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Foreign Direct Investment Policy – "Establishing a Lasting Interest" – The Impact on Indian Aviation Industry

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ABSTRACT

To attract the Foreign Direct Investment, Government of India has put in place an updated policy framework. The intent of this seems to promote a stake holding which is much more than a mere financial interest partnership. The broad objective is a regulatory mechanism which is transparent, shall help accelerate the economic growth and nurture the skill. It is expected to at the same time help evolve technology. The government seems very clear in its thought process and is promoting FDI as an investment, which is an instrument of enterprise development rather than portfolio investment. The Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce & Industry, Government of India has on August 28th, 2017 released its updated policy framework – "Consolidated FDI Policy". The tag line seems to be: "establishing a 'lasting interest' in an enterprise that is resident in an economy other than that of the investor". Thus, in the present avatar, the intent of the consolidated framework on FDI seems to be – 'a Win–Win Scenario" for the enterprise as well as for the investor. For the aviation industry, it is definitely an exciting and challenging opportunity. The rules of the game have been clearly defined. There is a platter of options of investment. The parameters are in place and of course, due diligence in terms of limited control and assessment in the interest of the Nation, enterprise and the impact on the end users seems to be a new modern swadeshi approach. The holistic policy also points at a well-intended long-term resilient impact on the connectivity, modernization and infrastructure development of aviation in India.

Keywords: *aviation, economic growth, entreprise development FDI, policy*

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INTRODUCTION

Foreign Direct Investment or FDI is an investment by non-resident entity/person resident outside India in the capital of an Indian company under Schedule 1 of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 [1].

For investment into India, the policy permits that a nonresident entity can invest in permissible sectors and activities in India. However, there are certain restrictions and guidelines for investment by residents of Bangladesh, Pakistan, Bhutan, Nepal, etc. Similarly, a trust, partnership firm or company controlled and owned by NRI and incorporated abroad has to follow the schedule and guidelines as per the policy [1]. Indian companies however can issue capital against FDI as per the prevailing norms. Foreign investment in sectors/activities under government approval route will be subject to government approval. All these are subject to cap on the investments and entry conditions including remittances, reporting requirements and violations of FDI.

The FDI comprehensive policy transparently defines the respective Competent Authorities for grant of approval for foreign investment for sectors/activities requiring Government approval. In case of Civil Aviation, the procedure and guidelines of approval are in the domain of Civil Aviation ministry. Proposals for foreign investment once received would be examined by Competent Authorities as per the Standard Operating Procedure laid down by DIPP (The Department of Industrial Policy and Promotion (DIPP) [2]. In case of proposals involving total foreign equity inflow of more than Rs 5000 crore, Competent Authority shall place the same for consideration of Cabinet Committee on Economic Affairs (CCEA).

CIVIL AVIATION

The investigation and analysis of the consolidated FDI policy of August, 2017 and its impact on civil aviation industry of India brings us to a pertinent question of what is civil aviation. One needs to understand how civil aviation is defined in the ambit of FDI. The constituents of this sector which are the integral part and are impacted by the policy and thus impact the aviation industry are equally relevant for our study.

The Civil Aviation sector as defined under the policy 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 [3].

"Air transport service" [4] in the ambit means a service for the transport by air; for any kind of remuneration whatsoever, whether such service consists of a single flight or series of flights; and specifically brings us to "Air Transport Undertaking" which means an undertaking whose business includes the carriage by air of passengers or cargo for hire or reward. Air Transport Services would include Domestic Scheduled Passenger Airlines; Nonscheduled Air Transport Services, helicopter and seaplane services.

Further, for the purposes of the Civil Aviation sector: "Airport" means a landing and taking off area for aircrafts, usually with runways and aircraft maintenance and passenger facilities and includes aerodrome. "Aerodrome," however, 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.

