

Regulatory Hotline

June 30, 2020

FUTURE OF DRONES IN INDIA: DRAFT RULES 2020

Recent need for the use of Unmanned Aircraft Systems (“UAS” / “Drones”) for COVID-19 related relief operations has resulted in the authorities realizing that the current laws for civil operations of Drone in India had several missing links. Consequently, the Indian Ministry of Civil Aviation (“MoCA”) on June 02, 2020 introduced the draft Unmanned Aircraft System Rules, 2020 (“Draft UAS Rules”).¹

The power to issue such rules have been conferred upon the Central Government under Section 4, 5 and 8 (2) of the Aircrafts Act, 1934. The Draft UAS Rules, once passed will supersede the existing drone regulations which were made effective by the Director General of Civil Aviation (“DGCA”) in December 1, 2018 (“Existing Guidelines”).

We have discussed below some of the key features of the Draft UAS Rules.

APPLICABILITY

Unlike the Existing Guidelines whose applicability was limited only to the India territory, the applicability of the Draft UAS Rules has been extended to all UAS registered in India, even when they are operating outside Indian territory. Further, its provisions would also apply to all persons seeking to own or possess, or seeking to engage in importing, manufacturing, trading, leasing, operating, transferring or maintaining a UAS in India.

CATEGORIZATION AND CLASSIFICATION OF UAS

While the Existing Guidelines are limited to RPAS alone, the Draft UAS Rules goes on to categorize UAS into the following:

- Remotely Piloted Aircraft System (*i.e. UAS piloted from a remote pilot station*)
- Model Remotely Piloted Aircraft System (*i.e. UAS operating without payload and used for educational or experimental purposes only within visual line of sight*)
- Autonomous Unmanned Aircraft System (*i.e. UAS that does not require pilot intervention in the management of the flight*)

Further, the classification of UAS under the Draft UAS Rules are similar to the Existing Guidelines (i.e. weight-based classification)², with one exception being introduction of reclassification norm for Nano Drones into Micro Drones, if the Nano Drone exceeds the stipulated performance parameters based on the maximum speed (i.e. 15 m/s), height (i.e. 15 meters) and range attainable (i.e. 100 meters) (i.e. performance-based classification).

The abovesaid exception pertaining to reclassification of Nano Drones is likely to impact the current Drone ecosystem and pose a challenge for its manufactures and existing operators. Currently, such drones are exempted from meeting various conditions prescribed under the Existing Guidelines. However, going forward to continue to available such exemptions, the manufacturer may have to inbuilt geo fence capabilities to restrict the operations of Nano Drones to above said speed and height limits.

AUTHORISATION FRAMEWORK

As against the earlier regime under the Existing Guidelines where only the UAS operators, manufacturers and importers were required to obtain necessary licenses and approvals, going forward the Draft UAS Rules require all persons associated with the Drone ecosystem to undertake a registration in the capacity of an authorised UAS Importer, authorised UAS Manufacturer, authorised UAS Trader, authorised UAS Owner or authorised UAS Operator (together as “Authorised Person”), by applying through the digital sky platform in accordance with the conditions prescribed under Schedule I of the Draft UAS Rules.

To be eligible to apply for above said authorizations requires the applicant to be:

- An individual who is a citizen of India who is an Indian citizen and has attained at least 18 years of age; or
- A company or a body corporate whose substantial ownership and effective control should vest with Indian nationals and -
 - It is registered and has its principle place of business within India;
 - Its chairman and at least two-thirds of its directors are citizens of India;

Or;
- By a firm or an association of persons or body of individuals or a local authority or any legal entity whether incorporated or not (whose substantial ownership and effective control should vest with Indian nationals), Central and State Government or an agency thereof:

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Each Authorised Person will be required to submit an application as prescribed under Schedule I of the Draft UAS Rules to obtain an authorisation unique number (“**AUN**”) to be issued by the DGCA via the digital sky platform, which will be valid for a period of 5 years, unless it is suspended, revoked or cancelled, with a further renewal option for another 5 years. However, it is pertinent to note that the Draft UAS Rules do not prescribe any time-line within which the DGCA would grant such authorization to the applicant. Thus, there remains ambiguity with respect to the time which may be required for obtaining such authorisation.

Further, we note that the eligibility restrictions on foreign entities or their Indian subsidiaries continues to exist as they are not allowed to register as an Authorised Person. Considering the capabilities of international players in the Drone industry and the potential of technology collaboration, not allowing foreign owned and control Indian entities to be able to own / operate Drones in India seems restrictive. Further, this may also dis-incentivize foreign players from investing in the Indian UAS market.

