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The Indian Aviation Sector

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1. History of Aviation in India

French pilot Monseigneur Piguet flew the first commercial flight in India from Allahabad to Naini on February 18, 1911. However, it wasn't until 1932 that Jehangir Ratanji Dadabhoy, the 'Father of Indian Aviation', established India's first licensed commercial carrier.[1] Tata Airlines was based out of Mumbai and transported both mail and passengers across India. In 1946 it changed its name to Air India. Two years later, the Indian Government acquired 49% of the company, and fully nationalized the airline in 1953 pursuant to the Air Corporations Act, 1953.[2] This law not only allowed the Government to gain control over the erstwhile Tata Airlines, but also nationalized the entire sector. All existing airlines were merged into either Indian Airlines Corporation or Air India International.[3] This monopoly continued for the next forty years. It wasn't until the Indian economic liberalization of the 1990's that the aviation sector was again open to private participation.

Despite an early start in the 1900's, the aviation sector has grown slowly in India, mainly because of the fact that air transportation has traditionally only been for the elite and not the masses. However, in the last decade the sector has experienced exponential growth due to structural reforms, airport modernization, entry of private airlines, adoption of the low cost models, and improvements in service standards. The government has also played a large role in supporting growth in aviation by encouraging the private sector to become more involved in the construction of airports through Public Private Partnership models, and by providing state support in terms of concessional land allotment, financing, tax holidays and other incentives.[4]

1. IATA- Airlines International, "History-The Father of Indian Aviation." available at: http://airlines.iata.org/blog/2011/08/history-the-father-of-indian-aviation
2. IATA- Airlines International, "History-The Father of Indian Aviation." available at: http://airlines.iata.org/blog/2011/08/history-the-father-of-indian-aviation
3. Dr. K. C. Kahurana, Aviation Management: Global Perspectives, Global India Publications Pvt. Ltd., New Delhi 2009. Pg. 296.
4. India Brand Equity Foundation. Available at: http://www.ibef.org/industry/indian-aviation.aspx

A brief history of the Indian aviation sector.

Year	Event
< 1953	Nine Airlines existed including Indian Airlines & Air India
1953	Nationalization of all private airlines through Air Corporations Act
1986	Private players permitted to operate as air taxi operators
1997	India's first Greenfield Public Private Partnership (PPP) airport developed in Cochin
1994	Air Corporation Act, 1953 repealed. Private players permitted to operate scheduled airlines
1995	Jet, Sahara, Modiluft, Damania, and East West granted scheduled carrier status
1997	4 out of 6 operators shut down. Jet & Sahara continue
2001	Aviation Turbine Fuel ("ATF") prices decontrolled
2003	Air Deccan starts operations as India's first Low Cost Carrier ("LCC")
2004-5	Kingfisher, SpiceJet, Indigo, Go Air, and Paramount start operations
2007	Industry consolidates: Jet Airways acquires Air Sahara, Kingfisher acquires Air Deccan, and Air India acquires Indian
2010	SpiceJet starts international operations
2011	Indigo starts international operations Kingfisher exits LCC segment
2012	Government allows direct ATF imports FDI allows for foreign airlines to hold up to 49% stake in scheduled and non-scheduled air transport services while NRIs are permitted to hold 100% equity in airlines
2013	Singapore-based Tiger Air enters into an interline agreement with Spicejet
2014	Air Asia (a joint venture between Tata Sons, Malaysia's Ais Asia Berhard, and Arun Bhatia's Telestra Tradeplace) and Vistara (a joint venture between Tata Sons and Singapore Airlines) enter the market
2014	Ethihad Airways purchases 24% stake in Jet Airways
2015	Indigo launches one of the largest IPOs in Indian history
2016	Jet Airways to merge with JetLite in order to complete its exit from the LCC segment

2. Snapshot of the Indian Aviation Sector

I. Rapidly Growing Sector

The civil aviation sector consists of several segments including helicopter/seaplane services, ground handling services, maintenance and repair organizations, flying training institutes, and technical training institutions. However, the sector's health is often identified primarily with the growth of scheduled airline[5] and public airport activity.

Currently India is the 9th largest aviation market in the world, with a market size of approximately USD 16 billion.[6] The civil aviation sector has seen a growth of 13.8% during the last 10 years, and has attracted FDI of over USD 569 million from April 2000 to February 2015.[7] Passenger traffic has also increased by 12.47% to arrive at 190 million passengers in FY 2015, and over the next five years is expected to continue to increase at an annual average rate of 12% (*for domestic passengers*) and 8% (*for international passengers*).[8] Recently, Crisil Ltd. has projected that airlines operating in India will collectively record a profit of USD 1.29 billion in FY 2016.[9]

Moreover, the current rapid growth of the Indian aviation sector is expected to continue well into the future. The International Air Transport Association (**IATA**) has reported that the total annual passengers in India will increase to 367 million by 2034, and overtake the United Kingdom to become the 3rd largest market by 2031.[10] This means not only a surge in aviation services over the next few decades, but also an increase in demand for maintenance, repair, and overhaul ("**MRO**") services.

In fact, currently the MRO business of Indian carriers is approximately Rs 5,000 crore, 90% of which is spent outside India in countries like Sri Lanka, Singapore, Malaysia, UAE etc.[11] However, in response to the evident growth in India's aviation sector coupled with India's technology and skill base, the Government is eager to develop India as an MRO hub in Asia, for both domestic and foreign airlines. Steps towards this goal have already been taken pursuant to the Minister of Finance's 2016 Budget speech wherein the Minister announced certain customs and excise duty exemptions for MRO service providers

The Government has also recognized the need for better regional connectivity and in an effort to address this need, has announced that the Central Government will partner with State Governments in order to implement a new Action Plan for regional interconnectivity. This Action Plan includes identifying non-operational airstrips and developing them in consultation with State Governments. Under the Action Plan State Governments are expected to support airport development by providing state tax exemptions to airports and airlines, and reimbursement for reoccurring utility expenditures incurred for airport operations. The Central Government has committed to revive 10 non-operation airports during financial year 2015-16 alone.[12]

While it is clear that the civil aviation industry in India as a whole is experiencing a much awaited period of expansion, it is important to also consider the growth of the industry with respect to Non-Scheduled operators[13] like charter companies and business and private jet

5. Scheduled airlines are those airlines whose owners have obtained a Scheduled Operators permit from the Directorate General of Civil Aviation ("DGCA"). Specifically, such airlines operate according to a published time table or with flights so regular or frequent that they constitute a recognizably systematic series, each flight being open to use by members of the public. In contrast Non-Scheduled Operators provide air transport services that may be on charter basis and/or non-scheduled basis. The operator is not permitted to publish time schedule or issue tickets to passengers.
6. Source: http://www.ibef.org/industry/indian-airports-analysis-presentation
7. Source: http://www.india-aviation.in/pages/view/38/an_overview.html
8. Source: http://www.ibef.org/industry/indian-airports-analysis-presentation
9. Source: http://www.ibef.org/industry/indian-airports-analysis-presentation
10. IATA Press Release No. 57 dated October 16, 2014 available at: http://www.iata.org/pressroom/pr/Pages/2014-10-16-01.aspx
11. Press Information Bureau, Government of India, Ministry of Civil Aviation, "Civil Aviation Minister says Budget 2016-17 has paved the way for developing India the MRO hub of Asia. " Available at: http://pib.nic.in/newsite/PrintRelease.aspx?relid=137188
12. Press Information Bureau, Government of India, Ministry of Civil Aviation, "Civil Aviation Minister says Budget 2016-17 has paved the way for developing India the MRO hub of Asia. " Available at: http://pib.nic.in/newsite/PrintRelease.aspx?relid=137188
13. Supra footnote 5

owners. These industry stakeholders form an important part of the General Aviation ("**GA**") sector in India. A 2011 report released by CAPA India[14] highlighted the potential of the GA sector and projected that its indirect contribution to India's economy could be close to USD 4 billion per year by 2020. However, in 2015 India witnessed a 2% drop in its Business Aviation sector[15] which currently consists of over 150-160 flight operators, 121 of which are Non-Scheduled operators and the rest are private owners .[16] Several factors are thought to have contributed to the decline in the Business Aviation sector, and the General Aviation industry overall. These factors include poor airport infrastructure and high customs duty on the import of aircrafts for private use.[17] For example, a lack of space at most metropolitan airports, like Chhrapati Shivaji International Airport in Mumbai, forces private and charter jets to park in neighboring airports which increases time and fuel costs and disincentives the use of private or charter jets. Further, while companies having a Non-Scheduled operators permit can import planes at a reduced customs duty of only 3%, individuals or companies buying planes from abroad for private use are hit with an effective customs duty (*including basic duty, additional duty, education cess, and special duty*) as high as 25%. This discrepancy has caused many companies to form aviation related subsidiaries which obtain the requisite permit and import aircrafts at the lower rate of duty.[18] As such, while the number of non-scheduled operators in India has grown noticeably from 39 in 2000[19] to 121 in 2016,[20] such growth does not mirror an accurate increase in the number of full-fledged charter service providers, but rather reflects a fragmented sub-industry where companies having small fleets of 2-3 airplanes have obtained Non-Scheduled operator permits in order to avoid paying the higher rate of customs duty. Despite the slight dip in the growth of the Non-Scheduled sector, the aviation industry in India at large is steadily on the rise, driven by factors such as low cost carriers, modern airports, foreign direct investments in domestic airlines, a large and growing middle class population, rapid economic growth, higher disposable incomes, cutting edge information technology, and a growing emphasis on regional connectivity. This expansion is further supported by the fact that India currently has one of the least penetrated air transportation markets in the world. While the United States leads the world-wide aviation market with more than 2 trips per capita per annum, China has 0.3 trips and India a meager 0.04 trips[21] Such low penetration is an indication that there exists tremendous potential for growth. In fact, it is estimated that even a 1% increase in the number of people who travel by air would require India to double its fleet of passenger aircrafts.[22]

II. Key Players

A. Airlines

Airlines in India are operated by Scheduled and Non-Scheduled Operators[23] which play a key role in the development of the aviation sector as they further drive services like ground handling and MROs.

The passenger and cargo air transportation market is dominated by domestic Scheduled Operators like Air India, Air Asia (India), Jet Airways, Jet Lite, Spice Jet, Go Airlines, Vistara (**TATA SIA Airlines**), and Indigo Airlines.[24] Air India is India's national airline and

14. Centre for Aviation "CAPA" India "India Business & General Aviation Report 2011" Summary available at: http://capaindia.com/about-us/press-release/New-CAPA-Report-identifies-General-Aviation-in-India-as-the-next-growth-wave
15. Neha Singla, Media India Group "Business Jets Sky Luxury" (March 2016). Available at: http://mediaindia.eu/niche/business-jets/
16. TravelBiz monitor.com. Interview with Jayant Nadkarni, President of Business Aircraft operators Association (BAOA) "Business Aviation aircraft are being squeezed out of metro airports" (May 16, 2016) Available at: http://www.travelbizmonitor.com/In-Conversation/business-aviation-aircraft-are-being-squeezed-out-of-metro-airports--jayant-nadkarni-president-baoa-30432
17. The Economic Times "High taxes and poor infrastructure take toll on business jets in India" (December 1, 2015) Available at: http://articles.economictimes.indiatimes.com/2015-12-01/news/68688557_1_atiesh-mishra-taj-air-high-taxes
18. The Economic Times "Government bans use of non-scheduled operator's license y companies to import aircraft at low rates" (April 14, 2015). Available at:
19. Ministry of Civil Aviation "Strategic Plan 2010-2015" Available at: http://www.civilaviation.gov.in/sites/default/files/moca-plan_0.pdf
20. Directorate General of Civil Aviation "List of Non-Scheduled Operator's Permit Holders" (as of 22.06.2016). Available at: http://dgca.nic.in/nsoper/ns-oper.pdf
21. Source: http://www.makeinindia.com/sector/aviation/
22. The Economic Times "India's aviation growth to be double of global average: Airbus" (June 22, 2015) Available at http://articles.economictimes.indiatimes.com/2015-06-22/news/63708538_1_global-market-forecast-airbus-aviation-growth
23. A list of conditions which must be satisfied in order to obtain certification as a Scheduled or a Non-Scheduled Operator is provided in Annexure 1
24. Market shares reflected in Chart A

