THE TECHNOLOGY NEWSLETTER

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INTRODUCTION

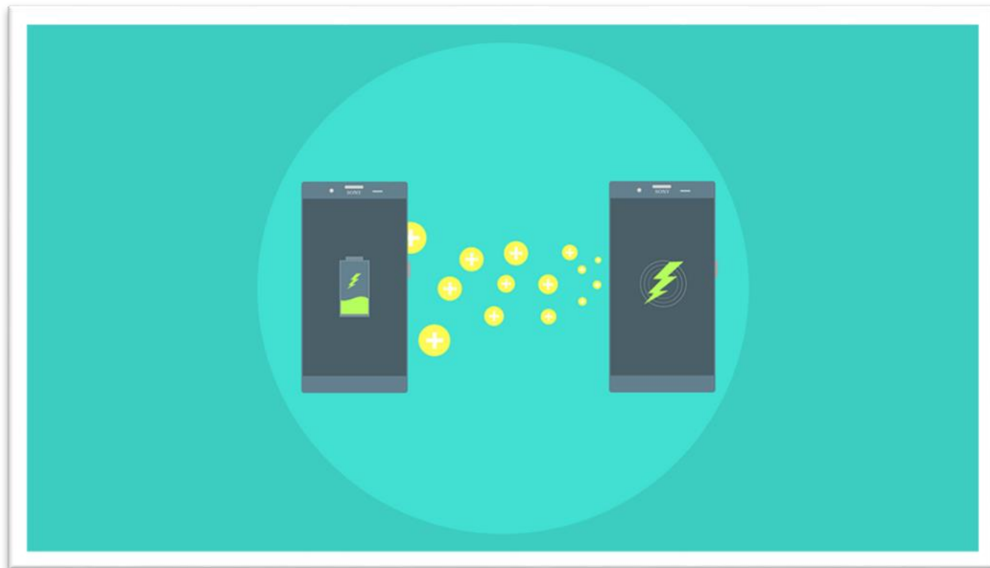
The Argus Technology Newsletter discusses recent developments in technological advances or milestones or events. As lawyers, we enjoy delving into the legal nuances and implications of technological changes and analysing their impact on our clients and their activities. It is said that law always lags behind technological advances and there could be some truth behind such statement, but there is no reason for lawyers to lag behind technological advances.

The Argus Technology Newsletter is not meant to be a substitute for your regular technology periodical. Instead, we hope and promise to offer a lawyer's insights into technological change and innovation.

Argus Partners has a developed a strong and a robust technology and data privacy practice, which spans transactional advisory, corporate and regulatory advisory as well as contentious matters and disputes. Whilst physically the attorneys are based out of our Mumbai, Delhi & Bangalore offices, the team is servicing clients across the globe on Indian legal issues in technology and data privacy.

Data Centres to be Reclassified as "Infrastructure"

Article Contributed by Aishwarya Manjooran (Associate)



On February 1, 2022, when presenting the annual budget, the finance minister Nirmala Sitharaman announced that "*Data centres and energy storage systems including dense charging infrastructure and grid-scale battery systems will be included in the harmonized list of infrastructure. This will facilitate credit availability for digital infrastructure and clean energy storage.*" This move essentially makes it quite easier for firms operating data centres to raise funds, through investments or loans, and by providing access to cheaper and long-term institutional funds and credit.

This change in policy is set to take effect from April 1, 2022 and has been widely welcomed by the data centre industry. This development is quite a boost for the major players of the industry such as the Adani Group, Reliance and Bharti Airtel and comes as the government strives to widen its reach of the digital India scheme to rural India, while also shifting user data from foreign data centres to local facilities. With India gearing up for the launch of 5G telecom services, there is bound to be a surge in demand for data centre services, making this reclassification extremely well-timed.

The Case for a CBDC in India in Light of the Legal Developments in the United Kingdom

Article Contributed by Anurag Prasad (Associate)

The Hon'ble Finance Minister of India, Ms. Nirmala Sitharaman during her budget speech, on the floor of Lok Sabha, announced that the Reserve Bank of India ("**RBI**") is working on the digital Rupee, a central bank digital currency ("**CBDC**"), which will lead to a more efficient and cheaper currency management system. She mentioned that the CBDC would leverage blockchain and other technologies and would be launched in the current financial year.

In launching a CBDC, India joins a growing list of countries that have issued or announced potential national digital currencies, which includes China, the Bahamas, Nigeria, the United States of America, the United Kingdom and various countries in the European Union[1]. CBDCs are intended to water down the craze for fiat alternatives such as cryptocurrencies and other digital tokens.

