

Power Play:

A Regulatory Guide for Indian Gaming Companies

March 2024



TreeLife

Introduction

India's gaming industry is experiencing a meteoric rise, transforming from a nascent market to a global powerhouse.¹

Fueled by a burgeoning youth population, affordable smartphones, and expanding internet access, India boasts a staggering **420 million gamers**, solidifying its position as the second-largest gaming market worldwide, trailing only China.

This explosive growth has spurred the emergence of over 500+ gaming studios in India, all vying to captivate this enthusiastic player base.²

According to a joint report by EY and FICCI, the gamer population is poised to reach a staggering 500 million by 2025.³ Industry analysts predict a future even brighter, forecasting the Indian gaming industry to surpass \$3.9 billion by 2025.⁴ This phenomenal growth presents a wealth of opportunities for aspiring entrepreneurs.

This comprehensive report, titled "**Power Play: A Regulatory Guide for Indian Gaming Companies**", serves as an invaluable guide for navigating the intricacies of this dynamic landscape. We'll delve into the various types of gaming companies flourishing in India, explore the investment landscape with insights into PE/VC activity, and equip you with the knowledge to navigate the legal and regulatory framework. From essential financial and tax considerations to navigating regulatory hurdles, this manual provides you with the tools and information necessary to thrive in India's booming gaming industry.

¹<https://thebridge.in/esports/meteoric-rise-indian-video-gaming-esports-sector-2023-44812>

²<https://economictimes.indiatimes.com/news/international/business/big-bang-growth-of-indias-gaming-industry/articleshow/92053190.cms?from=mdr>

³https://assets.ey.com/content/dam/ey-sites/ey-com/en_in/topics/media-and-entertainment/2023/05/ey-me-report.pdf

⁴https://economictimes.indiatimes.com/news/international/business/big-bang-growth-of-indias-gaming-industry/articleshow/92053190.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

Agenda

The following sections of this report will equip you with the knowledge to navigate the exciting world of Indian gaming companies. We'll explore:

1. The Landscape of Gaming Companies in India
2. Funding the Game: PE/VC Activity and Industry Size
3. Landmark Happenings in the Indian Gaming Industry
4. Business Models in the Gaming Industry
5. Navigating the Playing Field
6. Compliance Essentials
7. Contractual Considerations
8. Protecting Innovation (Intellectual Property Rights)
9. GST and Taxation for Online Gaming in India
10. Recent Judgments Shaping the Legal Landscape of Online Gaming in India
11. Look Out: Anticipated Developments Shaping India's Gaming Landscape
12. Final Thoughts
13. FAQs
14. Contact Us

The Landscape of Gaming Companies in India

The online gaming segment in India has seen remarkable growth with immense economic potential. The country boasts a substantial gaming community, comprising 568 million gamers⁵, out of which 25% are paying users. This explosive growth is fueled by a young, and mobile-savvy population and has fostered a diverse ecosystem of gaming companies, each catering to a specific niche within the market. Understanding these different types of companies is crucial for aspiring gaming entrepreneurs navigating the Indian market.

S. No.	Type of Gaming Company	Top Companies	Marquee Investors
1.	Game Developers These companies are the creative heart of the industry, designing and developing video games across various genres and platforms.		⁶
		 (\$2.5 Billion)	
		PLAYSIMPLE (\$360 Million)	
2.	Gaming Platforms These platforms act as digital storefronts and battlegrounds for gamers. They provide access to a variety of games, fostering a thriving gaming community	 (\$2.3Billion)	
		 (\$365 Million)	
		 (₹52,699 crore)	

⁵<https://economictimes.indiatimes.com/tech/technology/game-theory-how-fortunes-of-indias-gaming-industry-turned-from-being-a-sunrise-sector/articleshow/105683818.cms?from=mdr>

⁶ Disclaimer: Peak XV investments reflect their independent operations post-separation from Sequoia Capital (US). This table might not differentiate between investment timing. Consider further research to pinpoint the specific investor (Sequoia Capital US or Peak XV). This disclaimer applies to all instances of 'Peak XV' used in the table.

S. No.	Type of Gaming Company	Top Companies (Valuation)	Marquee Investors
3.	Esports Companies Esports companies specialize in the world of competitive gaming. They train professional gamers, organize tournaments, and create sports-related content	 (\$349 Million)	
		 (\$82 Million)	
4.	RMG Companies RMG games let players wager and win real money. This includes online card games, fantasy sports, or other games of skill or chance. (Note: Due to legal restrictions, the operation of RMGs can vary from state to state.)	 (\$8 Billion)	
5.	Blockchain Gaming The Indian gaming landscape is also witnessing the emergence of blockchain gaming. These games utilize blockchain technology to create in-game economies where players can own and trade digital assets.		 Justin Mateen (Co-Founder of Tinder)

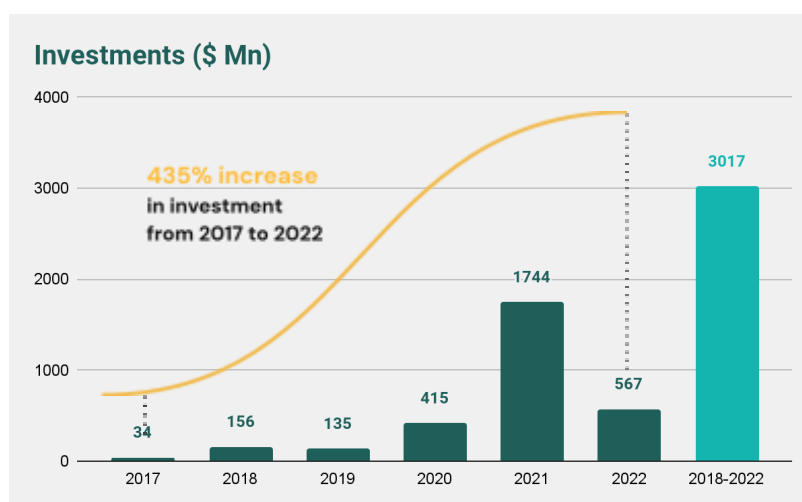
The Indian gaming industry offers a plethora of opportunities for aspiring entrepreneurs. By understanding the different types of gaming companies – game developers, gaming platforms, esports companies, RMG companies, and the emerging blockchain gaming sector – and the prominent players within each segment, new ventures can strategically position themselves for success in this dynamic market.

