

MEITY NOTIFIES AMENDMENTS TO IT RULES 2021: ONLINE REAL MONEY GAMING PLATFORMS NOW REGULATED BY THE CENTRE

1. INTRODUCTION

The Central Government on April 06, 2023 provided the much awaited and needed regulatory clarity to the online gaming industry by amending the [Information Technology \(Intermediary Guidelines and Digital Media Ethics Code\) Rules 2021](#) (“IT Rules 2021”) to add provisions for online gaming. These [amendments](#) (“Online Gaming Rules”) are a culmination of events that started with the Central Government realising that the burgeoning online gaming industry needs a uniform, contemporary and clear law, not only for the benefit of the industry but also to safeguard consumer interests.

Throughout 2022, it was apparent from the Central Government’s responses to questions raised in Parliament, that they were approaching the regulation of online gaming platforms as intermediaries under the IT Rules 2021. In December 2022, the Central Government [amended](#) the Government of India (Allocation of Business) Rules 1961 to make the Union Ministry of Electronics and Information Technology (“MeitY”) the nodal ministry for ‘matters relating to online gaming’. On January 02, 2023, MeitY released a [draft](#) of the proposed amendments to the IT Rules 2021 for online gaming, for public consultation. Pursuant to these, MeitY finally [notified](#) the Online Gaming Rules on April 06, 2023, which comes as a huge relief to the online real money gaming industry in India.

2. HIGHLIGHTS FROM THE ONLINE GAMING RULES

- Online real money games offered by intermediaries will be regulated through MeitY-recognised self-regulatory bodies (“SRB”). While free-to-play games are outside the ambit, MeitY may in certain instances notify a free-to-play-game to be treated at par with an ‘online real money game’.
- An ‘online gaming intermediary’ (“OGI”) is defined as *“any intermediary that enables the users of its computer resource to access one or more online games”*.
- An entity desirous of being recognised as an SRB by MeitY is required to fulfil the prescribed criteria in relation to its composition, by-laws, and functioning, among others.
- The responsibility of ‘verifying’ an online real money game will be that of the SRB in relation to its member OGI. The minimum requirements for such verification and of an OGI’s membership of the SRB have been outlined by the Online Gaming Rules.
- A ‘permissible online game’ is one that is either free-to-play or an online real money game verified by the SRB in accordance with the Online Gaming Rules. The compliance requirements under this law apply to online real money games or any other online game specifically notified.
- If one qualifies as an OGI, they must adhere to the general as well as additional due diligence obligations prescribed for intermediaries under the Online Gaming Rules.
- An SRB may suspend or revoke the ‘verification’ given to an online real money game, for non-compliance with the Online Gaming Rules.

3. WHAT STAKEHOLDERS SHOULD EXPECT

The Online Gaming Rules have put in place a ‘co-regulation’ framework for online games. We have captured the essential ingredients of the framework in the Annexures herein.

- For understanding the compliances for an ‘online gaming intermediary’, refer to [Annexure A](#).
- For an overview of the grievance redressal mechanism, refer to [Annexure B](#).
- For understanding the verification process which will make an ‘online real money game’ a ‘permissible online real money game’, refer to [Annexure C](#).
- For an overview of how an SRB will be recognised by MeitY, refer to [Annexure D](#).

4. KEY THEMES, IMPLICATIONS AND ANALYSIS

4.1. Nature of games permitted under the Online Gaming Rules

The Online Gaming Rules only allow ‘permissible online games’ to be hosted and offered to users in India. The due diligence obligation to ensure this has been put on the ‘OGI’ as per Rule 3 (1) (b). An online game can become ‘permissible’ in 2 (two) scenarios. First, if it is not an ‘online real money game’ i.e., it is a free-to-play game. Second, if it is an ‘online real money game’ but is verified by a recognised SRB under the Online Gaming Rules.