IMPORT OF UAS

The import procedures under the Draft UAS Rules is a multi- step process where the UAS Importer is required to obtain a Certificate of Manufacture followed by an application to DGCA via the digital sky platform and DGCA, upon its satisfaction, recommending the application for issuance of an import clearance to the Directorate General of Foreign Trade (“**DGFT**”). Also, there are no exemptions for Nano category Drones which is a significant change from the Existing Guidelines.

CERTIFICATE OF MANUFACTURE

The Draft UAS Rules proposes a new certification requirement in the form of a ‘Certificate of Manufacture’ which is required to be obtained by an authorised UAS Manufacturer / UAS Importer to certify that the design of the UAS along with its specification meets the requirements as specified under the Draft UAS Rules. Further, the term ‘manufacturer’ has been defined to mean a person who either manufactures or assembles an UAS or any part or component thereof. Therefore, the requirement for obtaining a Certificate of Manufacture will be applicable on any authorized UAS Manufacturer / UAS Importer engaged in manufacturing / importing of a UAS or any of the parts or components of a UAS or assembling a UAS from different set of parts, either imported to India or locally purchased in India.

The scope of Existing Guidelines vis-a-vis meeting certain manufacturing standards was limited to manufactures and importers of assembled drones. However, extending similar certification requirements even to the manufactures and importers of different parts that may be used for manufacturing of Drones, is likely to have an adverse impact on the Indian Drone industry for following reasons:

- a. most domestic players rely on imported spare parts for the purpose of their manufacturing in India;
- b. multiple certifications may be required for manufacturing a Drone – each for the spare parts and then for the final assembled Drone; and
- c. some components used for manufacturing of Drones may also have alternative use and hence creating an ambiguity on applicability of Draft UAS Rules on such components.

In order to ascertain compliance of the equipment requirements for grant of Certificate of Manufacture, DGCA has reserved the power to appoint testing laboratories or organizations that will carry out testing for purposes of certification of UAS.

From an overall process perspective, the applicant will have to demonstrate the compliance of each type of UAS with the related documents submitted and other manufacturing requirements as applicable for each type of UAS.

Subsequently, the authorised testing laboratory or organization will submit the test report and recommendations to DGCA, based on which the DGCA will take the final decision in this regard. However, no guidance is provided on how a Drone will be imported in India to comply with the said testing processes.

Further, the Draft UAS Rules fail to lay down the definition of ‘components’, which may include both hardware and software elements of a UAS. Considering the UAS industry and market in India are at a very nascent stage, a majority of Indian UAS manufacturers may be reliant on foreign imports for their hardware or software component or parts required for development of indigenous UAS. Therefore, the burden for obtaining a Certificate of Manufacture would be applicable on domestic manufacturers and importers, even in instances where merely a spare part or an additional component is required to be imported and not the entire UAS. In addition, considering the reliance of domestic manufacturers to import parts / components, the entire process for obtaining a Certificate of Manufacture will have a significant impact on production timelines, considering the Draft UAS Rules are silent on any time-line within which the DGCA would grant such Certificate of Manufacture to the applicant.

Additionally, for each Certificate of Manufacture, there will also be a requirement to obtain an ‘equipment type approval’ (“**ETA**”) from the Wireless Planning and Coordination (“**WPC**”) wing of India’s Department of Telecommunication (“**DoT**”) for operating drones in de-licensed frequency bands, along with details of emergency recovery system installed.

Lastly, Certificate of Manufacture will also be required for Nano category Drones.

MAINTENANCE OF UAS

The Draft UAS Rules propose to prohibit the operation of any UAS, unless it is maintained as per the Draft UAS Rules. The term ‘maintenance’ includes performance of tasks required to ensure the continuing airworthiness of an UAS, which may include overhaul, inspection, replacement, defect rectification and embodiment of a modification or repair or test. Every UAS Manufacturer or UAS Importer operating in India is required to submit to DGCA, a maintenance manual containing the maintenance requirements and procedures on a mandatory basis. The maintenance manual is also required to be a part of the mandatory sale documents provided by such manufacturer or importer to any authorised UAS Trader, UAS Owner or UAS Operator.

UAS Manufacturers or UAS Importer are also permitted to establish authorised maintenance centers subject to notification to the DGCA once established. It is pertinent to note that while the authorised maintenance centers are not required to be owned or controlled by an Authorized Person under the Draft UAS Rules, it is not very clear as to whether any ownership and control restrictions are applicable on foreign entities or their Indian subsidiaries for operating such authorised maintenance centers.

OWNERSHIP, SALE AND PURCHASE OF UAS

The Draft UAS Rules do not permit any UAS to be owned or operated in India unless it has been allotted a UIN. Accordingly, the Draft UAS Rules has put the onus on the authorised UAS Importer or the authorised UAS Manufacturer to obtain a UIN for each UAS before it could be transferred (including by way of sale) to an authorised UAS Trader or authorised UAS Owner. Such UIN will have to be affixed on the UAS in an identifiable and visible manner. Also, as opposed to the Existing Guidelines, the said UIN will be required for Nano category Drones.

