

TRAI Consultation Paper on Inputs for the formulation of the National Broadcasting Policy, 2024

I. Background

On April 2, 2024, the Telecom Regulatory Authority of India ("TRAI") came out with a Consultation Paper on the formulation of the National Broadcasting Policy, 2024. TRAI has invited responses and comments from various stakeholders regarding the Consultation Paper.

We, Cyril Amarchand Mangaldas, a full-service law firm with offices in Mumbai, New Delhi, Ahmedabad, Hyderabad, Bangalore, and Chennai, are providing our inputs on the Consultation Paper through this briefing note on the key question posed in the paper regarding online gaming, namely:

“Q9. Online gaming being a rising sector holds potential for contributing to economy, what policy and regulatory aspects should be adopted for the orderly growth of online gaming in India? Further, suggest measures to support local game developers to compete and grow. Also suggest safeguards to protect general public (especially underage players) from negative and psychological side effects, while promoting healthy gaming.”

In addressing this question, we have split the query into each of its constituent parts and provided comments on them separately. But, prior to it, we are placing on record, our preliminary observations regarding the Consultation Paper.

II. Preliminary observations regarding the Consultation Paper

- Definition of online gaming in para 2.81 ought be aligned with the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (“**IT Rules, 2021**”).
- Online gaming is an occupied field, and the Ministry of Electronics and Information Technology (“**MeitY**”) is the nodal ministry.¹
- More nuances may be added to Para 2.84 for consumer protection and measures to safeguard users from financial and other kinds of risk.
- Online gaming industry has distinct operators - pay to play and for free. Pay to play is only offered to adults and uniform practice is adopted for age gating.
- Courts have held that involvement of money does not alter the nature of the game-pay to play formats and for free, both if are predominantly skill based will be considered as games of skill.

¹ [MeitY becomes nodal ministry for online gaming | Technology News - The Indian Express](#)

III. What policy and regulatory aspects should be adopted for the orderly growth of online gaming in India

- Current Status of Regulatory Framework by MeitY
 - Inter-Ministerial Task Force (“**IMTF**”) was constituted comprising of seven Secretaries from various Ministries to analyse and provide recommendations on the regulatory framework for online gaming.
 - After The IMTF submitted its report in November, 2022, the Cabinet Secretary amended the Allocation of Business Rules and allocated the subject matter of online gaming to MeitY and e-sports to Ministry of Youth Affairs and Sports.²
 - MeitY introduced amendments to the IT Rules, 2021 in 2023 (“**Online Gaming Rules, 2023**”) to bring a regulatory framework for online gaming. The key highlights of the Online Gaming Rules, 2023 are:
 - Two tier regulatory framework: Tier 1 entails self-compliance, due diligence and grievance redressal by the online gaming intermediary itself. Tier 2 consists of Self-regulatory Bodies (“**SRBs**”) designated by MeitY who shall function with limited Government oversight by the Ministry i.e., MeitY.
 - The Online Gaming Rules, 2023 mandate an online gaming intermediary to comply with due diligence requirements. These rules require verification of an online real money game by an SRB, to be designated as a permissible online real money game.
 - SRB’s are mandated to also introduce a framework on protecting users from the risk of addiction, financial loss, etc.
 - SRBs are yet to be notified by the Ministry. Additionally, as per the latest comments from MeitY, the Government is of the opinion that as the nodal Ministry, MeitY itself, shall constitute the SRBs.³
- Finance Act
 - Amendments could be made to the Income Tax Act, 1961 to provide for a distinctive treatment to online gaming from that of gambling and betting.
 - Separate provisions for deduction of TDS and Income Tax on winnings from online gaming.
- Therefore, it is stated that:

² [Interministerial panel proposes central law to govern online gaming | Latest News India - Hindustan Times](#);

³ [Govt to regulate the online gaming industry whilst awaiting for proposals to set up SRO by the industry, ET LegalWorld \(indiatimes.com\)](#)