CBDC in the UK:

The United Kingdom was one the first countries to bring about a public discourse and involve central banks, to examine the feasibility of a CBDC The Bank of England published a discussion paper on March 12, 2020 ("**Discussion Paper**") highlighting the advantages and disadvantages of a CDBC and invited comments from various stakeholders. The Bank of England approached the proposed CBDC from a neutral standpoint. The key points put forth in the Discussion Paper were:

- CBDC should coexist with cash and other types of money in a flexible and innovative payment system.
- Any introduction should support wider policy objectives and do no harm to monetary and financial stability.
- CBDC's features should promote innovation and efficiency.

On June 7, 2021, the Bank of England published another discussion paper ("**2021 Discussion Paper**") on new forms of digital money. This came in the wake of the announcement by the

[1] https://fortune.com/2022/01/13/9-countries-central-digital-currencies-crypto/

Bank of England and HM Treasury on April 19, 2021 setting up a joint taskforce ("**Joint Taskforce**") to explore the potential of a 'retail' central bank digital currency.

In the 2021 Discussion Paper, the Bank of England identified 5 (five) core principles from the responses to the Discussion Papers which will guide the bank's future exploration of CBDC, these include:

1. **Financial inclusion** should be a prominent consideration in the design of any CBDC. Any CBDC should have a high degree of accessibility to people.
2. A **competitive CBDC ecosystem** with a diverse set of participants will support innovation and offer the best chance to deliver the benefits of CBDC.
3. In assessing the case for CBDC, **the Bank of England should assess whether non-CBDC payment innovations could deliver the same benefits**.
4. A **CBDC should seek to protect users' privacy**.
5. While CBDC **should "do no harm" to the Bank's ability to meet monetary and financial stability**, opportunities to meet policy objectives more effectively should also be considered in the CBDC exploration.

However, more recently a rather conservative stance was taken by the Economic Affairs Committee of the House of Lords when it issued a report titled '***Central bank digital currencies: a solution in search of a problem?'*** ("**Report**").
The Report poses several questions that the House of Lords needs the Joint Taskforce to answer before the legislature decides the course on CBDCs and these are extracted hereinbelow:

- To what problem is a CBDC the answer?
- What is the precise threat posed by privately issued digital currencies?
- What is it that a CBDC could do to offset any threat, and what is the role of regulation?
- How can a CBDC be a competitive payments option without causing a level of banking sector disintermediation that would have negative consequences for credit allocation and financial stability?
- What additional monetary policy options would a CBDC provide to the Bank of England, and would these be proportionate to the Bank's current mandate for monetary and financial stability?
- How can a CBDC ensure strong privacy safeguards while also meeting financial compliance rules? Which organisations will be able to access sensitive CBDC payments data, and for what purpose will that data be used?
- What are the main international and national security risks that arise from a CBDC, and how can these be managed? How can a CBDC be made secure against current and future threats without sacrificing useability?

In the wake of such relevant and active dialogue by and between the various regulators and the legislators in the United Kingdom, it becomes crucial for the Indian Government and the RBI to be vigilant, proactive and patient in the implementation of a CBDC.

The abovementioned questions are pertinent and the responses to these questions by the Joint Taskforce are going to form reliable jurisprudence on CBDCs going forward.

A **copy** of the Discussion Paper can be accessed here and a **copy** of the Report can be accessed here.

Russia Set to Regulate Cryptocurrencies and Digital Assets.

Article Contributed by Anurag Prasad (Associate)

On February 8, 2022 Russian government put forth a press release ("**Press Release**") with a draft document for the comprehensive regulation of cryptocurrencies and other digital currencies. The Press Release provides that the Russian Federation ranks 3rd (third) in the world in terms of global mining capacity and according to expert estimates, more than 12,000,000 (twelve million) cryptocurrency wallets have been opened by citizens of the Russian Federation and such wallets contain about 2,000,000,000,000 (two trillion) Rubles.

The Russian government is of the view that there is a need to integrate the mechanism for the circulation of digital currencies into the financial system and ensure control over cash flows. The Press Release notes that failure to regulate the cryptocurrency industry or an outright ban will both lead to the creation of a shadow economy, an increase in cases of fraud and destabilization of the industry as a whole.

The salient features of the proposed regulation are:

1. it regulates (i) Organizers of digital currency exchange systems; (ii) Digital currency exchange operators; (iii) Foreign exchange of digital currencies; and (iv) clients of these entities.
2. it details the requirements to be registered as an organizer, operator or an exchange dealing with cryptocurrencies in Russia.
3. It contains the KYC and anti-money laundering provisions applicable to the participating stakeholders.

The Press Release can be accessed here. An English google translation of the Press Release is attached in the email.

Regulation of the Metaverse – No Time to Lose

Article Contributed by Rabia Rahim (Associate)

One thing common to all technological (or technology, "**tech**") innovations / developments in today's world is that laws and regulations are yet to catch up with them. In many instances, regulators frame regulations only after a lot of damage has been done by 'new technology'.