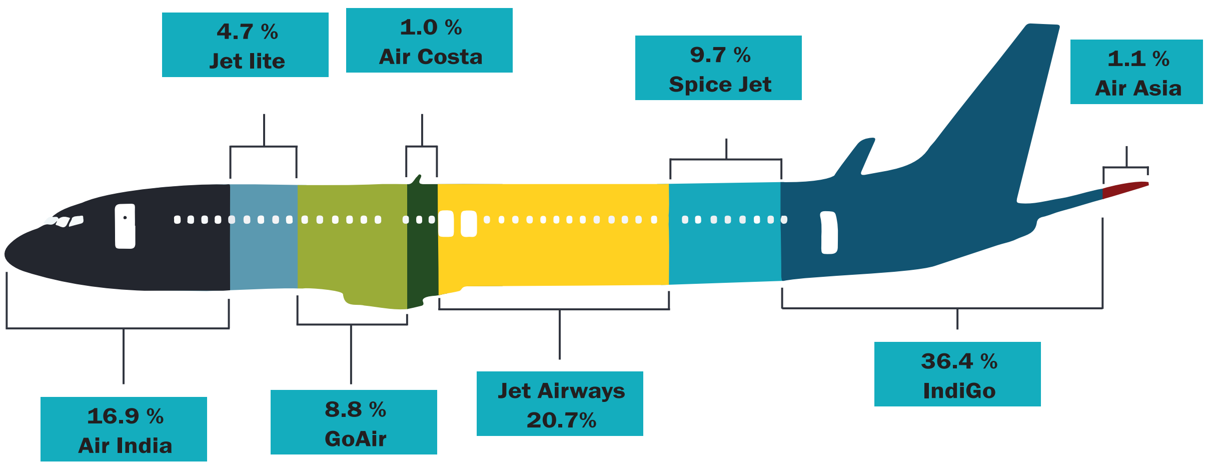
constitutes only about 13% of the domestic passenger market, a substantial decrease when compared to the 100% monopoly it had prior to India's economic liberalization. There are also more than 60 foreign airline carriers, which constitute an aggregate of 65% of international air travel to and from India.[25]

Recently, InterGlobe Aviation Ltd, owner of Indigo Airlines (*India's largest airlines by market share*) launched the largest IPO in India since 2012. Founded in 2006 by Rakesh Gangwal and Rahul Bhatia, Indigo Airlines has been the only airline to report profits for the past seven consecutive years.[26] While entering during a time when the market was dominated by Jet Airways, Indigo Airlines has made its place as the most profitable airline by redefining the concept of a low cost carrier.

In September of 2015, InterGlobe Aviation Ltd. received approval from SEBI for its Rs. 2,500 crore public offer. By October 2015, the company launched the three day IPO and raised a total of Rs. 3,010 crore.[27]

Chart A

Market Share of Scheduled Domestic Airlines
March 2015



Source: http://www.dgca.nic.in/reports/Traffic_reports/Traffic_Rep0315

25. CAPA Center for Aviation. 'India Aviation Outlook: Traffic up, losses down but operating environment remains challenging' available at http://centreforaviation.com/analysis/india-aviation-outlook-traffic-up-losses-down-but-operating-environment-remains-challenging-228991

26. MoneyControl, "IndiGo's Rs 2,500-crore IPO gets Sebi nod" (September 15, 2015) Available at: http://www.moneycontrol.com/news/ipo-news/indigos-rs-2500-crore-ipo-gets-sebi-nod_3076381.html

27. Economic Times " Indigo raises Rs. 3010 crore in IPO at upper end of range" (November 2, 2015) Available at: http://economictimes.indiatimes.com/markets/ipos/fpos/indigo-raises-rs-3010-crore-in-ipo-at-upper-end-of-range/articleshow/49631313.cms

B.Airports

Airports also play a significant role in the development of the aviation sector. Currently there are over 115 airports and civil enclaves in India, of which 17 are international airports.[28] However, active airports with the most passenger traffic are located in metropolitan cities like Mumbai, Delhi, and Bangalore, while smaller airports in cities like Jaisalmer, Rajasthan are currently not in operation.[29] The Government aims to remedy this discrepancy by increasing regional interconnectivity through an investment of USD 1.3 billion on upgrading and modernizing non-metro airports between 2013 and 2017.[30] By 2020, the Government also aims to have 200 new low cost airports connecting tier I and tier II cities across India.[31] Moreover, plans to develop new airports in Navi Mumbai (**Maharashtra**),[32] Dholera (**Gujarat**)[33] the National Capital Region (**New Delhi**),[34] and several districts in Andhra Pradesh,[35] are already underway.

State Governments also continue to participate in regional airport development projects by providing land needed for airport construction, and also by forming joint ventures ("**JV**") with private participants. Such JVs, or private/public partnerships ("**PPP**") are then responsible for the development and management of a new airports.

Most notably, Cochin International Airport (**CIA**) was the first greenfield airport in India to be developed through the PPP model. The plan to build the new airport was initiated in 1991. Due to the erstwhile National Airports Authority's ("**NAA**")[36] inability to fund such a project, Sri V J Kurian and others took up the onus financing the airport while the NAA provided technical services.[37]

Although the CIA developed under the PPP framework out of sheer necessity, it provided a concept for many subsequent airport project developers to follow and evolve. For example, the Airport Authority of India and the Karnataka State Industrial Investment & Development Corporation of India jointly hold only 26% equity in Bengaluru's Kempegowda International Airport ("**KIA**"). 43% of the equity is held by GVK[38] and the remaining by private promoters[39] Additionally, a GVK led consortium is also the majority shareholder, with 74% equity holding, in Mumbai's Chhatrapati Shivaji International Airport ("**CSIA**").[40]

Recently, India's first fully privatized Greenfield airport has also begun operations. Kazi Nazrul Islam Airport at Durgapur in West Bengal was privately built by Bengal Aerotropolis Private Limited and Singapore's Changi Airports International. In order to promote air traffic, the State Government has granted a tax waiver on air turbine fuel for six years. However, in order to attract more airline participation the airport may also need add further incentives like a waiver of landing and takeoff fees, and commitment to underwrite a minimum number of seats[41]

Airports, however small or remote play a vital role in supporting the economic interests of a particular state. Shimla's Jubbarhatti airport, located 2,196 meters above sea level in the State of Himachal Pradesh, has been shut for scheduled flights since September 6, 2012, affecting the flow of both tourists and businessmen to the State.[42]

28. Airport Authority of India, http://www.aai.aero/public_notices/aaisite_test/faq_Gen.jsp
29. Times of India "Ready for 3 yrs, Jaisalmer airport yet to see a take-off" available at: thttp://timesofindia.indiatimes.com/city/jaipur/Ready-for-3-yrs-Jaisalmer-airport-yet-see-a-take-off/articleshow/48229360.cms
30. Source: http://www.makeinindia.com/sector/aviation/
31. BusinessToday.in "Govt plans 200 low-cost airports to connect Tier-II, Tier-III towns" available at: http://www.businesstoday.in/sectors/aviation/govt-plans-new-low-cost-airports-for-small-town-connectivity/story/208429.html
32. Source: http://www.cidco.maharashtra.gov.in/nmia_abouttheprojects.aspx
33. Source: http://www.bloomberg.com/news/articles/2015-02-04/india-to-build-new-airport-as-modi-targets-middle-east-traffic
34. Source: http://www.business-standard.com/article/companies/aviation-ministry-clears-new-airport-in-ncr-115062600031_1.html
35. Source: http://www.business-standard.com/article/economy-policy/traffic-rise-in-old-airports-gives-a-boost-to-andhra-s-plan-to-build-6-new-runways-115122200787_1.html
36. The National Airports Authority was the government body regulating domestic airports in India prior to the establishment of the Airports Authority of India in 1994.
37. Source: http://cial.aero/contents/viewcontent.aspx?linkid=51
38. GVK is a leading Indian conglomerate with investments in various sectors including airports.
39. Source: http://www.gvk.com/ourbusiness/airports/kiabengaluru.aspx
40. Source: http://www.gvk.com/ourbusiness/airports/csiamumbai.aspx
41. Business Today In. "India's first private airport, at Durgapur, to be operational by April 14" (March 16, 2015), http://www.businesstoday.in/sectors/aviation/india-first-private-airport-to-be-operational-by-april-14/story/216986.html
42. Time of India "HC seeks report on shut Shimla airport" (October 13, 2015). Available at: http://timesofindia.indiatimes.com/city/shimla/Himachal-HC-seeks-report-on-shut-Shimla-airport/articleshow/49335366.cms

A writ petition[43] was filed by Paras Dhaulta alleging that the closed airport was affecting the state of Himachal Pradesh. By its order dated January 9, 2015[44] the court constituted a committee comprising top functionaries of the civil aviation ministry, Airports Authority of India and Air India to suggest measures to make the airport functional again. Recently, by its order dated October 12, 2015[45] the court directed this committee to submit a report within a week on resuming flights from Jubbarhatti airport. While the matter awaits adjudication, it will be interesting to see how the court deals with various regulatory issues which are discussed briefly in this paper.

43. Source: CWP No. 9800 of 2014, http://hphighcourt.nic.in/

44. Source: http://164.100.138.228/casest/generatenew.php?path=data/order/2015/&fname=CWP301571409 0115.pdf&smflag=N

45. Source: http://164.100.138.228/casest/generatenew.php?path=data/order/2015/&fname=CWP30157141210 15.pdf&smflag=N

3. Regulatory and Legislative Framework

Policy	Ministry of Civil Aviation Enters into International Agreements & Formulates National Policy
Legislation	Airport Authority Act, 1994 Governs Regulation of Airports Aircraft Act, 1934 & Aircraft Rules, 1937 Governs Regulation of Aircrafts Airports Economic Regulatory Authority of India Act, 2008 Governs Tariffs & Disputes between Airport Service Providers Suppression of Unlawful Acts Against Safety of Civil Aviation Act, 1982 Defines Offences in Relation to Civil Aviation Anti Hijacking Act, 2016 Provides for Penalties against Hijacking Carriage by Air Act, 1972 Defines Liability of Airlines in Case of Damage or Injury
Regulators	Airport Authority of India (AAI) Regulates Construction and Management of Airports Directorate General of Civil Aviation (DGCA) Regulates Safety & Operations of Aircrafts Bureau of Civil Aviation Security (BCAS) Regulates airport and airline security standards Airports Economic Regulatory Authority (AERA) Regulates tariffs and fees
International Agreement	Chicago Convention Facilitates Safe & Peaceful Development of Int'l Civil Aviation Chicago Convention Facilitates Safe & Peaceful Development of Int'l Civil Aviation Chicago Convention Facilitates Safe & Peaceful Development of Int'l Civil Aviation Bilateral Agreements Defines Specific Aspects of Int'l Flights Between State Parties

Entry 29, List I, VII Schedule read with Art. 246 of the Indian Constitution vests the Parliament of India with the exclusive jurisdiction to legislate in relation to '*Airports; aircraft and air navigation; provision of aerodromes*; regulation and organisation of air traffic and of aerodromes.' This centralised control over the aviation industry ensures that airports are set up in suitable locations which have the ability to deal with passenger and cargo inflow and support airport projects. State governments can approach the Central Government to acquire property for conducting aviation activities.[46]

While the overall legislative framework for the sector is provided primarily by the Airports Authority of India Act, 1994 and the Aircraft Act, 1934, the Ministry of Civil Aviation identifies key issues facing the aviation industry and provides policy to address the same.

I. Ministry of Civil Aviation ("MCA")

The MCA is responsible for formulating national policies and programs that help develop and regulate the Indian civil aviation sector. It administers the Aircraft Act and Rules, and various other aviation related legislations. The MCA also exercises administrative control over entities like the Directorate General of Civil Aviation ("**DGCA**")[47] and the Airports Authority of India ("**AAI**"), and has the authority to enter into Bilateral Airline Service Agreements with other countries.

Till date, the MCA has issued several policies including the Policy on Regional and Remote Area Air Connectivity, Policy Guidelines of Air Freight Stations, Policy for Training of Officers under IATA Training Programs, and Policy on Airport Infrastructure, 2011. Most recently, the MCA has released a comprehensive National Civil Aviation Policy, 2016.

46. Constitution of India, 1950 art. 31(2) emphasises that no property shall be compulsorily acquired except by the authority of law. This becomes relevant in the context of acquiring the land for projects like an International Airport for a public purpose.

