

DRONE LAWS

E-commerce companies have become very popular in India and the industry is growing at a good rate. These companies are finding different ways of being innovative and efficient in their business approach and one such example that companies are exploring is quick deliveries of products through unmanned aircraft systems (“Drones” or “UAS”). The use of Drones by the government to make public announcements, spraying disinfectants, keeping surveillance etc. has shown that they can be very effective and productive if commercially used. The status quo of the standard delivery system was challenged by Amazon when it launched it’s drone delivery system Amazon Prime Air that anticipates deliveries in 30 minutes or less in the USA. The use of Drones is an environment friendly delivery choice and as the delivery is quick and affordable, drones can decrease delivery expenses and improve sales figures. Further, these UAS can be tracked easily as they run on GPS technology and would also be a very useful tool for the people involved in dealing with perishable goods.

In India, the Drone system is regulated by the government through the Directorate General of Civil Aviation (“DGCA”). The DGCA very recently came up with the draft Unmanned Aircraft System Rules, 2020 (“Draft UAS Rules” or “Rules”) on June 02, 2020. The power to issue such rules have been conferred upon the Central Government under the Aircrafts Act, 1934. However, the Draft UAS Rules are yet to be notified. The applicability of the Draft UAS Rules extends to the whole of India and also to all the Drones registered in India, even when they are operating outside the Indian Territory. The applicability of the Rules would also extend to all persons seeking to own or possess, or seeking to engage in importing, manufacturing, trading, leasing, operating, transferring or maintaining a Drone in India. These Rules categorize the Drones into various categories however, it appears, per the guidelines, that Autonomous Unmanned Aircraft System (i.e. UAS that does not require pilot intervention in the management of the flight) may be the



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Drones that may generate interest for the E-commerce companies.

Under the Rules all persons associated with the Drone ecosystem are required to undertake a registration in various capacities. For E-commerce companies it could consider registering itself as an authorised UAS Owner or an authorised UAS Operator with the DGCA as per the procedure set out under the Rules. These companies may submit an application to obtain an authorisation unique number which will be issued by the DGCA and will be valid for a period of 5 years, unless it is suspended, revoked or cancelled. The Rules provide various criteria's for being eligible for registration including one being that an Indian company applying will need to ensure that the substantial ownership and effective control of such company vest with Indian nationals.

Under the Draft UAS Rules all the authorised UAS operators will be permitted to operate the UAS only after they have obtained a UAS Operator Permit (“**UAOP**”) from the DGCA. The UAOP holder shall 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, specified by the DGCA. Further, no UAS is permitted to operate without having a valid third party insurance policy to cover the liability that may arise on account of a mishap involving such Drones and causing death or bodily injury to any person or damage to property. The Draft UAS Rules have also introduced the concept of Drone Ports which essentially means the airport for the Drone where landing and taking off of the Drone would happen. Usually in a drone ecosystem, the Drone would take off from a fulfilment centre (point of launch) and cover the distance in the airspace before making a delivery in a hover position at safe height. Companies would need to register with DGCA for use of these Drone Ports.

The Draft UAS Rules is undoubtedly a step forward with regards to the Drone ecosystem in India, more specifically for E-commerce companies wanting to use them in their business. In this context, DGCA recently, granted approval for testing drone deliveries beyond visual line of sight to the prominent food delivery start-ups. However, there are certain aspects which the Draft UAS Rules don't address. The first and foremost point being the restrictions on entities owned by foreign players or their controlled Indian subsidiaries, as they are not allowed to register as an Authorised Person under the Rules. The restriction can be a dampener for foreign investors wanting to invest in E-commerce companies wanting to use Drones. Under the current FDI Policy the status of delivery services via drones is not clear. The erstwhile Department of Industry Policy and Promotion issued a press note in 2014 classifying unmanned aerial vehicles (“**UAV**”) as defence aircrafts. Later in 2019, the Department of Industrial Policy and Promotion exempted a select category of UAVs from the meaning of defence aircraft. Consequently, a number of UAVs continue to fall under the exemption list. While such position begs clarifications by the authorities, a possible argument can be that the delivery service via drone would come under the non-scheduled air transport service (for civil use) and consequently 100% FDI would be permitted under the

automatic route as the same is a commercial activity and not a defence sector related activity.

Secondly, the use of Drones by E-commerce companies for delivery may also not be permitted in certain areas as per the Rules, which essentially means that these areas will be a no-fly zone for such E-commerce companies for delivery, illustratively areas near airports, state secretariat complexes etc. Consequently, E-commerce companies may not be able to deliver their products to every customer in a city where they propose to make deliveries.

That said, use of Drones by such companies will enhance customer experience and their dependence on online markets. It is a positive step and hopefully Indian customers may pretty soon see Drones at their doorsteps.

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