

## ERGO

*Analysing developments impacting business*

**Flying Drones in India legal from 1 December 2018! Indian Aviation Ministry unveils the National Drone Policy, 2018**

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On 27 August 2018, the Ministry of Civil Aviation, Government of India (GOI) released the National Drone Policy, 2018 version 1 (Drone Policy), comprising of: (a) Civil aviation requirements (CARs) of civil remotely piloted aircraft system (RPAS); (b) FAQs on operation of RPAS; and (c) Do's and Don'ts for operation of RPAS. The Drone Policy legalises the use and operation of drones in India, effective from 1 December 2018.

In future, the Drone Task Force under the chairmanship of the Minister of State, Mr Jayant Sinha will provide draft recommendations for Drone Regulations 2.0. These regulations will examine, *inter alia*, certification of safe and controlled operation of drone hardware and software, air space management through automated operations linked into overall airspace management framework, beyond visual-line-of-sight operations, contribution to establishing global standards, and suggestions for modifications of existing CARs and/or new CARs.

### Background

So far, the use of drones in India had been prohibited. In October 2014, the Director General of Civil Aviation (DGCA) had banned use of drones in India due to privacy and security concerns, and the absence of a regulatory framework in India governing their operations. However, given their commercial benefits, there have been attempts in the past to formalise a regulatory framework for operation of drones in India. Last year in November 2017, the GOI had released the draft CARs for permitting operation of civil drones. The Drone Policy has thus been unveiled after taking into consideration the comments and feedback from various stakeholders on the draft CARs. (you can access our previous Ergo on this [here](#)).

### What are Drones?

Remotely piloted aircraft (RPA), popularly known as 'drone,' is an unmanned aircraft (i.e. with no human pilot on board), which is piloted from a remote pilot station. RPA, its associated remote pilot station(s), command and control links and any other components forms a RPAS.

### Drone Policy | Key Provisions

This Ergo Update discusses the key aspects for operation of drones / RPAs as laid down under CAR:

## ➤ Category of Drones

RPAs are classified in accordance with their maximum take-off weight including the payload, in the following manner:

- 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;
- Large – Greater than 150 kg.

## ➤ Drones can be imported in India, or locally purchased.

## ➤ Regulatory Approvals: Operating drones in India will need a host of regulatory approvals and clearances, and oversight by various Government agencies, such as:

- equipment type approval (ETA) from the Department of Telecommunication (DoT) for operating in de-licensed frequency band(s);
- import clearance (other than for nano RPA) from DGCA (in case of import of drones in India);
- import license from the Directorate General of Foreign Trade (DGFT) (in case of import of drones in India);
- security clearance from the Ministry of Home Affairs (except in case of Government companies);
- unique Identification Number (UIN)/ Unmanned Aircraft Operator Permit (UAOP), as applicable, from DGCA;
- permission of aerial survey, etc. on a case-to-case basis from the Ministry of Defence;
- air defence clearance and monitoring of RPA movements by the Indian Air Force;
- approval of security programme by the Bureau of Civil Aviation Security (BCAS);
- flight plan approval and monitoring of RPA movements by the Airport Authority of India;

- enforcement of penal provisions and certain permissions provisions by local police office.
- Digital Sky Platform: All applications for grant of UIN/ UAOP, as applicable, will be processed through an online platform, the Digital Sky Platform. Specific timelines are prescribed for obtaining UIN and UAOP. Users will be required to do a one-time registration of their drones, pilots and owners. For every flight (exempted for the nano category), users will be required to ask for permission to fly on a mobile app and an automated process will permit or deny the request instantly.
- Eligibility for UIN registration: Owing to the security concerns, no foreign national or foreign entity will be granted a UIN and cannot operate drones in India. However, they can lease RPAS to an Indian entity. As per the CARs, UIN will be granted only where the RPAS is wholly owned by:
  - (a) a citizen of India;
  - (b) GOI or state governments, or a company owned or controlled by these governments;
  - (c) an Indian company or body corporate, which (i) has its principal place of business within India, (ii) its chairman and at least 2/3<sup>rd</sup> of board of directors are citizens of India, and (iii) its substantial ownership and effective control is vested with Indian nationals; or
  - (d) a company or corporation registered outside India, only if it has licensed the RPAS to any organisation set out in (b) or (c) above.

