

UNLEASHING THE WORLD OF ONLINE GAMING IN INDIA



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INTRODUCTION

Rolling of dices, placing bets, and watching the stakes go high; in the exhilarating realm of online real money gaming has grown exponentially in the past decade. In this domain of heart-pounding escapade, all is won or lost with a click of a button. Amidst this whirlwind, lawmakers of the country continue to delve into the regulation of this industry.

In this captivating arena of online real money gaming, the lines between luck, chance and skill continue to blur, where sometimes players rely on sharp mathematics and strategy analysis and sometimes on sheer luck. Recognising that as the stakes become higher, the need for a legal framework to embrace skill-based gaming but also minimising the negative implications of this booming industry to set boundaries and draw certain rules becomes necessary.

Furthermore, the entrance of new foreign players due to the amplifying growth of this industry changes the landscape of online real-money gaming. These expanding horizons have opened the virtual doors to international players, and this influx of foreign investments calls for India to navigate gaming and investment laws to regulate this uncharted territory.

This article aims at understanding the scope of online real money games in India and the entry of foreign players in the industry, which also mandates their regulation. We will talk about the necessary requirements that are to be fulfilled by foreign investors and the guidelines that are to be followed. Subsequently, the recent developments in the gaming industry are also discussed in depth.

GAME OF SKILL VS GAME OF CHANCE

The two primary legislations governing the regulation of the gaming sector in India are the Public Gaming Act, 1867 and Prize Competitions Act, 1955. According to Section 12 of the Public Gaming Act, the provisions of the act are not applicable to games of skill. This implies that in India, lawmakers have differentiated between a game of skill and a game of chance. This is substantiated through multiple judgments by the Hon'ble Supreme Court of India.

In the landmark case of **State of Andhra Pradesh v. K. Satyanarayana & Ors.**¹, it was held under Section 14 of the Public Gaming Act that playing rummy for stakes is not entirely a game of chance and rather a game of skill however, a three-card game such as Teen Pati is a game of chance.

Subsequently, this stance was reiterated in **Dr. K.R. Lakshmanan v. State of Tamil Nadu and Anr.**² where it was held, "*The courts have reasoned that there are few games, if any, which consist purely of chance or skill, and as such a game of chance is one in which the element of chance predominates over the element of skill, and a game of skill is one in which the element of skill predominates over the element of chance.*"

It is noteworthy to mention that on analysis of the aforementioned statute and judgments, it is concluded that in India, a game of skill is allowed, however, a game of chance is not permitted to be played.

¹ (1968) 2 SCR 387, at ¶ 12.

² 1996 SCC (2) 226.

ENTRY OF FOREIGN PLAYERS IN THE INDUSTRY

Attributing to the fast-pacing growth of the gaming industry in India, the entry of foreign investors is inevitable. However, the question is whether laws in India permit such entry. The Public Gaming Act, 1867 governs the gaming industry in India but fails to mention foreign companies in this regard. As a result, it can be inferred that **foreign companies are allowed to set up a game where money is exchanged in India.**

As far as the regulation of online games in India is concerned, the Government has introduced an amendment to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023 (“**IT Rules, 2023**”).

According to the definition set out in Section 2 (qa) of the IT Rules, 2023, an “online game” means a game that is offered on the Internet and is accessible by a user through a computer resource or an intermediary.

According to Section 2 (qb) of the IT Rules, 2023, “online gaming intermediary” is defined as any intermediary that enables the users of its computer resources to access one or more online games.

In reference to the exchange of money on the game, Section 2 (qd) of the IT Rules, 2023 defines the “online real money game” as an online game where a user makes a deposit in cash or kind with the expectation of earning winnings on that deposit.

The explanation to the section 2 (qd) defines “winnings” to mean any prize, in cash or kind, which is distributed or intended to be distributed to a user of an online game based on the performance of the user and in accordance with the rules of such online game.

Apropos of the aforementioned laws, it is deemed that foreign companies are permitted to set up business in the gaming industry in India. Pertinently, they, like all Indian companies are also required to follow the laws of the country. Therefore, there is no particular exclusion of foreign companies making it permissible for

them to offer online real money games subject to certain requirements.

PRE-REQUISITES FOR FOREIGN COMPANIES TO ENTER THE INDIAN GAMING INDUSTRY

Checklist for Registration

- Digital signature certificate issued by the Ministry of Corporate Affairs
- Director Identification Number issued by the Ministry of Corporate Affairs
- Reservation of the name of the company at the Central Registration Centre of the Ministry of Corporate Affairs
- Necessary incorporation documents such as Memorandum of Association and Articles of Association
- Permanent Account Number (PAN) and Tax Deduction and Collection Account Number (TAN)
- Bank Account
- GST Registration
- Verification by Self-Regulatory Body applicable for online real money games

Disclaimer: The above checklist for registration is not an exhaustive list.

