



APAO/AERA / 2021-22

Date: 14<sup>th</sup> July 2021

**Director (P&S, Tariff)**  
**Airports Economic Regulatory Authority of India (AERA),**  
AERA Administrative Complex,  
Safdarjung Airport,  
New Delhi – 110 002

**Subject: APAO response to Consultation Paper No. 08/2021-22 dated 15<sup>th</sup> June 2021 in the matter of determination of aeronautical tariff for Cochin International Airport, Kochi (Cok) for the Third Control Period.**

Dear Sir / Madam,

This is in reference to the **Consultation Paper No. 08/2021-22 dated 15<sup>th</sup> June 2021** issued by AERA in the matter of determination of aeronautical tariff for Cochin International Airport, Kochi (Cok) for the Third Control Period (01.04.2021-31.03.2026) wherein written comments were sought from stakeholders.

Please find below the submission of APAO for the kind consideration of AERA.

**1) Inclusion of profits of Subsidiary company Cochin Duty Free Services Limited as part of the non-aeronautical revenues for true-up of the second control period and the ARR computation of the Third Control Period**

**A. Proposal of AERA:**

*Para 4.9.25: "Based on the assessment of the financials of CDRSL, it was observed that the gross profit margin (gross profit/revenue from operations) for CDRSL excluding royalty paid to CIAL during the period FY 18-20 lies in the range 45-48%. As per the tariff order of the Second Control Period, the Authority had noted that the income would be earned by the wholly owned subsidiary of CIAL (i.e., CDRSL) from duty free operations and the Authority sees no reason in a part of the revenue earned by CIAL through its subsidiary to be kept outside the purview of being considered as Non-Aeronautical revenue and hence, the entire profits from that activity should be considered as Non-Aeronautical revenues for computing the Aggregate Revenue Requirement. In line with this, for the purposes of tariff determination and true up, the Non-Aeronautical Revenues for CIAL from duty free operations is proposed to be the sum of royalty received from CDRSL plus the net profits of CDRSL for any given year."*

*Para 10.2.9 - "CIAL has considered a 30% revenue share from CDRSL for the 3rd Control Period. The Authority notes that based on the decision taken regarding duty-free revenue*



*in the 2<sup>nd</sup> Control Period Tariff Order, the entire profit of CDRSL should go to the CIAL (100% holding company of CDRSL). However, since forecasting profit of the subsidiary is difficult at this stage, the Authority proposes to consider a 30% revenue share during FY 2022 and FY 2023, owing to decline in international traffic due to COVID-19 pandemic. Further, the Authority proposes to consider 45% revenue share during the period FY 2024-2026 and true up the same based on actual revenues and profits.”*

## **B. APAO Submission:**

APAO strongly objects AERA’s treatment of profits of subsidiary company as part of the non-aeronautical revenues on account of the following reasons which are explained in detail below:

- a. This is an Arm’s length transaction between airport operator and subsidiary.
- i. Subsidiary financial accounts are outside of AERA’s jurisdiction. AERA Act, 2008 (and its amendment) and the AERA guidelines does not provide AERA with the mandate to evaluate the financial statements of the non-aeronautical subsidiaries. Therefore, AERA has no jurisdiction to review the financial accounts of CDRSL, an entity providing non-aeronautical services.
- b. Need for consistent treatment on Subsidiaries to all private airports
- c. Change of decision of AERA from second control period to third control period.

## **2) Airline space rentals considered as aeronautical revenues in second control period and third control period by AERA**

### **A. Proposal of AERA:**

Para 4.10.16: *“The Authority observes that in the Tariff Order for the 2<sup>nd</sup> Control Period, Airline space rentals were proposed to be considered as Aeronautical revenues basis which the Authority proposes to consider Airline space rental as Aeronautical revenue for the 2<sup>nd</sup> Control Period.”*

Para 10.2.6: *“Airline Space Rentals –The Authority proposes to consider all rentals collected from Airlines as Aeronautical revenues.”*