The Online Gaming Rules do not delve extensively on the criteria and method for the SRB to verify an ‘online real money game’ and it appears that the process is left to the SRB’s discretion. However, Rule 4A (3) and (8) provide certain baseline checks that each SRB must adhere to during verification. Among these, the requirement for an SRB to ensure that ‘*the online real money game does not involve wagering on any outcome*’ is in particular vague and exposes certain game formats to the risk of non-approval. A purposive reading might suggest that ‘wagering on any outcome’ is limited to ‘games of chance’, and the SRB’s job in the first instance is to evaluate whether the ‘online real money game’ is a ‘game of skill’. But a clarification from MeitY would certainly help in avoiding confusion and dilemma of the industry.

It is also interesting to note that while the draft version of the Online Gaming Rules had expressly mandated ‘No Bot’ and ‘Random Number Generator’ (RNG) certificates to be obtained by an OGI, the requirement is no longer present in the notified Online Gaming Rules. However, it remains to be seen whether for effective compliance with the overall objective of the law, the SRBs continue to require these from the OGIs to demonstrate compliance, specially to demonstrate no system manipulation.

4.2. Ease in governance through self-regulation instead of setting up a government regulatory body

The self-regulatory mechanism, first introduced in February 2021 in the IT Rules 2021 for online publishers, is a novel approach to regulate tech industries. The sector is fast-evolving and requires flexible and agile regulations; something which traditional law-making may not provide. The Online Gaming Rules have put in place a framework whereby self-regulatory bodies will drive the regulation for online gaming. MeitY has proposed a minimum of 3 (three) SRBs, each subject to certain eligibility criteria. A recognized SRB has the power to verify an ‘online real money game’ as a ‘permissible online real money game’.

This is a welcome change for the industry in terms of approvals for ‘games of skill’. Till date, having a court decision approving a game as a ‘game of skill’ was the only conclusive way for an operator to offer its game legitimately. This is not a feasible way to sustain the growth of an industry which thrives on

innovation and has a need for speed. The self-regulatory mechanism will mark a shift from this approach, lessen the burden on the judiciary, and promote ease of doing business.

Whether the SRB mechanism will truly be industry-led will depend on the functioning of the SRBs and their relationship with MeitY. As per the text of the Online Gaming Rules, there are certainly elements of co-regulation in place. For instance, the government has prescribed certain base line principles that SRBs need to check before verifying an 'online real money game' but have left the process and method of evaluation to the SRB's discretion. Rule 4A (2) allows an SRB to constitute its own board of directors ("BoD") but ensure that a MeitY appointed person is one of the members. MeitY further can ask for any information from the SRB and rectify the verification process. These provisions indicate a fine balance between government oversight and industry-led self-regulation that will aid industry innovations.

4.3. Applicability of the law to evolving business models for the online gaming industry

The definition of 'online gaming intermediaries' does not make it amply clear whether it applies to 'intermediaries' or also covers publishers, albeit MeitY's intent has been amply clear throughout the consultative process that the law will apply equally to all kinds of online real money gaming platforms.

The definition of an 'intermediary' under the Information Technology Act 2000 ("IT Act") is quite broad and may arguably be given multiple interpretations. Today, business models of online gaming platforms are not just restricted to offering third-party games, but also publishing their own games as well as curating the content disseminated on their platform. There are arguments on both sides to defend or question whether all business models can still fall under the ambit of 'intermediaries'. However, like the IT Rules 2021, the Online Gaming Rules are a great step forward to take cognizance of the current issues posed by online gaming and for institutionalizing a process to address the same.

From a long-term perspective, we believe it would be a more holistic approach if the proposed Digital India Act seeks to regulate online gaming operators for what they provide as opposed to what they are classified as. Many online gaming operators are likely to be multi-functional in the future and therefore a narrow approach can have the ability of stifling innovation as well.

4.4. State government's power on the subject

Entry 34 of the State List under the Indian Constitution gives every state government the power to regulate 'betting and gambling'. For years, Indian courts have interpreted this entry to be limited to 'games of chance' albeit some state governments have explored ways to include and regulate 'games of skill' under their state enactments.

However, Entry 31 of the Union List read with the recent amendments to the [Allocation of Business Rules 1961](#), gives MeitY the power to regulate 'matters relating to online gaming'. Through the Online Gaming Rules, the Central Government has tried regulating online games and has addressed most of the issues that state governments were facing on the subject. Thus, now, there should ideally be no need for states to come out with regulations for online games, since the central law seeks to achieve the same. If a state tries to do so, it will lead to multiplicity of conflicting laws which will lead to unnecessary litigation and instability in policy making. In our view, the Online Gaming Rules are wholesome to address any state-specific nuances that may exist, as well.

