



MIAL/ VPR/ 2018-19/16

October 22, 2018

The Secretary  
Airports Economic Regulatory Authority of India  
AERA Building, Administrative Complex,  
Safdarjung Airport  
New Delhi – 110 003

Madam,

**Sub: Comments on Supplementary Consultation Paper No.17/2018-19 In the matter of Determination of Fair Rate of Return (FRoR) to be provided on Cost of Land Incurred by various Airport Operators in India. (In continuation to Consultation Paper No.04/2018-19 dated 08.05.2018)**

In connection of above we give below our point wise comments:

- 1) Proposal in Para 12.1.3 : In this connection we wish to state that Authority has proposed to allow a return in the form of equated yearly installment at par with interest on debt in case of privately acquired land by the Airport Operator. In this connection, we state that since the cost of land may be funded through both debt and equity, the return should be allowed at the weighted average cost of capital. Return at cost of debt should only be considered where such land is financed purely out of debt.
- 2) Proposal in Para 12.1.5: Though this proposal applies to airport land acquired by Government and handed over to the airport operator, it is arbitrary in nature. Condition to reduce the dividend paid from amortization to be allowed would make it difficult for Government to structure such amortization of land cost in advance. In absence of any return by way of WACC, there would be uncertainty as to amortization of cost of land and return on the same.
- 3) In Para 4.6 of the Supplementary Consultation paper, Authority states that where the city side revenue and Non Aeronautical revenues are large and under the Hybrid Till Policy, the Airport Operator gets to retain a substantial portion enabling the operator to pay a handsome dividend, It may not be necessary to provide for a return on land cost. In this connection we wish to state that there is no relation between providing return on cost of land used for aeronautical purposes and revenues from city-side development. National Civil Aviation Policy envisages Hybrid Till at the airport, under which only 30% revenue from non-aeronautical activities can be considered for cross-subsidisation.



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Any dividend, if paid shall always be out of non aeronautical income remaining after cross subsidisation. Any such attempt by the Authority to not allow or limit a return on land shall result in increased amount of cross-subsidy which will be against the intent of the policy. This proposal is arbitrary and need to be dropped / removed at the time of issue of final Order in this respect.

- 4) In Para 4.7 and Para 12.1.6, Authority has proposed that the cost of land shall be subject to further due diligence and the Authority shall determine separate fair value of land. This proposal is detrimental to the interest of the Airport Operator since it would involve post facto disallowance of cost of land and would add to the woes of the Airport Operator by introduction of regulatory uncertainty and result in denial of amortizing the cost of land and earning any return on such disallowed cost of land. In our opinion the cost actually incurred on acquisition & development of land should only be considered as Fair Value of Land.
- 5) Further in Para 4.7 and Para 8.2 of the Supplementary Consultation Paper, Authority has stated that the cost incurred towards displacement and rehabilitation would not be included in land development cost and passed on to other stake holders and passengers.

Authority should note that an airport operator, for removal of bottlenecks for development at an existing airport, maybe required to incur costs on displacement and rehabilitation of persons in occupation of a certain land to be acquired. Such expenses on displacement and rehabilitation could also be for getting possession of its own land encroached upon by outsiders. If the Authority does not allow such cost to be included in the cost of land, it would affect the acquisition of land for streamlining or removal of bottlenecks at existing airports and shall ultimately limit the development.

Thus, the cost of displacement & rehabilitation should be allowed for amortisation together with return provided at WACC. Alternatively, such cost could be allowed as pass through in the year of its incurrence.

- 6) Further, Authority should allow return on all the land except which is used/allocated specifically for Non-Aeronautical services. All the land which is lying unutilized or kept vacant for future development should by default be considered as aeronautical unless utilized / earmarked for Non-Aeronautical purposes. However, if such unutilized land is put to any Non-Aeronautical use, no return may be provided by way of WACC with effect from such date.



- 7) In Para 4, Authority while expressing its views has stated that any rentals towards land let out for being used for providing Aeronautical revenues shall be treated as of aeronautical nature and the authority would regulate such rentals. In this connection, we wish to state that any rental towards land let out cannot assume colour of the purpose for which it is let out, i.e. Rental shall remain rental which is a Non-Aeronautical revenue and shall not assume colour of Aeronautical revenue just because it is coming from a party who is rendering Aeronautical services at the airport.

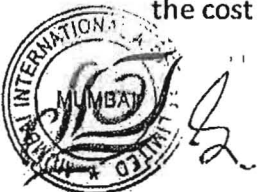
Hon'ble Supreme Court in case of Union of India vs. Tata Tea Co. Ltd. (2017), decided that dividend declared & distributed from the profits earned from the composite business of cultivation and manufacture of tea shall not be exempted from Dividend Distribution Tax under Section 115-O & DDT shall be applicable on the entire amount of dividend declared & distributed since the Dividend is derived from the investment made in the shares of the company & the foundation of its rests on the contractual relations between the company & the shareholder. Dividend is not derived by a shareholder by his direct relationship with the land.

Hon'ble Supreme Court in case of CIT V. Nalni Behari Lall Singha [1969] 74 ITR 849 (SC) in para 3, it has observed that Dividend distributed by a company among the shareholders, is not impressed with the character of the profits from which it reaches the hands of the shareholders. Thus, the Hon'ble Supreme Court concluded that when the dividend is declared & distributed to the shareholders, it is not impressed with character of source of its income.

Equating the above two cases to the present scenario, lease rentals derived from letting out the land to party rendering Aeronautical services is due to the contractual agreement & not by directly providing Aeronautical Services. Based on above, Lease rentals earned from letting out the land for the Aeronautical Services cannot be deemed to be Aeronautical Income in the hands of the Airport Operator which itself is not directly providing such Aeronautical Service.

We would also like to state that, MIAL reserves its right to elaborate on this issue at the time of determination of its tariff for the third control period.

- 8) In Para 3.4, the Authority on one hand expresses its apprehension that land might not be available for airport development unless it is acquired by paying the market price, while on the other hand in Para 8.2 it states its view to disallow the cost incurred on displacement and rehabilitation. The two views of Authority are contradictory to each other. To be fair Authority should allow WACC based return on cost of land including the cost on displacement and rehabilitation.



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- 9) In Para 3.6, the Authority has remarked that development of airports brings about economic benefit to the concerned region. The Authority should note that such factor can be viewed only by the Government who is responsible for the development of the region and the Private Airport Operator cannot be expected to be responsible for bringing in development at the expense of denial / lower return on the cost of land. Denial of full genuine costs incurred on bringing such land to use after its acquisition or otherwise, brings in Regulatory uncertainty.

To summarise our views, the Authority while finalizing the Principles on providing Fair Rate of Return on Cost of Land :

- a. should be allowing the EMI at WACC and not just on cost of debt;
- b. should allow any costs towards displacement and rehabilitation as a cost for development of land and allow amortization of the same over the initial concession period with return at WACC;
- c. should allow the actual cost and all genuine costs incurred on bringing the land to use as cost of land;
- d. Should not be treating the land rentals from a service provider, if it is providing an aeronautical service, as aeronautical revenue in the hands of the airport operator.

Thanking you,

Yours Sincerely,

For **Mumbai International Airport Ltd.**

**(Sanjiv Bhargava)**

**Vice President (Regulatory and Taxation)**



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