

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

UNION OF INDIA

India

The Information Technology Act, 2000

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

Rule G-S-R-275-E- of 2023

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MINISTRY OF ELECTRONICS AND INFORMATION TECHNOLOGYNOTIFICATIONNew Delhi, the 6th April, 2023G.S.R. 275(E).—In exercise of the powers conferred by sub-section (1) and clauses (z) and (zg) of sub-section (2) of section 87 of the Information Technology Act, 2000 (21 of 2000), the Central Government hereby makes the following rules to further amend the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, namely:—

1. Short title

(1)These rules may be called the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023.(2)They shall come into force on the date of their publication in the Official Gazette.

2. In the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (hereinafter referred to as the said rules), in rule 2, in sub-rule (1),—

(i)in clause (k), after the words “intermediary or the”, the words “online gaming self-regulatory body or the” shall be inserted;(ii)after clause (q), the following clauses shall be inserted, namely:—“(qa) „online game means a game that is offered on the Internet and is accessible by a user through a computer resource or an intermediary.Explanation.—In this clause, „Internet means the combination of computer facilities and electromagnetic transmission media, and related equipment and software, comprising the interconnected worldwide network of computer networks that transmits information based on a protocol for controlling such transmission;(qb)„online gaming intermediary means any intermediary that enables the users of its computer resource to access one or more online games;(qc)„online gaming self-regulatory body means an entity designated as such under rule 4A;(qd)„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. Explanation.—In this clause, „winnings means 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; (qe) „permissible online game means a permissible online real money game or any other online game that is not an online real money game; (qf) „permissible online real money game means an online real money game verified by an online gaming self-regulatory body under rule 4A;”.

3. In rule 3 of the said rules,—

(i) in sub-rule (1),—(I) in the opening portion, for the words “social media intermediary and significant social media intermediary”, the words “a social media intermediary, a significant social media intermediary and an online gaming intermediary” shall be substituted; (II) in clause (b),—(A) in the opening portion, for the words “to cause the user of its computer resource not to host,”, the words “by itself, and to cause the users of its computer resource to not host” shall be substituted; (B) in sub-clause (ii), after the words “or gambling,”, the words “or an online game that causes user harm,” shall be inserted; (C) in sub-clause (v), after the word “nature”, the words “or, in respect of any business of the Central Government, is identified as fake or false or misleading by such fact check unit of the Central Government as the Ministry may, by notification published in the Official Gazette, specify” shall be inserted; (D) for sub-clause (ix), the following sub-clauses and Explanation shall be substituted, namely:—(ix) is in the nature of an online game that is not verified as a permissible online game; (x) 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; (xi) violates any law for the time being in force. Explanation.—In this clause, “user harm” and “harm” mean any effect which is detrimental to a user or child, as the case may be; ; (III) in clause (f), the following proviso shall be inserted, namely:—“Provided that an online gaming intermediary who enables the users to access any permissible online real money game shall inform its users of such change as soon as possible, but not later than twenty-four hours after the change is effected;”; (IV) in clause (j), in the opening portion, after the words “but not later than seventy two hours”, the words “and in case of an online gaming intermediary who enables the users to access any permissible online real money game not later than twenty-four hours” shall be inserted;”; (ii) in sub-rule (2), in clause (a),—(I) in the opening portion, after the words “provisions of this rule or”, the words, brackets and figures “sub-rules (11) to (13) of rule 4, or in respect of” shall be inserted; (II) in sub-clause (i), in the first proviso, for the brackets and letters “(ix)”, the brackets and letters “(xi)” shall be substituted; (III) after sub-clause (ii), the following Explanation shall be inserted, namely:—‘Explanation.—In this rule, “prominently publish” shall mean publishing in a clearly visible manner on the home page of the website or the home screen of the mobile based application, or both, as the case may be, or on a web page or an app screen directly accessible from the home page or home screen. .

4. In rule 3A of the said rules,—

(i) in sub-rule (3), for the words “Any person aggrieved by a decision of the Grievance Officer”, the words, brackets, letters and numbers “Any person who is aggrieved by a decision of the Grievance

Officer or whose grievance is not resolved within the period specified for resolution in sub-clause(i) of clause (a) of sub-rule (2) of rule 3 or clause (b) of sub-rule (2) of rule 3 or sub-rule (11) of rule 4A, as the case may be,” shall be substituted;(ii) in sub-rule (7), after the words “intermediary concerned”, the words “or the online gaming self-regulatory body concerned, as the case may be,” shall be inserted.