Funding the Game: PE/VC Activity and Industry Size

The Indian gaming industry's meteoric rise has attracted significant interest from private equity (PE) and venture capital (VC) firms.⁷

PE/VC Activity:

- Investment Boom:** The segment has attracted consistent investments totaling INR 22,931 crore between FY20 and FY24 YTD from both domestic and foreign sources.⁸ The sector has grown at a CAGR of 28%, reaching INR 16,428 crore in FY23, and is expected to reach INR 33,243 crore by FY28.⁹



- Despite the peaks and valleys, the industry's momentum remains steadfast, with a cumulative investment of **\$3 billion from 2019 to 2022**.
- Major Investors:** Lumikai, Peak XV, Makers Fund, Accel, Bitkraft, Kalaari Capital and General Catalyst. There are a few strategic investors also, including the India Hero Project incubator program which supports emerging gaming studios.¹⁰

⁷https://www.business-standard.com/article/technology/gaming-sector-in-india-attracted-investments-worth-544-million-report-121031400228_1.html

⁸<https://timesofindia.indiatimes.com/blogs/newshound-tales/lets-stop-the-ping-pong-in-the-gaming-industry/>

⁹https://www.ey.com/en_in/news/2023/12/india-s-online-gaming-market-to-reach-inr-16428-crore-in-fy-23-to-enable-250000-jobs-in-india-by-2025-ey-report#

¹⁰ [Kalaari Capital Gameconomy Report 2023;](#)

Industry Size and Growth:

- **Market Expansion:** The Indian gaming industry is experiencing rapid expansion. Industry analysts remain bullish, with Lumikai projecting the market to reach **\$7.5 billion by FY28**, while EY and FICCI predict it will surpass **\$8.6 billion by 2027**.¹¹ The long-term outlook remains positive.

Additional Considerations:

- **Employment and FDI:** The sector holds the potential to boost Foreign Direct Investment (FDI) inflows, employment, and investments in various sectors like fintech, cloud services, data analytics, and cybersecurity.¹²

Company	Month	Total Raised	Valuation
 GAMES 24x7	March 2022	\$107 Mn	\$2.5 Bn
 DREAM11	November 2021	\$1.2 Bn	\$8.0 Bn
 MPL	September 2021	\$396 Mn	\$2.3 Bn

- **Unicorn Birthplace:** India has produced three gaming unicorns: Dream11, Mobile Premier League, and Games24x7.¹³ Furthermore, it directly and indirectly employs around one lakh individuals, with the prospect of expanding to 250,000 job opportunities by 2025.¹⁴
- **Investor Optimism:** India's first gaming-focussed venture capital fund Lumikai expects India's gaming market to hit \$7.5 billion in valuation in the next 5 years as the industry clocked \$3.1 billion in revenues in 2023. Lumikai expects renewed investor attention in 2024, leveraging India's growing consumer base.¹⁵

¹¹<https://economictimes.indiatimes.com/tech/technology/indian-digital-gaming-industry-to-more-than-double-to-7-5-billion-by-fy28-lumikai/articleshow/104914738.cms?from=mdr>

¹²https://www.ey.com/en_in/media-entertainment/new-frontiers-navigating-the-evolving-landscape-for-online-gaming-in-india#:~:text=The%20sector%20holds%20the%20potential,%2C%20data%20analytics%2C%20and%20cybersecurity.

¹³https://www.business-standard.com/companies/start-ups/gaming-unicorn-dream11-onboarded-55-million-users-in-2023-amid-tax-battle-124011201147_1.html

¹⁴ [Kalaari Capital Gameconomy Report 2023:](#)

¹⁵ <https://www.lumikai.com/post/vc-fund-lumikai-expects-surge-in-gaming-investments-in-2024-livemint>

Landmark Happenings in the Indian Gaming Industry

Here's a list of some events that have shaped the Indian gaming landscape

2013–2015

Emergence of Mobile Gaming:

- Angry Birds and Candy Crush gain immense traction in India
- Indian game development studios like Games2win emerge
- Fantasy sports platforms like Dream11 start gaining significant popularity

2016–2018

A Perfect Storm:

- Surge in Esports popularity
- Goods and Services Tax (GST) is introduced but its applicability to online gaming remains ambiguous
- Integration of Paytm for in-app purchase options within mobile games

2018–2020

Rise of Fantasy Sports and Esports in India:

- Tencent invests \$100 million in Dream11, major foreign investment in the Indian gaming industry.
- Dream11 becomes the title sponsor of the IPL (Indian Premier League)
- NODWIN Gaming organizes the first edition of the India Esports League
- Dream11, MPL, and Games24x7 achieve unicorn status

2021

Record-Breaking Year for Indian Gaming Funding:

- Indian gaming companies witness a record-breaking year in terms of funding, with over \$2 billion raised

2022

Esports Gains Recognition and Makes its Asian Games Debut:

- The Indian Olympic Association (IOA) recognizes esports as a legitimate sport
- The Asian Electronic Sports Federation (AESF) hosts the first edition of the Asian Games esports competition, with India participating

2023

Regulatory Changes and Continued Growth in Indian Gaming:

- The GST (Goods and Services Tax) Council introduces a 28% tax on online gaming
- Krafton, the developer of PUBG Mobile, establishes its first Indian studio
- The first edition of the National Games esports competition takes place in India
- Zerodha's Nikhil Kamath invests Rs. 100 crore in gaming company Nazara

Business Models in the Gaming Industry

The gaming industry stands at the forefront of innovation, continually evolving its business models to adapt to changing consumer preferences and technological advancements. Here is a roadmap to the business models prevalent in the gaming industry:

<p>01. Free-to-Play</p> <p>Where games are offered for free, with revenue generated through in-game purchases of virtual goods or premium features.</p>	<p>02. Pay-to-Play</p> <p>This model can be further understood through its kinds and evolving nature:</p> <p>Arcade Retail Digital Revenue</p>	<p>03. Subscription-based</p> <p>Offering players access to a library of games or premium features for a recurring fee.</p>
<p>04. In-game advertising</p> <p>Revenue is generated through strategically placed advertisements within games. This model can be less disruptive than other monetization methods but may not be suitable for all game genres.</p>	<p>05. GaaS (Games as a Service)</p> <p>GaaS involves offering games as ongoing services, providing continuous updates, expansions, and additional content to players. This model often includes subscription-based or microtransaction-driven revenue streams.</p>	<p>06. Play-to-Earn</p> <p>Enable players to earn rewards, virtual currency, or digital assets within a game by participating in gameplay activities. This model leverages blockchain technology and decentralized economies, allowing players to monetize their time and skills spent in-game.</p>

While the above-mentioned models cover some of the primary business models in the gaming industry, it's important to note that the landscape is indeed diverse, and there may be other models or variations tailored to specific game genres, platforms, or target demographics. Here are a few additional business models worth mentioning:

07. Franchise and Intellectual Property Licensing

Established gaming franchises may license their intellectual property (IP) to third-party developers for the creation of spin-off games, merchandise, or multimedia adaptations, providing a steady stream of revenue while extending the reach of the brand.

08. Educational and Training Programs

Gaming companies may offer educational or training programs within their games, targeting schools, businesses, or professional organizations. Revenue is generated through licensing fees or subscriptions for access to educational content and tools.

09. Adaptive Pricing Models

Some gaming companies implement adaptive pricing models that adjust prices based on factors such as player demographics, regional pricing differences, or demand elasticity. This allows developers to maximize revenue while maintaining accessibility for players.

Navigating the Playing Field: Legal and Regulatory Framework for Gaming Companies

The Indian gaming industry operates within a complex and evolving legal landscape. Understanding the distinction between "games of skill" and "games of chance" is crucial for navigating this environment.

Skill vs. Chance: A Crucial Distinction

In India, a game is classified as a game of skill if success is predominantly determined by a player's skill and knowledge. Conversely, games reliant largely on luck are considered games of chance. The Supreme Court of India (SC) has clarified the term "mere skill," specifying that games where success relies more on skill than chance are not gambling but are recognized as games of skill.

Evolving Legal Framework

The legal landscape remains dynamic due to varying positions adopted by different states. Some states classify online gaming platforms as "common gambling houses," even for skill-based games, contradicting interpretations in other states. Consequently, the distinction between skill and chance games is often assessed on a case-by-case basis by the respective state.

Regulations and Defining the Online Gaming Landscape:

In an attempt to regulate online games and companies, the Ministry of Electronics and Information Technology (MeitY) released the **Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023** (hereinafter defined as "**ITAR 2023**"). This introduced the definition of an "online real money game" and outlined regulations.

As per the ITAR 2023, the following games may be allowed to be recognised as 'permissible online real-money games'¹⁶, provided that

¹⁶ As per rule 2(qe) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023, "permissible online real money game means an online real money game verified by an online gaming self-regulatory body under rule 4A."

- a. the same is permitted by the applicable state enactment within a particular state's territory;
- b. the same does not involve wagering on any outcome; and
- c. the user of such an online game is at least 18 years of age:

However, the critical distinction between games of skill and chance remains unaddressed, creating room for further interpretation and potential regulatory challenges.

Center and State-Specific Landscape

When diving into the gaming scene in India, it's like stepping into a vast arena where the rules of the game change depending on where you stand. Imagine India's gaming landscape as a giant chessboard, with each state having its own set of moves. To make your mark, you need to know the playbook inside out—not just the central rules but also the local ones that vary from state to state.