However, UIN is not required for operating:

- RPA in nano category intended to fly upto 50 feet (15 m) above ground level (AGL) in uncontrolled airspace/ enclosed premises for commercial / recreational / R&D purposes are exempted from obtaining UIN; and
- RPAs owned / operated by National Technical Research Organization (NTRO), Aviation Research Centre (ARC) and Central Intelligence agencies are also exempted from obtaining UIN.
- Obtaining UAOP from DGCA

Every RPA operator must obtain a UAOP. Certain categories of RPA, such as nano RPAs operating below 50 feet AGL and micro RPA operating below 200 feet AGL, each in uncontrolled airspace and enclosed premises in uncontrolled airspace, have been exempted. Further, RPAs owned and controlled by NTRO, ARC and central intelligence agencies are exempted. Though, intimation to local police before undertaking operations will be required.

Application must be made at least 7 working days prior to the commencement of the RPA operations on the Digital Sky Platform. A copy of the UAOP will be sent to other regulatory agencies, namely, the MHA, BCAS, the Air Traffic Service, the

Indian Air Force and district administration (Superintendent of Police) for information.

The UAOP shall be issued for a time period of 5 years and shall be renewed after applying for a fresh clearance from MHA. A UAOP shall be non-transferable.

➤ Certain other key aspects

The CARs also set out the following requirements for operating drones / RPAs in India:

- 'No drone zones / restricted areas/ danger areas' restricting the operations of drones have been listed in the CARs. Further, no drones / RPAs will be permitted to operate in sensitive areas e.g. near airports, border, international borders /line of control, eco-sensitive zones, etc;
- All RPA operations must be conducted only in day-time, within visual line of sight and a maximum of 400 ft altitude operations;
- Minimum manufacturing standards have been prescribed for RPAS;
- Operator is responsible for safe custody, security and access control of the RPAS. In case of loss, operator needs to intimate the local police, BCAS and DGCA. Operator is also responsible for notifying any incidents/ accidents to Director of Air Safety (except for nano RPAs). If RPA is damaged beyond repair, operator needs to notify DCGA for cancellation of UIN;
- Operators need to have security programme approved by BCAS before operation of RPAs;
- Any sale or disposal of RPAS (issued with UIN) will need prior permission of DGCA. Any changes in contact details in UIN needs to be immediately notified to DGCA and concerned agencies;
- RPA can be operated by a remote pilot who has attained 18 years of age, passed 10<sup>th</sup> exam in English, and undergone ground/ practical training;
- There are security/safety, equipment, operating and maintenance requirements prescribed to be followed by RPA operators with respect to use of RPAS. UAOP holder must keep a record of each RPA flight;
- RPAs should not discharge or drop substances unless specifically permitted in the UAOP, nor should they transport any hazardous materials, animal or humans unless permitted;
- All RPAs, except nano RPAs, are required to inform (in writing) the local police authorities 24 hours prior to the commencement of the operations;
- All civil RPAS operators are required to obtain insurance for any liability / damage to third party from any accident or incident;

- The UAOP may be cancelled or suspended at any time if operations are not acceptable to DGCA; and
- Breach of compliances under CARs may result in penal actions including under the Indian Penal Code, 1860. Further, actions under the Aircraft Act, 1934 and rules may be taken for non-compliances.

## Comment

The Drone Policy is a big step taken by GOI towards regulating drones in India. It shows GOI's commitment to use of artificial intelligence for technological and economic growth. Drones are commonly used in sectors such as e-commerce, agriculture, mining, power and infrastructure, defence and military, asset maintenance, insurance, film shooting, photography, etc. However, with the coming of Drone Policy, more sectors will explore using drones now. According to a research by BIS Research, a global market intelligence and advisory firm, the Indian drone market will reach USD 885.7 million by 2021, and the global market size will touch USD 21.47 billion. Owing to the immense potential that this segment has, the GOI has introduced the Drone Policy.

The Drone Policy however has certain hits as well as misses. Relaxations and exemptions for nano and micro categories will provide relief to operators using drones in enclosed spaces for commercial activities (e.g. use by photographers, etc). A digital IT driven platform in form of Digital Sky Platform will ease the process for applying for permits. The FAQs and Do's and Don'ts released provide much clarity on several common queries. In terms of misses, involvement of multiple regulatory agencies and compliances/clearances will discourage the players. Further, drones cannot be used as of now for delivery of food/ other items, or to carry passengers. So, e-commerce players, cab aggregators and other commercial players will have to wait for using drones as air taxis or delivery operations. There are restrictions on drone operations in India by foreign players (except through a license to an Indian entity) and on majority foreign investment or control in Indian entities operating drones, which may impact the growth of this sector.

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