47. The DGCA is constituted under the Aircrafts Act. For more information please refer section on Aircrafts Act, 1934

II. National Civil Aviation Policy, 2016 ("NCAP 2016")

The first version of the civil aviation policy was released in November 2014, but was vehemently opposed to by the industry which prevented its implementation. After revamping the original policy based on stakeholder suggestions, the Government released the NCAP, 2016 which focuses on to creating safe, secure, affordable and sustainable air travel that can be accessed by the masses across India.[48] A few of the key changes implemented by the NCAP 2016 are outlined below:

A. Regional Connectivity

The NCAP 2016 introduces a new Regional Connectivity Scheme ("**RCS**") which is to come into effect in the second quarter of 2016-2017. Under the RCS, the MCA targets an estimate airfare of INR 2,500 per passenger for flights travelling on RCS specified routes for a distance of approximately 500kms – 600kms. This reduced airfare is intended to be achieved through a revival of un/under – served airports / routes and the development of new No-Frills Airports (*costing INR 50 – 100 crore each*) through the combined contribution of both Central and State Governments. These airports may also be developed through a public private partnership with State Governments. Specifically, State Governments will (*for a period of 10 years*):

a. reduce VAT on Aviation Turbine Fuel at RCS airports to 1% or less;

b. provide land, multi-model hinterland (road rail, metro etc) connectivity, and police / fire services free of cost and as required;

c. provide power, water and other utilities at concessional rate.

48. Government of India, Ministry of Civil Aviation, 'National Civil Aviation Policy 2016', available at http://www.civilaviation.gov.in/sites/default/files/Final_NCAP_2016_15-06-2016-2_1.pdf

The Central Government shall also provide (*for a period of 10 years*) that:

1. no airport charges be levied for operations under RCS;
2. Landing, Parking and Terminal Navigation Landing charges be waived
3. Route Navigation and Facilitation charges be levied on a nominal basis
4. service tax on tickets be levied on 10% of the taxable value
5. airlines be permitted to operate ground handling services themselves at all RCS airports
6. airlines operating under the RCS be permitted to enter into code sharing agreements

Further, a reduced excise duty of 2% shall be levied on Aviation Fuel drawn by operators from the RCS airports for an initial period of three years. The Viability Gap Funding ("**VGF**") required to support the RCS shall be provided jointly by the Central (*through the MCA*) and State Governments. The MCA's share of the VGF shall be provided to the airline operator by establishing a Regional Connectively Fund ("**RCF**") which shall be operated by the Airports Authority of India. The RCF shall be funded by a levy notified by the Government at a future date under the Aircraft Act, 1934. Such levy shall be applicable to all domestic routes other than Cat II / Cat IIA routes, RCS routes and small aircrafts (*less than 80 seats*) irrespective of the routes, as well as any premium realized from the allotment of additional capacity entitlements on international routes.

Similar concessions have also been provided for cargo operations and air freighters operating from RCS airports.

B. 5/20 Requirement for International Operations

Since October of 2004 Indian airline operators have been permitted to fly international routes only if they have been flying domestic routes for 5 years and have a fleet of 20 aircrafts (*the "5/20 Rule"*). The issue of whether to keep the 5/20 rule has been a hotly debated topic with new / small airline operators arguing for a more level playing field. The Government has addressed the issue in the NCAP 2016 by allowing all domestic airline operators to fly international routes provided that they deploy 20 aircrafts or 20% of their total capacity (*determined in terms of average number of seats on all departures*), whichever is higher for domestic operations.

C. Maintenance, Repair and Overhaul

The Indian Maintenance, Repair and Overhaul ("**MRO**") sector is slowly gaining momentum which is highlighted by the fact that India currently has several MRO service providers like Air Works India Engineering, Max MRO Services, Horizon Aircraft Maintenance, and Aman Aviation & Aerospace Solutions which have earned European Aviation Safety Agency ("**EASA**") approval. However, approximately 90% of the total MRO business of Indian carriers is still spent outside India in countries like Sri Lanka, Singapore, Malaysia, and the UAE.[49] Based on India's technology and skill base, the Government is taking active steps to promote the use of domestic MRO services by carriers across Asia.[50] To this extent, the NCAP 2016 provides that:

a. foreign MRO experts will be provided visas promptly;

b. 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, subject to conditions;

c. Airport Entry Passes for MROs will be need based and not restricted if required conditions are met;

d. the MCA will try to ensure that State Governments notify MRO activities as 'zero-rated";

e. adequate land for MRO service providers will be made in all future airport/heliport projects, where possible; and

49. Government of India, Ministry of Civil Aviation, 'National Civil Aviation Policy 2016', available at http://www.civilaviation.gov.in/sites/default/files/Final_NCAP_2016_15-06-2016-2_1.pdf

50. Please refer to our section on FDI in Airports and other Sectors for more details on FDI policy changes promoting domestic MRO services

f. airport royalty and additional charges will not be levied on MRO service providers for a period of five years.

D. Ground Handling

Ground Handling Services (“**GHS**”) in India include services such as aircraft cleaning, cargo handling, transport services, ground support equipment, servicing/maintenance, and security. The NCAP 2016 provides that all domestic scheduled operators will be permitted to carry out self-handling at all airports by engaging either their own subsidiary or a third party ground handling service provider like Air India, Aviaxpert, Celebi/NAS etc. Foreign airlines continue to be prohibited from self-handling such services.

Further, airport operators are obligated to ensure that at least three ground handling service providers are available at all major airports to ensure fair competition. By permitting domestic scheduled airline operators to engage non-AAI ground handling service providers, the Government has dramatically transformed the MRO sector and has opened a significantly larger market opportunity for third party providers. With air traffic in India projected to triple over the next decade CAPA expects to see India become a USD1 billion ground handling market by 2023 .[51]

III. The Airports Authority of India Act, 1994 (“AAI Act”)

The AAI Act[52] provides a general framework under which airports in India are governed. Prior to the AAI Act, activities relating to the construction and management of airports were governed by the DGCA. [53] However, due to a growing aviation market, Parliament enacted the International Airports Authority of India Act, 1971 and the National Airports Authority Act, 1985. These statutes established the International Airports Authority of India (IAAI) to manage international airports and the National Airports Authority (NAA) to manage domestic airports, respectively. The DGCA’s jurisdiction was limited to regulating activities relating to aircrafts.[54] With an every growing market and the NAA unable to generate sufficient funds, Parliament saw the need to merge the NAA and IAAI into one authority which could more cohesively manage both domestic and international airports and civil centres whereat air transport services are operated.[55] Thus, the AAI Act was enacted and pursuant to section 2, the AAI was established.

As of January 1, 2016, the AAI manages a total of 125 airports/civil enclave, including 11 international airports, of which 71 have scheduled commercial operations.[56] Pursuant to section 12 of the AAI Act, the AAI’s main functions include the:

- construction, modification and management of passenger and cargo terminals;
- development and maintenance of infrastructure including runways, parallel taxiways, and aprons;
- management of air traffic services; and
- preservation of safety and order at airport premises and civil enclaves

51. CAPA-Center for Aviation, Aviation Analysis, “Third party ground handling business in India could increase by USD130 million overnight” (April 7, 2014) available at http://centreforaviation.com/analysis/third-party-ground-handling-business-in-india-could-increase-by-usd130-million-overnight-161630
52. Airports Authority of India Act, 1994 available at: http://civilaviation.gov.in/sites/default/files/moca_000719_0.pdf
53. The Airports Authority of India Act, 1994. Bare Act, Universal Law Publishing Company Pvt. Ltd. New Delhi, 2011.
54. For more information on the DGCA, please refer to the section on The Aircraft Act, 1934.
55. The Airports Authority of India Act, 1994. Bare Act, Universal Law Publishing Company Pvt. Ltd. New Delhi, 2011.
56. Government of India, Ministry of Civil Aviation, ‘National Civil Aviation Policy 2016’, Available at: http://www.civilaviation.gov.in/sites/default/files/Final_NCAP_2016_15-06-2016-2_1.pdf

The recently released NCAP 2016 provides an additional broad framework under which the AAI is to function. Specifically, the policy aims to guide the AAI towards investing in and maintaining airports which are in line with the MCA's overall goal of economic and commercial sustainability of the aviat sector in India.[57]

IV. The Aircraft Act, 1934 ("Aircraft Act") read with the Aircrafts Rules, 1937 ("Rules")

The primary function of the Aircraft Act[58] is to provide the Central Government with the power to make rules which govern aircrafts. Specifically, section 5 of the Aircraft Act states that the Central Government shall have the power to make rules regulating the manufacture, sale, use, operation, export/import, and safety of all civil aircrafts. The Rules themselves provide detailed regulations that need to be complied with in relation to:

- the inspection and control of the manufacture, repair and maintenance of aircrafts and of places where aircrafts are being manufactured, repaired or kept[59]
- the registration and marking of aircrafts[60]
- the licensing of persons employed in aircraft operation, manufacture, repair or maintenance[61]
- outlining a broad framework for aircraft airworthiness under which the DGCA can operate[62]

The Aircraft Act also establishes the DGCA as the principle administrative authority under the Central Government. Pursuant to section 5A, the DGCA is empowered to:

- implement provisions of the Rules, various international conventions, and the aviation policy of the Central Government;
- establish safety guidelines for the airworthiness of an aircraft, and register and certify aircrafts pursuant to such guidelines;
- grant licenses to pilots, aircraft maintenance engineers, and monitoring of flight crew; and
- advise the Central Government on matters pertaining to civil aviation.

The DGCA is also responsible for issuing the Civil Aviation Requirements ("**CAR**"). While the broad principles of law are contained in the Aircraft Act and Rules, CAR specifies detailed requirements and compliance procedures including those with regard to obligations India has as a Contracting State under the Chicago Convention.[63] By issuing CAR, the DGCA aims to standardize and harmonize aviation requirements with the rules and regulations of other regulatory authorities, and implement recommendations of courts of inquiry and other committees constituted by the Central Government to deal with aircraft safety and operation. Non-compliance with CAR attracts such penalties as fine up to Rs. 10 lakhs and/or imprisonment up to 2 years, as provided under Schedule VI of the Aircraft Rules, 1937.

V. Other Legislations

A. The Airports Economic Regulatory Authority of India Act, 2008 ("AERA Act")

In 2008, the AERA Act established the Airports Economic Regulatory Authority ("**AERA**") of India.

57. Government of India, Ministry of Civil Aviation, 'National Civil Aviation Policy 2016', Available at: http://www.civilaviation.gov.in/sites/default/files/Final_NCAP_2016_15-06-2016-2_1.pdf
58. The Aircraft Act, 1934, available at http://dgca.nic.in/airact/aircraftact.pdf
59. Aircraft Rules, 1937, Parts XII-B, and XIII-A, available at http://dgca.nic.in/rules/1937-ind.htm
60. Aircraft Rules, 1937, Part IV, available at http://dgca.nic.in/rules/1937-ind.htm
61. Aircraft Rules, 1937, Parts V and XII, available at http://dgca.nic.in/rules/1937-ind.htm
62. Aircraft Rules, 1937, Part VI, available at http://dgca.nic.in/rules/1937-ind.htm
63. For more information on the Chicago Convention please refer to the section on "International Conventions"

AERA's function is to help create a level playing field and foster healthy competition amongst all major airports, encourage investment in airport facilities, regulate tariffs on aeronautical services, and monitor airport performance standards. Pursuant to section 17, the AERA Act also established the Appellate Tribunal which adjudicates disputes between the service providers inter se and between service providers and consumer groups. It also hears appeals brought against any order or direction of AERA.

In a recent example of regulatory powers exercised by AERA, the Mumbai International Airport Ltd ("**MIAL**"), which was seeking a further upward revision in airport charges, has been made to wait till late November, 2015 as AERA decided to continue with the existing rates. The AERA, in an order dated August 24, 2015[64] stated that rates approved in its order of January 15, 2013,[65] wherein it had approved a 154% hike in the development fee from passengers are to continue till the end of November 2015 or till the time that tariffs for the second five-year control period (*2014-2019*) are determined. This had resulted in an increase in the general ticket prices for passengers. However, by denying MIAL's attempt to seek further increase in airport charges, the AERA has used its powers to ensure that passengers do not have to be faced with such recurring increase in costs at a frequent basis without due consultation and study.

In another case, AERA had approved of a 346 % hike in aeronautical tariff in an order dated April 20, 2012,[66] wherein Delhi International Airport Limited ("**DIAL**") had sought an almost 800 per cent increase earlier. This resulted in Air travel getting costlier from Delhi. This also increased the costs of the airlines. The Federation of Indian Airlines ('**FIA**") thereafter filed an appeal[67] before the Airport Economic Regulatory Authority Appellate Tribunal ("**AERAAT**") which has been pending adjudication for quite some time.

In fact, on January 22, 2015, the Delhi High Court directed the AERAAT to decide the pleas before it challenging the aeronautical tariffs for the April 2009 – March 2014 period. The court passed the order on the plea of GMR-operated DIAL which had challenged the Delhi High Court single judge's decision allowing AERA to fix new tariff for the period from 2014 to 2019 even when the dispute against the earlier one was pending before **AERAAT**.[68] It is opined amongst many that such a drastic increase in airport charges resulted in Delhi losing out on the opportunity of becoming a global aviation hub.[69]

B. The Carriage by Air Act, 1972 ("Carriage Act") and Carriage by Air Amendment Act, 2009 ("Carriage Amendment")

The Carriage Act primarily sets out the scope of liability for carriers/operators in case of damage, bodily injury, or death sustained by a passenger during the course of air travel. It extends to the whole of India and also applies to international carriers having passengers who are Indian citizens. The Carriage Amendment was enacted in order to codify the obligations India entered into upon ratifying the Montreal Convention with regard to liabilities owed to families of victims.

