

Telephone No. : 4622495 Telegraphi Address: Commercial : AIRCIVIL NEW DELHI Aeronautical : VIDDYAYX E Mail: dri@dgca.nic.in Fax 011 24629221	Government of India Aeronautical Information Services DIRECTOR GENERAL OF CIVIL AVIATION OPPOSITE SAFDARJUNG AIRPORT New Delhi-110003	Sl. No. 7/2008 <hr/> 30 th June, 2008
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File No. AV.14027/1/2003-AT(I)

The following guidelines for foreign equity participation in the air transport services as amended and approved by the Ministry of Civil Aviation vide their letter No. AV13011/10/96-DT dated 19th June 2008 are issued for information, guidance and necessary action.

This supersedes AIC 9/2005 dated 27 July, 2005.



(Kanu Gohain)

Director General of Civil Aviation

GUIDELINES FOR FOREIGN DIRECT INVESTMENT IN THE CIVIL AVIATION SECTOR

The Government of India has notified the amended policy on Foreign Direct Investment (FDI) for the Civil Aviation sector which now includes airports, scheduled and non-scheduled domestic passenger airlines, helicopter services/ seaplane services, Ground Handling services, Maintenance and Repair organizations, Flying training institutes and technical training institutes.

The Press Note issued by the Department of Industrial Policy & Promotion, Ministry of Commerce & Industry New Delhi, 12th March, 2008 (Press Note No.4/2008) in this regard is reproduced below:-

“The present policy of FDI in the Civil Aviation sector covers Airports and Air Transport Services. The Civil Aviation sector, however, includes Airports, Scheduled and Non-Scheduled domestic passenger airlines, Helicopter services/ Seaplane services, Ground Handling Services, Maintenance and Repair organizations; Flying training institutes; and Technical training institutions. It has now been decided to amplify and lay down the policy for Foreign Direct Investment (FDI) for the Civil Aviation sector.

2. Definitions

The policy for FDI in the Civil Aviation Sector would be subject to the Aircraft Rules, 1937 as amended from time to time, Civil Aviation

Requirements, and Aeronautical Information Circulars as notified by the Ministry of Civil Aviation. In terms of these Rules/Circulars:-

(a) "Airport" means a landing and taking off area for aircrafts, usually with runways and aircraft maintenance and passenger facilities and includes aerodrome as defined in clause (2) of section 2 of the Aircraft Act, 1934;

(b) "Aerodrome" means any definite or limited ground or water area intended to be used, either wholly or in part, for the landing or departure of aircraft, and includes all buildings, sheds, vessels, piers and other structures thereon or appertaining thereto;

(c) "Air transport service" means a service for the transport by air of persons, mails or any other thing, animate or inanimate, for any kind of remuneration whatsoever, whether such service consists of a single flight or series of flights.

(d) "Air Transport Undertaking" means an undertaking whose business includes the carriage by air of passengers or cargo for hire or reward.

(e) "Aircraft component" means any part, the soundness and correct functioning of which, when fitted to an aircraft, is essential to the continued airworthiness or safety of the aircraft and includes any item of equipment;

(f) "Helicopter" means a heavier-than-air aircraft supported in flight by the reactions of the air on one or more power driven rotors on substantially vertical axis;

(g) "Scheduled air transport service", means an air transport service undertaken between the same two or more places and operated according to a published time table or with flights so regular or frequent that they constitute a recognisably systematic series, each flight being open to use by members of the public.

(h) "Non-Scheduled Air Transport service" means any service which is not a scheduled air transport service and will include Chartered and Cargo airlines.

(i) "Chartered" and "Cargo" airlines would mean such airlines which meet the conditions as given in the Civil Aviation Requirements issued by the Ministry of Civil Aviation.

(j) "Seaplane" means an aeroplane capable normally of taking off from and alighting solely on water;

(k) "Ground Handling" means (i) ramp handling, (ii) traffic handling both of which shall include the activities as specified by the Ministry of Civil Aviation through the Aeronautical Information Circulars from time to time, and (iii) any other activity specified by the Central Government to be a part of either ramp handling or traffic handling.

3. Policy for FDI in Civil Aviation sector

3.1 Airports: As per the policy notified vide Press Note 4 (2006)-

(a) Greenfield projects- FDI upto 100% is allowed under the automatic route.

(b) Existing projects- FDI upto 100% is allowed with prior approval of the Government for FDI beyond 74%.

3.2 Air Transport Services:

(a) Air Transport Services would include Domestic Scheduled Passenger Airlines; Non-Scheduled Airlines; Chartered Airlines; Cargo Airlines; helicopter and seaplane services.