As we await the arrival of the mother of all technological innovations – the metaverse ("**Metaverse**"), there is a lot of speculation about what the Metaverse will entail. The Metaverse, as the name suggests, is predicted to be a virtual universe created by integrating the internet as we know it today, with other tech innovations like virtual reality, augmented reality and blockchain technology. Much like our physical universe, the metaverse will also facilitate interaction, as real as that in the universe, or even more real: by combining all tech innovations, so that we may actually feel the presence of a person who is hundreds of miles away. The Metaverse will not just be a mere chat-room, if anything, that is speculated to be the least of the Metaverse's impressive features. The Metaverse will revolutionize the digital world, or maybe create a new world of its own, revamping our lives.

The Metaverse is expected to transcend physical sovereign borders. The Metaverse will become a school for those focusing on education, a religious institution for worshippers, the cinema / theatre for the entertainment lovers, it could serve social purposes like obtaining your aadhar card online, or technical purposes like overseeing air-traffic – it will become a platform which blurs the boundaries of personal data, privacy and property, and maybe even our discretion. As a platform, it will blur the lines between virtual and real. Does all of this not sound very exciting and also extremely dangerous?

Consider now, the possibility that different 'metaverses' could exist. As the name suggests, maybe the Metaverse will be governed / controlled primarily by Meta, and maybe there will be another 'metaverse' in the near future, which will be controlled purely by another private company, like, Google, or even one that may even be governed by the Government ("**alternate-verse**"). We live in a world where it is difficult to regulate and police Facebook and Twitter, not to mention Telegram and these are all one-dimensional platforms. And now imagine a three-dimensional platform in their place. Let us just go out on a limb and say that it is going to be

amplify the risks by at least three-fold. How will we ever keep up with these tech innovations if we don't start charting a regulatory framework right away?

With so much power, comes certain threats and dangers - the Metaverse / alternate-verses may not be free from the clutches of destructive or toxic human behavioral traits. That being said, we shouldn't fear these platforms. Rather, we should start trying to understand the Metaverse and prepare a legal framework for regulating the Metaverse / alternate-verses, so that we will be able to welcome the Metaverse and alternate-verses with open arms and clear rules for the protection of its users.

In the Metaverse, you should be worried about more than just your bank account details being stolen. The kind and extent of personal data that the Metaverse would have access to, is beyond your imagination. For example, with the combination of technologies that go into the Metaverse, even your eyes can be tracked to analyze what catches your attention. If all of this personal data is accessed, it won't be very difficult for the person accessing such data to claim to be *you.*

Yes, there is no debate that our lives will become very different with the introduction of the Metaverse. To be a part of these new mediums and play a prominent role, our regulatory agencies will have to incorporate (or whatever the process will be) themselves within the Metaverse, in addition to regulating the Metaverse.

While creating a regulatory framework, focus should be on the protection of children, privacy of personal data, ensuring moderation and accountability by the Metaverse hosts, consumer protection, etc. We could perhaps constitute at a regulatory body (as envisaged under the Data Protection Bill 2021, with wider powers) which would govern all aspects of the Metaverse and alternate-verses including taxation and other financial obligations. We believe that focus groups should be in place, to study the up-and-coming Metaverse / alternate-verses and to draft legislations for protection of the makers and users of tech innovations, as the features of the tech innovations demand, to stay ahead of the challenges / risks which accompany such tech innovations.

If the Metaverse / alternate-verses turns out to be all that we anticipate it to be and more, we will need it to be a safe platform so that people can access and use it without being scared of it, or so that people do not refrain from using it for inhibitions of safety. The longer the delay in framing regulations, the more the leeway for evil to grow and become powerful within the metaverse. Governments should take a proactive approach in this regard, than wait for the Metaverse to take shape and "hope for the best".

Karnataka High Court Strikes Down Law Banning Online Gaming

Article Contributed by Smriti Tripathi (Associate)

The October 2021 issue of this newsletter had a piece on the Karnataka Police (Amendment) Bill, 2021 ("**Amendment Act**") which amended the Karnataka Police Act, 1963 ("**KPA**") to ban all forms of gambling in Karnataka, including online gambling. The piece also covered the judgments in *Head Digital Works Private Limited* v. *State of Kerala*[2] and in *Junglee Games v. State of Tamil Nadu*[3], wherein the Kerala High Court and the Madras High Court, respectively, had struck down as unconstitutional a complete ban on online rummy/gaming sought to be imposed by the respective legislatures.