C. The Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982

The Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982 gives effect to the provisions of The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation which was signed by India on December 11, 1972 and ratified

64. [F. No. AERA/20010/MYTP/MIAL/CP-II/2013-14!V01- II], AERA, Order No. 26/ 2015-16, http://aera.gov.in/upload/order/55daf45ea5680MIAL.pdf

65. File No. AERA/20010/MYTP/MIAL/2011-12-IV, AERA, Order No. 32/2012-13, http://aera.gov.in/upload/order/542b8cb7da54d283.pdf

66. Order No. 03/2012-13 dated 20.04.2012

67. Federation of Indian Airlines vs AERA & Anr (DIAL), Appeal No. 06 of 2012 with I.A. No. 10 of 2012, AERAAT

68. http://www.business-standard.com/article/pti-stories/current-airport-tariffs-to-continue-till-aeraat-decision-hc-115012201363_1.html

69. http://www.livemint.com/Companies/XywoiuCLJ7kmgmVh-JK91XP/Foreign-carriers-threaten-to-stop-services-to-Delhi.html

on the November 12, 1982.[70] It defines offences in relation to civil aviation and provides corresponding penal sanctions.

D. The Anti-Hijacking Act, 2016 ("Anti-Hijacking Act")

Recently, the Government has notified the new Anti-Hijacking Act which replaces the nearly 35 year-old Anti-Hijacking Act of 1982. Like its predecessor, the new Anti-Hijacking Act gives effect to the provisions of The Convention for the Suppression of Unlawful Seizure of Aircraft which India ratified on November 12, 1982.[71] However, it also implements the convention's Protocol Supplementary, which India signed on September 10, 2010.[72] Responding to advances in technology, the Anti-Hijacking Act now includes technological intervention and intimidation within the definition of 'hijacking', and provides for the death penalty in instances where hostages or the crew have suffered death. Further, the Anti-Hijacking Act expands the scope of criminal liability to include any person who not only commits, but also threatens to commit the crime of hijacking, and persons who knowingly assist an offender to evade investigation, prosecution or punishment.

VI. International Conventions

A. Chicago Convention on International Civil Aviation, 1944 ("Chicago Convention")

India ratified the Chicago Convention on March 1, 1947,[73] and in doing so it bound itself to the principle tenets of the Convention which include the safe and peaceful development and operation of international air travel. The Convention requires that Contracting States ensure that their aircrafts do not cross jurisdictions and that one Contracting State's aviation services do not interfere with another's. These broad principles are reflected in many Indian aviation rules and statutes like the DGCA's Civil Aviation Requirements. Pursuant to this Convention, India also became one of the founding members of the International Civil Aviation Organization (**"ICAO"**) which codifies the principles and techniques set forth in the Chicago Convention.

B. Convention for the Unification of Certain Rules for International Carriage by Air, 1999 ("Montreal Convention")

India ratified the Montreal Convention on May 1, 2009.[74] The Montreal Convention was brought about mainly to amend and harmonize the scope of liabilities to be paid to families for death or injury whilst on board an aircraft. The Montreal Convention has been incorporated into the Carriage by Air Act, 1972 through the Carriage by Air (Amendment) Act, 2009 in India.[75]

C. The Cape Town Convention on International Interests in Mobile Equipment, 2001 ("Cape Town Convention")

The Cape Town Convention standardizes transactions involving movable property. It creates standards for registration of ownership, security interests, leases and conditional sales, and various legal remedies for default in financing agreements, including repossession and

70. International Civil Aviation Organization, Legal Affairs and External Relations Bureau. Available at http://www.icao.int/secretariat/legal/List%20of%20Parties/Mtl71_EN.pdf

71. International Civil Aviation Organization, Legal Affairs and External Relations Bureau. Available at http://www.icao.int/secretariat/legal/List%20of%20Parties/Hague_EN.pdf

72. International Civil Aviation Organization, Legal Affairs and External Relations Bureau. Available at http://www.icao.int/secretariat/legal/List%20of%20Parties/Beijing_Prot_EN.pdf

73. International Civil Aviation Organization, Legal Affairs and External Relations Bureau. Available at http://www.icao.int/secretariat/legal/lists/current%20lists%20of%20parties/allitems.aspx

74. International Civil Aviation Organization, Legal Affairs and External Relations Bureau. Available at http://www.icao.int/secretariat/legal/lists/current%20lists%20of%20parties/allitems.aspx

75. Carriage by Air Act, 1972, section 4A

the effect of particular states' bankruptcy laws. The Protocol to the Cape Town Convention makes these provisions applicable to aircraft objects. India ratified both the Convention and the Protocol on March 31, 2008. [76]

VII. Bilateral Agreements

India has entered into a number of bilateral air services agreements (ASAs) with various countries. These ASAs set out negotiated terms on issues like which airlines are permitted to fly between the contracting States and the number of flights and seat quotas allotted to each State. India has also implemented an "Open Skies" policy with certain countries. Under this policy both contracting States agree to permit unlimited flight and seat quotas to the other contracting State. In 2005, India entered into an Open Skies agreement with the Unite States.[77] This agreement also provided for code-sharing between US and Indian airlines. India has also entered into Open Skies bilateral agreements with Sri Lanka and Thailand. Pursuant to the NCAP 2016, the Government intends to liberalise the bilateral ASA regime in order to provide greater ease of conducting international operations and tapping into the global passenger market. To this extent, the Government has committed to enter into Open Skies bilateral agreements on a reciprocal basis with SAARC countries and countries which fall entirely outside a 5000km radius from New Delhi. Currently, only Air India, Air India Express, Jet Airways, Indigo and Spice Jet are permitted to fly overseas; however the fact that the NCAP 2016 has done away with the 5/20 Rule,[78] India is likely to see many more airline operators take advantage of India's ASA. This move may also further improve conditions for foreign investment into domestic airlines.

76. International Civil Aviation Organization, Legal Affairs and External Relations Bureau. Available at http://www.icao.int/secretariat/legal/lists/current%20lists%20of%20parties/allitems.aspx

77. CAPA- Center for Aviation "India, US sign 'Open Skies' aviation agreement" (April 18, 2005) available at http://centreforaviation.com/analysis/india-us-sign-open-skies-aviation-agreement-8

78. Please refer to our section on 'National Civil Aviation Policy, 2016" for more information on the 5/20 Rule.

4. Opportunities for Foreign Investment in the Aviation Sector

Foreign investment in India is governed by the provisions of the Foreign Exchange Management Act, 1999 ("**FEMA**"), the regulations made thereunder by the Reserve Bank of India ("**RBI**"), and the Industrial Policy and Procedures issued by the Department of Industrial Policy and Promotion, the Secretariat for Industrial Assistance, the Ministry of Commerce and Industry, and the Central Government (the "**FDI Policy**").

Foreign investors are permitted under the FDI policy to invest in helicopter services/seaplane services, ground handling services, maintenance and repair organizations, flying training institutes, and technical training institutions. However, the most significant foreign direct investments have traditionally been undertaken in airports and airline operators.

I. Investment in Airline Operators

A significant amount of the total FDI in the Aviation sector is made in companies operating Scheduled and Non-Scheduled domestic passenger airlines. Scheduled Operators provide air transport services between two or more places and operate according to a published time table or with flights so regular or frequent that they constitute a recognizably systematic series, each flight being open to use by members of the public. Whereas, Non-Scheduled Operators provide air transport services that may be on charter basis and/or a non-scheduled basis. Such operators are not permitted to publish time schedules or issue tickets to passengers.

To obtain status as a Scheduled or Non-Scheduled Operator the applicant must either be an Indian citizen, or a company which has its principal place of business within India, its chairman and at least 2/3 of its directors must be citizens of India, and its substantial ownership and effective control should be vested in Indian nationals. The applicant must also meet certain other requirements which are outlined in Annexure 1.

A. FDI[79] in Civil Air Transportation Services

Up to 49% FDI is permitted in Scheduled Air Transport Services/Domestic Scheduled Passenger Airlines and Regional Air Transport Services through the automatic route. NRI's are permitted a full 100% FDI in these segments under the automatic route.

Further, 100% FDI is also permitted in Non Scheduled Air Transport Service[80] and Helicopter and Sea Plane Services requiring DGCA permission through the automatic route.

B. FDI by Foreign Airlines

Prior to 2012 foreign airline companies were prohibited from investing in both Scheduled and Non-Scheduled airlines. However, pursuant to Press Note 6 of 2012 issued by the Ministry of Commerce and Industry,[81] the Government opened the segment to FDI by foreign airlines.[82] Currently, FDI is only permitted up to 49% of the company's paid up capital, and must be done through the government approval route. Further, the cap of 49% includes both FDI and FPI/FII investments. All foreign nationals likely to be associated with the Scheduled and Non-Scheduled air transport service must first obtain security clearance and all technical equipment imported as result of the investment shall require clearance from the Ministry of Civil Aviation. It should also be noted that to acquire a Scheduled or Non-Scheduled Operator's permit, substantial ownership and effective control and management of the company must remain within India.

79. All FDI limits stated in this paper are pursuant to the Department of Industrial Policy and Promotion Ministry of Commerce and Industry Government of India, Consolidated FDI Policy, 2016 (Effective June 7, 2016) available at: http://dipp.nic.in/English/Policies/FDI_Circular_2016.pdf

80. Non-Scheduled Operators include cargo carriers

81. The term 'Foreign Airlines' is not defined under Indian law, however the generic definition would mean an airline which is registered outside the territory of India.

82. Investment by foreign airlines into Air India continue to remain prohibited.

Foreign airlines are permitted to invest in the equity capital of companies operating Cargo airlines, and helicopter and seaplane services, as per the limits and entry routes mentioned in this chapter.

II. Investment in Airports

The airport segment of the aviation sector is growing to meet the demands of increased passengers. The expected 300% increase in passenger numbers over the next decade will require a significant investment in airport infrastructure. Recognizing this need and the fact that the AAI itself has neither the capital nor the expertise to grow at such scale, the Government has adopted the Public-Private Partnership ("**PPP**") model for several airport projects.[83] As of March 2015, there are 5 international airports functioning under the PPP model,[84] and these account for approximately 60% of total passenger traffic in the country.[85] Recently, the Government has furthered its efforts to encourage the use of the PPP model for developing airports. For example, pursuant to the NCAP 2016, the MCA has committed to coordinate with respective ministries and State Governments to provide multi-modal hinterland connectivity (road, rail, metro, waterways, etc) for the success of airport projects.[86] It has also ensured that it will coordinate with AERA, AAI, airlines, airport operators and stakeholders including cargo, MRO, and ground handling service providers to identify ways to bring down airport charges, while still honoring the provisions of existing agreements.[87]

While foreign airport operators like Malaysia Airports, Airports Company of South Africa, and Zurich Airport, already hold majority shares in these PPP model airports,[88] the Government has also opened FDI in the aviation sector for foreign airlines.

A. FDI in Airports and Other Services

Pursuant to the 2016 Consolidated FDI Policy the Central Government allows 100% automatic investment in Greenfield airport projects. FDI in existing airport projects is also 100%, however only up to 74% is permitted through the automatic route.

FDI up to 100% is allowed through automatic route in maintenance and repair organizations, flying training institutes, technical training institution, and ground handling services, subject to sectoral regulations and security clearances.

83. CAPA-Center for Aviation, "India's airport sector vibrant, with tenders for six PPP concessions: CAPA Mumbai Summit, 3/4 Feb" (January 20, 2015) available at: http://centreforaviation.com/analysis/indias-airport-sector-vibrant-with-tenders-for-six-ppp-concessions-capa-mumbai-summit-34-feb-205433

84. Indira Gandhi International Airport, Delhi; Chattrapati Shivaji International Airport, Mumbai; Rajiv Gandhi International Airport, Hyderabad; Kempe Gowda International Airport, Bengaluru; and Cochin International Airport, Kochi

85. Ministry of Finance, Government of India, Public Private Partnerships in India. Available at: http://pppinindia.com/sector-airports.php

86. Government of India, Ministry of Civil Aviation, 'National Civil Aviation Policy 2016', Available at: http://www.civilaviation.gov.in/sites/default/files/Final_NCAP_2016_15-06-2016-2_1.pdf

87. Government of India, Ministry of Civil Aviation, 'National Civil Aviation Policy 2016', Available at: http://www.civilaviation.gov.in/sites/default/files/Final_NCAP_2016_15-06-2016-2_1.pdf

88. CAPA-Center for Aviation, available at: http://centreforaviation.com/analysis/indias-airport-sector-vibrant-with-tenders-for-six-ppp-concessions-capa-mumbai-summit-34-feb-205433

5. Fuel Hedging in India

Fuel hedging is a widely practiced method by which international airlines are able to reduce risks associated with drastically fluctuating fuel prices. Hedging broadly consists of speculating at what price ATF will be sold at in the future. Airlines then enter into agreements with their ATF suppliers to purchase fuel at that pre-determined price regardless of what the fair market value may be at the time of purchase. This practice locks in the price of future fuel purchases, thereby stabilizing the expense incurred by airlines on the purchase of ATF.

