

INDIA GETS NEW CIVIL AVIATION POLICY



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The Indian Government approved the country's first National Civil Aviation Policy ("New Policy") yesterday (15th June, 2016). This update provides a brief summary of the major proposals that are to be implemented under the Policy.

1. 5/20 Rule Abolished

Per the erstwhile rule created in 2004 (which was known as the 5/20 Rule), a domestic airline in India was allowed to fly on international routes only after flying for 5 years to domestic destinations and operating at least 20 aircraft. This Rule was always a bone for contention, as domestic airlines would allege that it left them at a competitive disadvantage as compared to their peers internationally, as none of the other countries had similar regulations and their airlines would corner the market during those 5 years.

Under the New Policy, the Government has scrapped the 5/20 Rule and now, any domestic airline can fly overseas provided they deploy 20 planes or 20 per cent of their total capacity for domestic operations. This means that new airlines such as Vistara and Air Asia will no longer have to wait for 5 years to start operations on international routes.

2. Open Skies for European and SAARC Nations

Under the current arrangement, India has an open sky policy with the US, but only a 'near' open sky policy with the UK, with restrictions on the frequency of flights operating between UK and Delhi and Mumbai.

Under the New Policy, India is set to get an open-sky policy for countries beyond the 5,000-km radius from Delhi, on a reciprocal basis. This implies that airlines from Europe and/or the SAARC countries will have unlimited access in terms of the number of flights and seats, to Indian airports, leading to increased flight frequencies with these countries.

3. Fare Cap on Flights on Certain Regional Routes

As part of its regional connectivity scheme under the Route Dispersal Guidelines, the New Policy provides that airlines will charge INR 2,500 to passengers for one-hour flights on regional routes.

The Government's Route Dispersal Guidelines have also been a highly contentious issue, since they require Indian airlines to serve Tier II and Tier III cities, even though they may be loss-making for the airline.

However, the New Policy provides that the Government will provide support to fund airlines' losses on such unserved / lesser served routes by allowing the airlines to charge a small levy per departure on all domestic routes, except in remote cities and in the north-eastern states. The amount of levy that the airlines will be allowed to charge is unclear at this time.

4. Self Ground Handling Permitted

Under the new policy, domestic airlines will be permitted self ground-handling at all airports to ensure competition and efficiency, as well as lead to cost savings for the airlines.

India has had a Ground Handling Policy that was introduced in 2007, which required airlines to outsource the job in New Delhi, Mumbai, Kolkata, Chennai, Hyderabad and Bengaluru to one of the three – (a) an airport operator along with a partner; (b) an arm of national carrier Air India; or (c) a company selected by the operator. Elsewhere, they could manage ground handling on their own or hire agents. The 2007 Ground Handling Policy was stayed after airlines went to court, saying it would make operations more expensive and take away their unique selling proposition of providing extra services to passengers.

By allowing the airlines to handle ground handling themselves may lead to cost savings for the airlines, but there are some concerns regarding safety and security of personal belongings of the passengers. Accordingly, it might be prudent for the Government to quantify standards and benchmark costs for ground handling such that safety and security may not be compromised.

5. Miscellaneous

Under the New Policy, development of Greenfield and Brownfield airports by the state governments, private sector and/or in Public-Private-Partnership (PPP) mode will be encouraged.

Additionally, there is a proposal for the development of four heli-hubs and for the provision of helicopter emergency medical services.

Concluding Words

The New Policy certainly seems to have pushed the right buttons in terms of its objectives of making flying affordable, safe and convenient; looking to promote balanced regional growth, tourism, and infrastructure, but the most significant impact that the New Policy has, is that it is in line with the Government's *raison d'être* of ease of doing business in India.

India is on track of becoming one of the topmost civil aviation markets in the world, and the New Policy certainly seems to have the right intention, vision and planning. We will await how the execution and implementation of this New Policy will unfold.

ABOUT THE AUTHOR

Piyush Gupta is a partner and head of the Aviation & Competition law practice at the Firm. Piyush is an Aviation law expert with over a decade of diverse experience in advising clients across the entire spectrum of the industry including airline manufacturers, carriers, MROs, regulatory bodies and cargo & logistics operators.

His expertise is backed by rich industry experience of having worked as in-house counsel with leading airlines carriers - Singapore Airlines Ltd and 'IndiGo' airlines – the largest low cost airline in India. Piyush has also worked with leading Singapore law firms advising clients on corporate M&A, aviation and competition.

Under the aegis of Kochhar & Co., Piyush has been providing extensive legal advice to airlines, MROs and OEMs on various aspects of Indian aviation laws (including repossession/insolvency issues & applicability of international conventions) and is also advising the International Air Transport Association (IATA). Specifically, Piyush is leading a team of lawyers which is representing most of the international airlines operating in India under the auspices of the IATA at various fora where several major government-linked entities are the opposite parties.

Piyush has also conducted numerous trainings and workshops on various issues including aircraft leasing and financing, competition compliances, emissions trading and alliances, JVs and regulatory hurdles within the aviation industry in India.

It may be relevant to mention that Piyush holds the position of Vice-Chair of the Aviation Committee at the Inter-Pacific Bar Association (IPBA).

Piyush has been recognized as a prominent practitioner for Aviation laws in India by the Asia Pacific Legal 500 & Euromoney Asia.

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KOCHHAR & CO. – AVIATION PRACTICE

The Firm has a strong Aviation Law Practice with a number of lawyers having significant work experience in handling all matters across the spectrum within the aviation industry. The most significant contribution of this department (as against some of the competing firms in India) is that the practice is headed by an airline in-house counsel, which brings a practical perspective to the advice given by the Firm, keeping in mind the commercial considerations being faced by airlines in India.

Apart from assisting clients with legal advice / litigation support, the Firm also conducts client and industry specific training sessions / seminars for the overall benefit of the clients' operations in India. For instance, the Firm was recently engaged by All Nippon Airlines (ANA) to assist them with issues on competition and anti-bribery in India. The airline has offices at Delhi and Mumbai and all mid and senior management employees were part of these training sessions. Since the lawyers of the Firm are well-versed with the intricacies of the airline industry, the sessions were inundated with practical and 'live' examples from within the industry, which assisted the audience, understand the concerns much better.

Similarly, the Firm was engaged by Euromoney Asia to conduct a 3-day training in Hong Kong on Aircraft Financing and Leasing. Mr Piyush Gupta was personally requested to conduct the trainings, where the audience comprised of senior management officers and lawyers from Singapore, China and Philippines.

Awards & Accolades

- THE LEGAL 500 - Recommended Firm – Aviation & Dispute Resolution, 2015
- Awarded "Aviation Law Firm of the Year in India 2015" by GLOBAL LEGAL EXPERTS
- Awarded "Aviation Law Firm of the Year in India 2014" By CORPORATE INTL GLOBAL AWARDS

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