- Online gaming is an occupied field and falls under MeitY and therefore should continue to be regulated under the scheme of Online Gaming Rules, 2023.
 - Online gaming is already an occupied field with MeitY as its nodal Ministry, and regulation of this domain should be left to them.
 - The SRBs are yet to be notified. Once SRBs are notified, only online games that are registered with the SRBs shall be allowed to operate. The role of SRB covers all aspects of regulation from regulating game formats to adjudicating disputes to introducing proper frameworks for safeguarding users from the risk of addiction, financial loss etc.
 - Further, there are content specific rules and regulations as well. The Ministry of Information & Broadcasting (“MIB”) and the Advertising Standards Council of India (“ASCI”) have issued advisories with respect to advertisement of betting and gambling activities as well as advertisement of online games.
 - MeitY in consultation with the Ministry of Home Affairs has proactively banned certain online gaming apps for various legal infractions.
 - To address the dilemma surrounding this sector, the Online Gaming Rules, 2023 should be brought into effect expeditiously.
- Courts of the country have time and again held that games of skill are distinct from betting and gambling⁴, and that the former are protected under Article 19(1)(g) of the Constitution⁵. States should therefore desist from passing laws that attempt to prohibit online games that have been judicially held to be games of skill. Instead, online gaming as a subject matter should be left solely within the purview of the Central Government, acting through MeitY.
- Potential regulatory models that can be explored by MeitY
 - Apart from the two-tier regulatory structure already provided under Online Gaming Rules, 2023 for creating a more robust regulatory framework, MeitY may consider following regulatory models:
 - A three-tier regulatory framework similar to that of OTTs.
 - Creating a single independent regulator for efficiency and expertise. The regulator shall take feedback from various

⁴ AIGF v. State of Karnataka (WP No. 18703 of 2021).

⁵ RMD Chamarbaugwalla v. UOI (1957 AIR 628).

stakeholders to ensure industry participation and foster innovation and growth of the emerging sector.

- Introducing a registration mechanism: all online gaming intermediaries to be registered with MeitY to ensure that only legitimate platforms offer their services in India.

IV. Measures to support local game developers to compete and grow

- The MIB is taking various initiatives to accelerate India's transformation into a global gaming and AVGC hub. The MIB has come up with the Draft National Policy for the Growth of the AVGC sector in India, with a special emphasis on the gaming sector.⁶
- Many states have published or are in the process of publishing state AVGC policies to boost local game development.⁷
- These initiatives can help catalyze game development in the country and increase India's footprint in the global market.
- Therefore, it is suggested that the National Policy for Growth of the AVGC policy should be finalized and notified at the earliest. The policy also proposes setting up a nodal agency under the MIB to closely monitor the growth of the sector. It is recommended that a dedicated sub-group for online gaming is created under the aegis of MeitY.
- Greater synergy between the states and the union government should be facilitated to ensure holistic development of online games in India.

V. Suggest safeguards to protect the general public (especially underage players) from negative and psychological side effects, while promoting healthy gaming.

- Online Gaming Rules, 2023 already prescribe a comprehensive set of responsible gaming measures. These include:
 - Any intermediary shall not host:
 - Any online real money game that is not verified by an SRB.
 - Any advertisement of online games which is not a permissible online game.
 - Online gaming intermediaries are obligated to display visible mark of registration on all games registered by an SRB.
 - KYC obligations similar to that of RBI's Regulated Entities.

⁶ [PowerPoint Presentation \(mib.gov.in\)](https://mib.gov.in)

⁷ ['India's AVGC-XR sector to become \\$26-bn industry by 2030' - The Hindu](#)

- Providing information regarding online games, risk of financial loss, KYC requirements, registration with an SRB, etc.
 - Requirement for the appointment of a Grievance Officer, a Chief Compliance Officer and a Nodal Officer. Additionally, all such appointees are to be employees of the online gaming intermediary and residents of India.
 - Inclusion of age gating measures. For instance, there is a requirement to be an adult to play permissible online real money games.
 - Requirement to ensure time bound grievance redressal mechanism and publish a monthly compliance report.
 - Prohibition on online gaming intermediary from financing by way of credit or enabling financing to be offered by third parties.
- Proactive approach from the industry in adopting the Internet and Mobile Association of India's ("IAMAI") Voluntary Code of Ethics:
- While MeitY is in the process of appointment of SRBs, the industry federations have come together and adopted a voluntary code of ethics to ensure uniform adoption of responsible gaming standards.
 - The industry associations – AIGF, EGF, and FIFS – have collaborated to endorse a voluntary code of ethics. This code includes responsible gaming measures that all their members are expected to adhere to.
 - It provides for measures to be taken by the members on responsible gaming, safeguards for minors, fair gaming policies, financial safeguards, responsible advertising and all other measures to ensure safe, secure and reliable gaming service.

VI. Concluding Remarks

In conclusion, we express our hope that our comments have helped highlight the need for regulation of the online gaming space through the IT Rules or other appropriate measures by MeitY, so as to bring about safety and responsibility while promoting growth and innovation in this ever-expanding domain.

We are happy to provide any assistance as may be required in relation to the same.