Indian carriers operate in an exceptionally high-cost environment. The single largest element contributing to airline costs is ATF which accounts for nearly 40% of all expenditure, whereas it only constitutes 20% international carriers. Additionally, ATF in India is priced, on average, almost 60% higher than international pricing. The widening differential in ATF prices and its negative impact on airline finances are eroding Indian airline competitiveness.[89]

While fuel hedging seems like an ideal way to combat losses incurred due to high ATF costs, it is interesting to note how few India airlines actually hedge ATF prices. One reason for this lack of practice is the fact that domestic carriers are only permitting to hedge their price risk on ATF in overseas exchanges or Over the Counter ("**OTC**") markets. Such hedging may only be done with the prior approval of the RBI and is also subject to the Foreign Exchange Management (*Foreign Exchange Derivative Contracts*) Regulations, 2000. Specifically, RBI Circular No. 66 dated May 31, 2007 provides that AD Category – I Banks may permit domestic airlines to hedge their economic exposures in the international commodity exchanges based on their domestic purchases. If the risk profile warrants, the actual users of ATF may also use OTC contracts.[90]

However, among the several internationally flying airlines in India, Air India is the only airline that consistently hedges fuel costs. In fact, it was the first airline to be permitted to hedge when it signed an International Swap Dealer's Association deal with ICICI Bank in 2003. While Jet Airways has also been granted approval by RBI,[91] IndiGo (India's largest airline) SpiceJet, AirAsia India and GoAir do not generally hedge their fuel prices.[92] One possible reason for this lack-luster activity in ATF hedging may be due to the highly volatile nature of fuel prices. A recent drop has resulted in carriers like Singapore Airlines to incur heavy losses as their locked-in fuel prices have now become much higher than fair market value.[93]

89. Para 11.100, Chapter 11, Energy, Infrastructure and Communications, Economic Survey of India 2010-2011, available at www.indiabudget.nic.in

90. In practice, fuel price risk can be managed in a number of ways, including by way of OTC contracts such as forward contracts, futures contracts, options, collars, swaps etc.

91. Hindu Business Online, "Jet Airways Fares Better" (April 30, 2006) available at http://www.hinduonnet.com/thehindu/2006/04/30/stories/2006043005171500.htm

92. The Financial Express, "Jet Airways to keep it simple as ATF hedging backfires for other carriers" (October 9, 2015) available at: http://www.financialexpress.com/article/industry/companies/jet-airways-to-keep-it-simple-as-atf-hedging-backfires-for-other-carriers/41027/

93. The Financial Express, "Jet Airways to keep it simple as ATF hedging backfires for other carriers" (October 9, 2015) available at: http://www.financialexpress.com/article/industry/companies/jet-airways-to-keep-it-simple-as-atf-hedging-backfires-for-other-carriers/41027/

6. Ownership of Private Aircrafts

Owning a private aircraft in India can be done in several ways. The simplest of course involves buying an aircraft already located in India from its current owner or a jet manufacturer. However, considering that the number of private jets in India is limited (not to mention that many would like their jet customized to their specific needs) and that such jets are not domestically manufactured, chances are that the private aircraft will need to be imported from abroad. An aircraft is typically imported into India by a company either having a Scheduled or Non-Scheduled Operator's permit which allows the importer to provide air transportation services. Commercial air transportation, like the service provided by well-known airlines like Indigo and Jet Airways, is undertaken with a Scheduled Operator's permit, while charter plane services are offered by companies holding Non-Scheduled Operator permits. However, aircrafts can also be imported to, and operated in India under the category of 'private aircraft'. A private aircraft includes any aircraft which is not operated for hire or reward or for any kind of remuneration whatsoever.[94]

The stage for private jet ownership in India is currently dominated by the likes of the Ambani brothers, Vijay Mallaya, and Lakshmi Mittal.[95] While these billionaires travel in style with luxury jets priced anywhere from USD 30 million over USD 70 million,[96] corporate executives of all sorts are starting to find that private jets are not only about status, but also provide the most time efficient way to travel. As such, third-party companies like JetSetGo and Club One Air offer private jet charter services in India. However for frequent travelers flying more than 50 hours per year in private charters, some Indian charter service providers have also starting providing the option of fractional ownership. The concept of fractional ownership of aircrafts is commonly believed to have been first introduced in the United States by a company called NetJets in 1986.[97] Essentially, the fractional ownership model provides for an individual (or company, as the case may be) to purchase a part of an aircraft for a fraction of what it would cost to buy the whole aircraft outright. Fractional ownership programs operate through a series of agreements between the various aircraft owners and the service provider (*ie the operator*), and are formally governed by the Federal Aviation Regulations ("**FARs**") in the United States. Although the fractional owner enters into an agreement to buy a fraction of a specific aircraft, the terms of the agreement generally grant him access to any number of jets in the service provider's fleet.[98] This helps ensure that the owner enjoys the reliability of guaranteed jet availability with as little as 4 – 6 hours' notice and does not need to deal with any of the day to day management of the aircraft.[99] Further, fractional ownership in the United States is tantamount to actual ownership for all tax and regulatory purposes. Accordingly, the aircraft is shown as a capital assets in the owner's books and depreciation may be claimed on the same. At the end of a pre-determined lock-in period the service provider typically guarantees liquidity and repurchase of the owner's share at fair market value.[100]

In India, the concept of fractional ownership has yet to take off. Only a few Indian companies, like JetSetGo, actually offer the service. Although the basic concept is modelled off of the programs in the United States, fractional ownership in India generally offers a fractional interest in an aircraft. Typically an interested party may purchase 1/16th of an aircraft which also buys you 50 hours of flight time for a pre-set period of time, say 5 years. Like the programs in the United States, a fractional owner is guaranteed a jet at short notice and has control over its take-off time, destination and flight path. However, at the end of the 5 year period, companies like JetSetGo do not buy back the share or interest

94. Government of India, Office of the Directorate General of Civil Aviation, "Civil Aviation Requirement Section-2 Series F Part III," Note 4. Available at: http://dgca.nic.in/ftppub/d2f-f3.pdf

95. The most Expensive Journal, "8 most expensive private jets owned by Indian billionaires" Available at: http://most-expensive.com/private-jet-indian-billionaires

96. The most Expensive Journal, "8 most expensive private jets owned by Indian billionaires" Available at: http://most-expensive.com/private-jet-indian-billionaires

97. Aircraft Owners and Pilots Association (AOPA), AOPA's Pilot Information Center, "Fractional Ownership: Overview". Available at: https://www.aopa.org/training-and-safety/pic-archive/aircraft-ownership/fractional-ownership-overview

98. Fractional Jet Ownership "FAQ's and Legal Questions" Available at: http://www.fractionaljetowners.com/faqs

99. https://www.netjets.com/Programs/NetJets-Share/

100. https://www.netjets.com/Programs/NetJets-Share/

in the jet. As such, fractional ownership in India operates more like a lease agreement which expires at the end of its terms.

Another significant difference between fractional ownership in the United States and in India, is that India does not provide a specific set of regulations to govern fractional ownership programs. As such, it is difficult to determine whether tax authorities would treat the fraction of the aircraft as a capital asset owned by the tax payer. Under FAR in the United States, fractional owners are determined to have "operational control" over their aircraft if they exercise authority over initiating, conducting or terminating a flight. Such control is also considered sufficient to meet the "possession, command and control" test required to determine ownership for United States tax purposes. However, without such regulations in India, coupled with the fact that the Indian business model suggests that fractional ownership agreements are more akin to lease agreements since 'ownership' simply expires at the end of the term instead of being bought back by the service provider, makes it difficult to determine whether fractional ownership would qualify for depreciation under the ITA. Specifically, the ITA provides for depreciation to be deducted at the rate of 40% on aircrafts which are *owned, wholly or partly, by the assessee and used for the purposes of the business or profession.* While the intention to allow depreciation for part ownership is self-evident, what is less clear is whether fractional ownership, as provided for in India, would amount to ownership for tax purposes. Although it has been settled through case law that the term "owned" for purposes of depreciation must be interpreted broadly and does not require the assessee to have legal title of the asset, the assessee must have still have *dominion over the property as would enable others [to be] excluded therefrom and [have] the right to use and occupy the property or to enjoy its usufruct in his own right.*" [101] freely. However, as long as such terms do not amount to the assessee simply having a lease over the aircraft, and provide the fractional owner an unfettered right to use the aircraft, depreciation should be allowable.

101. Mysore minerals v CIT 239 ITS 775

7. Competition Law

The Competition Commission of India ("**CCI**") is another important regulator in the sphere of the aviation industry and is empowered by the Competition Act, 2002 to ensure that participants do not indulge in anti-competitive practice. The CCI has kept a close watch and investigated a number of cases in the aviation sector under Section 3 and Section 4 of the Act.[102] A few of the issues dealt with by the CCI are discussed below.

I. Cartels and Abuse of Dominance

In the case of *Uniglobe Mod Travels Pvt. Ltd. v. Travel Agents Federation of India & ors ("Uniglode").*[103] The CCI found the cartelization of travel agents and penalized them for breach of Section 3 of the Act. The issue arose when foreign airlines, such as Singapore Airlines etc. and domestic airlines such as Jet, Kingfisher etc. issued notices to the travel agents to move from the "commission" based model of remuneration to "transaction" based model. This was a shift from prior practice wherein the travel agents had been getting a fixed commission by the airlines on every ticket sold by them to a transaction fee model wherein the travel agent charge the passenger according to the services rendered and the bouquet of services offered. The travel agents were reluctant to adopt the new model since the commission based model ensured that they got an assured return on each ticket sold.

Therefore, through their respective associations, travel agents formed an agreement to boycott the decision and subsequently stopped booking ticket for these Airlines. This particular action pressurized the domestic airlines operators into revoking their decision of switching to the transaction based model. The foreign airlines however maintained their stance. The Informant, Uniglobe Mod, a travel agent rendering various travel services, boycotted such an arrangement and continued to render services to the Foreign Airlines. This resulted in the informant's expulsion from the association on account of non-adherence to the terms and conditions laid down by them. The informant therefore filed a complaint under Section 19(1)(a) of the Competition Act alleging that the travel agents had entered into anti-competitive agreements amongst themselves. The CCI, on completing an investigation, found the Travel Agents association to be in contravention of Section 3(1) and 3(3)(b) of the Act given the fact that three fourth of the tickets were booked through agents. This established the fact that they held substantial market power. The CCI therefore directed them to refrain from indulging in such anti-competitive practices in future and also imposed a penalty upon them. The parties aggrieved with the order approached the Competition Appellate Tribunal ('**COMPAT**") which upheld CCI's order[104]

II. Code-Sharing Agreements

Often, instead of entering into full-fledged mergers or acquisitions, airlines choose to achieve joint synergies by entering into mutual exchange contracts. One such contract is a Code-Sharing Agreement (CSA). CSAs have come into prominence with the advent and increase in the use of computer reservations systems on the internet. A CSA essentially allows for a flight operated by one carrier, also to be marketed by another carrier, under that other carrier's code and flight number. For instance, Indigo airlines (operating with flight no. IN 3204) may have a code-sharing agreement with Jet Airways (which operates with flight no. JT 2434) for a specific route. In such a situation, Jet Airways would be permitted to market and sell the seats on Indigo airlines under its flight number for a specific route. The carrier operating the flight is known as the "operating

102. Directorate For Financial and Enterprise Affairs Competition Committee, Airline Competition – Note by India (dated June, 3 2014, page 10), available at http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/WD(2014)71&docLanguage=En

103. Uniglobe Mod Travels Pvt. Ltd. v. Travel Agents Association of India & Ors, Case No. 03/2009, available at, http://www.cci.gov.in/May2011/OrderOfCommission/UniGlobeMain

104. Appeal No. 08 of 2012/ I.A. No. 08/ 2012, http://compat.nic.in/upload/PDFs/julyordersApp2013/10_07_13.pdf

carrier" (Indigo airlines), while the carrier marketing the flight under its own code is known as the "marketing carrier" (Jet Airways).