4.5. How do the Online Gaming Rules help online gaming operators

For the longest time, online gaming operators in India were required to ensure compliance with multiple, complex, and inconsistent gaming laws notified by various states in India. There was also a significant

amount of hesitance from both investors and service providers to onboard or service a gaming operator given lack of clarity in the law.

The Online Gaming Rules help allay some of these concerns for the online gaming industry in India. It acknowledges the legitimacy of the industry and provides a mark of approval to 'permissible online game' through an SRB-led industry regulation having government oversight.

The recent development on Tamil Nadu's Governor giving assent to the Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Bill 2022 does muddle the waters and creates a potential overlap. The rationale of why a separate law is required at the state government level is not very clear and is likely to lead to confusion, given that the Online Gaming Rules address the concerns that most states had on the subject.

While the interplay of state laws with the Online Gaming Rules will still be debated over the coming months, operators will have a stronger case to present before their investors, provide better comfort to financial service intermediaries and marketeers, and instill greater consumer confidence.

5. CONCLUSION

The Online Gaming Rules are a positive step towards consolidating the regulation of online gaming in India. The Indian government, through MeitY, has acknowledged the need for agile regulations for tech-focused sectors and accordingly adopted principles of co-regulation through these amendments. With the notification of the Online Gaming Rules, online gaming becomes one of the few sectors in India to have 'self-regulation' model in place, which may act as a guiding precedent for other fast-evolving industries to follow.

Annexure A

Online Gaming Intermediaries and their due diligence obligations

The Online Gaming Rules have amended the IT Rules 2021 to include regulation of OGI in relation to 'online games'. The amendments layout a comprehensive framework for the online gaming ecosystem and enforce due diligence requirements on OGIs.

- Every OGI needs to become a member of a registered SRB.
- MeitY may approve as many SRBs it deems necessary, and OGIs have an option to become a member with any of them.
- Rule 3 and Rule 4 provide due diligence requirements that an OGI needs to follow.
- The due diligence obligations however do not apply until the expiry of 3 (three) months from the date by which MeitY has notified the registration of at least 3 (three) SRBs.

Due diligence requirements on an OGI under Rule 3

The IT Rules 2021 under Rule 3 has various due diligence requirements for an 'intermediary'. With the Online Gaming Rules now notified, the same requirements are also applicable on an OGI.

Some key requirements are mentioned below:

1. The OGI shall publish its terms of use, privacy policy, and other user agreements on its platform. Among other things, an OGI should specifically ensure that users are informed to not use the platform to upload any information that [Rule 3(1)(b)]:
 - Is an online game, however, is not a 'permissible online game'.
 - Is an advertisement (including surrogate) that promotes an online game that is not a 'permissible online game'.
 - Violates any law for the time being in force.
2. Provide necessary information within 24 (twenty-four) hours to government agencies investigating cyber security incidents [Rule 3(1)(j)].
3. Retain user registration related information for 180 (one hundred and eighty) days post cancellation or withdrawal of such user's registration [Rule 3(1)(h)].
4. Inform users about changes to its terms of use, privacy policy, etc. within 24 (twenty-four) hours [Rule 3A (f)].
5. Appoint and share the details of the grievance officer who is a resident in India [Rule 3(2) read with Rule 4(1)(c)].

Additional due diligence requirements on an OGI under Rule 4

The IT Rules 2021 under Rule 4 has various due diligence requirements for a 'significant social media intermediary'. With the Online Gaming Rules now notified, the same requirements are also applicable on an OGI. Some key requirements are mentioned below:

1. Publication of physical address in India on the platform [Rule 4(5)].
2. Publication of periodic compliance reports on complaints received from users and action taken [Rule 4(1)(d)].