Central Enactments

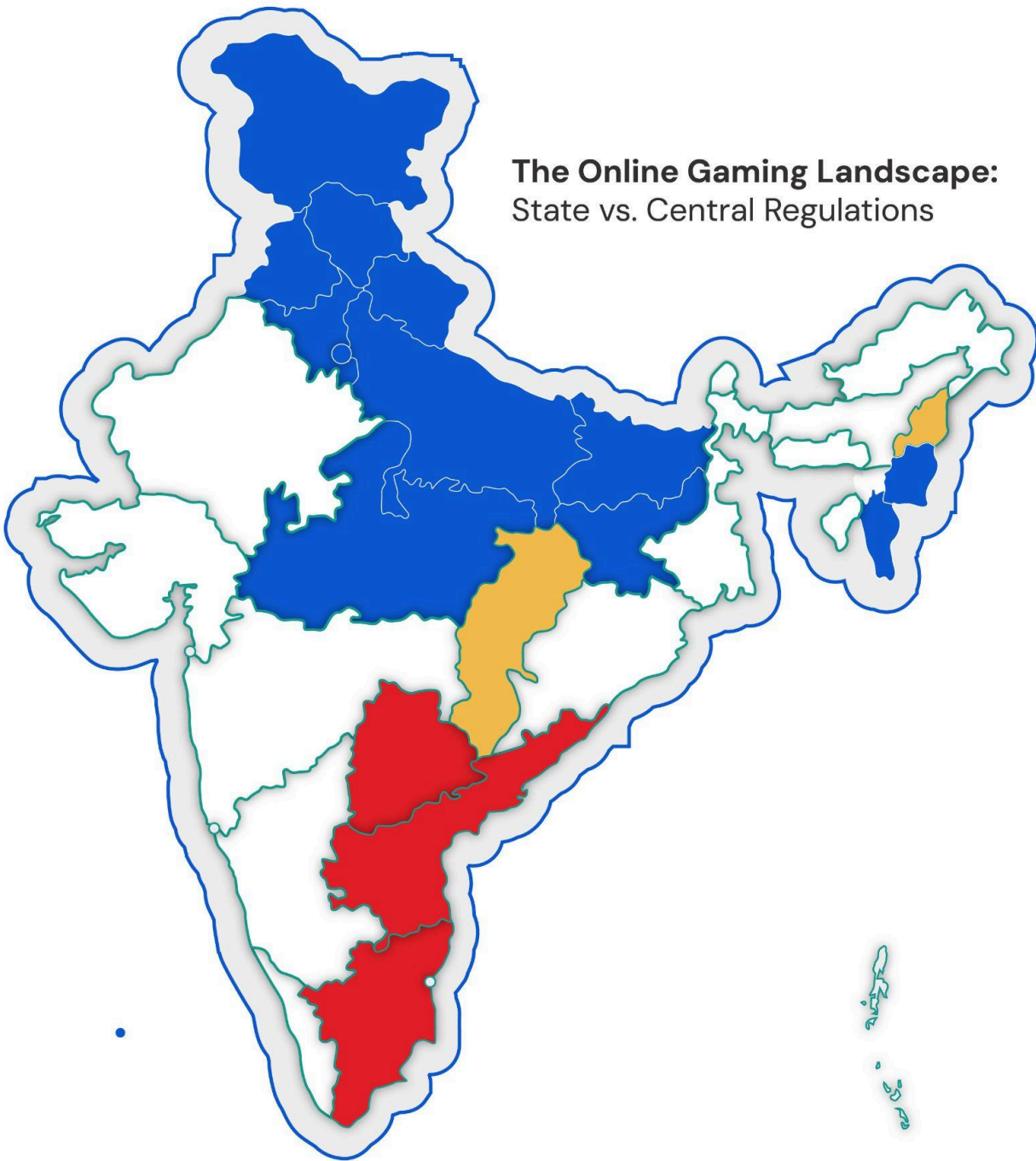
At the national level, the two primary legislations impacting the gaming industry are:

1. **Public Gambling Act, 1867:** This act primarily addresses gambling activities, distinguishing between a 'common gaming house' and permissible gaming activities. It sets the foundational legal premise but allows states the discretion to implement their own regulations.
2. **Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023:** These rules introduce the concept of "online real money game" and establish a regulatory framework specific to online gaming. They underscore the need for gaming platforms to adhere to stipulated guidelines, ensuring a safe and responsible gaming environment.

State-Specific Landscape

The regulatory framework for gaming companies in India is notably complex, due to the unique legal stance taken by each state on online gaming. To assist with navigating this diverse regulatory environment, we have created a chart that outlines the stance of each state on online gaming. This chart serves as a quick reference guide, to easily identify the regulatory framework applicable in different states.

**The Online Gaming Landscape:
State vs. Central Regulations**



- Both 'Game of Skills' and 'Game of Chance' are banned
 - Online 'Game Of Chance' is banned
- Follow Central Legislation – Public Gambling Act, 1887 with State Amendments as applicable
 - Have their own regulations for online gaming

For an exhaustive list of state positions and specific regulations, please refer to Annexures 1, 2, 3, and 4.

Compliance Essentials¹⁷

Aside from the secretarial compliances that gaming companies are required to do under the Companies Act, 2013, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023 has introduced the following requirements that gaming companies will have to comply with:

S. No.	Name of the Compliance	Conditions under it	Additional Remarks
1.	Privacy Policy and User Agreement	Gaming companies shall provide privacy policies and user agreements on their mobile applications and websites.	In English language or any language specified in the Eighth Schedule to the Constitution of India.
2.	Restrictions with respect to data and information	Gaming companies shall not host, display, upload, modify, publish, transmit, store, update, or share any information which restricted	Restricted information includes information that impersonates or belongs to another person, or infringes any IP; is obscene, invasive of privacy, relates to or encourages money laundering/gambling, causes harm, or contains software viruses; threatens the unity, integrity, defense, security or sovereignty of India,

¹⁷<https://www.meity.gov.in/writereaddata/files/244980-Gazette%20Notification%20for%20IT%20Amendment%20Rules%2C%202023-%20relating%20to%20online%20gaming%20%26%20false%20information%20about%20Govt.%20business.pdf>

			relations with foreign States, or public order; etc.
3.	Periodic information to users	In case of non-compliance with rules and regulations, privacy policy, or user agreement.	At least once in any given year
4.	Grievance Redressal	Every gaming company shall, on its website or in its mobile application or both, publish (i) the name of its grievance officer; (ii) contact details of the grievance officer; and (iii) mechanism to file a complaint in case of violation of the startup's responsibilities.	Such gaming companies shall acknowledge the complaint within 24 hours and resolve the same within 15 days of the receipt thereof.
5.	Additional compliances for companies engaged in providing 'permissible online real money games'	Appoint key personnel like Compliance Officer/ Grievance Officer(resident Indian), and 24/7 Law Enforcement Liaison. Provide clear user information regarding, withdrawal/refund policy, winnings determination & distribution, fees, KYC procedures, deposit protection measures, game framework.	Publish monthly compliance reports (complaints & actions). Display verification marks from a self-regulatory body on such permissible online real money games. Verify user identity before accepting deposits.

