

AVIATION BULLETIN



CHANGING DIMENSIONS OF AVIATION SECTOR

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INTRODUCTION

The policy of increased liberalization both on domestic and international sectors has led to a boom in the civil aviation as the domestic passenger carriage, cargo movement, and international air traffic have shown exponential growth. In 2007, the Government of India (“GOI”) adopted a forward looking approach and made significant changes in the aviation sector in order to meet the international standards. The new aircraft (amendment) act, proposal for establishing an Airport Economic Regulatory Authority (“AERA”), changes in FDI policy, and policy for augmenting more regional air connectivity were a few notable steps in this direction. These changes of 2007 form the subject matter of this bulletin, and are discussed below in detail.

1. Aircraft (Amendment) Bill, 2007

To make it more effective and consistent with the present requirements and to ensure that air travel in India continues to meet international safety and security standards amendments to the Aircraft Act, 1934 (“the Act”) were made. The Aircraft (Amendment) Bill, 2007 (“the Bill”) has been passed by both the Houses of Parliament and is awaiting President’s assent to become law. The proposed Act empowers GOI to make rules on licensing of personnel engaged in air traffic control and certification: inspection and regulation of the communication, navigation and surveillance: air traffic management facilities: safeguarding civil aviation against acts of unlawful interference and ensuring civil aviation security.

Before this, the Bill was also referred to the Parliamentary Standing Committee on transport, tourism, and culture (“Committee”) which suggested that “with the coming of new private airports, greenfield airports, chartered and many other private airlines into Indian skies, the government should become more futuristic while bringing any new legislation on the sector.”¹

The Bill seeks to enable GOI to regulate foreign registered aircraft operating in India and aircraft operated by a person who is not an Indian citizen but has his principal place of business or permanent residence in India and to give GOI powers to license personnel engaged in air traffic control, inspect and regulate communication. It is, therefore, proposed to insert a new clause² to make this point explicit and clear. The Directorate General of Civil Aviation (“DGCA”) has been empowered to issue directions on matters related to any person using an aerodrome or engaged in air traffic operations, air traffic control, maintenance, and operation of aerodrome, air traffic management facilities, and safety oversight functions. The Bill also enhances existing penalties for contravention of any provisions which prohibits or regulates the carrying of arms, explosives, or dangerous goods in the aircraft from imprisonment up to two years and a fine to imprisonment up to two years and a fine of up to INR 1 million.³ Further, for willfully flying an aircraft in a manner which may cause danger to any person or property on land, water, or air from conviction up to six months or a fine of up to INR 1,000⁴ to a prison term of up to two years or with fine up to INR 1 million or with both.

¹ “Panel urges 'futuristic' aviation regulation bill”, March 13, 2007, The Times of India.

² In section 1 of the Act which provides the title and scope of the Act.

³ US\$ 25,000 (Conversion rate: 1 US \$= INR 40 approx).

⁴ US\$25.

2. Establishment of Airport Economic Regulatory Authority

With the objectives to encourage investment in airport facilities, foster healthy competition amongst all airports, regulate tariffs of aeronautical services, create a level playing field, protect reasonable interest of users, and operate efficient, economic and viable airports, GOI has announced⁵ its intent to set up AERA. A bill to this effect has already been referred to the Committee for examination and report within three months to the Lok Sabha.⁶

The functions of AERA shall be to fix, review and approve tariff structure for the aeronautical services taking into consideration the capital expenditure incurred, the service provided, its quality and other relevant factors; to fix, review and approve users development fees which may be levied by service provider for development of an airport; to monitor the set performance standards relating to quality, continuity and reliability of service as prescribed by GOI or its authorized agencies through concession agreement or such other agreement; to call for such information required to review the regulated tariff structure; and to perform such other functions as may be entrusted to it by GOI or as may be necessary to carry out the provisions of this proposed Act.

3. Augmenting Helicopter services for non-accessible areas and tourism

Helicopter services sector in India is dominated by public sector Pawan Hans Helicopters Ltd (“PHHL”). During 2007 PHHL inducted two Dauphin N3 helicopters enhancing the total fleet size of the company to 35 helicopters. Presently PHHL provides passenger services only for hilly areas. PHHL has proposed to further connect to important tourist places in Uttaranchal and Tamil Nadu. PHHL has a plan to construct a heliport in the national capital region to meet the significant and growing demand for helicopter services both in the government and business sector. In the wake of these developments, GOI has allowed 100% FDI in helicopter services with prior approval of DGCA.⁷

4. Changes in FDI in aviation sector

GOI on January 30, 2008 reviewed and approved the FDI policy in civil aviation sector and released the official notification to this effect on March 13, 2008. The new policy has renamed passenger airlines sector as the “*Scheduled air transport service.*” 74% FDI in non-scheduled airlines, chartered airlines, and cargo airlines through the automatic route have been approved. However, no direct or indirect participation by foreign airlines has been allowed in non-scheduled airlines and chartered airlines.