(b) No foreign airlines would be allowed to participate directly or indirectly in the equity of an Air Transport Undertaking engaged in operating Scheduled, Non-Scheduled, and Chartered airlines.

(c) Foreign airlines are allowed to participate in the equity of companies operating Cargo airlines, helicopter and seaplane services.

3.3 FDI ceilings in Air Transport Services:

(a) Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline - FDI up to 49% and investment by Non-resident Indians (NRI) up to 100% allowed on the automatic route.

(b) Non-Scheduled Air Transport Service/ Non-Scheduled airlines, Chartered airlines, and Cargo airlines- FDI up to 74% and investment by Non-resident Indians (NRI) up to 100% allowed on the automatic route.

(c) Helicopter services/seaplane services requiring DGCA approval- FDI up to 100% allowed on the automatic route.

3.4 FDI ceilings in other services under Civil Aviation sector

(a) Ground Handling Services- FDI up to 74% and investment by Non-resident Indians (NRI) up to 100% allowed on the automatic route. This will be subject to sectoral regulations and security clearance.

(b) Maintenance and Repair organizations; flying training institutes; and technical training institutions - FDI up to 100% allowed on the automatic route.

4. FDI Policy announced vide Annex to Press Note 4(2006) dated 10th February 2006 stands modified to the above extent."

It has, therefore, become necessary that guidelines for interpretation of indirect investment by foreign investing institution/ entity/ airlines, which are in conformity with the provisions of the Aircraft Rules, 1937, and the existing Air Transport Policy be promulgated.

Accordingly, the following guidelines are issued with the approval of the Government—

1. **Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline**
- 1.1 Permission to operate Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline will be granted either –
 - (i) to a citizen of India; or
 - (ii) to a company or a body corporate provided that –
 - (a) it is registered and has its principal place of business within India;
 - (b) its Chairman and at least two-thirds of its Directors are citizens of India; and
 - (c) its substantial ownership and effective control is vested in Indian nationals.
- 1.2 Foreign financial institutions and other entities who seek to hold equity in the Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline shall not have foreign airlines as their shareholders.
- 1.3 An applicant shall be required to furnish full and detailed information with regard to the shareholding of any airline in the foreign investing institution/entity, if any, and composition of the Board of Directors and senior management of the said foreign investing institution/entity.
- 1.4 An applicant who seeks permission to operate Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline shall be required to give a declaration that no foreign airline is in financial or commercial tie-up with him or has the management/ownership interest in him.
- 1.5 While the foreign investing institution/entity, which seeks to hold equity in the Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline may have representation on the Board of Directors of the Company, such representation shall not exceed 1/3rd of the total.

- 1.6 Any foreign financial institution/entity which seeks to make investment in the Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline shall not be a subsidiary of a foreign airline. However, such air transport operators may be permitted to import aircraft on dry lease from foreign airlines. Wet leasing of an aircraft may also be allowed from any source subject to the fulfillment of the guidelines issued by the Government/DGCA.
- 1.7 A Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline shall not have agreements such as shareholders agreements etc. with a foreign airline, containing provisions/arrangements empowering such foreign airlines or others on their behalf to have effective control in the management of the domestic airline.
- 1.8 A Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline shall not enter into an agreement with a foreign airline which may give such foreign airline the right to interfere in the management of the domestic operator.
- 1.9 A Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline may enter into financial arrangements with a bank and/or other financial institutions for the purpose of lease-finance, hire-purchase or other loan arrangements, but such a tie-up shall not be permitted with a foreign airline.
- 1.10 Management contract with a foreign airline shall also not be permitted to a Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline. Marketing arrangements such as ground handling, general sales agency, code sharing, interlining will, however, be permitted. Foreign airlines are, however, allowed to participate in the equity of companies operating cargo airlines, helicopter and seaplanes services.
- 1.11 A Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline will also be permitted to get maintenance, overhaul, repair works done and training of pilots/engineers conducted either at the facilities available with other airlines or those certified by the Director General of Civil Aviation on such terms as may be prescribed.
- 1.12 An applicant who seeks permission for Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline will be required to give a declaration that he fulfills all the requirements mentioned in the above guidelines and in case of any change, he shall notify the competent authority within one month of such change. In addition, the applicant will be required to furnish such a declaration every year.
- 1.13 A Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline which furnishes wrong information in respect of any of the above prescribed

guidelines at any stage shall be liable for suspension/cancellation of his Operating Permit.

