or government sanction or recognition.

Some of these organisations have introduced rules/regulations that are applicable to the organisation of, and participation in, esports tournaments organised under their aegis. However, these rules/regulations are not binding on non-members.

▼ 12.3 Fantasy Sports

Please see **1.1 Current Outlook** and **1.2 Recent Changes**.

▼ 12.4 Skill Gaming

Please see **1.1 Current Outlook** and **1.2 Recent Changes**.

▼ 12.5 Blockchain or Cryptocurrency

Currently, there is no sector or industry-specific regulatory framework for virtual currencies, cryptoassets, virtual digital assets or cryptocurrencies in India.

The use of blockchain technology in India faced a rough start. A circular issued by the Reserve Bank of India in 2018 prohibited “virtual currency” activity. However, this prohibition has been overturned by the Supreme

Court, which held that such a prohibition was unreasonable and affirmed virtual currency exchanges' fundamental right to trade and do business under the Constitution of India.

In July 2019, an Inter-Ministerial Committee appointed by the Ministry of Finance released a report on a proposed regulatory approach towards distributed ledger technology and virtual currencies (“the IMC Report”). The Committee recommended a complete prohibition and criminal penalties for dealing in virtual currencies.

It also recommended the promotion of distributed ledger technology without the use of virtual currencies, and the exploration of a sovereign digital currency. The Committee's recommendation is non-binding and appears to be under consideration by the government. A statement by a senior Ministry of Finance official in June 2022 indicates that the government will introduce a consultation paper on regulating the industry, having “*sought viewpoints of both domestic institutional stakeholders and international organisations including the World Bank and the International Monetary Fund*”.

In the meantime, blockchain has been gaining prominence in the Indian gaming sector and has received a significant boost during the COVID-19 lockdowns. Indian users are currently offered several cryptocurrencies in fantasy and trading games and these are widely available on both iOS and Android platforms. The Indian gaming sector has also seen a recent increase in demand for gaming using non-fungible tokens (NFTs).

▼ 13. Tax

▼ 13.1 Tax Rate by Sector

Income Tax

As per Indian income tax laws, any income by way of winnings from any lottery, crossword puzzle, card game or other game exceeding INR10,000 is subject to a withholding tax of 30% (exclusive of applicable surcharge and cess). However, in cases where the winnings are wholly in kind – or partly in cash and partly in kind (but the cash component is insufficient to honour the withholding obligation in respect of the whole of the winnings) – the payor is required to ensure that the tax is paid at the aforementioned rate before releasing the whole winnings to the payee.

Equalisation Levy

A new tax has been imposed that is chargeable on online services or goods supplied by offshore e-commerce operators to Indian residents or persons accessing such platforms through an Indian IP address. This tax is a 2% turnover tax on the sale of goods or services to Indian residents. The question of whether this tax applies to offshore gaming operators may also arise and, based on the specific facts of the game model, it may be possible to argue that this tax should not apply. There are certain de minimis thresholds, below which the gross income is not subject to this tax.

Goods and Services Tax

Under the GST laws, services by way of admission to entertainment events or access to casinos and the like are taxable at a rate of 28%.

Furthermore, games offered under direct betting models (where the players bet against the house) constitute actionable claims. To the extent that such actionable claims involve lotteries, betting or gambling, they

constitute supply of goods subject to GST at a rate of 28% on the entire bet amount. Actionable claims relating to games of skill are not subject to GST.

On the other hand, games offered under the peer-to-peer model (where the players bet against each other and the gaming company merely provides the platform for facilitating such betting) constitute the provision of services by the gaming company. Such provision of services should be chargeable to GST only if it constitutes online information database access and retrieval (OIDAR) services.

Essentially, OIDAR services are those that can be provided through minimal human intervention. The rate of tax is 28% (for games of chance such as betting/gambling) or 18% (for games of skill). The tax is levied on the service fee/commission charged by the gaming operators. If there is sufficient human intervention in the provision of the services (eg, live casinos), such services should not qualify as OIDAR and, accordingly, should not be taxable.

At present, there is also ongoing deliberation at GoM level as to whether:

- GST should be charged at the rate of 28% on both, skill gaming and chance gaming; and
- the tax base should be the entire amount that a player deposits for a game.

This is currently undecided, with reports suggesting that ministers are seeking legal opinions on the issue.

Please note that to ascertain the taxability, rate of taxation and the correct tax base, the exact nature of the product offering should be analysed. The outcomes would also vary depending on whether the operators are based in India or conducting such activities from outside India.

▼ 14. Anticipated Reform

▼ 14.1 Anticipated Reform

Please refer to **1.1 Current Outlook**.

Nishith Desai Associates

3 North Avenue
2nd Floor
Maker Maxity
Bandra-Kurla Complex
Bandra (East)
Mumbai
400051
India


+91 22615 95019

gowree.gokhale@nishithdesai.com
(mailto:gowree.gokhale@nishithdesai.com)
www.nishithdesai.com (<http://www.nishithdesai.com>)

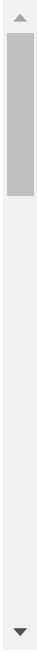
 Nishith Desai Associates
LEGAL AND TAX COUNSELING WORLDWIDE

Compare law and practice by selecting locations and topic(s)


Select Location(s)

Search 

- Alderney
- Australia
- Belgium
- Brazil
- Canada
- China
- Colombia
- Denmark
- Estonia




Select Topic(s)


Search 

Law and Practice

- 1. Introduction



- 1.1 Current Outlook
- 1.2 Recent Changes
- 2. Jurisdictional Overview
 - 2.1 Online
 - 2.2 Land-Based
- 3. Legislative Framework
 - 3.1 Key Legislation


Reset  (/practice-guides/comparison/715/9822/15816-15819-15822-15830-15841-15844-15851-15855-15859-15866-15870-15875-15881-15883)

Compare 

© 2022 Chambers and Partners | Terms and Conditions
(<https://chambers.com/info/terms-and-conditions>) | Privacy
(<https://chambers.com/info/privacy>)

 (<https://www.linkedin.com/company/chambers-and-partners/>)

(<https://twitter.com/chambersguides?lang=en>)

 (<https://en-gb.facebook.com/Chambersandpartners/>)



Chambers and Partners make no representation or endorsement of the quality and services supplied by companies or firms that may be found on this website. In no event will Chambers and Partners be liable for any damages including, without limitation, indirect or consequential damages, or any damages whatsoever arising from use or loss of use, data, or profits, whether in action of contract, negligence or other tort action, arising out of or in connection with the use of the website.

