

The Nagaland Prohibition Of Gambling And Promotion And Regulation Of Online Games Of Skill Bill 2015: Salient Features

The Legislative Assembly of the State of Nagaland in India has recently passed The Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Bill, 2015 ("Bill"). The Bill was under review of a Committee specifically appointed by the Government of Nagaland to bring appropriate amendments in the originally proposed Bill. The Committee ultimately recommended the passing of the proposed law without any significant changes. The Bill then received the assent of Shri. PB Acharya, the Hon'ble Governor of Nagaland. After the Hon'ble Governor's approval, the Skill Games Bill has become an Act duly passed by the legislative assembly. Sources now indicate that the process of drafting Rules and issuing licenses under the new law will commence in the next few months.

As the contents of Bill/Act are not made public, [Perry4Law Organisation \(P4LO\)](#) is providing this analysis on the basis of publicly available information and inputs. We have requested the Government of Nagaland to provide us a copy of the Bill/Act and we would upload it once we receive the same.

Please note that P4LO cannot independently vouch for the authenticity of this Bill/Act, and some provisions could have changed/modified before the Bill was passed in Assembly, hence this analysis is merely for reference purposes and for no other purpose. Please contact the Government of Nagaland for exact legal position and documents.

The salient features of the Bill/Act are as follows:

(1) Gambling Is Prohibited: The Bill/Act has prohibited "Gambling" that means and includes wagering or betting on games of chance but does not include betting or wagering on games of skill. If a licensee is found to be running games of chance, a fine of Rs 20 lakhs will be applicable in the first instance, followed by an imprisonment of 6 months if not remedied further.

(2) Games Of Skill Allowed: The games of skill have been allowed by the Bill/Act. These include all such games where there is preponderance of skill over chance, including where the skill relates to strategising the manner of placing wagers or placing bets or where the skill lies in team selection or selection of virtual stocks based on analysis or where the skill relates to the manner in which the moves are made, whether through deployment of physical or mental skill and acumen.

Few instances of games of skill specifically mentioned are "Chess, Sudoku, Quizzes, Binary Options, Bridge, Poker, Rummy, Nap, Spades, Auction, Solitaire, virtual Golf, virtual racing games including virtual horse racing, virtual car racing etc.; virtual Sports including virtual Soccer, virtual Cricket, virtual Archery, virtual snooker/bridge/pool, virtual fighting, virtual wrestling, virtual boxing, virtual combat games, virtual adventure games, virtual mystery and

detective games, virtual stock/monopoly games, virtual team selection games, virtual sport fantasy league games.

The term virtual “means games played online by means of computer automation and exercise of skill.”

However, games which have been declared by courts (Indian or International) as games of skill may be included in this list in future. The Finance Commissioner or any Licensing Authority will be permitted to add to this list the games of skill as long as it is in consonance with the definition of ‘Games of Skill’ under the Bill/Act.

(3) Territorial Applicability: The Bill/Act applies to any territory in India in which “games of skill” are permitted and are recognised as being exempt from the ambit of “gambling”.

(4) Licensing Requirements: In order to offer any “games of skill” on a website, mobile platform, TV channel or any other online media, and earn revenue via advertising or by taking a percentage of winnings or “charging fixed fee for membership or for downloading the game etc.”, it shall be necessary for the entity to obtain a valid license. The state government will specify license terms and rules separately, but the bill mentions the following:

- (a) A license may be issued only to “a person or entity which is incorporated in India, and has a substantial holding and controlling stake in India”,
- (b) Executive decision making powers have to be performed from within the Indian territory,
- (c) Hosting, website management and placement of servers have to be in India, and
- (d) The entity should not have any interest in any online or offline gambling activities in India or abroad.

The decision on giving a license has to be taken within 6 months from the date of receipt of application, and communicate reasons for refusal, if any.

(5) Monitoring Of Stakeholders: The State Government, may, by notification, designate an authority or body to monitor and regulate the activities of all licensees to ensure compliance with the provisions of this Act, and to settle all disputes arising from the activities conducted under this Act.

(6) Breach Of Licence Conditions: if there’s a breach of license conditions, the authority shall issue a notice, and the license holder has to make a written and oral representation. However, the violation of the license terms may be compounded if the breach is remedied within 30 days of the breach having been established to the satisfaction of the Licensing Authority. A delay in payment of license fee may be compounded by payment of penalty calculated at 12% per annum.

(7) Inter State Violations: If the licensee operates in a state where the state government believes the company is violating the provisions of the act or its rules, or in violation of local

laws, it may inform the licensing authority of Nagaland. The licensing authority shall then try and get the issues resolved.

We at Perry4Law Organisation (P4LO) believe that the Inter State Violations provisions have not been drafted properly and they should be modified immediately. The Bill/Act also need to be tweaked keeping in mind States Legislative Powers, Taxation issues, Information Technology Act 2000 provisions, Cyber Law Due Diligence (pdf), Internet Intermediary Obligations, etc.

Specially the Bill/Act needs to be in conformity with Techno Legal requirements of existing Online Gaming And Online Gambling Laws of India. The existing Bill/Act is in "Active Violation" of the provisions of Indian Constitution, Taxation laws of India and Information Technology Act, 2000. Perry4Law Organisation (P4LO) strongly recommend that the Bill/Act must be "Suitably Amended" before allowing entities and stakeholders to run online gaming websites and businesses.

Nevertheless, P4LO welcomes this move of Government of Nagaland and commits to extend its "Techno Legal Expertise" to Gaming Stakeholders in general and Government of Nagaland in particular.