

Technology Law Analysis

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HERE IS HOW RESTRICTIVE LAWS WILL STIFLE DRONE INDUSTRY

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In 2014, the Directorate General of Civil Aviation (DGCA) issued a public notice announcing its intention to release guidelines to regulate the civil use of unmanned aircraft. The notice clarified that until the formulation of regulations, a blanket ban will be levied on the civil use of drones by private parties. Further, in 2016 the Directorate General of Foreign Trade (DGFT) also restricted the import of drones. The civilian use and import of drones was thus banned in India.

In 2016, the DGCA released draft guidelines which proposed to legalise the flying of drones and at the same time regulate them. However, such draft guidelines never became law and were replaced by new draft guidelines released in 2017. The civil use and import of drones continues to be banned in India as of now. As per news reports, these draft guidelines (subject to industry's input) are poised to become drone law in India in early 2018.

KEY FEATURES

These draft guidelines apply to the operation and import of remotely piloted aircraft systems (RPAS), which includes drones. The categorisation of such drones is based on their maximum take-off weight and they are classified into categories that range from nano drones (less than 250 grams) to large drones (greater than 150 kg).

The first step towards owning a drone (not falling under the guideline exemptions) is obtaining a Unique Identification Number (UIN), subsequently followed by obtaining a drone flying permit (UAOP).

The exemptions for issuance of UIN and UAOP (for civilian use) are mainly offered to drones weighing less than two kg (nano and micro drones), provided they are flown within 50ft and 200ft (respectively), along with certain other limitations as detailed in the guidelines.

For obtaining a UIN, among other requirements, the applicant must submit details of the operator, specifications of the drone, purpose and area of operations, security clearance from the ministry of home affairs (MHA), and verification of the character and antecedents of the remote pilot(s) from the local sub-divisional police officer.

In addition, for obtaining a drone flying permit, the applicant must submit the UIN number and related details, copy(ies) of MHA clearances, details of the remote pilot(s) along with their training records, permission of the owner of the land used for drone take-offs/landings and other government-related permissions.

To be eligible to fly a drone, a remote pilot is required to have attained 18 years and have undergone thorough ground training and practical training, equivalent to the one undertaken by the aircrew of a manned aircraft or a private pilot licence holder.

However, these requirements will not apply to drones weighing less than two kg. Further, the permission of the DGCA needs to be sought prior to selling or disposing of any drone.

SHORTCOMINGS

The process for obtaining drone approvals is largely through the submission of physical forms. Considering that this is the age of digitisation, the application and approval process should be digitised.

In addition, the guidelines do not differentiate between drones used for educational or recreational purposes and commercial purposes. In most drone-regulated countries, the level of compliances depends on the purpose for which drones are used.

Also, the guidelines mandate security clearances from the MHA and verification of the character and antecedents of the remote pilot from the local sub-divisional police officer. The verification of character and antecedents could be justifiable. However, security clearances from the MHA could result in the approval process becoming time-consuming and bureaucratic.

Further, the guidelines have levied a bar on foreign citizens and Indian companies owned by foreign companies, from owning drones. This restriction will most likely discourage foreign drone players.

Lastly, requiring the remote pilot to obtain the same level of training as that required of the holder of a private pilot

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licence could be construed as unreasonable.

CONCLUSION

Drones are a new-age technology with applications spreading across various sectors and industries. Many Indian start-ups are also looking to provide enterprise drone solutions and have already started catching the attention of big corporations. However, one cannot ignore the safety concerns and issues arising from the use of drones.

While we wait for the DGCA to release the final regulations, the draft guidelines in their current form may be overly restrictive and lay down procedures which would only increase the administrative burden of the regulators.

Thus, a balanced approach should be adopted which adequately and efficiently regulates the use of drones, but at the same time maximises the benefits to be derived from them and encourages the drone industry.

— Aishwarya Pundir & Huzefa Tavawalla
You can direct your queries or comments to the authors

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