

ONLINE GAMING INDUSTRY BRACES FOR INFORMATION TECHNOLOGY RULES AMENDMENTS

The Indian gaming market growing at a CAGR of 30% is expected to grow from \$2.8 billion in 2022 to \$5 billion in 2025. The number of gamers is expected to rise from 420 million in 2022 to 500 million by 2025. Considering the evolution of the industry and the involvement of public at large, the government with a view to safeguard the public money from the detrimental effects of online gaming decided to provide for a regulatory mechanism and thus has recently released **draft amendments** to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (“the **2021 Rules**”) to bring online gaming intermediaries operating online games under the ambit of the Rules.

Addition of new definitions under the 2021 Rules

1. **Online Game**- A new sub-rule ‘qa’ under Rule 2 will be inserted which defines online game as a game that is offered on the internet and is accessible by a user through a computer resource if he makes a deposit (i.e., deposit made or committed to, in cash or in kind, by the user for participating in an online game) with the expectations of earning winnings (i.e., any prize, in cash or in kind, that is distributed to a user of an online game based on the performance of the user and the rules of the online game).
2. **Online Gaming Intermediary (“the Intermediary”)**- A new sub-rule ‘qb’ under Rule 2 will be inserted which defines online gaming intermediary as an intermediary that offers one or more than one online game.

Additional Due Diligence Obligation on Online Gaming Intermediaries

The draft amendment obligates the Intermediary to undertake the due-diligences as provided under the 2021 Rules. Apart from that, certain additional due diligence needs to be undertaken by the Intermediaries while discharging its duties, namely-

1. **Display of registered mark**-The Intermediary has an obligation to display a demonstrable and visible mark of registration on all online games registered by the self-regulating body.
2. **Information to Users**- The rules and regulations, privacy policy, terms of service and user agreements of the Intermediary shall provide the following information to the user of its computer resource, namely:
 - a. all the online games offered by the Intermediary, along with the withdrawal or refund policy with regard to the deposit made with the expectation of earning winnings, the manner of determination and distribution of such winnings, and the fees and other charges payable by the user for each such online game;
 - b. the risk of financial loss and addiction associated with the online game;
 - c. the know-your-customer procedure followed by the Intermediary for registration of the account of a user;
 - d. the measures taken for protection of deposit made by a user; and
 - e. the framework of such self-regulatory body, of which the Intermediary may be a member of.
3. **Certification requirement and publication**- The Intermediary shall publish on its website or mobile based application, a random number generation certificate and a no bot certificate from a reputed certifying body for each online game offered by it, along with relevant details of the same;

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4. **User Identification-** The Intermediary shall at the time of commencement of a user account based relationship for an online game, identify the user and verify his identity as per the procedure followed by the RBI regulated entity under directions issued by it.
5. **Voluntary Verification of account-** The Intermediary is mandated to enable the users to voluntarily verify their accounts, and shall post verification provide the user with a demonstrable and visible mark of verification, visible to all users of the service.
6. **Appointment of officers by the Intermediary**
 - a. Grievance Officer who shall be employee of the Intermediary and shall be resident in India;
 - b. Chief Compliance Officer who shall be a key managerial personnel or a senior employee of the Intermediary and resident in India. He shall be responsible for ensuring compliance of the Information Technology Act and the rules and shall be liable if the Intermediary fails to observe due diligence. He shall also be responsible for coordinating with the law enforcement agencies and their officers to ensure compliance with their order and requisitions made.
 - c. Nodal Contact Person who shall be employee of the Intermediary, other than the Chief Compliance Officer and shall be resident in India. He shall be responsible for 24x7 coordination with law enforcement agencies and ensure compliance with orders or requisitions.
7. **Physical Contact Address-** The intermediary is required to have an address in India which it shall publish on its website or mobile based application, for the purposes of receiving any communication addressed to it.
8. **Complaint Procedure-** The Intermediary shall put in a place a mechanism for the receipt of complaints and grievances for violations of these 2021 Rules, and shall enable complainant to track the status by providing a unique ticket number for every such complaint.
9. **Intimation of Change-** The Intermediary shall inform the users of any change in its rules and regulations, privacy policy or user agreement immediately after such change is effected, in English or any language specified in Schedule 8 of the Constitution.
10. **Assistance to Government Agency-** The intermediary shall within twenty-four hours of the receipt of an order, provide information under its control or possession, or assistance to the government agency, for the purposes of verification of identity, or for the prevention, detection, investigation, or prosecution, of offences, or for cyber security incidents.

