INDIALAW

POLICY

Salient features of draft National Civil Aviation Policy, 2015

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Editorial note: *this article analyses the draft National Civil Aviation Policy released in 2015. The final National Civil Aviation Policy was approved in June 2016, and the sector has been governed by it and by later amendments since. The article is retained as a record of the draft stage.*

Introduction

The Ministry of Civil Aviation ("MCA") has introduced a revised draft of National Civil Aviation Policy, 2015

("New Policy"), to promote the growth of Indian civil aviation sector. The New Policy aims to:

• create a multiplier effect on the employment generation and output generation.

• provide level playing field to sub-sectors in aviation field such as airlines, airports, cargo, aerospace manufacturing, skill development etc.

• Make 'flying' an affordable experience for the masses.

• Make the systems and processes simple and transparent.

Salient Features Of The Policy

1. Regional Connectivity Scheme ("RCS")

Under the RCS, MCA will target an all-inclusive airfare not exceeding Rs 2500 per passenger, indexed to inflation for a one-hour flight. Service Tax on tickets under RCS will be exempted. RCS will come into effect from 1 April 2016. However, RCS will be made operational only in those States which reduce VAT on Aviation Turbine Fuel ("ATF") at these airports to 1% or less.

RCS will be implemented by way of:

• revival of un-served or under-served aerodromes and airstrips,

• concessions by different stakeholders,

• Viability Gap Funding ("VGF") for scheduled commuter airlines

• cost-effective security solutions by Bureau of Civil Aviation Security ("BCAS") and

• free land and multi-modal hinterland connectivity (road, rail, metro, waterways, etc) and other essential utility services provided by State Government in concessional rates.

2. Scheduled Commuter Airlines ("SCA")

The following eligibility criteria has been prescribed for SCAs:

• SCA shall have aircraft with capacity of 100 seats or less.

• There will be no restrictions on number of aircraft for an SCA. SCA will be allowed self-handling of their aircraft. SCA would be allowed to enter into code-shares with Indian and foreign airlines.

• The eligibility criteria for SCA in terms of paid-up capital will be kept at Rs 2 crore to enable easy entry of new players.

• SCA would need to operate a minimum number of movements per week to RCS destinations as prescribed.

The government will promote the growth of SCAs for efficient regional connectivity. SCA operating on RCS routes will be eligible for VGF. They would be free to sell their DFC (discussed below) to other Indian carriers. There will be no airport charges levied on SCA for their operations under RCS. ATF drawn by SCA's from the RCS airports shall be exempt from excise duty. For Customs Duty, SCA will be treated at par with scheduled commercial airlines provided they do not undertake any charter carriage. SCAs will be provided easy options for entry into and exit from RCS. RDG (discussed below) will not be applicable to SCA.

MCA will endeavour to rationalise landing, parking, navigation and other airport charges at non- RCS airports for SCA aircraft with 100 seats or less. This will be for a period of 10 years for a particular route. MCA will coordinate with the airport operators and AAI to ensure adequate space allocation at Indian airports for SCA.

3. Route Dispersal Guidelines ("RDG")

RDG was introduced in 1994 to provide air connectivity to Jammu & Kashmir, North Eastern region, island territories, tier-2 and tier-3 cities, by way of internal cross-subsidy by airlines, using their profits on the trunk routes (12 in number). RDG has been successful in creating connectivity to remote locations.

It is proposed that more routes would be added to Category I routes under the RDG scheme. The criteria proposed for a Category I route is a flying distance of 700 km, average seat factor of 70% and annual traffic of 5 lakh passengers based on information available with DGCA.

4. 5/20 Rule

5/20 Rule was introduced by Union Cabinet in October 2004. According to the 5/20 Rule, Indian carriers must fly on domestic routes for 5 years and have a fleet of 20 aircraft to fly abroad. The government is contemplating abolition of 5/20 Rule. The government will take a final decision on the 5/20 Rule, after examining suggestions on the following three possible policy options:

i) 5/20 Rule may continue as it is or

ii) 5/20 Rule will be abolished with immediate effect, or

iii) Domestic Airlines will have to accumulate Domestic Flying Credits ("DFC") . Domestic airlines will need to accumulate:

a. 300 DFC before commencing flights to SAARC countries and countries with territory located entirely beyond a 5000 km radius from New Delhi.

b. 600 DFC before starting flights to the remaining parts of the world.

DGCA will be the monitoring agency for accounting of DFC.

RDG will continue to be applicable to all domestic airlines.