Further, any sale, ~~lease~~ or transfer of UAS will only be permitted between Authorised Persons in accordance with the Draft UAS Rules. In case of sale, an authorised UAS Importer or UAS Manufacturer will only be permitted to sell to a UAS to an authorised UAS Trader or an authorised UAS Owner in India. Hence, it could possibly be concluded that an UAS Operator is not permitted to own a Drone.

Specially, when it is not clear as to whether the same person can obtain multiple authorizations under the Draft UAS Rules to undertake, two or more activities, such as owning and operating, importing and manufacturing or manufacturing and trading etc. Clarity in this regard would be very helpful from an overall drone ecosystem.

Any Authorised Person seeking to sell / lease his UAS to another Authorised Person would be subject to prior approval from the DGCA.

OPERATION OF UAS

Authorised UAS Operators will be permitted to operate UAS, except Nano category UAS, only upon obtaining a UAS Operator Permit ("**UAOP**") from the DGCA via the digital sky platform. Conditions stipulated for obtaining UAOP includes, among others, due intimation to the land or property owner or the local authority for takeoff and landing of UAS. After each flight, the operator should also furnish a log of the flight.

The UAOP holder will be responsible for ensuring the privacy of individual and their property during operations and it will be required to comply with any other local or state regulatory requirements and/or any other conditions including height and air space restrictions, as may be specified by DGCA. It is also pertinent to note that no UAS shall be operated without having obtained a valid third party insurance policy to cover the liability that may arise on account of a mishap involving such UAS and causing death or bodily injury to any person or damage to property. The UAOP will be non-transferable and will be valid for a period of up to 5 years, with an option to apply for renewal for a period of another 5 years.

No UAOP shall be required for operating Nano category Drones.

REMOTE PILOTS

Except for Nano UAS, no person other than qualified remote pilots ("**QRP**") under the Draft UAS Rules should operate a Micro category UAS. Eligibility requirement for QRP is that the applicant should be of 18 years of age, passed tenth standard and must have undergone the required training as specified in the Draft UAS Rules. However, in order to operate any UAS of a higher category than Micro, the QRP must also obtain a valid 'remote pilots' license' ("**RPL**"). The RPL will have to be obtained through the digital sky platform in the manner and procedure that will be specified by the DGCA. For foreign pilots, an additional security clearance issued by the Ministry of Home Affairs will have to be obtained in addition to the QRP and/ or RPL.

AUTONOMOUS & BVLOS OPERATIONS

Unlike the Existing Guidelines where autonomous operations of UAS was completely restricted, the Draft UAS Rules proposes to enable its operations subject to conditions that may be specified by the DGCA. Further, while the Existing Guidelines restricted the UAS operations to the direct visual line of sight, the Draft UAS Rules, do not expressly impose any such operational airspace restrictions for UAS operating beyond the visual line of sight. This development may give a significant a boost to UAS-based commercial services and enhanced operations. The flexibility in the text of the Draft UAS Rules is a welcome step but it would largely depend on the willingness of the DGCA to permit such operations.

MODEL RPAS OPERATIONS

This is an independent drone category which has been introduced under the Draft UAS Rules. Such Model RPAS are not allowed to carry any payload and should be used only for educational or experimental purposes and must be flown within visual line of sight only. Considering the purpose of such Drones, most of the conditions / compliances under the Draft UAS Rules have been exempted for such Model RPAS (such as Certificate of Manufacture, AUN, UIN, UAOP etc.). However, it needs to be examined whether such Model RPAS would extend to all drone categories (irrespective of weight) and considering the exemptions, whether such Model RPAS could be owned / operated by foreign owned and control Indian entities.

Introduction of this new category of Drones clears the air around use of Drone prototypes for research and developments purposes, which was unclear under the Existing Guidelines.

DRONE PORTS

Taking a cue from the Drone Ecosystem Policy Roadmap that was released by MoCA during the Global Aviation Summit, 2019, the Draft UAS Rules have also introduced the novel concept of licensed Drone Ports. It has been defined under the Draft UAS Rules to mean an area on land or water, including any buildings, installations, and equipment in a permitted area that can be used for the purposes of arrival, departure, surface movement and associated maintenance, along with commercial activities of Drones.

To be eligible to apply for a Drone Port license the applicant must be:

- iv. An individual who is a citizen of India who is an Indian citizen and has attained at least 18 years of age; or
- v. A company or a body corporate whose substantial ownership and effective control should vest with Indian nationals and -

- (c) It is registered and has its principle place of business within India;
- (d) It meets the equity holding criteria, as prescribed by the Central government;

Or;

- vi. By a firm or an association of persons or body of individuals or a local authority or any legal entity whether incorporated or not (whose substantial ownership and effective control should vest with Indian nationals), Central and State Government or an agency thereof:

Similar to other approvals / licenses under the Draft UAS Rules, the applicant may apply to DGCA via the digital sky platform. Accordingly, the DGCA upon its satisfaction, may grant a license for the Drone Port, subject to any security clearance of the applicant by the concerned authority. Such a license will be granted for a period upto 5 years with an option to renew. The Draft UAS Rules also prescribe for an option to obtain a Drone Port authorization for temporary operation of UAS for a period up to 3 months.