The Greenfield projects have already been allowed 100% FDI.⁸ Further, for the existing projects provision for 100% FDI has been provided with the prior approval from GOI in cases where FDI is beyond 74%. Moreover, 100% FDI through the automatic route has also been allowed with prior approval

⁵ Press Information Bureau release of December 27, 2007 issued by the Ministry of Civil Aviation.

⁶ The Lok Sabha is the lower house in the Parliament of India and is also, alternatively, titled as the House of the People in the Constitution of India.

⁷ Press Note 4 (2008) dated March 12, 2008 issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industries,

⁸ Press Note 4 (2006) dated February 10, 2006 issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industries.

of DGCA in the setting up of maintenance, repair and overhaul facilities, flying training institutes, technical training institutions, helicopter, and sea plane services.

5. New Projects and approvals by GOI: Year round up 2007

The GOI has approved its agreement to the Cape Town Convention and the Aircraft Protocol, which has the principal objective of efficient financing of mobile equipment and is intended to set up an international legal regime for categories of high value and uniquely identifiable mobile equipments. By doing so, it is likely to reduce the risk applicable to asset-based financing and leasing transactions and help in the availability of aviation credit at a cheaper cost.

Meanwhile, GOI has also given approval for adoption of International Air Transport Association (“IATA”) Resolution 815, which will enable the implementation of the Cargo Accounts Settlement System (“CASS”), which is the equivalent of the “Bank Settlement Plan” of IATA applicable for the passenger airlines. The CASS plan of IATA facilitates improved accounting and easy payment methods by the airlines to the cargo agents. It operates through CASSlink, an advanced global web-enabled e-billing solution. CASS yields a two-fold solution as it replaces the traditional paper based invoicing and manual controlling of those invoices by the agents. It streamlines invoicing and collection of sales revenue processes, provides a neutral settlement office, total flexibility to manage data centrally or from any field office with CASSlink’s web-based application, the elimination of invoices’ loss or failure to deliver and enhanced financial control and improved cash flow as the CASS rate of success in collecting funds is virtually 100%.

Further, an Aviation Cooperation Programme (“ACP”) has been signed between India and USA in June 2007. This ACP is a public private partnership between the US Trade and Development Agency, the Federal Aviation Administration and US aviation companies with the objective to promote increased safety, operational efficiency, and system capacity in the Indian aviation sector as well as facilitate and coordinate aviation industry training and technical ties between the U.S. and India.

In order to expand air connectivity with Tier II and Tier III cities and to promote regional air connectivity, a separate category of permit “*Scheduled Air Transport (Regional) Services*” has been introduced. Accordingly, DGCA has issued civil aviation requirements stipulating minimum requirements for grant of permit to operate in a designated region⁹ and which on grounds of operational and commercial exigencies may be allowed to operate from its designated region to airports in other regions, except metro airports of other regions.

In 2007, traffic rights were also improved and enhanced with the signing of bilateral treaties by India with several countries including US, Singapore, Hong Kong, Malaysia, Jordan, UAE (Abu Dhabi/Dubai/Sharjah), Kuwait, Uzbekistan, Chile, and Cambodia. These agreements would lead to more flights and better connectivity from these countries to India apart from providing more competitive fares for passengers.

⁹ So far Southern Region –Star Aviation; Northern Region – Jagson Airlines and MDLR Airlines Pvt. Ltd. have obtained no objection certification to operate regional air transport services.

GOI is even considering relaxing the regulations that currently prevent Indian carriers from operating internationally until they have completed five years of domestic operations. The Civil Aviation Ministry has proposed¹⁰ that carriers should be evaluated on a case-to-case basis, assessed on their individual merits rather than blanket eligibility criteria.

CONCLUSION

GOI has taken several proactive steps to complement the demands raised by the increased air travel and freight movement in the Indian skies. Growth of tourism, emergence and growth of low cost budget carriers are some of the compelling factors in the rapid evolution in this sector. To further augment this development considerable effort has been made in the establishment of new aerodromes, maintenance, and upgradation of the existing aerodromes, regulation of carriage of traffic by air and ensuring civil aviation safety and security. These attempts were taken by GOI in 2007 to face the challenges posed by the rapid increase in the air traffic and related demands by the aviation sector in the process of modernization.

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¹⁰ <http://indiaaviation.aero/news/> (Visited on March 13, 2008).