5. Code Share Agreements ("CSA")

CSA between two airlines enables one airline i.e. the Marketing airline to sell seats on a flight run by another airline i.e. Administrating airline, with its own airline code and flight number. This helps in seamless connectivity for passenger.

In this regard, it is proposed to enable Indian carriers to enter into code-share agreements with foreign carriers for any destination within India on a reciprocal basis. No prior approvals from MCA will be required. Indian carriers simply need to inform MCA 30 days prior to starting the code-share flights. The International codeshare between Indian and foreign carriers will however be subject to the ASA between India and the relevant country.

6. Bilateral traffic rights

The regime of bilateral rights originated in the Chicago Convention 1944. India has Air Service Agreements ("ASA") with 109 countries covering aspects relating to the number of flights, seats, landing points and code-share. Use of bilateral rights at any point of time differs from country to country and is subject to periodic renegotiation. The government is planning to liberalize the regime of bilateral rights leading to greater ease of doing business and wider choice to passengers.

In this regard, the following terms are proposed:

• The government will enter into an 'Open sky' ASA on a reciprocal basis with SAARC countries and countries with territory located entirely beyond a 5000 km radius from New Delhi.

• Unlimited flights above the existing bilateral rights will be allowed directly to and from major international airports within the country as notified by MCA from time to time. However, the landing rights at other airports under the existing ASA will continue to be honoured.

• For short haul countries partly or fully within 5000 km radius, where domestic airlines have not fully used their quota, additional seats above existing bilateral rights would be allotted by bidding out these rights for a three-year period, without requiring reciprocity, the proceeds of which will go to RCF.

• Whenever domestic carriers come close to use of domestic quota, bilateral rights will not be auctioned and will be renegotiated in the usual manner.

• Open-skies agreement with countries lying partly or fully within the 5000 km radius from New Delhi will be considered with effect from 1 April 2020 on a reciprocal basis for the major international airports within the country as notified by MoCA from time to time.

• Increase in FDI in airlines from 49% to above 50% will be examined if the Government decides to go in for open skies for countries lying within 5000 km radius.

7. Helicopters

Helicopters are central to remote area connectivity, intra-city movement, tourism, disaster relief, search and rescue, emergency medical evacuation, etc. It is proposed that separate regulations for helicopters will be notified by DGCA by 1 April 2016.

The government will enable the development of four heli-hubs initially, across the country to promote regional connectivity. Helicopters will be free to fly from point to point without prior clearance by Air Traffic Controller ("ATC"), in airspace below 5000 feet and areas other than prohibited and restricted ones, after filing the flight plan with the nearest ATC office. Scheduled helicopter operators will be allowed to trade their DFC.

The government will also promote the use of seaplanes for growth of tourism and regional connectivity, along India's 7500 km coastline.

8. Charter operations

There are certain restrictions on charter flights into and within India. The government plans to significantly de-regulate the same. Charter Operations are central to bringing in high end tourists into India and in promoting regional connectivity within India.

It is proposed that there will be no restrictions on the number of international charter flights by an operator and passengers flown into India as long as they do not follow a fixed schedule and are in compliance with the relevant ASA.

Incoming charter aircraft will be free to land at any Indian airport that has Customs and Immigration facilities. Charter operators do not need to take any prior permission from DGCA, as long as they have filed the flight plan with ANS and have a confirmed landing slot at the relevant airport.

The passengers on charter flights will not be restricted to those that have bought an Inclusive Tour Package (ITP). Passengers coming on an inbound charter flight will be free to shift to scheduled carriers for travel within India or abroad and vice versa.

9. Air cargo

Currently air cargo volumes in India are extremely low as compared to other leading countries due to high charges and high turnaround time. Promotion of Air cargo is a key objective of the government, given its importance from a 'Make in India', e-Commerce and exports perspective. Revenue from air cargo helps airlines subsidize the cost of passenger tickets and take flying to the masses. Air cargo has a high employment potential, especially for semi-skilled workers.

The following framework is expected to ensure growth of air cargo business:

• Air cargo will be accorded 'infrastructure' status if co-located with an airport and will be eligible for Sec 80IA benefits.

• The Air Cargo Logistics Promotion Board ("ACLPB") has been constituted to promote growth in air cargo by way of cost reduction, efficiency improvement and better inter-ministerial coordination.

• ACLPB and the industry will submit a detailed action plan after stakeholder consultation, with the objective of reducing dwell time of air cargo from 'aircraft to truck' to below 24 hours by 31 December 2016 and to 6 hours by 31 December 2017. ACLPB's action plan should ensure a shift to paper-less air-cargo processing by 1 April 2017.