5. In rule 4 of the said rules,—

(i) in the heading, after the word “intermediary”, the words “and online gaming intermediary” shall be inserted;(ii) in sub-rule (1),—(I) in the opening portion, for the words, brackets, letters and figures “intermediary shall, within three months from the date of notification of the threshold under clause (v) of sub-rule (1) of rule 2,” the words, brackets, letters and figures “intermediary, within three months from the date of notification of the threshold under clause (v) of sub-rule (1) of rule 2, and an online gaming intermediary that enables the users to access any permissible online real money game, shall” shall be substituted;(II) in clause (a),—(A) in the proviso, after the word “intermediary”, the words “or such online gaming intermediary” shall be inserted;(B) in the Explanation, after the word “intermediary”, the words “or an online gaming intermediary, as the case may be,” shall be inserted;(III) in clause (b), for the Explanation, the following Explanation shall be substituted, namely:—‘Explanation.—In this clause, “nodal contact person” means the employee of—(i) a significant social media intermediary, other than its Chief Compliance Officer; or(ii) an online gaming intermediary, who is resident in India; ;(IV) in clause (c), in the Explanation, for the word “intermediary,” the words “intermediary or an online gaming intermediary, as the case may be,” shall be substituted;(V) in clause (d), for the words “thereon, and”, the words “thereon, and, in respect of a significant social media intermediary,” shall be substituted;(iii) in sub-rule (5), for the words “The significant social media intermediary”, the words “A significant social media intermediary and an online gaming intermediary who enables the users to access any permissible online real money game” shall be substituted;(iv) in sub-rule (6), for the words “The significant social media intermediary”, the words “A significant social media intermediary and an online gaming intermediary who enables the users to access any permissible online real money game” shall be substituted;(v) in sub-rule (7), for the words “The significant social media intermediary”, the words “A significant social media intermediary and an online gaming intermediary who enables the users to access any permissible online real money game” shall be substituted;(vi) after sub-rule (9), the following sub-rules shall be inserted, namely:—“(10) An online gaming intermediary who enables access to its users to any permissible online real money game, shall display a demonstrable and visible mark of verification of such online game by an online gaming self-regulatory body on such permissible online real money game.(11) While informing the users of its rules and regulations, privacy policy, terms of service and user agreements under clause (b) of sub-rule (1) of rule 3, an online gaming intermediary who enables the users to access any permissible online real money game, shall include the following information in respect of every such online games, namely:—(a) 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;(b) the know-your-customer procedure followed by it for verifying the identity of the users of such online game;(c) the measures taken for protection of deposit made by a user for such online game; and(d) the framework referred to in rule 4A, relating to such online game.(12) An

online gaming 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: Provided that the procedure required to be followed by an entity regulated by the Reserve Bank of India for identification and verification of a customer at the commencement of an account-based relationship shall apply, mutatis mutandis, in identification and verification of the users of such online gaming intermediary. (13) An online gaming intermediary who enables the users to access any permissible online real money game 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.”.

6. After rule 4 of the said rules, the following rules shall be inserted, namely:—

„4A. Verification of online real money game.—(1) The Ministry may, by a notification in the Official Gazette, designate as many online gaming self-regulatory bodies as it may consider necessary for the purposes of verifying an online real money game as a permissible online real money game under these rules. (2) An entity which fulfils the following criteria may apply to the Ministry for designation as an online gaming self-regulatory body, namely:—(a) the entity is a company registered under section 8 of the Companies Act, 2013 (18 of 2013); (b) its membership is representative of the gaming industry; (c) its members have been offering and promoting online games in a responsible manner; (d) its Board of Directors is comprised of individuals of repute and do not have any conflict of interest and possess special knowledge or practical experience suitable for the performance of the functions of such self-regulatory body, and consists of—(i) an individual having special knowledge of or practical experience in the online gaming industry; (ii) an individual having experience in promoting the interests of users of online games; (iii) an educationist; (iv) an expert in the field of psychology or mental health or such other relevant field; (v) an individual having special knowledge of or practical experience in the field of information and communications technology; (vi) an individual who is or has been a member or officer of an organisation dealing with the protection of child rights; (vii) an individual having practical experience in the field of public policy or public administration or law enforcement or public finance or other relevant field, to be nominated by the Ministry; and (viii) such other individuals as may be appointed with the previous approval of the Ministry; (e) its memorandum of association and articles of association contain provisions relating to—(i) the performance of its functions under these rules, including the redressal of grievances under sub-rule (11), in a manner free from conflict of interest and at arm's length from its members; (ii) the disclosure and reporting by and accountability of its members in relation to the online games verified by such body; (iii) the clear and relevant criteria, consistent with these rules, for the acceptance and continuation of a person as its member, and for revoking or suspending such membership after giving such person an opportunity of being heard; and (iv) the requirement that the amendment in the memorandum of association and articles of association in relation to any matter referred to in sub-clauses (i), (ii) or (iii) is carried out with the previous approval of the Ministry; and (f) the entity has sufficient capacity, including financial capacity, to perform its functions as an online gaming self-regulatory body under these rules. (3) The online gaming self-regulatory body, upon an application made to it by its member in respect of an online real money game, may declare such online real money game as a permissible online real money game, if, after making such inquiry as it deems fit, it is satisfied that—(a) the online real money game does not

