

GREENFIELD AIRPORTS POLICY

1. Introduction / Context

1.1 India is presently on a high economic growth trajectory with GDP growth reaching 9% since 2005-06. This is also manifested in a phenomenal growth in air traffic that has been enabled by liberalized policies. Since 2002 the growth rate of passenger traffic has steadily increased crossing 20% in 2004-05. Expansion of air services in a competitive environment has brought it within the reach of large numbers that were hitherto not using air travel as their preferred mode of travel. This rapid growth in passenger traffic has put enormous pressure on airport infrastructure causing severe congestion at major airports. Airport services at non-metro airports are also not geared for handling this increased flow of traffic

1.2 In the past, government policy relating to greenfield airports was restrictive and aimed at protecting the financial viability of the existing airports. However, the spurt in traffic suggests a liberalized approach towards setting up of greenfield airports with a view to bridging the growing deficit in airport infrastructure. The anticipated investment in airport development during the Eleventh Plan is over Rs 40,000 crores, both from public and private sources, including for greenfield airports. It is, therefore, necessary to lay down the policy guidelines that would govern proposals for setting up greenfield airports, other than defense airports.

2. Legal framework

2.1 The Constitution includes aerodromes in item 29 of the Union List, which implies that the Central Government alone has the legislative and executive powers relating to airports. The primary responsibility for development of airports rests with the Central Government. The Union alone has competence to legislate in respect of:

“Airways, aircraft and air navigation; provision of aerodromes; regulation and organization of air traffic and of aerodromes; provision for aeronautical education and training and regulation of such education and training provided by States and other agencies”

2.2 The Aircraft Act, 1934 (the “Aircraft Act”) and the Rules made thereunder by the Central Government govern the development, maintenance and operation of all airports, including greenfield airports. Under the Act, Central Government has the sole right to grant a license for setting an airport, and the operations of the airport would be subject to its licensing conditions (Rule 78 of the Aircraft Rules).

2.3 Airports Authority Act (the “AAI Act”) was enacted by the Central Government in 1994, which stated that all government airports are to be developed, financed, operated and maintained by Airport Authority of India (“AAI”). However, the AAI Act enables AAI to grant a concession to a private entity for financing, development, operation and maintenance of an airport being managed by AAI. As such, greenfield airports to be developed by the Central Government could adopt the concession route if private participation is envisaged.

2.4 Airports other than those managed by AAI are governed by the provisions of the Aircraft Act and the Rules made thereunder. An entity other than AAI (hereinafter referred to as an “Airport Company”) can set up an airport. The Airport Company must function under a license from DGCA to be issued under the Aircraft Act. Such a license can be granted only to the following (Rule 79 of the Aircraft Rules):

- (a) A citizen of India; or
- (b) A Company or a body corporate either in the Central sector, State sector or the private sector registered under the Companies Act, 1956 subject to the following conditions:
 - (i) it is registered and having its principal place of business in India
 - (ii) it meets the equity holding criteria specified by the Central Government from time to time; or
- (c) the Central Government or a State government or any company or any corporation owned or controlled by either of the said Governments; or
- (d) a Society registered under the Societies Registration Act, 1860

2.5 Thus an airport can be developed and operated either by AAI or by an Airport Company that has been given a license by DGCA as per its license conditions. The Rules also allow the Central Government or a State Government to obtain a license.

3. Operations of airports

3.1 Airports managed by AAI must be operated according to the provisions of the AAI Act as well as the Aircraft Act. All other airports would have to be operated under the provisions of the Aircraft Act and the conditions of license.

4. Regulation of Airports

- (i) **Safety Regulation**

4.1 The process to regulate the technical and safety standards of all airports are vested in DGCA under the provisions of the Aircraft Act. AAI airport as well as those owned by Airport Companies must, therefore, conform to the technical and safety standards laid down by DGCA under the Aircraft Act.

(ii) **Economic Regulation**

4.2 Economic Regulation of all airports would be governed by the proposed Airport Economic Regulatory Authority (AERA) as and when enacted.

5. Development and Financing of Greenfield Airports

(i) **AAI Airports**

5.1 Greenfield airports to be set up by AAI would be preferably constructed through Public Private Partnership (PPP) and such airports would be financed substantially through PPP concessions. However, land for such airports would have to be provided by AAI. Further, financing gaps, if any, can be bridged through the Viability Gap Funding scheme, which provides for a capital grant of upto 20% of the project cost. The concessions for development of greenfield airports would be awarded through open competitive bidding based on model bidding documents. In the north eastern areas where it may not be feasible to follow the PPP route, AAI could set up greenfield airports by itself, as may be approved by the Government on a case to case basis.

(ii) **Other Airports**

5.2 Financing and development of any other airport would be the responsibility of the Airport Company seeking the license. Land for this purpose may be acquired by the Airport Company either through direct purchase or through acquisition by the State Government as per extant policy.