## **B. APAO's proposal:**

- i. APAO has noted that AERA has treated the airline space rentals of CIAL as aeronautical revenues.
- ii. APAO strongly objects AERA's inconsistent approach on the treatment of the airline space rentals.
- iii. AERA Act, 2008 and the AERA guidelines do not consider the airline space rental as a aeronautical revenues. Further, AERA does not regulate the airline space rental at any of the airports. Thus, the proposal of AERA does not conform to its Act and guidelines.
- iv. ICAO's Policies on Charges for Airports and Air Navigation mentions that airline space rentals are non-aeronautical in nature while airlines may be providing services aeronautical in nature. Below is the excerpt from the ICAO's policy:  
*"Revenues from non-aeronautical sources. **Any revenues received by an airport in consideration for the various commercial arrangements** it makes in relation to the granting of concessions, the rental or leasing of premises and land, and free-zone operations, **even though such arrangements may in fact apply to activities which may themselves be considered to be of an aeronautical character** (for example, concessions granted to oil companies to supply aviation fuel and lubricants and the rental of terminal building space or **premises to air carriers**). Also intended to be included are the gross revenues, less any sales tax or other taxes, earned by shops or services operated by the airport itself."*
- v. APAO emphasizes to AERA the need for consistent treatment of the airline space rentals and requests AERA to consider the airline space rentals as non-aeronautical revenues in the true-up of the second control period and the third control period.

## **3) CSR expenses excluded by AERA from the aeronautical operational expenditure for true-up of the second control period and the third control period**

### **A. Proposal of AERA:**

Para 9.2.18: *"The Authority notes that CIAL has excluded CSR expenses for the 3rd Control Period, which is in line with the decision taken by the Authority in this regard in the previous tariff order."*

## **B. APAO's proposal:**

- i. As per TDSAT judgement dated 16 December 2020 for BIAL, CSR expenses are allowed as part of aeronautical operational expenditure. Below is the excerpt from the TDSAT judgement:  
*"The decision of the Authority to not allow CSR expenditure as a cost of the Airport Operator is not proper and is set aside. The Authority shall pass consequential orders so as to prevent loss of or reduction in the determined fair return to the equity holders. Necessary true-up exercise shall be done accordingly. (Para 81)."*
- ii. APAO requests implementation of above TDSAT order on all tariff determination process.

## **4) Land lease rentals from coast guards, navy considered as non-aeronautical revenues for the true-up of the second control period and the computation of ARR for the third control period**

### **A. Proposal of AERA:**

Para 4.10.12: *"Further, there were some other revenues which had been considered as Non-Aeronautical Revenues by the Airport Operator under the head - 'Land space excluding BPCL fuel hydrant rent'. On obtaining clarifications from this aspect from CIAL, the Authority noted that land lease from Coast Guard and Navy are considered as Non-Aeronautical. The same have been proposed to be reclassified as Aeronautical revenues."*

### **B. APAO's proposal:**

- i. APAO has noted that AERA has considered the land lease rentals from Coast Guard and Navy as non-aeronautical revenues. APAO notes that such treatment is unprecedented, arbitrary and it lacks merit.
- ii. AERA Act, 2008 and the AERA guidelines do not consider the lease rentals from Coast Guard and Navy as an non-aeronautical revenue. Further, AERA does not regulate the lease rentals from Coast Guard and Navy at Cochin Airport. Thus, the proposal of AERA does not conform to its Act and guidelines.
- iii. ICAO's Policies on Charges for Airports and Air Navigation mentions that lease rentals are non-aeronautical in nature while the entity may be providing services essential to airport. Below is the excerpt from the ICAO's policy:  
*"Revenues from non-aeronautical sources. **Any revenues received by an airport in consideration for the various commercial arrangements** it makes in relation to the granting of concessions, the rental or leasing of premises and land, and free-zone*

*operations, even though such arrangements may in fact apply to activities which may themselves be considered to be of an aeronautical character (for example, concessions granted to oil companies to supply aviation fuel and lubricants and the rental of terminal building space or premises to air carriers). Also intended to be included are the gross revenues, less any sales tax or other taxes, earned by shops or services operated by the airport itself.”*

- iv. APAO has noted that it is a general practice of giving the space to the Indian Army, Navy and Air Force based on their needs and the lease rentals received from these entities have been considered as non-aeronautical revenues by AERA for all major airports including AAI airports.
- v. APAO requests AERA to consider the land lease rentals from Coast Guard and Navy as non-aeronautical revenues in the true-up of the second control period and the ARR computation of the third control period.