After the Amendment Act came into force on October 5, 2021, online gaming companies had either suspended their operations in Karnataka or had geo-locked the availability of their sites and apps in Karnataka to avoid police action. Various industry associations like the All India Gaming Federation and gaming companies like A23(Ace2Three), Junglee Games and Gameskraft challenged the constitutional validity of the Amendment. The grounds of challenge included, *inter alia*, lack of legislative competence since the Amendment Act does not fit into Entry 34 (Betting & Gambling) of List II of the Constitution of India, violation of the fundamental right to carry on profession/business and manifest arbitrariness.

On February 14, 2022, in the case of *All India Gaming Federation and ors. v. State of Karnataka and ors.*[4], a Division Bench of the Karnataka High Court struck down the contentious provisions of the Amendment Act that deal with online gambling

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[2] WP (C) No. 7785 of 2021, WP (C) No. 7851 of 2021, WP (C) No. 7853 of 2021 and WP (C) No. 8440 of 2021 (27.09.2021 – Kerala HC).

[3] W.P. Nos. 18022, 18029, 18044, 19374, 19380 of 2020, 7354, 7356, 13870 of 2021, (03.08.2021 – Madras HC).

[4] Writ Petition Nos. 18703, 18729, 18732, 18733, 18738, 18803, 18942, 19241, 19271 19322, 19450 and 22371/2021 (GM-POLICE).

as unconstitutional. While the court declared the provisions as 'ultra vires of the constitution', it clarified that the entire KPA is not struck down, but only the specific amended provisions.

Since the Amendment Act imposes an absolute embargo on all games of skill, it defies the principle of proportionality, is far excessive in nature and therefore violates Article 14 of the Constitution on the ground of manifest arbitrariness. The High Court ("**HC**") observed that "*the Amendment Act suffers from the infirmity of this kind inasmuch as Section 2(7) which encompasses all games regardless of skill involved, renders the charging provisions of the Principal Act so vague that the men of common intelligence will not be in a position to guess at its true meaning and differ as to scope of its application and therefore, is liable to be voided*." The HC also issued a writ of mandamus restraining the state government from interfering with the online gaming business and allied activities of the petitioners while making it clear that nothing in the judgment shall be construed to prevent an appropriate legislation on 'betting & gambling' in accordance with the Constitution.

Verdict in detail

The HC held that the Amendment Act violates Article 14 in as much as it does not recognize the long-standing jurisprudential difference between a 'game of skill' and a 'game of chance'. Relying on the Supreme Court judgments in *State of Bombay v. R.M.D. Chamarbaugwala*[5], *K Satyanarayana* v. *State of Andhra Pradesh*[6], and *KR Lakshmanan* v. *State of Tamil Nadu*[7], the HC held that "*gambling is something that does not depend to a substantial degree upon the exercise of skill, and therefore something which does depend, ought not to be considered as gambling; as a logical conclusion, a game that involves a substantial amount of skill is not a gambling*."

The HC also referred to similar judgments given by other High Courts in the country including *Head Digital Works* and *Junglee Games*. Referring to the difference between a game of chance and a game of skill, the HC held as follows: "*The distinction lies in the amount of skill involved in the games. There may not be a game of chance which does not involve a scintilla of skill and similarly, there is no game of skill which does not involve some elements of chance. Whether a game is, a 'game of chance' or a 'game of skill', is to be adjudged by applying the Predominance Test: a game involving substantial degree of skill, is not a game of chance, but is only a game of skill and that it does not cease to be one even when played with stakes*."

In response to the state government's argument that the Amendment Act had been enacted to curb the menace of online gaming which has deleterious effects on the societal interest, the High Court referred to several empirical studies on the subject that stated that online gambling does not inherently encourage excessive gambling and that research on the health risks of online gambling is in its infancy and more research is needed to conclude on the topic. The HC noted that before imposing a statutory embargo on online gaming, the state had not constituted any expert committee to undertake a scientific study and empirical research as to the arguable ill effects of online games specific to socio-economic and cultural conditions in the state.

The HC held that the online gaming activities predominantly involving skill, judgment or knowledge and played with stake partake the character of business activities and therefore, they have protection under Article 19(1)(g). Imposing an absolute embargo, by any yardstick, appears to be too excessive a restriction. In such cases, a heavy burden rests on the state to justify such an extreme measure. However, the court held that there no material was placed

[5] AIR 1957 SC 628.
[6] AIR 1968 SC 825.
[7] (1996) 2 SCC 226.

on record to demonstrate that the State, whilst enacting such an extreme measure, had considered the feasibility of regulating wagering on games of skill. If the objective was to curb the menace of gambling, the state should have prohibited activities which amount to gambling as such and not the games of skill which are distinct, in terms of content and produce.

This judgement will likely pave the way for fantasy sports and gaming firms such as Dream11 and Mobile Premier League to make a comeback in Karnataka. It is also hoped that going forward, these judgments would nudge the state governments to frame progressive policies for skill based online gaming, which is a sunrise sector.

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