For any service provider and enterprise, there are various business models and they broadly are categorized as "Scheduled air transport service" which 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 recognizably systematic series, each flight being open to use by members of the public; and "Non-Scheduled air transport service" means any service which is not a scheduled air transport service.

Foreign Direct Investment

As per UNCTAD report, 2016; FDI is on an upswing in South Asia and specifically display an encouraging trend to India. As a result of rising FDI in India, total inflows to South Asia increased impressively by about 22 per cent. This increase to $50 billion surpasses FDI into West Asia. India thus became the fourth largest recipient of FDI in developing Asia. It is also the tenth largest in the world, with inflows reaching $44 billion in 2015 [5]. The government of India has initiated various liberalization steps that have contributed to attracting FDI from all quarters. Countries like Singapore and Mauritius have alone accounted for nearly three fifths of total foreign equity investment in India. India is proactively maintaining FDI inflows from developed-countries. The emphasis on long standing partners especially in Europe and the United States however remains momentous.

FDI in CIVIL AVIATION

By 2026, as per the IATA, India is progressing to become the third largest aviation market in the world in terms of passengers. Furthermore, the IATA also expects the air passengers to grow at a compound average growth rate. The CAGR is expected to double from 3.7 per cent i.e. 3.8 billion air passengers in 2016 to 7.2 billion air passengers by 2035 [6]. The National Civil Aviation Policy, 2016 with a view to aid in modernization of the existing airports to establish a high standard and help ease the pressure on the existing airports, had granted 100% FDI under automatic routed in Brownfield Airport projects. This initiative was to further the developing of the domestic aviation infrastructure. In addition, FDI limit for Scheduled Air Transport Service/Domestic Scheduled Passenger Airline and regional Air Transport Service was raised from 49% to 100%, with FDI up to 49% permitted under automatic route and FDI beyond 49% through Government approval [7]. For nonresident Indians (NRIs), 100% FDI will continue to be allowed under automatic route. However, foreign airlines would continue to be allowed to invest in capital of Indian companies operating scheduled and non-scheduled air transport services up to the limit of 49% of their paid-up capital and subject to the laid down conditions in the existing policy. Increasing the FDI limit for these aviation services shall encourage competition. Moreover, this shall impact the lowering of prices and shall offer more choice to consumers [8].

The National Civil Aviation Policy coupled with the revised FDI regime shall impact the broad policy areas, such as Regional connectivity, Safety, Air Transport Operations, 5/20 Requirement for International Operations, Bilateral traffic rights, Fiscal Support, Maintenance, Repair and Overhaul, Air-cargo, Aeronautical "Make in India." However, as per the Minister of State of Civil Aviation in his reply in Lok Sabha on July 6th–21st, 2016, it shall have profound impact on.

[1]. Regional Connectivity Scheme (RCS).
[2]. Thrust in RCS on the Revival of under-served or un-served routes.
[3]. Proposal to introduce 'Schedule Commuter Operator' category under Commercial Air Transport Operations.
[4]. The 5 by 20 policy has been duly amended. The requirement of 5 years and 20 aircrafts for international operation has been modified. It is now 0 years and 20 aircrafts. This means 20% of the total capacity (in terms of average number of seats on all departure put together) whichever is higher for domestic operations.
[5]. Further liberalization of code sharing on domestic points within India.

Subsequently, moving forward, the Government of India in line with its Make in India, make by India and ease of doing business policy has uncovered further initiatives to promote the sectoral growth and enhance infrastructure development, the essential parameter of growth of Aviation in India. With the "Consolidated Aviation Policy, 2017" as announced on August 28, 2017 [9] further tweaking of the FDI policy has been done. The underlying principle which sets the policy apart is the spirit of promoting India as a theme and while pitching for the interest of the investor, it is emphasized that the growth of the enterprise, which is an Indian entity has to be paramount. The engagement is seen for the purpose of lasting interest.