The underlying motivation of airlines entering into such agreements is to broaden the number of destinations and flight timings they can offer their passengers without incurring the costs and difficulties associated with investing in additional equipment, or merging with another airline. CSAs also enhance the presence of an airline in markets where it would otherwise have no profile, and hence facilitate the marketing of its services, allowing its seats to be sold via a marketing carrier which may be much better known in that market.[105]

It is important to note that the Government has recently addressed the issue of code-sharing agreements between domestic and foreign airline operators under the NCAP 2016.[106] Specifically, the policy provides that all domestic carriers will be free to enter into code-share agreements with foreign carriers to any point in India available under the relevant ASA. Further, designated Indian carriers will be permitted to enter into international code-share agreements without obtaining the prior approval of the MCA.

Apart from code-sharing, it is pertinent to note that airlines can form cooperative marketing alliances which cover a wide array of joint activities. In general, alliances may include cost-reduction initiatives (sharing or consolidating airport facilities such as gates, lounges, sharing the ground handling services, etc.), schedule and gate coordination to provide more convenient connections between flights of alliance partners, and frequent-flyer program and/or airport lounge reciprocity etc.[107]

However, as in cases of mergers and acquisitions, if the purpose for entering into any of these agreements is to dominate or control and has an appreciable adverse effect on competition in the market, the CCI may pass orders directing parties to discontinue such agreements and impose monetary penalties.[108]

105. Steer Davies Gleave, Competition Impact of Airline Code-Share Agreements, Final Report, January 2007, prepared for European Commission, DG Competition, available at http://ec.europa.eu/competition/sectors/transport/reports/airlinecodeshare.pdf

106. Government of India, Ministry of Civil Aviation, 'National Civil Aviation Policy 2016', available at http://www.civilaviation.gov.in/sites/default/files/Final_NCAP_2016_15-06-2016-2_1.pdf

107. Harumi Ito, Darin Lee, Domestic Code Sharing, Alliances, and Airfares in the U.S. Airline Industry, Journal of Law and Economics, May 2007, 50 J.L. & Econ. 355.

108. . Section 43 in Chapter VI of the Act, whereby the penalty which can be imposed may vary from Rs. 100,000 per day during the period of non-compliance, and which may extend up to Rs. 250,000,000. Also, person refusing to pay the penalty may be imprisoned for a period which may extend up to 3 years or with penalty or both

8. Taxation

I. Corporate Income Tax

Income tax in India is levied under the Income Tax Act, 1961 ("**ITA**"). While residents are taxed on their worldwide income, nonresidents are only taxed on income arising from sources in India. A company is said to be resident in India if it is incorporated in India or its place of effective management is located in India.[109]

Resident companies are taxed at the rate of 30% ,[110] while non-resident companies are taxed at the rate of 40%. A minimum alternative tax is payable by resident, and in certain circumstances, non-resident companies at the rate of around 18.5%.

The Indian Finance Minister in his budget speech in 2015 had proposed to reduce the headline domestic corporate tax rate from 30% to 25% over the next four years, accompanied by a corresponding phasing out of the various exemptions and deductions available under the ITA. The Finance Act, 2016 began this process by reducing the domestic corporate tax rate to 29%, for those companies whose total turnover or gross receipts in financial year 2014-15 (i.e., April 1, 2014 to March 31, 2015) does not exceed INR 50 million.

II. Dividends

Dividends distributed by Indian companies are subject to a dividend distribution tax ("**DDT**") at the rate of around 15% (calculated on a gross-up basis), payable by the company. However, no further Indian taxes are payable by the shareholders on such dividend income once DDT is paid. Accordingly, there should be no withholding tax applicable on the payment of dividends to a non-resident.

The Finance Act, 2016 has levied a tax at the rate of 10% on dividends received from a domestic company, by a resident individual or firm, where the amount of dividend received exceeds INR 1 million. Dividends received from a domestic company by a non-resident company should continue to be Indian tax exempt in the hands of the foreign company, provided that DDT has been paid by the distributing domestic company.

A. Interest, Royalties and Fees for Technical Services

Interest earned by a non-resident may be taxed at rates ranging between 5% to around 40%, depending on the nature of the debt instrument.

The withholding tax on royalties and fees for technical services earned by a non-resident is 10%. These rates are subject to available relief under an applicable tax treaty. In this context, it is important to note that the definition of royalties and fees for technical services under Indian domestic law is much wider than the definition under most tax treaties signed by India.

III. Capital Gains

Gains earned by a resident company from the transfer of capital assets situated anywhere in the world are taxable in India. In the case of non-residents, only those gains arising out of the transfer of a capital asset in India should be taxable.[111] The tax treatment of capital gains depends mainly on whether the gains are short term or long term. Short term capital gains arise upon the transfer of assets held by a taxpayer for a period of 36 months or less before the date of transfer (12 months or less in the case of securities listed on a recognized stock exchange in India, and 24 months in the case of unlisted shares of an Indian com-

109. India introduced the 'place of effective management ("POEM") test for determining the residential status of a company in 2016. Under the POEM test, a company is said to be resident in India if it is incorporated in India or; if its place of effective management is in India. POEM has been defined to mean the place where key management decisions that are necessary for the conduct of the business of an entity as a whole are, in substance made. Until the introduction of POEM, foreign companies were characterized as being tax resident of India only on the satisfaction of the 'control and management' test, which required that the foreign company's control and management be wholly situated in India.

110. All tax rates are applicable to Financial Year 2016-17 and are exclusive of surcharge and education cess.

111. Having said that, India has recently introduced a rule to tax non-residents on the transfer of foreign securities the value of which are substantially (directly or indirectly) derived from assets situated in India.

pany). Long term capital gains arise upon the transfer of a capital asset held for a period of more than 36 months (12 months in the case of listed securities and 24 months in the case of unlisted shares of an Indian company).

Short term capital gains arising from the transfer of a listed equity share are taxable at the beneficial rate of 15%, while long term capital gains arising from the transfer of listed equity share are tax exempt.

Short term capital gains arising from the transfer of any other capital asset are taxed at the corporate tax rate of 30%, while long term capital gains arising from the transfer of such other capital assets are subject to tax at the rate of 20% .[112]

An Indian company would also be taxed at the rate of around 20% on gains arising to shareholders from distributions made in the course of a buy-back or redemption of shares.

IV. Withholding Taxes

Tax would have to be withheld at the applicable rate on all payments made to a non-resident, which are taxable in India. The obligation to withhold tax applies to both residents and non-residents. Withholding tax obligations may also arise with respect to specific payments made to residents and the failure to withhold tax could result in tax, interest and penal consequences.

V. Double Tax Avoidance Treaties

India has entered into more than 80 treaties for avoidance of double taxation. A taxpayer may be taxed either under domestic law provisions or the tax treaty to the extent it is more beneficial. Tax treaties generally provide that the business profits of a foreign enterprise are taxable in a State only to the extent that the enterprise has in that State a permanent establishment (PE) to which the profits are attributable. The definition of PE included in tax treaties is therefore crucial in determining whether a non-resident enterprise must pay income tax in another State.

Under the ITA, the taxation of foreign airline operators is undertaken on a 'presumptive basis' where the gross receipts of such operator are taxable at the rate of 5%. Whether a loss making airline would obligated to pay tax is a contentious issue. However, the Delhi High Court has held that a loss making foreign airline operator would not be required to pay tax.

However in terms of most tax treaties India has entered into, profits from the operation of aircraft in international traffic are taxable only in the country in which the airline operator is a resident. A non-resident claiming treaty relief would be required to file tax returns and furnish a tax residency certificate issued by the tax authority in its home country. Certain tax treaties such as the treaties with Mauritius, Singapore, and the Netherlands also provide significant relief against Indian capital gains tax and interest income in specific circumstances. Until recently, the treaties with Mauritius and Singapore provided such relief with respect to tax on all capital gains; however, the Governments of India and Mauritius have recently agreed upon a Protocol to the India-Mauritius tax treaty which provides for source-based taxation of capital gains arising on or after April 1, 2017 from the alienation of shares of and Indian company.[113] The Protocol also provides for a grandfathering provision which exempts capital gains arising out of sale of shares of an Indian company that were acquired before April 01, 2017, and a transition period which allows for a beneficial tax rate for capital gains arising from the alienation shares between April 01, 2017 and March 31, 2019.[114] As the India-Singapore tax treaty's capital gains benefits are linked with those under the India-Mauritius tax treaty, the same source-based taxation

112. In the case of non-resident companies, a further concessional rate of 10% is applicable on the gains arising to such non-resident from the transfer of shares of an Indian company

113. Protocol Amending the Convention between the Government of Mauritius and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains for the Encouragement of Mutual Trade and Investment. Available at: http://www.investmauritius.com/media/342048/protocol-to-the-mauritius-india-dtac-signed-on-10-may-2016.pdf

114. Protocol Amending the Convention between the Government of Mauritius and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains for the Encouragement of Mutual Trade and Investment. Available at: http://www.investmauritius.com/media/342048/protocol-to-the-mauritius-india-dtac-signed-on-10-may-2016.pdf

of capital gains arising from the sale of Indian shares should be applicable from April 1, 2017.[115] However, the full impact of the new Protocol on the India-Singapore tax treaty is still unclear, including whether the same grandfathering and transition period provisions provided under the India-Mauritius Protocol will also be applicable under the India-Singapore tax treaty. India is currently negotiating with Singapore to amend their treaty.[116]

VI. Anti-Avoidance

A number of specific anti-avoidance rules are enforced in India. Cross-border transactions between related parties would be viewed for tax purposes on an arm's length basis. Transfer pricing rules apply to certain domestic transactions as well. India does not have any thin capitalization rules at the moment. However, effective from April 1, 2017 wide general anti avoidance rules ("**GAAR**") shall be implemented to tax or disregard certain 'impermissible avoidance arrangements' that are abusive or lack commercial substance. GAAR is likely to impact some of the conventional tax optimization structures for India.

VII. Indirect Taxes

Indirect taxes are imposed at the federal and state level on expenses incurred. This includes service tax, customs and excise duty, value added tax ("**VAT**") and central sales tax. The rate of these taxes vary depending on the product and/or service.

Service tax is payable by the service provider at the rate of 14.5% (*to be increased to 15% from June 1, 2016*) on all services except for services specified in a negative list. Services provided outside the taxable territory of India are not subject to service tax. Air transport services provided by an airline are taxable at 15% (however, an abatement of 60% is available in the case of economy class, and of 40% in the case of any other class

Customs Duty would be applicable at the rate of 3% on the import of aeroplanes and other aircrafts (not being helicopters or space craftes), and at the rate of 10% on the import of ATF. Additional Duty, Countervailing Duty etc. may also be applicable.

The Government has recently increased excise duty on Aviation Turbine Fuel from 8% to 14% for commercial airlines; however this increased rate will not be applicable to Scheduled Commuter Airlines operating from Regional Connectivity Scheme airports.

In an effort to promote MRO services, the Government has also recently exempted tools and tool kits from customs and excise duty when they are imported / procured for MRO services, and has done away with the rule requiring that MRO service providers utilize duty free parts for maintenance, repair and overhauling within one year.

115. Article 6 of the Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income with Singapore. Available at: http://www.incometaxindia.gov.in/Pages/international-taxation/dtaa.aspx

116. The Economic Times, 'After Mauritius tax treaty, government looking to rework pact with Singapore', May 12, 2016. Available at: http://economictimes.indiatimes.com/news/economy/policy/after-mauritius-tax-treaty-government-looking-to-rework-pact-with-singapore/articleshow/52230209.cms

9. Dispute Resolution

The Indian aviation sector promises to grow exponentially in the coming years and reap great benefits for all the players involved. The thriving Indian middle-class provides a market, both domestic and international, that few other economies can match in the world. However, there are still a lot of issues that need to be ironed out before the true potential of the sector can be realized. While it has been more than 25 years since the Indian economy was liberalized, the aviation sector is yet to mature. While issues relating to Competition are have already been discussed in a separate section, this section will focus specifically on disputes relating to "ground handling" and "consumer protection."