The Additional due diligence requirements shall be complied with by the Intermediary within **3 months** of the coming of the rules into effect.

Provisions relating to Self-Regulatory Body ("the Body")

The Intermediary which is desirous of being registered as a self-regulatory body may file an application for registration with the Ministry.

1. **Legal Form of the Body-** The Intermediary, may either be a Company incorporated under Section 8 of the Companies Act 2013 or a society registered under the Societies Registration Act, 1860.
2. **Manner of registration of the Body-** Upon submission of application for registration, the Ministry may register the same, on satisfying itself that prescribed criteria are met, namely:
 - a. The number of Intermediaries who are its members;
 - b. Its track record in promoting responsible online gaming;
 - c. The general repute, the absence of the conflict of interest and the relevance and suitability of the individuals comprising its Board of Directors or governing body;
 - d. The presence of the following in the Board of Directors or governing body:

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- i. An independent eminent person from the field of online gaming, sports, or entertainment, or such other relevant field;
 - ii. An individual who represents online game players;
 - iii. An individual from the field of psychology, medicine, or consumer education, or such other relevant field;
 - iv. An individual with practical experience in the field of public policy, public administration, law enforcement or public finance, to be nominated by the Central Government; and
 - v. An individual from the field of information communication technology.
- e. The provision in its Articles of Association or bye laws to ensure its functioning independently and at arm's length from its member Intermediaries;
- f. Its capacity, in terms of deployment of technology, expertise and other relevant resources, for evolving the desired framework, testing and verifying conformity of online games with the same, and continuously updating and further evolving such framework, testing and verification protocols.
3. **Granting Membership to Intermediaries-** The Body may grant membership to the Intermediary, having regard to the following criteria, namely:
 - a. The adherence by such Intermediary and all online games with criteria mentioned in the point 4;
 - b. The adherence by Intermediary to the due diligence and additional due diligence requirements;
 - c. Track record of the Intermediary in offering online games responsible while securing the interests referred to in Section 69A of the Information Technology Act.
4. **Registration of online games-** The Body shall have regard to the following criteria that it:
 - a. is offered by an Intermediary which is a member of a self-regulatory body;
 - b. does not contain anything which is not in the interest of sovereignty and integrity of India, defence of India, security of state, friendly relations with foreign states or public order, or incites the commission of any cognizable offence relating to the aforesaid;
 - c. is in conformity with laws in force in India, including gambling or betting law or the age at which an individual is competent to enter into a contract.
5. **Framework by Self-Regulatory Body-** The Body is under an obligation to evolve a framework to secure the interest referred to in Section 69A of the Information Technology Act, and undertake testing and verification to ensure conformity of online games with such framework. It shall continuously update the framework and publish it on its website or mobile based application or both. The framework may include suitable criteria with respect to:
 - a. the content of an online game, with a view to safeguard users against harm, including self-harm;
 - b. appropriate measures to be undertaken to safeguard children;
 - c. measures to safeguard users against the risk of gaming addiction and financial loss, including repeated warning messages at higher frequency beyond a reasonable duration for a gaming session, provision to enable user to exclude himself upon user-defined limits for time and money spent; and
 - d. measures to safeguard against the risk of financial frauds.
6. **Communication with the Government-** The Body is under an obligation to communicate the fact of recognition of every online game registered with it to the Central Government, along with a report on the reasons for such recognition.
7. **Complaint Resolution Mechanism-** The Body is required to establish a mechanism for time bound resolution of complaints of users that have not been resolved by the Intermediary.

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The draft amendments seek to provide a delicate proposition, for balancing the interests of both the users as well as the online gaming intermediaries. There is a need to further make meaningful discussions with all the related stakeholders and put forth a standardised regulatory regime.

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