5.3 In case a State Government wishes to promote the setting up of airports in the State, it could either:

- (a) apply to DGCA for a license itself, in which event the State Government would be responsible for development and operation of the airport; or
- (b) an entity of the State Government could apply for a license to DGCA, in which event such entity would be responsible for development and operation of the airport; or
- (c) the State Government or its corporation may select a private entity and form a Joint Venture Company (JVC) in the private sector and

- in such an event, the JVC would be responsible for development and operation of the airport under a license from DGCA; or
- (d) Allot land to a private Airport Company for development and operation of an airport under a license from DGCA.

5.4 In case a State Government wishes to facilitate setting up of the airport, it could provide the following incentives to an Airport Company:

- (a) land, concessional or otherwise;
- (b) real estate development rights in and around the airports;
- (c) airport connectivity; rail, road;
- (d) fiscal incentives by way of exemptions from State taxes; and
- (e) any other assistance that the State Government deem fit.

5.5 State Governments may evolve their respective policies for providing any or all of the aforesaid incentives to an Airport Company. If the selection of a private entity or JVC partner is to be made by the State Government or its entity it shall be done through open competitive bidding. While granting land and other benefits, the State Government may, if it deems fit, stipulate the rights and obligations of the Airport Company as conditions of such grant.

5.6 State Governments cannot enter into any concession agreement with the Airport Company as they do not have the powers to grant airport concessions under the Constitution. As noted above, the powers to grant a license for operating an airport rests solely with the Central Government under the provisions of the Aircraft Act, 1934. However, the State Governments can provide any or all of the incentives/assistance stated in para 5.4 above.

5.7 State Governments can also provide land to AAI for development of greenfield airports through concessions to be granted to private entities in accordance with the provisions of the AAI Act. States may also provide any of the above concessions to AAI for facilitating the development of airports in their respective States. All such airports would be developed as PPP projects.

6. Reserved activities

6.1 On any greenfield airport to be developed under these Policy Guidelines, activities relating to Air Traffic Services (ATS), security, customs and immigration would be reserved for central government agencies. Provision of these services would be governed by the policy to be laid down by the Central Government from time to time. Prior to grant of license, an applicant for license shall procure the following clearances:

- (a) Defence clearance: An applicant seeking a license would need prior clearance from the Ministry of Defence. Guidelines for this purpose would be issued by the Ministry of Defence from time to time.
- (b) Air Traffic Services (ATS): Functions related to ATS are being discharged by AAI. The applicant will have to enter into a CNS/ATM Agreement with AAI for the provision of ATS services at the proposed airport. ATS would be provided on a cost recovery basis and AAI would publish a standard agreement for this purpose. The Airport Company would also provide the required infrastructure to AAI free of cost for provision of ATS.
- (c) Security: The applicant will have to enter into an agreement for provision of security by the concerned authority. The cost of providing security will have to be borne by the Airport Company. Guidelines for this purpose would be issued by the Ministry of Civil Aviation from time to time.
- (d) Customs: In case of an international airport, the applicant will obtain clearance from the Department of Revenue for provision of Custom services. The cost of providing these services will have to be borne by the Airport Company. Ministry of Finance would issue the necessary guidelines from time to time.
- (e) MHA Clearance: The applicant seeking a license would need prior clearance from the Ministry of Home Affairs regarding location of the airport, acquisition and installation of security equipment and verification of credentials of the developers.
- (f) Immigration: In case of an international airport, the applicant will procure clearance from the Ministry of Home Affairs for provision of immigration services. The cost of providing these services will have to be borne by the Airport Company. Ministry of Home Affairs would issue the necessary guidelines from time to time.
- (g) BCAS Clearance: The applicant seeking a license would need prior clearance from BCAS regarding location of the airport and acquisition and installation of security equipment.
- (h) Airport Meteorological Services: The applicant will have to enter into a CNS/ATN agreement with IMD for provision of meteorological services at the proposed airport to be provided by India Meteorological Department (IMD). The meteorological services would be provided on a cost recovery basis and IMD would publish a standard agreement for this purpose. The airport company would also provide the required infrastructure to IMD free of cost for provision of meteorological services.

6.2 A memorandum of understanding would be entered into between the Airport Company and each GOI agency/department providing the following Reserved Activities, setting out the terms and conditions on which the said services shall be provided by the relevant GOI agencies/departments:

- (i) Customs Control;
- (ii) Immigration Services;
- (iii) Health Services;
- (iv) Plant Quarantine Services; and
- (v) Animal Quarantine Services

6.3 The memorandum of understanding would be issued and revised from time to time by the Ministry of Civil Aviation.

7. Conditions of license

7.1 As a condition of license, the licensee would be required to:

- (a) make available its airport services, free of charge and to the extent necessary, for meeting exigencies such as war, natural disaster/calamities, internal disturbances etc. in accordance with the provisions of the Union War Book;
- (b) provide uninterrupted landing and parking facilities for defence and other para-military aircrafts, free of landing and parking charges, and also provide the infrastructure facilities and equipment required for defence operations;
- (c) make available to the security agencies access to the airport for periodic and surprise inspections;
- (d) obtain approval of the relevant agencies for hiring of foreign nationals for senior decision making positions in the management of the private airports;
- (e) adhere to the security measures laid down by the BCAS and DGCA;
- (f) obtain prior verification of the credentials of foreign firms to be engaged for construction, ground handling or other important activities at the airport;
- (g) obtain clearance relating to the FDI limits in the construction/development of private airports from relevant authorities. Any change in the control or ownership shall be subject to security clearance from national security angle;
- (h) ensure the requisite infrastructure for handling international passengers and crew who must pass through immigration and customs; and
- (i) ensure appropriate arrangements for health services and plant quarantine at international airports.

