

April 2023



Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023

On 06 April 2023, the Ministry of Electronics and Information Technology (“MeitY”) notified and brought into effect the [Information Technology \(Intermediary Guidelines and Digital Media Ethics Code\) Amendment Rules, 2023](#) (“**2023 Amendments**”).

The 2023 Amendments introduce certain changes to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code), 2021 (“**Intermediary Guidelines**”), some of which are along the lines of the draft amendments [proposed](#) by MeitY earlier this year (“**Draft Amendments**”).

Set out below is a summary of the **key aspects** of the 2023 Amendments.

New Terms Within The Intermediary Guidelines

The 2023 Amendments have introduced the following key expressions to the Intermediary Guidelines:

1. **‘Online Game’**: Any game offered on the internet, accessible to a user through a computer resource or an intermediary (thus including all online games, irrespective of whether they involve real money or not).

The 2023 Amendments further classify ‘Online Games’ into three categories:

- **‘Online real money game’** (“**RMG**”) – any online game where a user makes a deposit in cash or kind with the expectation of earning winnings. All pay-to-play games are likely to fall within this definition.
- **‘Permissible online real money game’** (“**Permissible RMG**”)
 - an RMG that has been verified by an online gaming self-regulatory body (“**SRB**”).
 - For the purposes of being verified as a Permissible

RMG, such RMG should not involve wagering on any outcome, and must comply with: (i) the due diligence obligations applicable on intermediaries offering such games (*discussed below*), (ii) the framework adopted by the relevant SRB, and (iii) any law relating to the age at which an individual is competent to enter into a contract.

- The Central Government is further empowered to notify *any other online games* (which are not RMGs) within the scope of this definition and regulate such games as permissible RMGs. Such inclusion of *any other game* may be undertaken on specific grounds, including the interests of the sovereignty and integrity of India, security of State, or for preventing *user harm* (*discussed below*), etc.
- **‘Permissible online game’**– a Permissible RMG or any other online game which is *not* an RMG.
 - As such, any RMG that has **not been verified** as a ‘permissible online game’ will be considered *prohibited content*. Accordingly, intermediaries are required to ensure that such RMGs (which have not been verified) are not uploaded, advertised or promoted on their respective platforms.
- 2. **‘Online gaming intermediary’**(“**OGIs**”): Any intermediary that enables the users of its computer resource to access one or more online games.

As such, online gaming intermediaries will need to comply with ongoing due diligence requirements that other intermediaries undertake pursuant to the Intermediary Guidelines, in order to avail their safe-harbour protection under Section 79 of the Information Technology Act, 2000 (“**IT Act**”).



3. **'Harm' or 'user harm':** Any effect that may be detrimental to a user or a child.

The 2023 Amendments specify that *online games* which pose harm to the user shall be considered *prohibited content*. Accordingly, intermediaries are required to ensure that such online games (posing user harm) are not uploaded, advertised or promoted on their respective platforms.

4. **'Prominently publish':** This term has been clarified in the context of the way an intermediary or SRB must publish details of its grievance officer and make other user-facing disclosures. An intermediary/SRB must publish these details and disclosures in a clearly visible manner on the homepage of the website or the home screen of the mobile app, or on a web page or an app screen directly accessible from the home page or home screen.

Due Diligence Obligations

It is pertinent to note that the due diligence obligations introduced by the 2023 Amendment (*discussed below*) will become applicable in relation to online games only after the expiry of *three months from the establishment of at least three SRBs*.

