

ONLINE GAMING INTERMEDIARIES- NEW CHANGES AND COMPLIANCES

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Ministry of Electronics and Information Technology (“**Ministry**”) notified Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023 (“**Amended Rules**”) amending the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (“**IT Intermediary Rules**”) for an Open, Safe & Trusted and Accountable Internet. Majorly, the amendments layout a framework for Online Gaming Eco-system with twin objectives viz. expansion of online gaming innovation and simultaneously protecting citizens from illegal betting and wagering online.

Brief Snapshot of Amended Rules



Some of the important aspect of Amended Rules along with our analysis are as under:

- 1) **When are the Amended Rules going to be applicable?**
The due diligence obligations will be applicable on the expiry of a period of three months from the date on which at least three Self-Regulatory Organization (“**SRO**”) have been designated by the Central Government.

LK Note: The obligations of due diligence on online gaming intermediary would be applicable after notification of SROs rest of clauses are effective from notification. However, online gaming intermediaries should start the preparation for compliances.

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2) **What is an online game, as regulated under the Amended Rules?**

'Online Game' means a game that is offered on the Internet and is accessible by a user through a computer resource or an intermediary.¹

LK Note: The Amended Rules keep the definition of online game wider covering all the games offered on the internet.

3) **Who is online gaming intermediary?**

The term 'online gaming intermediary' means any intermediary that enables the users of its computer resource to access one or more online games.²

LK Note: By virtue of the Amended Rules, the online gaming intermediary has been included under the definition of intermediary under Information Technology Act, 2000 ("IT Act"). As a result, the online gaming entities have to comply with the requirements of intermediaries under the IT Act.

4) **Which online game will qualify as online Real Money Game?**

Online Real Money Game means an online game where a user makes a **deposit** in cash or kind with the **expectation of earning winnings** on that deposit.³

LK Note: It is important to determine whether the online games qualify as 'Real Money Game.' The twin factor to be satisfied are:
1) Deposit (cash or kind); and
2) Earning expectation on deposit.
However, the meaning of the term 'deposit' has not been defined. Thus, it would have to be decided on case-to-case basis. The Real Money Game has higher obligations to comply under Amended Rules.

5) **What constitutes Permissible Online Game and permissible Real Money Game?**

Permissible online Real Money Game⁴ means a Real Money Game verified by an online gaming SRO.

Permissible Online Game⁵, includes a permissible Real Money Game or any other online game that is not a Real Money Game.

LK Note: The Amended Rules have created two classes of permissible online games. *First*, permissible Real Money Game and *second*, any other online game that is not a Real Money Game. The Real Money Game requires verification by SRO to be permissible, whereas, the free to play games that do not require user to make deposit are, *per se*, permissible.

6) **What are the due diligence obligations that all online gaming intermediaries are required to comply under Amended Rules?**

The broad obligations⁶ of online gaming intermediary are as follows:

- Publication of (a) Rules and Regulations, (b) Privacy Policy and (c) User Agreement on its website, mobile based application or both. It has to be provided in multiple languages for users.

¹ Rule 2(1)(qa)

² Rule 2(1)(qab)

³ Rule 2(1)(d)

⁴ Rule 2(1)(qf)

⁵ Rule 2(1)(qe)

⁶ Rule 3

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- Avoid hosting, displaying, uploading, modifying, publishing, transmitting, storing, updating or sharing of any information prohibited under Rule 3(1)(b) of Amended Rules.
- Once in a year informing the users of its rules and regulations, privacy policy and user agreement and any change.
- Remove or disable access to the information which is categorized as unlawful by court order no later than 36 hours.
- Retention of user registration information for a period of 180 days.
- Take all reasonable measures to secure its computer resource and information contained therein under applicable security rules.
- Provide information under its control and possession within 24 hours upon order from Government agency.
- Reporting cyber security incidents by following proper procedure.

LK Note: The due diligence obligations as mentioned above are applicable to all online gaming intermediaries enabling access to permissible online games. Thus, for providing access to any class of the game (permissible Real Money Game or any other game) the online gaming intermediary needs to comply with all the obligations listed therein.