involve wagering on any outcome; and (b) the online gaming intermediary and such online game is in compliance with the provisions of rules 3 and 4, the provisions of any law relating to the age at which an individual is competent to enter into a contract, and the framework made by the online gaming self-regulatory body under sub-rule (8): Provided that an online gaming self-regulatory body may, initially rely upon the information furnished by the applicant for verification of the online real money game and declare such game as a permissible online real money game for a period not exceeding three months: Provided further that the online gaming self-regulatory body shall endeavour to complete the inquiry within the said period of three months and, upon its completion, either declare the online real money game as a permissible online real money game or inform the applicant in writing with the reasons thereof that such online game does not meet the requirements under these rules. (4) The online gaming self-regulatory body shall publish and maintain on its website, mobile based application or both, at all times, an updated list of all permissible online real money games verified under sub-rule (3), along with the details of such online games including the details of the applicant, the dates and period of validity of the verification, the reasons of such verification and the details of the suspension or revocation, if any, of verification of any online real money game. (5) Every online gaming self-regulatory body shall publish and maintain on its website, mobile based application or both, at all times, an updated list of all its members, whether present or former, the dates of their acceptance as member, their corporate or business-related identity number and other details, and the details of suspension or revocation of membership of any member. (6) The online gaming self-regulatory body may, at any time, after giving the applicant member an opportunity of being heard and for reasons to be communicated in writing, suspend or revoke the verification, if it is satisfied that the online real money game verified by it is not in compliance with the provisions of these rules. (7) The online real money game verified under sub-rule (3), and the online gaming intermediary which enables access to such online real money game, shall display a demonstrable and visible mark of such verification stating that the online real money game is verified by the online gaming self-regulatory body as a permissible online real money game under these rules. (8) The online gaming self-regulatory body shall prominently publish on its website, mobile based application or both, as the case may be, a framework for verifying an online real money game, which, among other things, includes the following, namely:—(a) the measures to ensure that such online real money game is not against the interests of sovereignty and integrity of India, security of the State, friendly relations with foreign States and public order; (b) the safeguards against user harm, including self-harm and psychological harm; (c) the measures to safeguard children, including measures for parental or access control and classifying online games through age-rating mechanism, based on the nature and type of content; and (d) the measures to safeguard users against the risk of gaming addiction, financial loss and financial fraud, including repeated warning messages at higher frequency beyond a reasonable duration for a gaming session and provision to enable a user to exclude himself upon user-defined limits being reached for time or money spent. (9) The Ministry may, if it considers it necessary, by a notice in writing, require an online gaming self-regulatory body to furnish to the Ministry or disclose on such body's website or mobile based application or both, such information as the Ministry may specify in the notice. (10) Before issuing a direction under section 69A of the Act in respect of a permissible online real money game, the Central Government may take into consideration the details published by an online gaming self-regulatory body under sub-rule (4). (11) Every online gaming self-regulatory body shall prominently publish on its website, mobile based application or both, the framework for

redressal of grievances and the contact details of the Grievance Officer to which an applicant aggrieved by a decision of such body with respect to verification may make a complaint in respect of any matter related to such online real money game or verification which shall be acknowledged by the Grievance Officer within twenty-four hours and resolved within a period of fifteen days from the date of its receipt.(12)Where the Ministry is of the view that any verification of a permissible online real money game by an online gaming self-regulatory body is not in conformity with these rules, it may, after giving such body an opportunity of being heard, communicate, in writing, the fact of such non-conformity to that body and direct it to take measures to rectify the same.(13)The Ministry may, if it is satisfied that it is necessary so to do, after giving the online gaming self-regulatory body an opportunity of being heard, by order, for reasons to be recorded in writing, suspend or revoke the designation of such body:Provided that the Ministry may, in the interest of the users of any online game that was verified by such body at the same time or at any subsequent time, give such interim directions as it may deem necessary to any intermediary or class of intermediaries regarding enabling its users to access such online game.(14)In this rule, „prominently publish shall mean publishing in a clearly visible manner on the home page of the website or the home screen of the mobile based application, or both, as the case may be, or on a web page or an app screen directly accessible from the home page or home screen.

4B. Applicability of certain obligations after an initial period.—The obligations under rules 3 and 4 shall not apply in relation to online games until the expiry of a period of three months from the date on which at least three online gaming self-regulatory bodies have been designated under rule 4A:

Provided that the Central Government may, at any time before the expiry of the said period of three months, by a notification in the Official Gazette, direct that the obligations under rules 3 and 4 shall apply in relation to an online game from such date as may be specified in the notification.

4C. Obligations in relation to online game other than online real money game.—(1) If the Central Government considers it necessary so to do in the interest of the sovereignty and integrity of India or security of the State or friendly relations with foreign States or public order, or preventing user harm, it may, by a notification in the Official Gazette, for reasons to be recorded in writing,—

(a)direct that an intermediary in respect of such online game, shall observe, mutatis mutandis, the obligations under sub-clauses (ix) and (x) of clause (b) of sub-rule (1) of rule 3 and sub-rules (1), (5), (6), (7), (10) and clause (d) of sub-rule (11) of rule 4 as if it is a permissible online real money game; and(b)specify the period within which the online gaming intermediary which enables access to such online game shall observe the obligations referred to in clause (a).(2)Where an online game is notified under sub-rule (1), the provisions of rule 4A shall apply as they apply to a permissible online real money game.Explanation.—In this rule, “user harm” means any effect which is detrimental to

users. .