Accordingly, foreign airlines are now allowed to participate in the equity of companies operating Cargo airlines, helicopter and seaplane services and foreign airlines are also allowed to invest in the capital of Indian companies, operating scheduled and non-scheduled air transport services, up to the limit of 49% of their paid-up capital. Such investment would be subject to the fact that they shall follow the Government approval route and the 49% limit will subsume FDI and FII/FPI investment, whereby no scope of arm twisting or back door stake holding or controlling issues have been left loose. As a safeguard, all investments so made would need to comply with the relevant regulations of SEBI. These will include the Issue of Capital and Disclosure Requirements (ICDR) Regulations/Substantial Acquisition of Shares and Takeovers (SAST) Regulations, as well as other applicable rules and regulations in force at that time.

Defining Moment

The FDI policy of August, 2017 advocates that a Scheduled Operator's Permit can be granted only to a company that is registered and has its principal place of business within India; and the Chairman and at least two-thirds of the Directors of which are citizens of India; and the substantial ownership and effective control of which is vested in Indian nationals. Thereby, further emphasizing that even the possible one third of foreign nationals likely to be associated with Indian scheduled and non-scheduled air transport services, as a result of such investment shall be cleared from security view point before deployment; and all technical equipment that might be imported into India as a result of such investment shall require clearance from the relevant authority in the Ministry of Civil Aviation.

The FDI is directly related to the ease of doing business and is a resultant need of the globalization. The implications of globalization in its many manifestations have been profound for the international air transport industry, not just on the demand side, where the scale, nature, and geography of demand in global markets has led to significant shifts, but also on the supply side, where implicit and explicit international coordination of policies by governments (e.g. regarding safety, security, and the environment) and the private sector (e.g. the internationalization of airframe and aero-engine production) have affected the institutional and technological environment in which air transport services are delivered [10].

Furthermore, as per the consolidated FDI policy, the green field projects and existing airport projects of civil aviation airports shall be eligible for 100% FDI. In other words, there is no capping on investment in airport projects in India, ether in existing ongoing projects or new green filed projects.

This is in line with the National Civil Aviation Policy, 2016 [11].

"Ministry of Civil Aviation (MoCA) will further encourage development of airports by the State Governments or in PPP mode or the private sector. MoCA will continue to motivate and encourage the State Governments to develop new airports in their State. For this, the thrust on forming SPV with airport authority of India or with other interested public sector undertakings/industry is encouraged. This shall create stake holding and ownership. Wherever so required, MoCA will endeavor to provide regulatory certainty with the following framework."

The 100% FDI permission is a welcome step and shall encourage the interested professional engagement and shall lead to a win-win scenario and; lead to aspirational growth of civil aviation in India. The noteworthy and commendable part of the policy is that it is through automatic route and thus devoid of any policy paralysis, intervention or non-governance.

Airports [12]

Sector/activity	% of equity/FDI cap	Entry route
@Greenfield projects	100%	Automatic
@Existing projects	100%	Automatic

Air Transport Services [13]

Sector/activity	% of equity /FDI cap	Entry route
1. (a) Scheduled air transport service/domestic scheduled passenger airline (b) Regional air transport service	100%	Automatic up to 49% (Automatic up to 100% for NRIs) Government route beyond 49%
2. Non-scheduled air transport services	100%	Automatic
3. Helicopter services/seaplane services requiring DGCA approval	100%	Automatic

Other Services under Civil Aviation Sector

Sector/activity	% of equity/FDI cap	Entry route
1) Ground handelling services subject to sectoral regulations and security clearances	100%	Automatic
2) Maintenance and repair organisations;flying training institutes ;and technical training institutions	100%	Automatic

Opportunities

In the Union Budget 2017–2018, the Civil Aviation Ministry received a substantial increase of over 22 per cent in budgetary allocation at Rs 5,167.60 crore (US$ 775.14 million) for the next financial year [14].