Additional Considerations for Data Protection:

India's booming gaming companies will also face a new hurdle with the [Digital Personal Data Protection Act, 2013](#) (DPDPA). While the act fosters trust by giving users control over their data, adhering to its regulations can be a challenge for young companies. The DPDPA mandates strong data security, clear user consent procedures, and restrictions on data sharing. This can increase compliance costs and require specialized personnel, impacting a startup's already tight resources. However, navigating these hurdles can be a strategic advantage. By prioritizing data privacy, companies can build a reputation for trustworthiness, attracting a privacy-conscious Indian gamer base.

- **Strict Consent Requirements:** The DPDPA emphasizes informed consent. Companies must obtain clear and unambiguous user consent before collecting any personal data, like gamer IDs or purchase history. This may require revamping in-game login and data collection processes.
- **Data Minimization:** The Act enforces data minimization principles. Gaming companies can only collect data essential for the game's operation, not for extraneous purposes like targeted advertising. This might necessitate reevaluating data collection practices.
- **Enhanced Security Measures:** The DPDPA demands robust security measures to safeguard user data from breaches. Companies will need to invest in data encryption and secure storage solutions to protect gamer information.

Contractual Considerations

From a legal viewpoint, running a gaming company in India involves execution of several agreements on a day-to-day basis and developing several policies to ensure compliance with the necessary laws and regulations. The following agreements are typically executed by gaming companies:

S. No.	Name of the Legal Agreement	Further Remarks
1	Non-disclosure agreements (NDAs)	They typically include terms such as what information is considered confidential, how it can be used, and for how long it must be kept confidential.
2	Software development agreements	They typically include terms such as the scope of work, the timeline, and the payment terms.
3	Licensing agreements	They typically include terms such as the scope of the license, the royalty payments, and the duration of the license.
4	Publishing agreements	They typically include terms such as the revenue share, the marketing obligations, and the termination provisions.
5	Terms of Service (ToS)	They are essential for gaming companies as they provide legal protection, define user behavior expectations, and establish the rights and responsibilities of both the company and its users.

6	Privacy Policy	The policy informs users about their rights and how their personal data can be collected, stored, transferred, processed, or otherwise used
7	Rules of Conduct & Community Policy	They provide a framework for acceptable conduct, etiquette, and behavior standards to ensure a positive and safe environment for all gamers. These policies help foster a respectful and inclusive community, prevent harassment and abusive behavior, and maintain the integrity of the gaming platform or the game.
8	Cooling-Off Policy	The cooling-off period typically allows users to voluntarily opt-out of the gaming platform or the game or restrict their access for a specified duration. During this time, gamers may not be able to access certain features or participate in gaming activities on the platform or in the game.
9	Other Agreements	Service provider agreements that gaming companies enter into for game development, animation, VFX, sound effects, music development, software testing, insourcing, localization, customer support, level design, and game art (concept art, 2D art, 3D art, and animation).


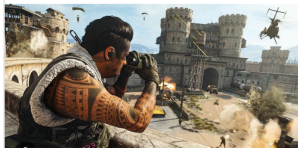
In addition to the above agreements, gaming companies may also need to enter into other agreements, such as marketing agreements, sponsorship agreements, and tournament agreements. The specific agreements that a gaming company needs to enter into will depend on its specific business model and operations.

Protecting Innovation (Intellectual Property Rights)

Gaming companies invest significant time and resources into creating unique concepts and game elements. Intellectual property (IP) protection plays a crucial role in safeguarding these innovations and ensuring a competitive edge. Here's a breakdown of key IPR considerations for gaming companies:

S. No.	Types of IP	Description
1	Trademark	<p>Function: Safeguarding brand elements like names, logos, slogans, taglines, sound marks, cartoon images, etc. that differentiate one vendor's products or services from another's.</p> <p>Registration: Trademarks registration is optional but advisable, and once granted will be valid for 10 years, renewable every decade.</p>
2	Copyright	<p>Function: Copyright is an inherent right for original works, like literary, artistic, dramatic, musical, cinematographic, architectural works, and software codes.</p> <p>Registration: The creator owns the copyright 60 years from creation before the work becomes public.</p>
3	Patent	<p>Function: Protection for an original invention, and covers utility, plant/industrial, or design patents.</p> <p>Registration: Typically granted for 20 years.</p>
4	Design	Protection for the aesthetic appearance of products/articles, including shape, configuration, pattern, ornament, or composition of lines/colors.
5	Trade Secret	Trade secrets are confidential, commercially valuable information known to a limited group and protected by the rightful owner through reasonable measures, typically including confidentiality agreements.

KEY IP in Gaming

S. No.	Types of IP	Description	Example
1	Trademark	<ul style="list-style-type: none"> Names, word-marks, Logos, symbols, Tag-lines, Cartoon/ caricature image, Short sound marks 	
2	Copyright	<ul style="list-style-type: none"> Software code, Cartoon caricature, Storyline, Music and sound effects, Conceptual art and design, Maps and buildings, Choreography Gaming rules and manual 	
3	Patent	<ul style="list-style-type: none"> Gaming console, joystick, or other hardware device Drastically unique or different technology User interfaces 	
4	Design	<ul style="list-style-type: none"> Graphic characters, Gaming cover and Graphic interface 	
5	Trade Secret	<ul style="list-style-type: none"> Algorithms and Customer lists 	

GST and Taxation for Online Gaming in India

The Goods and Services Tax (GST) In July 2023 with the introduction of a flat 28% tax rate on the entire contest entry fee. This section explores the key aspects of GST and other relevant taxes applicable to online gaming companies.

Challenges of the Current GST Structure:

- **Exponential GST Liability:** Companies face a substantial increase in GST each time a user deposits funds, raising operational costs.
- **Deposit Strategies and Reduced Withdrawals:** To minimize the impact of frequent deposits on GST liability, some companies are:
 - Encouraging users to keep funds in their accounts for longer durations.
 - Implementing strategies to potentially reduce user withdrawal frequency.

