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NITI Aayog
Government of India

Sub: Comments to Guiding Principles for The Uniform National-Level Regulation of Online Fantasy Sports Platforms in India (Draft for Discussion), December 2020

Dear Ms. Anna Roy,

ALG India Law Offices LLP (“ALG”) submits these comments in response to the invitation for feedback on the Guiding Principles for The Uniform National-Level Regulation of Online Fantasy Sports Platforms in India (Draft for Discussion), which was published in December 2020.

Our key comments and suggestions, discussed in detail in the enclosed Note, are summarized as below –

1. There should be clarity on what constitutes a game of skill as opposed to a game of chance.
2. There should be clear and comprehensive guidelines to ensure pay-to-play formats of fantasy sports contests, are not offered to users below 18 years old.
3. The scope of industry standardized policies to prevent use of Online Fantasy Sports Platforms (OFSPs) for illegal purposes needs to be well defined.
4. The proposed self-regulatory body for OFSPs should ensure uniform and adequate representation of the smaller operators in the decision making process.
5. There should be legislative changes made to ensure there is real and substantive uniformity in the working of OFSPs across India.

We appreciate the considerable effort that has gone into the Guidelines. We recognize the time pressures and challenges under which the Ministry is working, particularly in COVID19 times. We thank you for your time and consideration of these comments.

ALG India Law Offices LLP

Through

Abhimanyu Kumar, Partner

Manavi Jain, Principal



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NOTE CONTAINING ALG'S COMMENTS AND SUGGESTIONS ON THE GUIDING PRINCIPLES FOR THE UNIFORM NATIONAL-LEVEL REGULATION ONLINE FANTASY SPORTS PLATFORMS IN INDIA

- 1. All formats of fantasy sports contests offered by OFSPs should remain skill-predominant...periodically to demonstrate that the formats deployed by the operator are skill predominant.**

1.1 ALG's Observation

Multiple court rulings have determined the differences between the game involving skill as opposed to a game of chance. However, the guidelines do not discuss and address the modalities to be adopted for determining as to what constitutes a game of skill. Without there being clear cut guidelines and methodologies adopted by the proposed evaluation committee (with respect to what would constitute as a game of skill or a game of chance), the innovation in the sphere of online fantasy sports is bound to be stifled. Also, the guidelines do not state in clarity that online fantasy sports that emulate a real-life sporting event, are different from online games that merely simulate a fictionalized environment.

1.2 ALG's Recommendations

By laying down clarificatory principles and guidelines with respect to game of skill vs. game of chance, the requisite factors could be made clearer to the stakeholders. This would also lead to greater transparency and reduce the scope of subjectivity in the OFSPs players whilst developing a new format, or making changes to the existing ones. It is further recommended, that the members who will form a part of the independent evaluation committee should have demonstrated considerable experience in law and governance. The proposed oversight committee should not have members appointed by the independent self-regulatory body to ensure real "independence".

- 2. Pay-to-play formats of fantasy sports contests should not be offered by an OFSP operator to users who are less than 18 years old. All necessary safeguards to protect minors must be instituted.**

2.1 ALG's Observation

The necessary safeguards for ensuring that users below 18 years of age are not exposed to pay to -play formats have not been discussed in the draft guidelines. The enforcement of age

restrictions by OFSP is fragmented and not uniform. This has the potential to result in the states refusing to allow the application of safe harbour provisions for the games involving skill in their respective statutes dealing with gaming.

2.2 ALG's Recommendations

There should be clear and comprehensive guidelines to ensure pay-to-play formats of fantasy sports contests are not offered to users below 18 years old, otherwise, there will be difficulty in implementing this and it may render this guiding principle redundant.

- 3. OFSP operators should not offer or advertise gambling services or games of chance on their OFSPs and should put in place industry standard policies and measures to prohibit and prevent use of their OFSP for illegal purposes.**

3.1 ALG's Observation

What game may be considered a gambling service is still open to judicial interpretation and finality, even though the Supreme Court has deemed games like 'Rummy' (a card game), as games involving considerable skill. There is still a lot of ambiguity what can and cannot be advertised on OFSP's platforms, and what would constitute illegal purpose.

3.2 ALG's Recommendations

The scope of industry policies need to be well defined. This would depend on whether a particular game is a game of skill or chance and would in turn depend on the modalities of each game. Also, on the issue of gambling and its components, the states have different thresholds according to the local state laws, therefore there is a clear need for legislative and judicial intervention on the subject.

- 4. A single self-regulatory organisation for the fantasy sports industry should be recognised by the Government. Such self-regulatory body should be a single- purpose fantasy sports industry body and have membership of OFSP operators who, in aggregate, have as their registered users at least 66% of the registered fantasy sports users in India.**

4.1. ALG's Observation

With respect to the single purpose self-regulatory body, which would serve as a platform for OFSPs to represent their concerns, the requirement of OFSP having at least 66% of registered users in India, may result in the dominant players in the industry having the majority of users exert significant influence and have undue advantage in policies, in contrast to new and smaller operators in the OFSP Industry. To ensure mitigation of such a scenario instead of the requirement of 66% cap, policy should be framed to ensure uniform and adequate representation of the smaller operators in the decision making process.

- 5. The self-regulatory organisation should send a communication to all the States requesting them to consider granting to OFSPs immunity from criminal prosecution or sanction in respect of such formats of fantasy sports contests that are compliant with these guiding principles.**

5.1 ALG's *Observation*

There will be challenges in granting a blanket state-wise immunity to OFSPs from criminal prosecution or sanction (to keep in line with guiding principles) and the same may not be a practical approach, as the States are bound to have the final say in the matter which are adjudicated as per relevant state laws, thereby refusing the grant of immunity to the OFSP.

5.2 ALG's *Recommendations*

There needs to be legislative changes to ensure there is real and substantive uniformity in the working of OFSPs across India. The legislative change needs to be broad and made uniformly applicable to all forms of games of skill so as to ensure the proposed self-regulatory body is not deemed as discriminatory (*viz. favouring just one form of a game of skill over the others*).

Additional recommendations:

1. The proposed draft guidelines according to us should not only cover online fantasy games, but should also cover online digital skill based games as they are becoming major source of revenue generation, employment, etc. and share many similarities in the mode of operation and target audience.
2. It is recommended that a wider consultation also needs to be conducted to solicit suggestions and comments from State governments since legislation on subjects like sports, gambling and betting, fall under the State list.
3. While the guidelines clarify the stance on “pay-to-play” formats, there should also be an express clarification on whether OFSPs are allowed to run the “pay-to-play formats”, with the motive of “profit-making” for the operators; and whether such right is absolute, or one qualified by certain restrictions. Further, “profit-making” formats should be sufficiently distinguished from those “pay-to-play” formats that are designed solely towards pooling to a prize money (and do not have any bearing to the profits earned by the operators).
4. The composition of the independent evaluation committee should be delineated in the proposed guidelines to ensure fairness and impartiality of the entire proceedings.
5. The scope of the oversight board and the distinct responsibilities, especially *vis-à-vis* the individual evaluation committee, should be determined.

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