- Indian aviation companies have been encouraged with the award of the right to fly to 128 routes across India, requiring them to cap half the seats at nearly 50 per cent of the fare, under the Government of India's regional aviation scheme named UDAN.
- The Government of India has approved the construction of 18 Greenfield airports in the country, which would require an investment of Rs 30,000 crore (US$ 4.66 billion).
- The Cabinet Committee on Economic Affairs, Government of India (GoI), has approved the proposal to revive airports. It has cleared the revival of 50 un-served and under-served airstrips in three financial years starting from 2017 to 2018. This shall be at an estimated cost of Rs 4500 crore (US$ 698.7 million).
- The Government of India has started a new regional connectivity scheme (RCS) called Ude Desh ka Aam Nagrik (UDAN) under which fares will be capped at Rs 2,500 (US$ 37.5) for half the seats in a 1-hour flight, as per Mr Jayant Sinha, Minister of State Civil Aviation.
- Government intends to double the number of airports in India over the next two to three years to cater to the increased passenger traffic due to developing regional air travel market.

- The Ministry of Civil Aviation (MoCA) along with Airports Authority of India (AAI) plans to develop small airports. It is encouraging airports with frugal facilities. The encouragement to private airlines to bid for routes connecting these small airports with existing larger airports is a positive step. This shall increase regional air traffic.

- Capital expenditure by AAI for 2017–2018 is planned for enhancement by 25 per cent to Rs 2,500 crore (US$ 375 million). This is primarily to expand capacity at 12 airports. This shall help to accommodate rising air traffic (Ref Mr Guruprasad Mohapatra, Chairman, AAI).

Thus, all the above opportunities open the flood gate of dynamic participation by serious professional investors and organizations. The writing is clearly on the wall, come grow with Indian aviation, sky is the limit!!

SUMMARY

Although it can be difficult to determine the direction of cause-effect relationships, FDI is simply a reflection of increasing Globalization. However, it would simply not be possible without air transportation to connect the world and as Freidman puts-lead to a flat world. Likewise, the airline industry would be much less significant without concomitant global expansion [15]. Accordingly, the investment and integrations and alliances do form the growing and increasing pattern of modernization and impetus of investment. However, the policy as conceptualized by the Government of India stands out in various respects.

[1]. First and foremost the focus on investment for enterprise building for India through “Establishment of a lasting interest”. This is a historic and momentous policy shift. A thought process which is centred around taking the Nation forward, and not allowing FDI investment in crucial sectoral enterprises as to be used as an investment portfolio and dividend earning milking participation. The focus is loud and clear across the board –be a partner in an enterprise that is resident in India. On the deeper script analysis, one shall find that this eventually would have an impact on Make in India, Make by India and Skill India besides of course, the industry and infrastructure growth leading to economic momentum. Thus, FDI is being seen here as an instrument of enterprise development along with sectoral reforms.

[2]. The FDI limit in most of the aviation activities including non-scheduled air transports services, maintenance, repair and overhaul units, Airport infrastructure development, training institutes, helicopter services and scheduled air transport services and regional air transport service are with an automatic approval route and permissible with 100% equity. However, the subtle introduction in case of scheduled air transport service, domestic scheduled passenger service is that these are applicable in situation where there is no investment by foreign airlines. Moreover, the dispensation for NRIs regarding FDI up to 100% will also continue in respect of the investment subject to SEBI guidelines and the compliances related to subsuming of FII and FPI investments. This is welcome in a way as it promotes investment by Indian based consortiums and companies as well as giving freedom of participation by NRI and global players for bringing in expertises and knowledge. This primarily seem to reflect the shift of

focus from mere investment to long term participation and collaborative growth rather than an investment for the purpose of only profitability. The flip side is that this shall restrict global international players from unrestricted participation thereby the aviation industry may possibly could loose on some real professional engagement, as ownership restrictions shall discourage participation.

