

# #LegalOps Kochhar's Piyush Gupta on DGCA's draft guidelines on drones - Bar & Bench

Taking into the consideration the urgent need to regulate the civil use of unmanned aircrafts (UAs), the Director General of Civil Aviation (DGCA) has issued a set of draft guidelines for laying down rules governing the registration and usage of the UAs .

In India, the existing [aircraft rules](#) do not account for unmanned vehicles, a void the DGCA hopes to fill up in the near future. Along with defining UA's and UA Systems, the draft guidelines further:

- Classify the UAs into four categories depending on their weight and;
- Require a Unique Identification Number (**UIN**) for all UA operations in India.

All civil UA operations at or above 200 feet above ground level (**AGL**) in uncontrolled airspace require a 'UA Operator Permit' (**UAOP**). However, civil UA and model aircraft operations below 200 feet AGL under certain conditions have been exempted.

The UAOP can be obtained by only an Indian citizen or a company with its principal business within India and its substantial ownership and effective control vested in Indian nationals.

The UAOP is to be granted by the DGCA upon application made by the operator which is subject to various prior permissions and documentation. It is non transferrable and will be valid for a period of two years from the date of issuance. However, the DGCA has unfettered authority to cancel/suspend the UAOP at any time if in the opinion of the DGCA, the performance of the Remote Pilot/ maintenance of UAS is '*no longer to an acceptable standard.*'

**Kochhar & Co's** Aviation expert **Piyush Gupta** shares his thoughts on the guidelines and what they hold for the future of drones in India.

**Varun Marwah: Initial views on the draft guidelines? Would you recommend any changes?**

**Piyush Gupta:** India is set to join an exclusive club of select countries worldwide that has developed regulations for commercial use of drones / unmanned aircraft. This is in line with the Central Government's efforts to make the regulatory atmosphere in India, at par with other countries in the world.

While the Guidelines, as currently drafted, seem slightly passive, it may be noted that the same is still work in progress and hopefully the finished product is better with more stringent penalty provisions and provisions dealing with the safeguard of privacy issues.

**VM: Do you feel it is fair to have the same requirements for Unmanned Aircrafts which weigh less than 2 kilos and which weigh more than 150 kilos?**

**PG:** Personally, I don't think it is fair to have the same requirements. While there is merit in the fact that both categories of UA should be registered – the underlying intent being to associate

ownership/liability in the event of a mishap – the requirements should ideally be less stringent for the lighter UA as against the heavier one.

Having said that, the Guidelines do establish certain distinctions in terms of requirements for different UA. For instance, clause 10.12 of the Guidelines establishes that a person in charge of a micro and/or mini UA (i.e. up to 20 kilos) shall maintain visual contact with the aircraft. This is important so as to provide the operator of the micro/mini UA, an opportunity to monitor its flight path in relation to other aircraft, persons, vehicles, vessels and structures for the purpose of avoiding collisions. Such a requirement may not be feasible for a heavier UA, the purpose of which may be completely distinct from the smaller UA.

Similarly, unmanned aircraft (irrespective of their mass) that will be used for surveillance purposes should be subject to tighter restrictions with regard to the minimum distances that they can fly near people or properties.

**VM: Do you feel there should be more clarity on the fines/punishments which will be imposed for violators instead of leaving it to be settled through litigation?**

**PG:** Yes. I think that the penalty provision as envisaged under the current Guidelines, is extremely lame and ineffective. There has to be a monetary penalty associated with the unauthorized use of UAS. Take for instance, the recent case in the US in October last year, where the Federal Aviation Administration (FAA), imposed a fine of USD 1.9 million on a startup – SkyPan International – for allegedly conducting 65 drone flights without the required authorization.

Without adequate monetary fines, the penalty provisions of the Guidelines will lack the proper 'bite' to make them effective and be taken seriously. Not only that, the regulator should seriously consider penalty provisions to make it obligatory upon the 'offenders' to deposit the penalty amount in an escrow account pending litigation. This will ensure that the operators of UAS take their responsibilities seriously and do not fall foul of their regulatory obligations.

**VM: Do you feel privacy issues have been sufficiently addressed?**

**PG:** The privacy issues have been addressed only to a certain extent under the incumbent Guidelines. Ideally, the regulator should take into account the fact that there are significant advancements to technology at a very rapid pace and accordingly, the regulatory agencies should, prior to deployment of new UAS technology and at least every 3 years, examine their existing UAS policies and procedures relating to the collection, use, retention, and dissemination of information obtained by UAS, to ensure that privacy, civil rights, and civil liberties are protected.

In addition to requiring compliance with the protection of privacy and prevention of data theft in applicable circumstances, the agencies that collect information through UAS should ensure that their policies and procedures with respect to such information incorporate the details about the collection, use, retention and dissemination of information, and accountability and transparency of information obtained by UAS, to ensure that privacy and other rights are protected.

**VM: I'm going to have to plead ignorance here but, clause 5.2 prohibits operation of civil**

**UA in controlled airspace whereas clause 10.9 allows a Unmanned Air Vehicles (UAV) to enter the controlled airspace only with the prior approval of the ANS provider. While UA has been defined in the guidelines, UAV has not. Can they be used interchangeably or are they different things, and if so, what's the difference?**

**PG:** Good catch! While you are correct in saying that UA has been defined and not UAV, the interpretation seems to suggest that they mean the same.

Having said that, in response to your query, on the seeming conflict between points 5.2 and 10.9 of the Guidelines, please note that there is no conflict, rather, the two clauses are complementary.

Let me explain. Clause 5.2 does not “prohibit” the operation of civil UA in controlled airspace. The clause says that the operation of civil UA in controlled airspace is “restricted”. Clause 10.9 thereafter, clarifies that a UAV “shall enter the controlled airspace only with the prior approval of the ANS provider, which will be in the form of an airways clearance.”

Thus, you will note that while clause 5.2 provides for a restriction, clause 10.9 explains the restriction and what is required to circumnavigate the same.

*You can read the draft guidelines below. The draft guidelines are open for public comments till 21 May. Image: [Source](#)*