Further, we note that the eligibility restrictions have not been imposed on foreign owned and controlled Indian subsidiaries as they are allowed to apply for a Drone port license. Considering the capabilities of international players in the UAS industry and the potential of technology collaboration, allowing foreign owned and control Indian entities to be able to obtain a license for Drone ports in India is forward-looking step. As, this may incentivize foreign players to invest in building the requisite infrastructure in the Indian UAS market.

UNMANNED AIRCRAFT SYSTEM TRAFFIC MANAGEMENT SYSTEM

As per the Draft UAS Rules, the Central Government have been given the power to establish an Unmanned Aircraft Traffic Management System (“UTM System”) for UAS operations. The UTM System will cover registration, pre-flight, in-flight and post-flight services as specified by DGCA.

Any person seeking to obtain a license for providing UAS Traffic Management Service (“UTM Service”) will have to apply to the DGCA for an license, which will be valid for a period up to 5 years and may be renewed for another 5 years.

All UTM personnel are required to undergo training imparted by an authorised training organization only. Such UTM training organization will be licensed for imparting the training in the manner prescribed under the Draft UAS Rules for a period up to 5 years and an option to renew for another 5 years.

EXEMPTIONS UNDER DRAFT UAS RULES

It goes without saying that all provisions under the Draft UAS Rules would have to be strictly adhered to upon enforcement. However, the Central Government (i.e. MoCA) has been given the power to exempt any UAS or class of UAS or any person or class of persons from the operation of the Draft UAS Rules, either wholly or partially, subject to such conditions, if any, as may be specified by the Central Government in a written general or special order.

PENALTIES

Existing Guidelines prescribed certain broad penal provisions without getting into the detailed nature of contraventions that may take place while undertaking Drone related business in India. Further, it relied upon the provisions under the India Penal Code, 1100% and relevant sections of the Aircraft Act 1934 / the Aircraft Rules 1937 to take necessary action. Hence, creating an ambiguity with respect to such contraventions which may fall outside the scope of above said legislation.

However, to ensure that there is no such enforcement related ambiguities, the Draft UAS Rules go on to prescribe a separate schedule for penal provision that may apply to specific contraventions, in cases where no punishment is provided for such contravention in the Aircraft Act, 1934. The abovesaid schedule to the Draft UAS Rules divides the nature of offences into following two categories depending upon the penalties prescribed for the same.

1. Offences punishable with imprisonment for a term not exceeding two years or with fine not exceeding one lakh rupees, or with both; and
2. Offences punishable with imprisonment for a term not exceeding six months or with fine not exceeding fifty thousand rupees, or with both:

Further, considering the accident prone nature of Drone operations, the Draft UAS Rules also state that it shall be a valid defence to any proceedings under the Draft UAS Rules if the contravention is proved to have been due to accident, stress of weather or other unavoidable cause or that it took place without the actual fault or privity of the owner, hirer, operator, remote pilot of the UAS.

CONCLUSION

Introduction of the Draft UAS Rules is undoubtedly a forward looking step but may be criticized for excessive compliances. At one hand it proposes novel concepts that would certainly enhance the Indian Drone ecosystem but on the other it over regulates aspects which were exempted under the Existing Guidelines.

However, in order to achieve its objective, it is important that the new measures introduced under the Draft UAS Rules are implemented in a manner that do not pose practical challenges (as discussed in the sections above) for the stakeholders.

Before these Draft UAS Rules can become the law, they will have to pass the test of public comments. MoCA has invited comments, suggestions and or any objections from the public on these Draft UAS Rules, till July 4, 2020.

We believe that this may be an opportune time for stakeholders, specifically foreign players, to provide their suggestions and comments to the DGCA on the new Draft UAS Rules proposed for India; and engage in this consultative process to effectively supplement their drone policy-related advocacy efforts.

– Harshil Agarwal, Prashant Prakhara & Huzefa Tavawalla
You can direct your queries or comments to the authors

¹ <http://egazette.nic.in/WriteReadData/2020/219730.pdf>

² **Nano:** Less than or equal to 250 grams; **Micro:** Greater than 250 grams and less than or equal to 2 kg; **Small:** Greater than 2 kg and less than or equal to 25 kg; **Medium:** Greater than 25 kg and less than or equal to 150 kg; and **Large:** Greater than 150 kg.

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