• ACLPB will develop Service Delivery Modules for all elements of the air cargo value chain – airlines, airports, terminal operators, Customs House Agents (CHA), freight forwarders, and government agencies like Customs, CISF, quarantine officers etc.

• The government will simplify and simplify Customs procedures.

• BCAS will continuously review and simplify security procedures for air cargo in light of the changing business dynamics and evolving technology, while ensuring adequate checks and balances.

• Advanced Cargo Information (ACI) system will be implemented by 1 April 2016 to enable faster processing by Customs, security agencies and terminal operators.

• MCA plans to use the untapped trans-shipment opportunity. The ACLPB will propose specific action steps to promote trans-shipmentand the same will be monitored by MCA on a bi-monthly basis.

• The space allocated for cargo on the air-side and city side at most Indian airports is inadequate. ACLPB will lay down norms for space allocation for air-cargo for all greenfield airports. The action plan for space-augmentation at existing airports will be developed by ACLPB on a case by case basis.

• The government will endeavour that all relevant central government authorities are available under one roof, at the cargo terminals. These include MoF (Customs), MoEF (wild life clearance for handicrafts etc), MoCF (Drug Controller), MoA (Plant and Animal Quarantine), MoC (Archaeological Survey of India) etc. Clearances will be given promptly and online after necessary checks.

• The government has commenced 24×7 Customs operations at several airports. However, it has not been used optimally by industry. ACLPB will work closely with industry and propose action steps to spread out cargo handling round the clock.

• ACLPB will promote global good practices like Free-Trade Warehousing Zones (FTWZ), Air Freight Stations, Bonded trucking, dedicated cargo airports etc.

• Freighter aircraft suffer from low priority accorded in terms of time slots and parking bays. ACLPB will lay down norms to address the issue.

• ACLPB will lay down specific norms and penalties to minimize pilferage, mishandling and damage of cargo.

• ACLPB will work with AERA and AAI to ensure that user charges at Indian airports are competitive vis-a-vis competing aviation hubs. In particular for the non-metro airports, the lease and other fixed charges levied by AAI on cargo facility will be kept low so that it does not become an entry barrier.

• The government will consider providing incentives for skill development of people employed in the air cargo value chain.

• AAI will be permitted to provide space on 10-year lease to operators of express cargo and freighters who may then develop

dedicated infrastructure to improve their operational efficiency.

• MCA will encourage development of cargo-villages near airports.

10. Maintenance, Repair and Overhaul ("MRO")

The government is keen on projecting India as an MRO hub in Asia and attracting business from foreign airlines. Accordingly, it is proposed to make service tax on output services of MRO zero rated. MCA will also persuade State Governments to make VAT zero-rated on MRO services. Aircraft maintenance tools and tool-kits will be exempt from Customs duty and spare parts imported by MROs that can be stored tax-free will be extended to 3 years.

Further, the process of clearance of aircraft parts is proposed to be simplified by allowing for self -attestation by the MROs. Currently, MROs are required to provide proof of their requirements of parts, or orders from their client airlines. However, aircraft parts are used exclusively in the aircraft and are designated by Part Numbers as given by aircraft and related Original Equipment Manufacturers.

Foreign aircraft brought to India for MRO work will be allowed to stay for the entire period of maintenance or up to 6 months, whichever is lesser, provided it undertakes no commercial flights during the stay period. The aircraft may, however, carry passengers in the flights at the beginning and end of the stay period in India. For stay beyond 6 months, DGCA's permission will be required.

Foreign MRO experts will be provided visas promptly, especially in cases of an Aircraft on Ground (AOG) situation. Foreign pilots operating an aircraft to and from India for the purpose of servicing at an Indian MRO entity will be issued Temporary Landing Permits.

The provision under AIC 3 of 2010 of DGCA will be reviewed to declare MRO (Aircraft servicing) as a separate category instead of clubbing with Ground Handling (GHA) for security procedures and remove restrictions on foreign registered aircraft for MRO work.

11. Ground handling

The Ground Handling Policy of 2010 will be replaced by a new policy. As per the new policy, the airport operator has to ensure that there will be a minimum of three Ground Handling Agencies ("GHA") including Air India's subsidiary/JV at an airport to ensure fair competition. There will be no upper limit on the number of GHAs at an airport. Domestic airlines and charter operators will be free to carry out self-handling themselves or through their own subsidiaries or to outsource the same to other airlines or to a GHA.