2. **Non-scheduled Air Transport Service/ Non-Scheduled airlines, Chartered Airlines, and Cargo airlines**
- 2.1 Permission to operate Non-scheduled Air Transport Service/ Non-Scheduled airlines, Chartered Airlines, and Cargo airlines will be granted either –
 - (i) to a citizen of India; or
 - (ii) to a company or a body corporate provided that it is registered and has its principal place of business within India
- 2.2 The majority of Directors on the Board of the company shall be Indian citizens.
- 2.3 The positions of the Chairman, Managing Director, Chief Executive Officer (CEO) and/or Chief Financial Officer (CFO), if held by foreign nationals, would require to be security vetted by Ministry of Home Affairs (MHA). Security vetting shall be required periodically on yearly basis. In case something adverse is found during the security vetting, the direction of MHA shall be binding on the licensee.
- 2.4 Foreign financial institutions and other entities who seek to hold equity in the Non-scheduled Air Transport Service/ Non-Scheduled airlines, Chartered Airlines, shall not have foreign airlines as their shareholders. An applicant who seeks permission for such an operation shall be required to give a declaration that no foreign airline is in financial or commercial tie-up with him or has the management/ownership interest in him.
- 2.5 An applicant shall be required to furnish full and detailed information with regard to the shareholding of any airline in the foreign investing institution/entity, if any, and composition of the Board of Directors and senior management of the said foreign investing institution/entity.
- 2.6 Any foreign financial institution/entity which seeks to make investment in the Non-scheduled Air Transport Service/ Non-Scheduled airlines, Chartered Airlines, shall not be a subsidiary of a foreign airline. However, such air transport operators may be permitted to import aircraft on dry lease from foreign airlines. Wet leasing of an aircraft may also be allowed from any source subject to the fulfillment of the guidelines issued by the Government/DGCA.
- 2.7 Non-scheduled Air Transport Service/ Non-Scheduled airlines, Chartered Airlines, shall not have agreements such as shareholders agreements etc. with a foreign airline, containing provisions/arrangements empowering such foreign

airlines or others on their behalf to have effective control in the management of the domestic airline.

- 2.8 Non-scheduled Air Transport Service/ Non-Scheduled airlines, Chartered Airlines, shall not enter into an agreement with a foreign airline which may give such foreign airline the right to interfere in the management of the domestic operator. Foreign airlines are, however, allowed to participate in the equity of companies operating cargo airlines, helicopter and seaplanes services.
- 2.9 Non-scheduled Air Transport Service/ Non-Scheduled airlines, Chartered Airlines, may enter into financial arrangements with a bank and/or other financial institutions for the purpose of lease-finance, hire-purchase or other loan arrangements, but such a tie-up shall not be permitted with a foreign airline.
- 2.10 Management contract with a foreign airline shall not be permitted to Non-scheduled Air Transport Service/ Non-Scheduled airlines, Chartered Airlines. Marketing arrangements such as ground handling, general sales agency, code sharing, interlining will, however, be permitted with a foreign airline.
- 2.11 An applicant who seeks permission for Non-scheduled Air Transport Service/ Non-Scheduled airlines, Chartered Airlines, will be required to give a declaration that he fulfills all the requirements mentioned in the above guidelines and in case of any change, he shall notify the competent authority within one month of such change. In addition, the applicant will be required to furnish such a declaration every year.
- 2.12 Non-scheduled Air Transport Service/ Non-Scheduled airlines, Chartered Airlines, who furnishes wrong information in respect of any of the above prescribed guidelines at any stage shall be liable for suspension/cancellation of his Operating Permit.

3. **Cargo Airlines (Scheduled and Non-Scheduled), helicopters and seaplane services**

- 3.1 All conditions as given in either para 1 and 2 shall be applicable for operating Scheduled/ non-scheduled services, as the case may be, in respect of cargo airlines or operation with helicopters/ seaplane services.
- 3.2 Foreign airlines are allowed to participate in the equity of companies operating cargo airlines, helicopter and seaplanes services.

4. **Maintenance and repair organizations; Flying Training institutes; and technical training institutes**

- 4.1 The foreign company planning to set up a maintenance and repair organizations, flying training institute or a technical training institute shall have the option of being as an incorporated entity – by incorporating a company under the Companies Act, 1956 through a
- (i) Joint venture; or
 - (ii) Wholly owned subsidiary

Foreign equity in such Indian company can be upto 100% depending on the requirements of the investor.

- 4.2 For registration and incorporation, an application should be filed with Registrar of Companies (ROC). Once a company has been incorporated as an Indian company, it is subject to Indian laws and regulations as applicable to other domestic Indian companies.
- 4.3 An applicant for obtaining approval for a maintenance and repair organization, flying training institute or a technical training institute would need approval by DGCA subject to the fulfillment of the guidelines issued in this respect.

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