7) Whether there is any restriction under the Amended Rules with respect to advertising of online games?

Pursuant to the Amended Rules⁷, the online gaming intermediaries are not permitted to host, display, upload, modify, publish, transmit, store, update or share information that :

- is in the nature of an online game that is not verified as a Permissible Online Game; and
- is in the nature of advertisement or surrogate advertisement or promotion of an online game that is not a permissible online game, or of any online gaming intermediary offering such an online game.

LK Note: The advertisements in relation to non-permissible Real Money Game are restricted.

8) What additional due diligence any permissible Real Money Game has to observe?

Additional due diligence⁸ to be complied by Real Money Game intermediary are as follows:

- Appointment of a resident Chief Compliance Officer.
- Appointment of a resident nodal contact person for 24x7 coordination with law enforcement agencies and officer.
- Appointment of a resident Grievance Officer.
- Grievance handling mechanism and publication of periodic compliance report every month.
- Requirement to have a physical contact address in India.
- Enable their users to voluntarily verify their accounts.
- Display a demonstrable and visible mark of verification by SRO.
- **Deposit and KYC obligations:**
To include following information in rules and regulations, privacy policy, terms of service and user agreements:
 - (i) the policy related to withdrawal or refund of the deposit made
 - (ii) KYC procedure

⁷ Rule 3(1)(b)(ix) and Rule 3(1)(b)(x)

⁸ Rule 4

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- (iii) measures taken for protection of deposit made by a user
- (iv) framework as provided by SRO
- Conducting KYC of user before accepting deposit
- **Financing restriction:** It shall not itself finance by way of credit or enable financing to be offered by third party for the purpose of playing such online game.

LK Note: These additional compliances to be adhered to by the permissible Real Money Game. The KYC obligations has to be as per RBI requirement considering Prevention of Money Laundering obligations as well. The permissible Real Money Game intermediary will have to create a board approved KYC policy. Apart from this the permissible Real Money Game is barred from any credit activity.

9) **What is SRO and how it will be appointed?**

SRO is an entity designated by the Ministry for verification of Real Money Game. The Ministry may designate as many online gaming self-regulatory bodies as it may consider necessary for the purposes of the IT Intermediary Rules.

LK Note: Any Real Money Game would be permitted only after verification by such SRO.

10) **What is the role of SRO?**

Upon receipt of an application in respect of a Real Money Game, the SRO will do an inquiry and after being satisfied may declare such Real Money Game as a permissible Real Money Game. SRO is required to publish a report on their website detailing the list of verified Real Money Games, period of validity, bases for approval and details of suspension or revocation.

LK Note: The SRO would conduct a detailed investigation of the Real Money Games before permitting such games for users. There will be multiple SROs and each will have its own set of rules and regulations which is to be complied with Real Money Game.

11) **What kind verification shall be done in respect of permissible Real Money Game under the Amended Rules?**

SRO will consider following points with respect to online gaming intermediary enabling access to Real Money Game:

- It does not involve wagering on any outcome.
- It is compliant with due diligence obligations.
- It is not against the interests of sovereignty and integrity of India, security of the State, friendly relations with foreign States and public order.
- It complies with safeguards against user harm, including self-harm and psychological harm.
- It safeguard users against the risk of gaming addiction, financial loss and financial fraud.

All the compliances would be required to be done in accordance with the framework which will be published by SRO.

LK Note: The verification by SRO with respect to the issues of legality of the games, user harm, and sovereignty and integrity of India.



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12) What is the consequence of non-compliance with the Rules?

According to Rule 7 of the IT Intermediary Rules, the online gaming intermediary shall be liable for punishment under any law for the time being in force including the provisions of the Information Technology Act, 2000 and the Indian Penal Code, 1860 if it fails to comply with any of the Rules under the IT Intermediary Rules.

LK Note: The IT Intermediary Rules are mandatory and any non-compliance would attract penal actions.

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