3. Inform users through terms of use about deposit, refund, and withdrawal of funds, and process to determine winners [Rule 4(11)].
4. Appoint a chief compliance officer, resident in India, who shall ensure compliance with the IT Act and rules [Rule 4(1)(a)].
5. Appoint a nodal contact person, resident in India, who shall coordinate with law enforcement agencies to ensure compliance with their orders [Rule 4(1)(b)].
6. Display demonstrable and visible mark of verification provided by the SRB [Rule 4(10)].
7. Verify its users at the commencement of an 'account-based relationship' before accepting deposits, in line with the know your customer ("KYC") guidelines provided by the Reserve Bank of India ("RBI") [Rule 4(12)].
8. Prohibit financing or providing users with credit by itself or through third party [Rule 4(13)].

IndusLaw note: *The KYC obligations on an OGI were heavily debated during the consultation process as being onerous, however MeitY has maintained the same under the Online Gaming Rules. Accordingly, OGIs will need to institute KYC processes in place in line with the RBI Master KYC Directions. While the grievance officer, chief compliance officer, and nodal contact person are identified as 3 (three) different posts, we believe the same individual can be appointed for all offices.*

Annexure B

Grievance Redressal System under the Online Gaming Rules

Both OGI and SRBs must appoint a grievance officer and prominently publish their name and contact details as well as the grievance redressal mechanism. The Online Gaming Rules provide grievance redressal between OGIs and user, and between OGI and SRB, but do not shed any light on the grievances between the SRB and MeitY.

A brief overview of the process is below:

Grievance redressal mechanism	Online Gaming Intermediary	Self-Regulatory Body
Who can file a complaint	Any user or person aggrieved with OGI for violation of Rule 3 and sub rules (11) to (13) of Rule 4	Any applicant OGI aggrieved by the decision of SRB with respect to verification and revocation.
Timeline for Resolution	<p><u>Acknowledgement:</u> Within 24 (twenty-four) hours of receipt of complaint.</p> <p><u>Resolution window:</u></p> <ul style="list-style-type: none"> - 15 (fifteen) days where violation is of Rule 3 (1) (b) (i), (iv), and (xi). - 24 (twenty-four) hours in case complaint is with respect to sexual content. - 72 (seventy-two) hours in all other cases. 	<p><u>Acknowledgement:</u> Within 24 (twenty-four) hours of receipt of complaint.</p> <p><u>Resolution window:</u> Within 15 (fifteen) days of receipt of complaint.</p>
Timeline for Appeal to grievance appellate committee ("GAC")	If complainant is not satisfied with the resolution provided by the OGI's grievance officer or the complaint is not resolved within the prescribed timelines, an appeal can be made to the GAC constituted under Rule 3A within 30 (thirty) days.	If complainant is not satisfied with the resolution provided by the OGI's grievance officer or the complaint is not resolved within the prescribed timelines, an appeal can be made to the GAC constituted under Rule 3A within 30 (thirty) days.
Timeline for GAC to dispose appeal	30 (thirty) days from the date of receipt of appeal.	30 (thirty) days from the date of receipt of appeal.

IndusLaw note: *The Online Gaming Rules do not specify the recourse if the complainant is not satisfied with the outcome of the GAC. However, in a recent parliamentary response to a question posed to MeitY in relation to the same, the MeitY responded saying that the appellant can file a writ before High Court under Article 226 or the Supreme Court under Article 32 of the Indian Constitution.*

Annexure C

'Permissible online game' and process for verification with an SRB

The Online Gaming Rules require every intermediary, including an 'OGI' only allow a 'permissible online game' on its platform. If an 'OGI' fails to do so, it will lead to a loss of 'safe harbour' under Section 79 of the IT Act, and consequently the 'online gaming intermediary' will be directly liable for any third-party content that is hosted on its platform.

- An 'OGI' is an 'intermediary' that allows the users of its platform to access one or more 'online games'.
- A '**permissible online game**' is either an online game that is not an 'online real money game' i.e., it is free-to-play; or an 'online real money game' that is verified by an SRB.