MCA will encourage consolidation in ground handling through stakeholder consultations, with the objective of bringing in economies of scale and higher efficiency, without compromising on service quality, safety, security and cost to passengers. MCA will also encourage rationalization of airport royalties and other additional charges levied on GHAs over and above a reasonable lease rental.

The ground handling staff will be on the rolls of the airlines or their subsidiaries or the GHA and not of a manpower supplier. Domestic airlines (and their subsidiaries) and GHAs will be permitted to take contract employees on their rolls. Such employment contracts will be for a period of at least one year.

12. Aeronautical 'Make in India'

MCA will be nodal agency for developing commercial aero-related manufacturing and its eco-system in India. MCA and MoD will work together to ensure that commercial aero-manufacturing is covered under defence offsets requirements. MCA will encourage Indian carriers to consolidate their future demand for commercial aircraft.

The government will negotiate with global OEMs to enable establishment of a complete aircraft assembly plant in India along with its ancillary industries.

Area where aero-manufacturing takes place will be notified as SEZ. The government will provide fiscal and monetary incentives and fast-track clearances to global OEMs and their ancillary suppliers.

In case the cost of made-in-India aircraft and components work out to be higher than those supplied from their original sources, the government will consider an incentive package to nullify the cost differential.

13. Air Navigation Services ("ANS")

India has become the fourth nation in the world to use satellite-based navigation system, after the launch of GAGAN. AAI will explore opportunities to incentivise the airlines by way of concessions in ANS charges for getting their existing aircraft retrofitted with GAGAN receivers. New aircraft being registered in India from 1st April 2017 will mandatorily have to be GAGAN enabled.

'CATC Allahabad' which is ANS' training institute, will be developed into a world-class training centre for ANS professionals for the Indian and global market. CATC will be operated as a profit centre.

14. Safety

Directorate General of Civil Aviation ("DGCA") will implement State Safety Programme and develop State Safety Plan to ensure effective implementation of Safety Management Systems by relevant service providers. DGCA will also ensure real-time safety tracking and prompt incident reporting.

DGCA will issue separate Civil Aviation Requirements ("CAR") wherever possible for the ease of Scheduled Commuter Airlines, Charter operators etc. DGCA will review CARs once in every 5 years. DGCA will be authorized to impose fines and penalties for violations and necessary amendments to this effect, will be carried out in the applicable laws.

DGCA will strive to create a single-window system for all aviation related transactions, queries and complaints. The services rendered by DGCA will be fully automated by 1 April 2016 by implementing eGCA project on priority. DGCA will be allowed to recruit its personnel directly for posts which are sanctioned as per recruitment rules by exempting them from UPSC for this purpose.

15. Aviation Security, Immigration and Customs

MCA will develop 'service delivery modules' for aviation security, Immigration, Customs, quarantine officers etc in consultations with respective Ministries/Departments. Global best practices in IT, passenger check-in, baggage handling, mobile boarding passes, security checking procedures, immigration and customs etc will be introduced with due security vetting keeping the Indian context in mind. The government will allow Indian carriers to provide security services to other domestic airlines during the times when they have surplus capacity, subject to approval from BCAS and MCA. The Government will encourage use of private security agencies at airports for non-core security functions which will be decided in consultation with MHA. BCAS will provide scope of work and norms for the same. The private agencies will function under the overall control of the government agency providing aviation security at the airport. Private security agencies will comprise retired personnel from military and para-military forces satisfying qualification norms laid down by BCAS. Training and testing of the private security personnel will be carried out by CISF. Security auditors of BCAS will carry out regular and surprise audits with the power to penalize and blacklist the errant agencies.

The government will review and appropriately modify the AVSEC order 5/2009 on deployment of airline security personnel by 31 March 2016.

Facilities for government agencies like CISF, Immigration, Customs, Police etc, other than reasonable office space, will be arranged for by the government. No cost will be levied on the airport operator.

16. Airports developed by State Governments, Private sector or in PPP mode

MCA will endeavour that the future airport projects in India, both greenfield and brownfield have cost efficient functionality with no compromise on safety, security and efficiency. Operators of future airport projects will not levy airport charges, concession fee and royalties etc on MRO, cargo, ground handling, ATF infrastructure other than a reasonable lease rental. Tariff at all future airports will be calculated on a 'hybrid till' basis. 30% of non-aeronautical revenue will be used to cross-subsidise aeronautical charges. In case the tariff in one particular year comes out to be excessive, the airport operator and regulator will explore ways to keep the tariff reasonable, and spread the excess amount over the future.