[3]. The policy on FDI relating to Civil Aviation further clarifies with respect to foreign airlines that foreign airlines that are permitted to invest up to 49% in the capital of Indian companies operating scheduled or nonscheduled air transport services are not applicable to do so in the case of M/s Air India Limited. Thus, Maharaja is unlikely to be sold to foreign carrier s the government of India, through NITI AYOG moves ahead to disinvest Air India. This good as well as bad, as Air India being a legacy carrier shall be able to retain is symbolic National Carrier tag albeit with the massive concerns of deficit and out standing a concern to be written off or debt with by ministry. However, on the critical evaluation, this shall be a difficult preposition for the buyer. Although, the fact that the airline has stood its testing ground at all times when National Interest was at stake.

CONCLUSION

It is thus, no doubt that the FDI reforms in general and specifically to aviation sector are a welcome step. Apart from Air India, foreign investors and airlines will be able to participate in an Indian carrier only if there is substantial ownership and effective control is with Indians. The facility of using the route of sovereign funding or institutional investors as a sleeping partner is now done away with the effective control and chain of command and baton handed over to the Indian Nationals [16]. The consolidated FDI policy as released by department of Industrial Policy and promotions shall certainly bring about a fresh Indian flavor in the investment scenario. What remains to be seen is if it helps the sector in realizing aviation industry’s largely untapped growth opportunities. Air transport is still expensive for majority of the country’s population, which provides a great opportunity. It is time the industry should engage and collaborate with policy makers proactively to implement efficient and rational decisions that would boost India’s civil aviation industry. With the right policies and relentless focus on quality, cost and passenger interest, India would be well placed to achieve its vision of becoming the third-largest aviation market by 2026 [17] or may be with this impetus of FDI investment, before that. Thus, through this comprehensive FDI policy, Civil Aviation industry has been propelled in a new era of expansion, ushering in modern airports, Foreign Direct Investment (FDI) in domestic airlines, advanced information technology (IT) interventions and growing emphasis on regional connectivity. The sky seems to be the limit.

REFERENCES

[1]. https://rbi.org.in/Scripts/BS_FemaNotifications.aspx?Id=174. And Subsequent amendment notifications at https://rbi.org.in/Scripts/BS_FemaNotifications.aspx.
[2]. http://dipp.nic.in/sites/default/files/CFPC_2017_FINAL_RELEASED_28.8.17.pdf.
[3]. http://dipp.nic.in/sites/default/files/CFPC_2017_FINAL_RELEASED_28.8.17.pdf.
[4]. http://dgca.nic.in/.

[5]. World Investment report, 2016 by UNCTAD.
[6]. Reference IATA.
[7]. National Civil Aviation Policy, 2016.
[8]. Written reply of Minister of State Jayant Sinha in LOk Sabha on 21July, 2016 http://pib.nic.in/newsite/mbErel.aspx?relid=147483.
[9]. http://dipp.nic.in/sites/default/files/CFPC_2017_FINAL_RELEASED_28.8.17.pdf.
[10]. The Impacts of Globalization on International Air Transport Activity Past trends and future perspectives Ken Button, School of George Mason University, USA, OECD, November, 2008.
[11]. National Civil Aviation Policy, 2016; http://www.civilaviation.gov.in/sites/default/files/Final_NCAP_2016_15-06-2016-2_1.pdf.
[12]. Reference para5.2.9.1 to 5.2.9.3 from consolidated FDI policy of DIPP, GoI, 28th August, 2017.
[13]. http://dipp.nic.in/sites/default/files/CFPC_2017_FINAL_RELEASED_28.8.17.pdf.
[14]. https://www.ibef.org/industry/indian-aviation.aspx.
[15]. International Business Travel In The Global Economy, Ashgate, Jonathan V. Beaverstock, Ben Derudder, James Faulconbridge and Frank Witlox 2010.
[16]. Saurabh Sinha, Times of India, 28th August, 2017.
[17]. https://www.ibef.org/industry/indian-aviation.aspx.