Advertising Regulations

- A. [The guidelines on Online Gaming issued by the Advertising Standards Council of India \(ASCI\)](#) on 24.11.2020, effective from 15th December 2020, are to be followed.
- B. Advertisements for online real money games are also regulated, and such regulations are to be adhered to:
 1. Depiction of any person under the age of 18 years or who appears to be under the age of 18 engaged in playing a game of online games for real money winnings or suggestions is not allowed.
 2. Advertisements must carry the following disclaimer that should occupy no less than 20% of the space in the advertisement and should also specifically meet the disclaimer guidelines 4 (i) (ii) (iv) and (viii) laid out

in the ASCI Code. E.g., Print/Static disclaimer: *“This game involves an element of financial risk and may be addictive. Please play responsibly and at your own risk.”*

3. Audio/Video disclaimer: *“This game involves financial risk and may be addictive. Please pay responsibly and at your own risk.”*

- Must be played at a normal speaking pace at the end of the advertisement.
- Same language as the advertisement
- For audio-visual mediums, the disclaimer needs to be both in audio and visual formats.

C. The advertisements should not present ‘Online gaming for real money winnings’ as an income opportunity or an alternative employment option.

FEMA Regulations

A. Foreign Exchange Management Act, 1999 read with Foreign Exchange Management (Current Account Transactions) Rules, 2000:

Schedule I of the Current Account Rules provides a list of prohibited transactions which includes remittances out of lottery winnings, remittance of income from racing/riding etc., or any other hobby, remittance for purchase of lottery tickets etc.

B. RBI Master Direction No. 8/2015 on ‘Other Remittance Facilities’:

1. International credit cards cannot be used on the Internet or otherwise for the purchase of prohibited items like lottery tickets, banned magazines, participation in sweepstakes, football pool etc.
2. International debit cards cannot in any manner used for the purchase of items like lottery tickets, participation in sweepstakes, football pool etc.

C. A significant recent development regarding foreign investment and online gaming was by the Bombay High Court in its judgement in **Play Games 24x7 Private Limited v. Reserve Bank of India**³:

1. The Court made clear distinctions regarding the classification of a game as gambling, stating that two conditions must be satisfied. Firstly, the game should primarily rely on chance rather than skill, and secondly, it must involve playing for a reward. The court elaborated on the aforementioned judgements⁴ on the difference between a game of chance and a game of skill and the scope of gambling.
2. In relation to foreign direct investment (FDI) policy, which restricts FDI in gambling and betting, the Court made a significant observation that there is no prohibitions under the FDI policy for gaming activities which are not played for a reward.
3. The RBI was, therefore, required to consider the compounding application to invite foreign investors by the Petitioner herein since foreign investments under FEMA regulations are permitted for activities not amounting to betting or gambling.

Specific Information to be included in the Terms & Conditions as per the IT Rules, 2023

Online gaming intermediaries and online real money games:

- a. Shall display a demonstrable and visible mark of verification of such online games by an online gaming self-regulatory body on such permissible online real money game.
- b. Mandatorily include the policy related to withdrawal or refund of 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.

³ Writ Petition No. 3047 of 2022.

⁴ Supra 1 and 2.



- c. The know-your-customer procedure followed by it for verifying the identity of the users of such online games.
- d. Measures to be taken for the protection of deposits made by a user for such online game.
- e. Shall not itself finance by way of credit or enable financing to be offered by the third party for the purpose of playing such online game.

Verification of Users for Deposits

The intermediary shall before accepting any deposit in cash or kind from any user for a permissible online real money game, identify such user and verify his identity based on the identification process specified for entities regulated by RBI.

State Regulations

In India, two distinct classifications of states emerge, characterized by the presence of a regulatory framework for gaming involving real stakes:

- a. States that have a regulatory framework concerning online gaming:

Both Nagaland and Sikkim have a licensing regime pursuant to which online gaming operators require a license and need to meet the various regulatory conditions before offering or exhibiting online real money games. These licenses apply in every state in India, it is not just a license to be able to operate in that state. However, foreign investors are expressly barred from obtaining such a license.

- b. States that do not recognise the game of skill exception:

The gambling laws of Andhra Pradesh, Telangana, Assam and Odisha do not contain the games of skill exception and accordingly do not allow any game to be played for monetary stakes. In view of this, most online gaming companies restrict

users based in these states from accessing real money games on their platforms.

In practice, to remove the ambiguities regarding the law in certain states, gaming companies have created an exception by excluding residents of those states from the paid version of the game.

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