1. Enhanced due diligence requirements applicable to all intermediaries

The 2023 Amendments have expanded the due diligence requirements applicable to intermediaries (including OIGs), in addition to the existing requirements set out under the Intermediary Guidelines, as follows:

- **Responsibility to prevent prohibited content from being uploaded:** The Intermediary Guidelines already required all intermediaries to make "reasonable efforts to cause users" not to upload prohibited content on their platforms. The 2023 Amendments emphasise that such "reasonable efforts" need to be made by an intermediary itself, in addition to causing its users to not upload such content. The implications of this change are unclear.
- **User recourse in case of delay in resolution of grievances by grievance officer:** Previously, a user could file an appeal with the grievance appellate committee ("GAC") upon being aggrieved by a decision of an intermediary's grievance officer. According to the 2023 Amendments, a user may also appeal to the GAC, if such user's grievances have not been resolved by a grievance officer within the stipulated time period.

- **Prohibited Content:** Under the Intermediary Guidelines, an intermediary is required to inform its users of the categories of content which are prohibited from being uploaded onto its platform. The 2023 Amendments have included the following new categories of *prohibited content* to this list:
 - online games which cause user harm;
 - any information relating to the Central Government, identified as fake/false/misleading by the fact check unit of the Central Government;
 - any online game that has not been verified as a '*permissible online game*'; and
 - any (surrogate) advertisement or promotion of any online game that has not been verified as a '*permissible online game*', or any (surrogate) advertisement or promotion of an OIG offering such an online game.

2. Obligations akin to Social Media Intermediaries ("SSMIs"):

OIGs are also required to comply with certain obligations currently applicable to SSMIs only (under the Intermediaries Guidelines), including those in relation to appointment of additional local personnel (for grievance redressal, compliance, etc.), establishment of a physical contact address in India, and a mechanism for users to voluntarily verify their accounts, as well as track their complaints. It is notable that several obligations, such as the deployment of tools to monitor content, furnishing of details of the content removed, etc. remain inapplicable to OIGs.

3. Additional due diligence requirements specifically for OIGs

The 2023 Amendments also prescribe additional compliances, specifically for OIGs. These include the following:

- **Prohibition on financing:** OIGs are restricted from providing credit to their users, or enabling financing by third parties, for the purposes of playing any Permissible RMG.
- **User-facing disclosures:** OIGs are required to:
 - display a demonstrable and visible mark evidencing the verification of their online game by an SRB; and
 - keep the users informed about the OIG's policies related to deposits, winnings, fees and other user charges, know-your-customer processes, measures taken to protect user deposits, applicable framework of SRBs, etc.
- **Shorter timelines for OIGs:** For certain obligations, shorter timelines have been specified for OIGs (*vis-à-vis* other intermediaries), such as:
 - an OIG is required to furnish information sought by an authorised government agency within 24 hours of the



- receipt of an order.
- an OGI is mandated to inform its users, within 24 hours of any change in its platforms' rules and regulations, privacy policy or user agreement.
- **Identity verification of users:** Before accepting any deposit from a user for any Permissible RMG, an OGI is required to verify the identity of such user in accordance with the procedures prescribed by the Reserve Bank of India under the [Master Direction – Know Your Customer \(KYC\) Directions, 2016](#).

Framework for SRBs

1. The 2023 Amendments provide for the establishment of SRBs and set out detailed eligibility criteria required to be fulfilled by any entity seeking registration as an SRB.
2. **The powers and functions of an SRB** include the powers to:
 - onboard OGIs as its members, based on criteria formulated by such SRB;
 - verify an RMG as a Permissible RMG;
 - grant permission to allow an RMG to operate as a

- Permissible RMG for a period of three months, until final grant/rejection of verification;
- maintain and publish lists of its members, the Permissible RMGs (*i.e.* RMGs granted verification) and OGI applicants seeking verification for a Permissible RMG; and
- publish and enforce frameworks for verification of RMGs, measures for safeguard of interests of users and children including parental access/control and age-rating of online games, warning messages *etc.*

3. **Regulation of SRBs:** MeitY reserves the power to grant, suspend or revoke the registration of SRBs, as well as give directions to SRBs for rectifying any non-compliances.

Please get in touch with the SAM attorney you regularly work with if you would like to discuss any aspect of the 2023 Amendments in further detail.

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