Process for an 'online real money game' to be verified as a 'permissible online game'

1. The applicant should be an SRB member, in line with the membership process of the SRB.
2. The process of verification and suspension/revocation (if any) is left to the discretion of the relevant SRB, who are required to come up with detailed processes for the same.
3. However, there are some baseline requirements that every SRB needs to check that the 'online real money game':
 - Does not involve wagering on any outcome [Rule 4A (3)(a)].
 - Is in conformity with the due diligence obligations specified under Rule 3 and 4 of the IT Rules 2021 [Rule 4A (3) (b)].
 - Is not offered to any minor [Rule 4A (3) (b)].
 - Is not against the sovereignty, integrity, security of India, friendly relations with other states and public order [Rule 4A (8)].
 - Protects users against harm, takes measures to safeguard children, and has parental control and age ratings based on the nature and content of the game [Rule 4A (8)].
 - Protects users against addiction, financial loss, and fraud [Rule 4A (8)].
 - Provides repeated user warnings based on time spent on the game and provides users with self-exclusion mechanisms [Rule 4A (8)].
4. At the first instance, an SRB may rely on the information provided by the 'online gaming intermediary' and declare their game as a 'permissible online game' for a maximum period of 3 (three) months [Rule 4A (3)].
5. The SRB shall complete the verification process in this interim period of 3 (three) months and thereafter either approve or reject the game as a 'permissible online game' [Rule 4A (3)].
6. Post verification, the 'permissible online game' must carry a demonstrable and visible mark of verification provided by the SRB [Rule 4A (7)].

IndusLaw note: *The Online Gaming Rules have done a fair job in balancing government regulation with industry-led self-regulation. While the process of verification is left to the SRB, the baseline checks under Rule 4A (3) and (8) that every SRB needs to follow is a welcome step and will ensure uniformity in the functioning of all SRBs. The phrase 'wagering on any outcome' under Rule 4A (3) (a) is ambiguous and does require clarification from MeitY.*

Annexure D

Self-Regulatory Bodies, process for recognition, and their duties under Online Gaming Rules

The Online Gaming Rules have introduced a mechanism, whereby industry-led SRBs will be registered by MeitY and will be tasked to verify an ‘online real money game’ as a ‘permissible online game’.

- MeitY can appoint as many SRBs as it considers necessary.
- Minimum 3 (three) SRBs need to be registered for the Online Gaming Rules to apply to an OGI.
- No timelines mentioned for an SRB to make an application and be registered by MeitY.
- No guidance vis-à-vis disputes or grievances between the SRB and MeitY.

Requirements to become a registered SRB		
SRB should be a Section 8 company under the Companies Act 2013.	Membership should be representative of the gaming industry.	Members have been offering their online games in a responsible manner.
BoD has at least 7 (seven) individuals from different fields, with no conflict of interest.	Presence of a grievance officer and a grievance redressal framework.	Clear processes for accepting and revoking membership.
<p>IndusLaw note: <i>Some criteria are slightly vague and subjective in nature, and it may require the SRB to build its case before MeitY on how it meets the requirements. It will be useful if SRB's make use of industry reports and examples of their members in their applications to present how they meet the eligibility criteria, specifically the criteria under Rule 4A(2)(b), (c), and (d).</i></p>		

Duties after becoming a registered SRB

- Verification of an ‘online real money game’ as a ‘permissible online game’ and the power to suspend/revoke the verification. Other than Rule 4A (3) and (8), the process of verification and suspension/revocation is as per the SRB’s discretion.
- Ensure that the ‘online gaming intermediary’ and the ‘permissible online game’ are complying with Rule 3 (due diligence requirements) and Rule 4 (additional due diligence requirements).
- Publish on its website a list of ‘permissible online games’ that it has verified, along with details of applicant, period of validity, reason for verification, and details of suspension/revocation (if applicable).
- Publish on its website a list of all its members, both past and present, along with their corporate or business identity number, and details of suspension/revocation of membership (if applicable).
- Provide a demonstrable and visible mark of verification for an ‘online gaming intermediary’ and a ‘permissible online game’ to use and display.
- Liaison with MeitY, provide any information that it seeks, and address any concerns around verification or revocation of any ‘online gaming intermediary’ or a ‘permissible online game’.

IndusLaw note: *While some of the existing industry bodies may already have some of these duties implemented in practice, it is important to appreciate that their processes will now be under the direct scrutiny of the MeitY. Any lapse by an SRB may not only put the registration of such SRB at risk, but also directly impact the ability of their members to conduct business and operate in India.*

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