Other Applicable Taxes:

- **Equalization Levy:** A 6% tax was introduced in 2016 on payments made to non-resident service providers like online gaming platforms with a significant digital presence in India.
- **Income Tax Act, 1961:**
 - **TDS on Winnings (Section 194 BA):** Effective from July 2023, online gaming platforms are required to deduct TDS (Tax Deducted at Source) at a rate of 30% on a player's net winnings in a financial year.
 - **Taxation of Bonuses and Incentives:** Bonuses, incentives, and referral bonuses provided by online gaming companies are considered taxable deposits under the Income Tax Act.

Additional Considerations:

- If a user receives winnings in non-cash forms (e.g., merchandise), the equivalent monetary value is considered for calculating net winnings and TDS.
- **Section 194-O:** Introduced in 2020, this section mandates e-commerce platforms (e.g., Google Play Store) to deduct TDS at 1% on payments exceeding INR 5 lakhs made to online gaming companies selling their apps through the platform.

Recent Judgments Shaping the Legal Landscape of Online Gaming in India

The Indian online gaming industry has witnessed several landmark judgments that provide clarity on the legality of online games and the applicability of regulations. Here's a breakdown of two key cases:

Case 1: Play Games24x7 Private Limited v. Reserve Bank of India & Anr.

Facts:

- Play Games24x7 (Petitioner) develops online skill-based games like "Ultimate Teen Patti" and "Call it Right" with no real-money winnings.
- The Reserve Bank of India (RBI) questioned the legality of receiving foreign investment (FDI) due to ambiguity around the games being classified as "gambling" under the FDI Policy.

Issue:

- Whether the Petitioner's skill-based games with no real-money rewards constitute "gambling" and disqualify them from receiving FDI.

Judgment and Takeaways:

- The Bombay High Court relied on Supreme Court precedents to define "gambling" as:
 - Predominantly a game of chance.
 - Played for a reward.
- Since the games lacked real-money rewards, they weren't considered gambling.
- The Court directed the RBI to expedite the Petitioner's Compounding Application for past FEMA (Foreign Exchange Management Act) non-compliance.

Key Takeaways:

- Online games with no real-money rewards can receive FDI.
- To be considered gambling under the FDI Policy, a game must be:
 - Primarily based on chance.
 - Played for a real-money reward.

Case 2:

Gameskraft Technologies Private Limited v. Directorate General of Goods Services Tax Intelligence & Ors.

Facts:

- Gameskraft Technologies (Petitioner) develops online skill-based games like "Rummyculture."
- GST authorities attached the Petitioner's bank accounts alleging tax evasion by misclassifying their services as non-taxable and underreporting taxable income.

Issue:

- Whether online skill-based games like "rummy" qualify as "gambling or betting" under the Central Goods and Services Tax Act (CGST Act).

Judgment and Takeaways:

- The Karnataka High Court held that "rummy" is predominantly a game of skill, not chance.
- Games of skill, even with stakes, don't qualify as gambling under the CGST Act.
- The Court quashed the show cause notice issued by the GST authorities for misclassifying "rummy" as gambling.

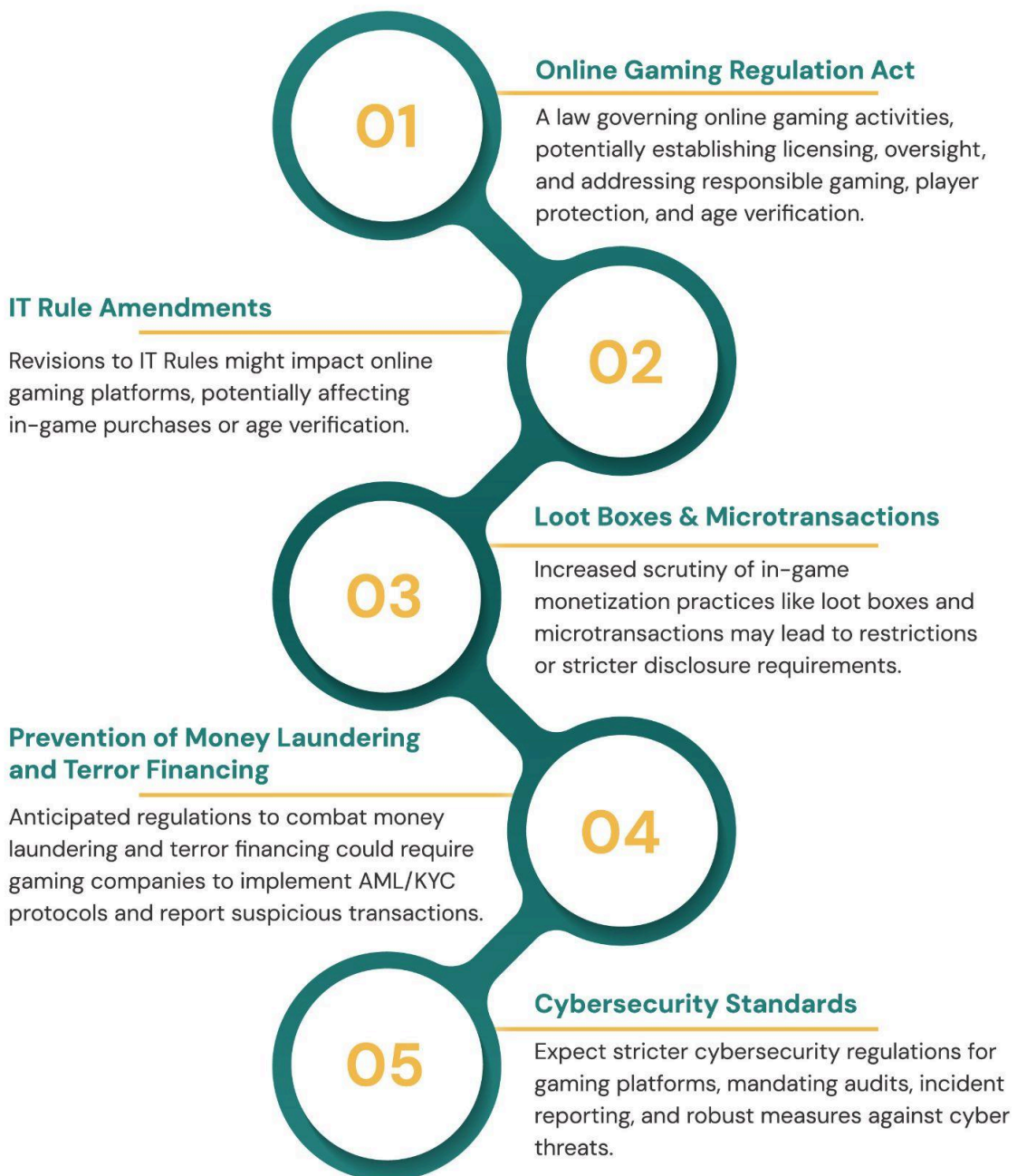
Key Takeaways:

- Online skill-based games, including those with stakes, are not considered gambling for GST purposes.
- The distinction between a game of skill and gambling under the CGST Act hinges on whether skill is the predominant factor, not the presence or absence of stakes.

These judgments provide valuable insights for online gaming companies in India by clarifying the legal classification of skill-based games and their treatment under foreign investment and taxation regulations.

Look Out: Anticipated Developments Shaping India's Gaming Landscape

The Indian gaming industry is at a pivotal juncture, with its future trajectory influenced by upcoming regulatory developments. Here's a glimpse into key areas to watch:



Conclusion

The Indian gaming industry is experiencing a meteoric rise, fueled by a young, tech-savvy population, increasing smartphone penetration, and the burgeoning esports scene. This growth has attracted significant investments and birthed a wave of successful gaming companies. However, there are challenges that could act as roadblocks for the development of the Indian gaming industry.

1. The lack of a clear legal distinction between "games of skill" and "games of chance" creates uncertainty.
2. Additionally, the recent imposition of a flat 28% GST on online gaming burdens companies despite offering skill-based games.
3. The shift in the governing ministry from IT to Information and Broadcasting further adds ambiguity regarding regulatory oversight.

Despite these hurdles, the Indian gaming industry possesses immense potential. Continued efforts to establish clear regulations, foster a supportive ecosystem, and promote responsible gaming practices are crucial for sustained growth. Navigating the evolving regulatory landscape and adapting to changing consumer preferences will be key for gaming companies to thrive in this dynamic market.

The future of the Indian gaming industry hinges on its ability to address these challenges and capitalize on its tremendous potential.

FAQs

1. Whether FDI is allowed with respect to companies offering games not involving real money?

Yes, as held in Play Games24x7 Private Limited v. Reserve Bank of India & Anr., FDI shall be permitted in companies offering games not involving real money or gambling.

2. Whether online rummy would amount to gambling and betting?

No, rummy being predominantly a game of skill, shall not amount to gambling and betting.

3. Whether the flat 28% GST would apply to both games of skill and games of chance?

Yes, as per the decision of the GST Council dated July 11, 2023, a flat 28% GST would be levied on both games of skills as well as games of chance.

4. What defines a 'game of skill' versus a 'game of chance' in the Indian gaming industry?

A game of skill is one where the outcome is predominantly determined by the player's skill rather than chance. Conversely, a game of chance depends more on luck. The legal distinction between these can affect a game's legality and taxation.

5. Is Foreign Direct Investment (FDI) allowed in Indian gaming companies?

Yes, FDI is allowed in Indian gaming companies, but with a specific distinction based on the type of game offered. **100% FDI is allowed under the automatic route for online gaming platforms offering skill-based games.** Whereas, FDI is currently not allowed for online gaming platforms where players can win real money.¹⁸

¹⁸ <https://www.nishithdesai.com/NewsDetails/9601>

6. How does the Goods and Services Tax (GST) affect online gaming in India?

As of the latest regulations, a flat 28% GST is applied on the entire contest entry fee for online games, impacting both games of skill and chance. This has significant implications for the operational costs of gaming companies.

7. What are the key legal and regulatory considerations for starting a gaming company in India?

Companies must navigate the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, understand state-specific gaming laws, ensure compliance with GST and taxation, and protect intellectual property rights.

8. How can gaming companies protect their innovations and intellectual property?

Companies should consider registering trademarks, copyrighting game code, artwork, and music, and possibly patenting innovative game mechanics. Protecting trade secrets is also vital for maintaining a competitive edge.

9. What are the current trends and anticipated developments in the Indian gaming landscape?

Key trends include the rise of esports, increased investment in mobile and blockchain gaming, and a focus on innovative business models. Anticipated developments include stricter regulations on online gaming, enhanced cybersecurity measures, and evolving taxation laws.

10. Can gaming companies in India operate across all states?

The legal landscape varies by state, with some states banning games of chance or requiring specific regulations for online gaming. Companies must adhere to state-specific laws to operate legally across India.