7.2 The authorities noted above shall, on a best endeavour basis, provide their response to the applications within 60 days.

8. Guidelines of Central Government to DGCA

8.1 The Central Government may from, time to time, notify guidelines to be followed by DGCA for grant of license to operate a greenfield airport. While granting a license, DGCA would keep these guidelines in view. For the present, the following conditions shall be kept in view by DGCA while granting a license.

- (a) No greenfield airport would be allowed within an aerial distance of 150 Km of an existing civilian airport.
- (b) In case a greenfield airport is proposed to be set up within 150 Km of an existing civilian airport, the impact on the existing airport would be examined. Such cases would be decided by the Government on a case to case basis.

9. Procedure for Approval of a Greenfield Airport

9.1 A greenfield airport to be set up by AAI or an Airport Company ["Airport Company" would have the meaning as given in Para 2.4] that is in compliance of the above guidelines and is beyond 150 km of an existing civilian airport would not require prior approval of the Central Government. DGCA would be competent to grant license for operation as per the extant Rules and Notifications.

9.2 A greenfield airport to be set up by AAI or an Airport Company that is beyond 150 km of an existing civilian airport but seeks exemption/relaxation from any of the other guidelines or extant Rules and Policies, would be considered by the Steering Committee constituted under paragraph 10. The Committee's recommendations would be forwarded to the Ministry of Civil Aviation. If the Steering Committee is unable to reach a consensus, the proposal would be placed before the competent authority (Union Cabinet) for a decision. DGCA would consider such proposals for grant of license only after the approval of the Central Government is conveyed.

9.3 In case of an application by the AAI or an Airport Company to set up an airport within 150 km of an existing civilian airport, the application shall be considered first by the Steering Committee. The Steering Committee shall consider all relevant facts and circumstances including contractual liabilities, if any. The Steering Committee shall also take into account whether the applicant has obtained the approvals required under the applicable laws from the authorities concerned. After considering the application, the Steering Committee shall make a suitable recommendation to the Central Government (Ministry of Civil Aviation). The Central Government (Ministry of Civil Aviation) shall consider the recommendation and decide whether approval for the airport project should be granted or not. DGCA shall

consider a proposal for grant of a license to the applicant only after approval has been granted by the Central Government (Ministry of Civil Aviation).

- 9.4 Where an application to set up a greenfield airport attracts paragraph 8.1(b) (within 150 kms) and also seeks exemption/relaxation from any extant Rules and Policies, the application shall be considered first by the Steering Committee. The Steering Committee shall consider all relevant facts and circumstances including contractual liabilities, if any. The Steering Committee shall also take into account whether the applicant has obtained the approvals required under the applicable laws from the authorities concerned. After considering the application, the Steering Committee shall make a suitable recommendation to the Central Government (Ministry of Civil Aviation). The Ministry of Civil Aviation shall place the matter before Union Cabinet for its consideration. DGCA would consider such proposals for grant of license only after the approval of the Central Government is conveyed
- 9.5 Airports for cargo and/or non-scheduled flights and for heliports need not be submitted for approval of the Ministry of Civil Aviation and these cases may be considered and decided at the level of DGCA, subject to applicable laws.

10. Constitution of a Steering Committee

10.1 Since the grant of a license for a greenfield airport involves several agencies, a Steering Committee would be set up under the chairmanship of Secretary (Civil Aviation) to coordinate and monitor the various clearances required for setting up of an airport. The Committee would consist of the following:

- (a) Secretary, Civil Aviation - Chairman
- (b) Secretary, Ministry of Home Affairs, or his representative not below the rank of Additional Secretary;
- (c) Secretary, Ministry of Defence, or his representative not below the rank of Additional Secretary;
- (d) Secretary, Department of Economic Affairs, or his representative not below the rank of Additional Secretary;
- (e) Secretary, Department of Revenue, or his representative not below the rank of Additional Secretary;
- (f) Secretary, Planning Commission, or his representative not below the rank of Additional Secretary;
- (g) Director General, India Meteorological Department;
- (h) Chairman, Airports Authority of India;
- (i) Director General of Civil Aviation; and

(j) Joint Secretary, Ministry of Civil Aviation - Convener

10.2 Ministry of Civil Aviation would convene a meeting of the Committee once every 3 months in case applications for grant of clearances/licenses are pending.