I. Ground Handling

Ground handling is an essential service required by an aircraft operator before take-off and after landing. This includes services such as air craft handling, cleaning, servicing, loading and unloading, cargo handling and security. So far ground handling operations were self-handled by the private airlines themselves but on 28th September, 2007 the office of the DGCA issued a circular[117] ("**2007 circular**") introducing new ground handling regulations that restricted the number of service providers and self-handling of ground operations by private aircraft operators at all Metropolitan Airports i.e. the airports located at Delhi, Mumbai, Chennai, Kolkata, Bangalore and Hyderabad ("**Metropolitan Airports**").[118] As per the circular only three external ground handlers are allowed to handle domestic flights at the Metropolitan airports: the AAI, Air India or Indian Airlines ("**National Carrier**") and any other agency licensed by the AAI. Similarly, the AAI on 18th October 2007 issued the *Airport Authority of India (General Management, Entry for Ground Handling Services) Regulations 2007* ("**2007 Regulations**"). As in the 2007 Circular, the 2007 Regulations only permit the AAI or its Joint venture, subsidiary of the National Carrier or any other ground handling service provider selected through a competitive bidding process to carry out ground handling services. Due to stiff opposition from airlines the DGCA had issued another circular on 2nd June, 2010 ("**Revised Policy**") amending the 2007 Regulations (all together referred to hereinafter as "**impugned policy decisions**") [119] which provided, among other things, that all private airlines (including foreign airlines) may undertake ground handling for only such services that entail passenger interface at the airports, such as passenger and baggage handling activities at terminals, and traffic services including passenger check-in.

Such regulations forcing the private airlines to outsource their ground handling operations to third parties would have cash implications in terms of increased costs, service tax payouts, profit margins and airport royalty charges. It would also mean re-structuring and re-organizing systems that had been followed for years by the private airlines. Consequently, Federation of Indian Airlines filed a writ petition ("**Writ**") in the Delhi High Court in November of 2010 challenging the impugned policy decisions[120] on the grounds that they violated the fundamental rights of the individual airlines and their shareholders to practice any occupation, trade or business as enshrined under Article 19(1) (g) of the Constitution of India. Since the Revised Policy also stated that "*all cargo airlines, which have their own cargo aircrafts, may undertake self-handling in their hub airports*", it was also urged in court that the impugned policy decisions discriminated between

117. *Grant of Permission for providing ground handling services at airports other than those belonging to the Airports Authority of India*, Directorate General of Civil Aviation (Circular No.7/ 2007 dated 28.09.2007)

118. The restrictions on the ground handling operations apply only to the 6 metropolitan airports and not to any other airport as also clarified by High Court of Punjab and Haryana in Federation of Indian Airlines & Ors vs. Union of India (CWP No. 18628 of 2015) dated 24.09.2015

119. *Grant of Permission for providing ground handling services at airports other than those belonging to the Airports Authority of India*, Directorate General of Civil Aviation (Circular No.3/ 2010 dated 02.06.2010)

120. Federation of Indian Airlines & Ors. vs. Union of India & Ors (W.P. 8004/2010); 2012(7) R.C.R. (Civil) 3215

cargo airlines and passenger airlines. The Union of India ("**UOI**") on the other hand argued that the said impugned policy decisions were in view of security and safety and in order to achieve economies of scale for proper utilization of resources and thereby provide world class standardized services in ground handling operations. The Delhi High Court did not find any substance in any of the contentions of the Petitioners and ruled in favour of UOI by dismissing the Writ in March 2011. Thereafter, the Petitioners filed an appeal in the Supreme Court of India challenging the Order of the Delhi High Court.

So far an interim order by the Supreme Court directs that parties maintain the status quo and the private airlines continue to self-handle all their ground operations. Recent NCAP 2016 has echoed the Supreme Court's order by providing that all domestic scheduled airline operators including helicopter operators will be free to carry out self-handling at all airports. [121]

II. Consumer Protection

Healthy competition encourages the players in the industry to provide services that are of the highest quality so that customers remain loyal. However, in spite of all efforts, in many cases deficiency in services becomes an issue. It is up to the consumer courts then to adjudicate upon issues emanating from such deficiency in services, thereby setting a benchmark for the minimum standard of services that should be guaranteed to the customers. The Consumer Protection Act, 1986 ("**Consumer Act**") provides that a consumer[122] as defined in section 2 (d) of the Consumer Act can file a complaint in relation to a dispute with manufacturer or service provider. There is some overlap between the Consumer Act and the Competition Act as the Consumer Act also regulates unfair trade practices. A key area regulated by the Consumer Act is deficiency in services provided by service providers. Service providers such as airlines and airports can be covered – and have been covered by these provisions. In the case of *Air Deccan (Deccan Aviation Ltd.) Vs. Dinesh B.V. & Anr* [123] a complaint was filed against Air Deccan before the district forum due to deficiency of service on account of Air Deccan misplacing baggage of passengers. The District Commission directed Air Deccan to pay USD 400 (Rs. 15, 804/-) along with Rs. 1,000/- as litigation cost. The National Commission upheld this decree in favor of air passengers.

In *Saroj Dikshah & Ors Vs. International Airport Authority of India* [124] the complainant filed a complaint before the Delhi State Consumer Disputes forum alleging that the respondent had failed to provide adequate medical facilities on the airport premises resulting in her husband's death on the way to the hospital. The State Commission found the respondent to have made an administrative error by not providing adequate medical facilities and therefore awarded a compensation of Rs 35,000/- . In appeal, the National Commission did not enhance the compensation but observed that the presence of more than one doctor and somewhat more upgraded facilities had become necessary in view of the increasing air travel by a very large number of passengers.

121. Government of India, Ministry of Civil Aviation, 'National Civil Aviation Policy 2016" Available at: http://www.civilaviation.gov.in/sites/default/files/Final_NCAP_2016_15-06-2016-2_1.pdf; Please see our section on 'National Civil Aviation Policy, 2016' for more information on the new Ground Handling framework.

122. (d) "consumer" means any person who—(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly prom[6]ised, or under any system of deferred payment and includes any beneficiary of such services other than the person who 'hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purposes; Explanation.— For the purposes of this clause, "commercial purpose" does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment;

123. Revision Petition No. 2401 of 2008 (National Consumer Disputes Redressal Commission, New Delhi), Decided on 01.10.2013

124. First Appeal No. 167 of 2006 (National Consumer Disputes Redressal Commission, New Delhi), decided on 01.02.2013

A case of wrongful denial of service is Kingfisher Airlines Ltd. Vs. Lata Sikri[125] where the complainant wasn't allowed to board the aircraft in spite of having a confirmed ticket. While the airlines provided the complainant her next flight, return journey free of cost and paid for travelling expenses, the district forum awarded a compensation of Rs. 30,000/- . The National Commission upheld this order.

The cases discussed above are indicators of the fact that industry players cannot take issues such as delay and cancellation of flights, denial of boarding and airport services lightly. Companies will need to be vigilant about its obligations to consumers as air passengers.

125. Revision Petition No. 27 of 2012 (National Consumer Disputes Redressal Commission, New Delhi), decided on 11.10.2012

10. Mergers & Acquisitions

Mergers and acquisitions in India are regulated under two major statutes. The first is the Companies Act, 1956[126] which requires that all proposed mergers or amalgamations obtain a sanction from the High Court.[127] The second is the Competition Act which investigates any merger or acquisition which may result in appreciable adverse effects in the relevant market.[128]

I. Jet-Ethiad Acquisition

In 2012, Etihad, a company incorporated in the United Arab Emirates proposed to acquire a 24% stake in Jet Airways. The Proposal had received approval from SEBI, FIPB and Cabinet Committee of Economic Affairs. Thereafter, the investment agreement, shareholders agreement as well as the commercial cooperation agreements between Jet and Etihad were submitted to the CCI for their approval. The Jet-Etihad filing[129] before the CCI has been considered a landmark case in the aviation sector, as CCI examined every detail of the impact caused by such a deal on the air passenger services and consequently on competition in India.

The CCI while considering the case filed before it had to consider whether the transaction between the two entities would have an Appreciable Adverse Effect on Competition (“**AAEC**”) in the relevant market India.[130] The relevant market was held to be the market for international passenger air transport based on their point of origin and destination (O & D), each constituting a different route. The CCI observed that there were 38 routes to and from India to other destinations where Jet and Etihad flew and there was at least one competitor on each of such routes. There were only 7 destinations where Jet and Etihad had a combined market share of more than 50%. The CCI observed that such a combination would result in potential efficiencies whereby the proposed transaction would generate significant synergies for both airlines in terms of network efficiencies and cost savings. The CCI also considered the importance of the proposed equity infusion, as Jet had been facing a financial crunch. The Commission therefore, vide a majority order dated November 12, 2013 approved the combination under sub-section (1) of Section 31 of the Competition Act. However, the CCI also warned that such an approval should not be construed as immunity in any manner from subsequent proceedings brought before it for violations of the Competition Act.

The approach that the CCI would appear to have been inspired from the decision in the merger between British Airways and Iberia, wherein, the European Commission had held that the merger would not affect competition till the time effective and credible competitors are present in the relevant market.[131]

II. Tata Sons Ltd. – Singapore Airlines (SIA)

J. R. D. Tata has often been called the father of aviation in India. Which is no surprise considering that he was the man who not only conceived and funded the first air mail carrier flight from Karachi to Mumbai on October 15, 1932, but he was also the pilot.[132] In 1937, the mail carrier airline was

126. The Companies Act 1956 has been replaced by the Companies Act 2013, however the provisions with regard to mergers under the new act have yet to be notified. Source: http://www.mca.gov.in/Ministry/pdf/ProvisionsTable_CompAct.pdf

127. Companies Act, 1956 sections 391-396

128. Competition Act, 2002 sections 5 and 6

129. CCI, Combination Registration No. C-2013/05/ 122, dated 12.11.2013

130. According to procedure laid down in the Competition Act, 2002, the Commission has to first ascertain whether there would be any appreciable adverse effect on competition in India through a particular combination, its only if they conclude in positive that investigation by Director General is initiated.

131. Case of Jet Airways (India) Limited and Etihad Airways PJSC (Combination Regulation), CUTS Institute for Regulation and Competition, Case study 18, available at http://circ.in/pdf/Case_Study_18.pdf

132. Business Today, “With Vistara a Tata airlines is reborn” (January 9, 2013). Available at: http://www.business-standard.com/article/companies/with-vistara-a-tata-airline-is-reborn-115010800126_1.html

expanded to transport passengers as well, and after World War II, Tata Airlines, which was held 49% by the Government, 25% by Tata, and the rest by public shareholders, started flights internationally.[133] Tata Airlines went public in 1946 and was renamed Air India. When the Government decided to nationalize all airlines in 1953, Tata was pushed out of the aviation sector.[134] Although the Tata Group had made several attempts in the past to re-enter the aviation sector in India, including acquiring a 30% shareholding in Air Asia India, Tata's true return to the Indian skies was marked by their majority controlled (51%) airline Vistara which they formed as a joint venture with Singapore Airlines ("**SIA**").[135] Although the venture obtained FIPB approval in 2013, it took the companies nearly 2 years to obtain the remaining government clearances, including the air operating permit from the DGCA[136] Vistara flew its first flight from Delhi to Mumbai in January 9, 2015.[137]

III. Mergers Prior to the CCI

A. Air India-Indian Airlines

Air India is the rebranded version of erstwhile Tata Airlines, while Indian Airlines was formed by merging seven domestic airlines into one. Both airlines were nationalized pursuant to the Air Corporations Act, 1953. Fifteen years after the aviation sector was liberalized, both the national flagship carriers were performing poorly due to aggressive competition. In order to address this problem, the Union Cabinet approved a merger between the two airlines on March 1, 2007[138] The Ministry of Corporate Affairs, vide Order dated August 22, 2007 approved the Scheme of Amalgamation of Air India Limited and Indian Airlines Limited with the National Aviation Company of India Ltd (NACIL).[139] The resulting airline retained the name Air India.[140]

While net synergy benefits of Rs. 2.8 billion were expected, the merged airline actually incurred a loss of Rs. 280 billion from 2007 to 2012.[141] This was primarily due to the fact that the Air India fleet consisted of Boeing aircrafts normally used for long distance international destinations, while Indian Airlines used Airbus aircrafts primarily for domestic destinations.[142] As such, synergies in relation to operational crews, engineers, technicians, etc could not be efficiently maximized. Furthermore, Air India also faced aggressive competition from airlines like IndiGo, Jet Airways, and Spice Jet which were gaining substantial leverage in the market.[143]

B. Jet-Sahara

Jet acquired 100% stake in Air Sahara for Rs. 1,450 cores 15 months after signing the original purchase agreement.[144] The airline was rebranded as "JetLite," and launched as Jet Airways's low budget carrier. Jet

133. Business Today, "With Vistara a Tata airlines is reborn" (January 9, 2013). Available at: http://www.business-standard.com/article/companies/with-vistara-a-tata-airline-is-reborn-115010800126_1.html

134. Business Today, "With Vistara a Tata airlines is reborn" (January 9, 2013). Available at: http://www.business-standard.com/article/companies/with-vistara-a-tata-airline-is-reborn-115010800126_1.html