## **5) Interim review of tariffs at the end of FY23**

### **A. Proposal of AERA: NIL**

### **B. APAO’s proposal:**

- i. COVID-19 pandemic has significantly affected the aviation sector and the trajectory of COVID-19 pandemic is uncertain. During February, 2021, when it was thought that India has seen the last of COVID-19, we were hit by second wave which was worse than the first wave. Second wave has again affected the once improving domestic air traffic and pushed forward the recovery period of international traffic.
- ii. AERA will appreciate that during these uncertain times it is exceedingly difficult to forecast the traffic and the building blocks for the determination of the ARR of the third control period. Though CIAL has taken the assumptions to the best of its knowledge based on the information available today, these assumptions are most likely to undergo a change.
- iii. Given these unprecedented situations, it is a humble request to AERA to allow airports CIAL to undertake an interim review of tariffs at the end of FY23. APAO would like to clarify that it does not expect the interim review to be a detailed exercise of tariff determination but expects it to be a simplified version of tariff determination to quickly revise the aeronautical tariffs based on the actuals of FY22 and FY23.
- iv. AERA will appreciate that the interim review will surely reduce the uncertainty faced by the airport operator and will go a long way in building confidence and resilience in the entire airport operator community.

## **6) Exclusion of land not in use**

### **A. Proposal of AERA:**

Para 8.2.9 - *“The Authority noted that the land for New Import Cargo Complex (4.1 acres), Future T3 apron expansion (33.6 acres) and the land for CISF quarters (5.4 acres at Akaparambu) have been considered in the computation of land cost for Aeronautical purposes. However, the Authority notes that according to Clause 3.5.3 of Order No. 42/2018-19 dated 05 March 2019 regarding FRoR to be provided on cost of land, the Authority only considers capitalised assets for providing a return and on the same lines would consider only value of land put to use by the Airport operator. The remaining land would be considered as and when the land is put to use. The Authority proposes to exclude such land earmarked for future use from the computation of return on land and proposes to true up the same based on actual usage.”*

### **B. APAO’s proposal:**

- i. As per Order No. 42/2018 – 19, AERA has offered return on land procured for airport. However, while finalizing the CIAL orders, it is stated that it will provide return only on the land put to use by airport operator and not for the land acquired for future expansion purpose.
- ii. APAO requests AERA to provide return on the land earmarked for future expansion also as:
  - a. acquiring land in future is not viable due to high land cost
  - b. it disincentivizes the airport operator to acquire land now for future phases
- iii. If AERA proposes to consider only the land for the capitalized assets, AERA to provide return at the fair value of the land at the time when it is put to use instead of its book value.

## **7) Financing allowance excluded by AERA in the true-up of the second control period and the ARR computation of the third control period**

### **A. Proposal of AERA:**

Para 4.4.38 - *“The Authority noted that the Airport Operator has considered a Financing Allowance (as provided in Direction 5 – Airport Guidelines) of INR 11.9 Crores, against Interest During Construction (IDC) on the Work-in-Progress (WIP) assets worth INR 158 Crores projected to be capitalised in FY 2021.*

Para 4.4.39 - *The Airport Operator has computed Financing Allowance on the entire WIP amount whereas the Authority is of the view that such allowance is essentially the IDC for a project and should be provided only on the debt portion of the project fund. Accordingly, the Authority has considered IDC to be provided based on the changes in aeronautical capital additions discussed above and the average gearing considered for the Second Control Period (refer Section 4.6)."*

Para 6.2.61 - *"The Authority noted that financing allowance and the methodology for computation of the same was detailed in the airport guidelines and the same would need to be provided to the Airport Operator. However, the Airport Operator has computed financing allowance on the entire WIP amount being capitalised, whereas the Authority is of the view that such an allowance is essentially the IDC for a project and should be provided only on the debt portion of the project funds. Accordingly, the Authority has considered IDC to be provided based on revisions in the proposed capital expenditure discussed above and the notional gearing considered for the Third Control Period (refer Section 7). IDC as considered by the Authority is given below."*

**B. APAO's proposal:**

- i. AERA has agreed in the consultation paper that the financing allowance and its methodology for computation is detailed in the airport guidelines and the same need to be provided to CIAL.
- ii. Further, AERA guidelines in para 5.2.7 clearly specify that the capital work in progress assets will be given return based on the computation of the financing allowance.
- iii. In the previous orders of AERA, financing allowance was allowed in the second control period of CIAL, BIAL and HIAL.
- iv. AERA's proposal to exclude the financing allowance does not conform to the AERA guidelines and is a change of decision by AERA from the second control period order
- v. As per the AERA guidelines, APAO requests AERA to consider the financing allowance on the capital work in progress.





We earnestly request the Authority to give a serious consideration to the points raised by us in the above response, before issue of final order determining the aeronautical tariff for Cochin International Airport, Kochi (Cok).

In case any other information/ clarification is required in this connection, please inform the undersigned.

Thanking you.

Yours faithfully,  
**For Association of Private Airport Operators (APAO)**

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