Inadequate tenure of long term project loans in India is another reason for high airport tariffs. RBI has recently permitted refinancing of existing long term project loans every 5-7 years so that the loan tenure can be extended to 85% of the concession period. MCA and AERA will encourage all airport operators to make use of this facility to extend the loan repayment schedule.

There are restrictions on the use of land allocated for commercial use of airport. MCA will explore ways to unlock the potential of the same by liberalising the end-use restrictions for existing (excluding PPP) and future airports of AAI and future airport projects under PPP.

MCA will coordinate with respective ministries and state governments to provide multi-modal hinterland connectivity (road, rail, metro, waterways, etc as relevant).

17. Airports Authority of India (AAI)

Out of 125 airports of AAI, about 95 are operational and 71 have scheduled operations as of July 2015. AAI will take up new greenfield or brownfield airports subject to the following conditions:

- Project should be financially viable with non- zero IRR, except for no-frills airports developed under RCS.
- State/Central government will provide VGF to AAI if the project is strategically important but financially unviable.
- Land will be provided free of cost by state government without treating it as equity.
- Land will include sufficient space on city side for commercial use subject to land use regulations of the State Government.

AAI may be suitably compensated by government of India and/or the relevant State Government in case a new greenfield airport is approved in future within a 150 km radius of an existing operational AAI airport (not applicable to civil enclaves). Alternatively, AAI may be given option to have the right of first refusal or equity participation upto 49% in the new airport at its discretion.

To fast-track capacity enhancement at the existing airports to meet the demands of increasing traffic and to avoid air congestion, brown-field airport projects as well as expansion projects will be exempted from obtaining Environment Clearance.

18. Fiscal support

It is proposed that MRO, ground handling, cargo and ATF infrastructure co-located at an airport will also get the benefit of 'infrastructure' sector, with benefits under Section 80-IA of Income Tax Act.

19. Ancillary Revenue

To compensate reduced the base airfare, it is felt that ancillary revenue for airlines must be increased. Accordingly, airlines will be free to charge any amount for additional services, except for check-in luggage and assistance to differently-abled passengers. However, such additional charges will have to be communicated clearly to the passenger.

20. Sustainable aviation

With an aim to promote sustainable development in aviation industry, MCA will work with DGCA and industry stakeholders to develop an action plan for making all Indian airports carbon neutral by 1 April 2030. MCA will pursue limitation of CO2 emission in Indian aviation in coordination with ICAO. DGCA will issue a CAR, making it mandatory for all aircraft operators to develop a reliable reporting system for CO2 emissions, based on fuel consumption, for each flight that lands in or takes off from India. All equipment operating within the airport environment will be in compliance with latest emission norms by 1 April 2017. Ground handling vehicle will use alternative fuels that can provide significant Local Air Quality (LAQ) emission benefits compared with petrol and diesel equipment. Options include LPG/ CNG vehicles, low emissions vehicles (LEV), hydrogen vehicles, and electric vehicles. Airports will be encouraged to use Fixed Ground Electrical Power (FGEP) and Pre-Conditioned Air (PCA) units. Airlines will be encouraged to use single engine taxiing and dispatch-towing.

MCA will strive to ensure Flexible Use of Airspace (FUA) by 1 April 2016 in consultation with MoD. MCA will encourage roll out of Airport Collaborative Decision Making (CDM) by 1 April 2016 to reduce on-ground and aerial congestion.

21. Aviation education and skill building

MCA will enable greater involvement of private sector in sponsoring aviation institutions, industrial training and R&D projects. The government will expedite the commencement of courses by the National Aviation University. MCA will also provide full support to the Aerospace and Aviation Sector Skill Council for imparting skills for the growing aerospace and aviation industry in India.

22. Essential Services Maintenance Act, 1968 ("ESMA")

As per ESMA Act 1968, essential services include '…any service connected with the operation or maintenance of aerodromes, or with the operation, repair or maintenance of aircraft..'The Government is proposing to include 'ground handling, catering and aircraft fuelling' within the said definition.

[2] DFC is a new concept introduced by MCA. The DFC earned by an airline will be equal to the Available Seat Kilometer (ASKM) deployed by the airline on domestic routes divided by 1 crore. For aircraft with 100 seats or less, the DFC shall be equal to the ASKMs deployed on Category II, Category IIA and RCS routes using the smaller aircraft, multiplied by the prescribed multiplication factor and divided by 1 crore.