135. Business Today "FIPB approves Tata-Singapore airline venture" (October 24, 2013). Available at: http://www.businesstoday.in/sectors/aviation/fipb-approves-tata-singapore-airline-venture/story/199983.html

136. Livemint "Tata-SIAs Vistara gets India operating license" Availavle at: http://www.livemint.com/Companies/BzczCi-ICRg68yhIecC3IBN/TataSIAs-Vistara-gets-India-operating-licence.html

137. Times of India "Tata-SIAs Vistara airline to begin operations today" (January 8, 2013). Available at: http://timesofindia.indiatimes.com/business/india-business/Tata-SIAs-Vistara-airline-to-begin-operations-today/articleshow/45813836.cms

138. Director's Report, NACIL available at: http://www.airindia.in/writereaddata/Portal/FinancialReport/1_114_1_Directors_report_0708.pdf

139. http://www.airindia.in/writereaddata/Portal/FinancialReport/1_114_1_Directors_report_0708.pdf Director's Report, NACIL available at:

140. Director's Report, NACIL available at: http://www.airindia.in/writereaddata/Portal/FinancialReport/1_114_1_Directors_report_0708.pdf

141. ICMR- IBS Center for Management Research, "Air India and Indian Airlines: A Merger Gone Wrong?" available at:

142. ICMR- IBS Center for Management Research, "Air India and Indian Airlines: A Merger Gone Wrong?" available at:

143. ICMR- IBS Center for Management Research, "Air India and Indian Airlines: A Merger Gone Wrong?" available at:

144. Times of India, "Jet disbands JetKonnect, to be all full service and single brand" (August 11, 2014), available at http://timesofindia.indiatimes.com/business/india-business/Jet-disbands-JetKonnect-to-be-all-full-service-and-single-brand/articleshow/40068848.cms

hoped to regain some of the market share it had lost to Indigo by entering the low cost segment, however JetLite failed to gain traction and Jet's second attempt to keep it afloat by rebranding it as JetKonnect also eventually failed.[145] In 2014 Jet announced that it would disband its low cast carrier and return to a single full service airline.[146]

C. The Air Deccan-Kingfisher Merger

The merger between the pioneer Low Cost Carrier ("LLC") and liquor baron was announced in May, 2007 when United Breweries picked up 26% stake in Air Deccan and proposed to buy another 20% via an open offer.[147] In the deal, United Breweries group paid Rs. 550 crore for their 26% stake in the LCC.[148]Subsequently, United Breweries acquired a controlling stake in Deccan and rebranded it as Kingfisher Red.[149] Similar to Jet Airways's launch of JetLite, Kingfisher Red was Kingfisher's attempt to revive growth by entering into the low cost carrier segment of the market. However, by 2012, due to exorbitant debt, non-payment of employees' salaries, default on taxes and creditor liabilities, overextension of funds, engine defects coupled with lack of manufacturer guarantees Kingfisher was forced to ground all operations.[150] Its permits were suspended, and arrest warrants were issued against its promoter Vijay Mallya, and four other directors.[151] Since 2012, Kingfisher's aircrafts have been deregistered and Vijay Mallya and three of the four directors have been declared as willful defaulters by the United Bank of India.[152]

Although the three mergers mentioned above resulted in losses, it is interesting to understand why such significant mergers, clearly having anti-competitive risks, were permitted in the first place. The answer may be as simple as, timing. The mergers took place in 2007, when India lacked a proper competition regulating authority that could investigate mergers.

Prior to the establishment of the CCI,[153] the competition regulating authority in India was the Monopolies and Restrictive Trade Practices Commission ("**MRTPC**"), established under the Monopolies and Restrictive Trade Practices Act, 1969 ("**MRTP Act**")[154] . However, pursuant to the Monopolies and Restrictive Trade Practices (**Amendment**) Act, 1991, the MRTPC's powers to investigate mergers, amalgamations and takeovers was repealed.[155] It wasn't until June, 2011[156] that the provision relating to mergers and combination under the Competition Act were notified.[157] Thus, the MRTPC did not have the authority to investigate the Jet-Sahara and Kingfisher-Air Deccan mergers in 2007. It is also important to note that pursuant to section 3, the MRTP Act did not apply to undertakings owned or controlled by the Central Government.[158]

145. Times of India, "Jet disbands JetKonnect, to be all full service and single brand" (August 11, 2014), available at http://timesofindia.indiatimes.com/business/india-business/Jet-disbands-JetKonnect-to-be-all-full-service-and-single-brand/articleshow/40068848.cms

146. Times of India, "Jet disbands JetKonnect, to be all full service and single brand" (August 11, 2014), available at http://timesofindia.indiatimes.com/business/india-business/Jet-disbands-JetKonnect-to-be-all-full-service-and-single-brand/articleshow/40068848.cms

147. Times of India, "Kingfisher buys control of Air Deccan" dated June 1, 2007. available at: http://timesofindia.indiatimes.com/business/india-business/Kingfisher-buys-control-of-Air-Deccan/articleshow/2090124.cms

148. Times of India, "Kingfisher buys control of Air Deccan" dated June 1, 2007. available at: http://timesofindia.indiatimes.com/business/india-business/Kingfisher-buys-control-of-Air-Deccan/articleshow/2090124.cms

149. Source: http://www.airdeccan.in/

150. The Hindu. Kingfisher Airline Crises Timeline, dated September 4, 2014. Available at: http://www.thehindu.com/business/Industry/kingfisher-airlines-crisis-timeline/article4636635.ece

151. The Hindu. Kingfisher Airline Crises Timeline, dated September 4, 2014. Available at: http://www.thehindu.com/business/Industry/kingfisher-airlines-crisis-timeline/article4636635.ece

152. The Hindu. Kingfisher Airline Crises Timeline, dated September 4, 2014. Available at: http://www.thehindu.com/business/Industry/kingfisher-airlines-crisis-timeline/article4636635.ece

153. Source: http://www.cci.gov.in/about-cci

154. The MRTP Act was repealed and replaced by the Competition Act, 2002 vide notification dated August 28, 2009. Notification No. SO2204 (E) dated 28 August 2009

155. Specifically, the Monopolies and Restrictive Trade Practices (Amendment) Act, 1991repealled sections 23 and 24 of the MRTP Act, 1969. Available at: http://www.mca.gov.in/Ministry/actsbills/pdf/The_Monopolies_and_Restrictive_Trade_Practices_Act_1969.pdf

156. Central Government notification S.O. 479(E) dated 4th March, 2011

157. Nishith Desai Associates, Competition Law in India: Jurisprudential Trends and the Way Forward. (April 2013) Available at: http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Competition%20Law%20in%20India.pdf

158. MRTP Act, 1969 s. 3 available at: http://www.mca.gov.in/Ministry/actsbills/pdf/The_Monopolies_and_Restrictive_Trade_Practices_Act_1969.pdf

11. Conclusion

The aviation sector has faced its obstacles over the last decade, including the rising cost of ATF, discontinued airlines, and over-saturated airports.[159] However, the sector's inherent potential for growth has started to emerge. A growing middle class population and rise in disposable income has resulted in a significant increase in passenger traffic. This rise in the number of people travelling every year has created a demand for civil aviation services.[160] The Central Government has attempted to meet this demand in several ways. Not only has it raised the limit of FDI permitted in the sector, but has also permitted foreign airlines to finally invest in India's airline segment. Additionally, the AAI is actively promoting regional interconnectivity by developing airports in non-metro cities, and State Governments are also contributing by donating land and forming PPPs with private investors like GVK.

These efforts are proving to be fruitful as the IATA projects that India will have the world's third largest civil aviation sector in the next 15 years.[161] This statistic is quite promising for investors, as is the fact that India has starting to integrate fully privatized airport development projects like Kazi Nazrul Islam Airport at Durgapur in West Bengal.[162] Projects such as these point to a healthy and lucrative sector in which the Indian Government has shown its full support.

Apart from this, the Indian Government's emphasis on infrastructure and the tourism industry are bound to contribute to the growth of the aviation sector.

159. Source: http://www.indiandefencereview.com/news/challenges-facing-civil-aviation-in-india/

160. Source: http://www.ibef.org/industry/indian-aviation.aspx

161. IATA Press Release No. 57 dated October 16, 2014 available at: http://www.iata.org/pressroom/pr/Pages/2014-10-16-01.aspx

162. Business Today In. "India's first private airport, at Durgapur, to be operational by April 14" (March 16, 2015), http://www.businesstoday.in/sectors/aviation/india-first-private-airport-to-be-operational-by-april-14/story/216986.html

Annexure

Scheduled Operators

1. Paid Up Capital

   a. New applicants shall submit a certificate from the banker or chartered accountant to confirm that the paid up capital of the company is in accordance with the following:

      i. Airlines operating an aircraft with takeoff mass equal to or exceeding 40,000 kg. must have a paid up capital of Rs. 50 crores for up to the first five aircrafts.

         - For each additional aircraft, a further equity investment of Rs 20 crores is be required.

      ii. Airlines operating an aircraft with takeoff mass not exceeding 40,000 kg. must have a paid up capital of Rs. 20 crores for up to the first five aircrafts.

         - For each additional aircraft, a further equity investment of Rs 10 crores is required.

   b. Existing airlines shall comply with the above requirements and, wherever necessary, will have to raise their authorized and paid up capital to the prescribed minimum levels.

2. Approval of Foreign Investment Promotion Board (FIPB), if foreign investment is envisaged, and security clearance of the Directors and Chairman

3. A no objection certificate (NOC) must be issued by the Ministry of Civil Aviation. The NOC shall initially be valid for one year and six months from the date of issue and shall stand automatically cancelled if the applicant does not take effective steps to obtain the Scheduled Operator's Permit within this period.

4. The Fleet

   a. Must have a minimum of five airplanes or five multi-engine helicopters either by outright purchase or through lease.

   b. The aircrafts shall be registered in India and shall hold a current Certificate of Airworthiness in Normal Passenger category. For leased aircraft, a copy of lease deed shall be filed with the DGCA.

   c. An operator will be permitted to commence operations with one aeroplane/ helicopter, on the condition that it will have the requisite 5 aircrafts within one year from the date of securing operator's permit.

   d. Adequate number of aircraft maintenance engineers and his own maintenance and repair facilities required carrying out maintenance of aircraft at least up to certification of flight release or 500 hours, whichever is higher.

Non-Scheduled Domestic Passenger Airlines/Operators (NSO)

Similar to a Scheduled Operator, an NSO must also either be an Indian citizen; or a company which has its principal place of business within India, its chairman and at least 2/3 of its directors are citizens of India, and its substantial ownership and effective control is vested in Indian Nationals. Further, an applicant seeking a Non-Scheduled Operator Permit (NSOP) must also meet the following criteria:

1. Paid Up Capital

   a. Applicants having up to 2 airplanes/helicopters must have a minimum paid up capital of Rs. 2 crores; those having 3-5 airplanes/helicopters must have a minimum paid up capital of Rs. 5 crores; those having 6-10 airplanes/helicopters must have a minimum paid up capital of Rs. 10 crores; and those having more than 10 airplanes/helicopter must have a minimum paid up capital of Rs. 15 crores;

2. Composition of the BOD and Effective Control and Management
   a. The majority of the Directors on the BOD shall be Indian citizens;

   b. If the positions of the Chairman, Managing Director, Chief Executive Officer (CEO) and/or Chief Financial Officer (CFO), are held by foreign nationals, each officer would require a security clearance from the Ministry of Home Affairs (MHA).

   c. Any change in the BOD shall be intimated to the Ministry of Civil Aviation and DGCA.

   d. Prior permission of DGCA/Ministry of Civil Aviation shall be required for:

      i. change in the name of the Company;

      ii. change in the management of the Company arising out of changes in the equity holdings of the Company;

      iii. takeover of the Company by another Company

3. An NOC must be issued by the Ministry of Civil Aviation.

4. The Fleet

   a. An NSOP must be in possession of at least one aircraft, either by outright purchase or on lease (without crew), which shall be registered in India and shall have a valid Certificate of Airworthiness in Normal Passenger Category.

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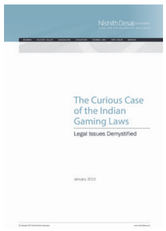

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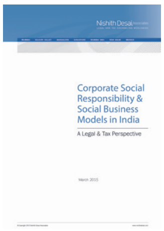

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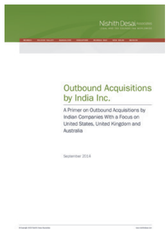

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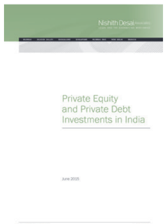

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