Annexure 1

STATES IN WHICH ONLINE GAME OF SKILLS ARE BANNED:

S. No.	States	Additional Remarks
1.	Andhra Pradesh	https://www.indiacode.nic.in/bitstream/123456789/16405/1/act_no_27_of_1974.pdf
2.	Telangana	Prohibits risking money even if it is for a game of skill https://www.indiacode.nic.in/bitstream/123456789/8643/1/act_27_of_1974.pdf
3.	Tamil Nadu	https://www.indiacode.nic.in/bitstream/123456789/19512/1/online_game_act.pdf

STATES IN WHICH ONLINE GAME OF CHANCE ARE BANNED:

S. No.	States	Additional Remarks (if any)
1.	Andhra Pradesh	https://www.indiacode.nic.in/bitstream/123456789/16405/1/act_no_27_of_1974.pdf
2.	Nagaland	However, as per the Act, games where there is a preponderance of skill over chance, including where the skill relates to strategizing the manner of placing wagers or placing bets or where the skill lies in team selection or selection of virtual stocks based on analyses or where the skill relates to the manner in which the moves are made, whether through deployment of physical or mental skill and acumen, are allowed. https://www.indiacode.nic.in/bitstream/123456789/15162/1/the_nagaland_prohibition_of_gambling_and_promotion_and_regulation_of_online_games_of_skill_act_2015.pdf

3.	Tamil Nadu	https://www.indiacode.nic.in/bitstream/123456789/19512/1/online_game_act.pdf
4.	Telangana	https://www.indiacode.nic.in/bitstream/123456789/8643/1/act_27_of_1974.pdf
5.	Chhattisgarh	https://prsindia.org/files/bills_acts/acts_states/chhattisgarh/2023/ActNo.4of2023CHG.pdf

Annexure 2

STATES WHICH HAVE THEIR OWN REGULATIONS FOR ONLINE GAMING

S. No.	State	Legislation
1.	Sikkim	Sikkim Online Gaming (Regulation) Act, 2008
2.	Andhra Pradesh	Andhra Pradesh Gaming (Amendment) Act, 2020
3.	Arunachal Pradesh	The Arunachal Pradesh Gambling (Prohibition) Act, 2012
4.	Assam	Assam Gambling and Betting Act, 1970
5.	Gujarat	Bombay Protection and Gambling Act, 1887
6.	Karnataka	Karnataka Police (Amendment) Act, 2021
7.	Maharashtra	Maharashtra Prevention of Gambling Act, 1887
8.	Nagaland	Nagaland Prohibition of Gambling and Public Nuisance Act, 1954
9.	Odisha	Odisha Prevention of Gambling Act, 1955
10.	Tamil Nadu	Tamil Nadu Gaming and Gambling Prohibition Act, 1930
11.	Telangana	Telangana Gaming Act, 2017
12.	Dadra and Nagar Haveli	Dadra and Nagar Haveli and Daman and Diu Public Gambling Act, 1967
13.	Daman and Diu	Dadra and Nagar Haveli and Daman and Diu Public Gambling Act, 1967

14.	Tripura	Tripura Gambling Act, 1926
15.	Rajasthan	The Rajasthan Public Gambling Ordinance, 1949
16.	Puducherry	The Puducherry Gaming Act, 1965
17.	Meghalaya	The Meghalaya Regulation of Gaming Act, 2021
18.	Kerala	Kerala Gaming Act, 1960
19.	Andaman and Nicobar Islands	Andaman and Nicobar Islands Public Gaming Regulation, 1951
20.	Telangana	Telangana Gaming Act, 2017
21.	Tamil Nadu	Tamil Nadu Gaming and Gambling Prohibition Act. 1930
22.	West Bengal	West Bengal Gambling and Prize Competitions Act, 1957
23.	Chhattisgarh	The Chhattisgarh Gambling (Prohibition) Act, 2022

Annexure 3

STATES THAT FOLLOW CENTRAL LEGISLATION – PUBLIC GAMBLING ACT, 1887 WITH STATE AMENDMENTS AS APPLICABLE–

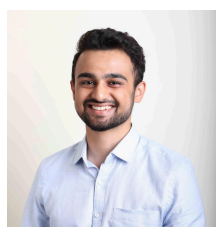
S. No.	State	Legislation
1.	Uttar Pradesh	Public Gambling Act, 1887
2.	Uttarakhand	Public Gambling Act, 1887
3.	Punjab	Public Gambling Act, 1887
4.	Mizoram	Public Gambling (Extension to Mizo District) Act, 1962
5.	Madhya Pradesh	Public Gambling (Madhya Pradesh) Act, 1976
6.	Manipur	Public Gambling Act, 1887
7.	Lakshadweep	Public Gambling Act, 1887
8.	Jharkhand	Public Gambling Act, 1887
9.	Haryana	Public Gambling Act, 1887
10.	Goa	Public Gambling Act, 1887
11.	Bihar	Public Gambling Act, 1887
12.	Jammu and Kashmir	Public Gambling Act, 1977
13.	Himachal Pradesh	The Public Gambling (Himachal Pradesh Amendment) Act, 1976
14.	Delhi	Delhi Public Gambling Act, 1955

Want to Know More?

Get in touch with the Legal Team



Garima Mitra
garima@treelife.in



Koustubh Athavale
koustubh.a@treelife.in



Malvika Gupta
malvika.g@treelife.in



Karan Dhingra
karan.d@treelife.in

About Treelife

Treelife provides support to entrepreneurs and investors with access to a team of professionals, including chartered accountants, lawyers, and company secretaries, who have deep domain expertise in the startup industry.

Our mission is to empower the startup ecosystem by providing holistic legal and finance solutions and save at least 80% time of stakeholders by delegating tasks to experts with accountability and confidence.



support@treelife.in



+91 99301 56000 | +91 22 6852 5768



www.treelife.in

Follow us on



Disclaimer: The above is for information purposes only and does not constitute advice or a legal opinion and are personal views of the author. The possibility of other views on the subject matter cannot be ruled out. By the use of the said information, you agree that the Author / Treelife is not responsible or liable in any manner for the authenticity, accuracy, completeness, errors or any kind of omissions in this piece of information for any action taken thereof.