

COULD INDIA BE THE NEXT FINANCING AND LEASING HUB FOR AIRCRAFT?

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BACKGROUND

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India is already the world's third largest domestic civil aviation market and plenty of untapped growth potential remains. Indian airlines account for a significant portion of the narrow-body aircraft order book and the majority of such aircraft will be leased and/or financed. In a bid to support the civil aviation sector and Indian carriers, the Government of India has announced its intention to develop an aircraft financing and leasing hub in India. The Government has recently taken a number of steps in pursuance of this objective, most notably by announcing a new framework entitled 'Framework for Aircraft Operating Lease' ("the Framework") that paves the way for lessors to set up operations in India.

RECENT DEVELOPMENTS

In October 2020, 'aircraft lease' was designated as a 'financial product' that can be offered by entities set up in International Financial Services Centres ("IFSCs") in India. IFSCs are essentially special economic zones dedicated to financial services. Apart from having a single-point authority to regulate the financial services, IFSCs provide tax benefits and flexibility in foreign currency transactions. They are, therefore, well suited to host entities that offer aircraft finance.

In February 2021, as part of the Union Budget, the Indian Finance Minister announced certain tax incentives encouraging foreign entities to set up in India's first IFSC, the GIFT City in the state of Gujarat. Following closely on the heels of the budgetary announcement, the Government has announced the Framework. As a result, aircraft leasing and finance companies can immediately start preparations to set up in GIFT City.

OVERVIEW OF THE FRAMEWORK

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The Framework allows leasing companies to set up a company, a limited liability partnership or a trust in India and have such entity registered with the IFSC Authority as a 'lessor'. A 'lessor' can be engaged in the business of providing aircraft or helicopters and the engines of aircraft or helicopters or any other part thereof under lease arrangements, including sale and lease back, purchase, transfer, assignment and novation. A 'lessor' must have a minimum of US\$200,000 capital or its equivalent in a foreign currency and is required to transact in foreign currency, although it can maintain an Indian Rupee account for defraying administrative expenses. In addition, a 'lessor' will be required to make filings with the IFSC Authority (most likely on an annual basis). The initial statutory cost of setting up a 'lessor' is US\$6,000 and the recurring annual statutory cost is US\$3,000, although these figures are subject to change.

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Following the Indian Civil Aviation Ministry's 'Project Rupee Raftar' working group consultations, the Government's recent announcements are certainly indicative of a commitment to support the aviation sector. The announcement of the Framework may already be bearing fruit with recent news reports suggesting that some aircraft finance companies have already started the process of setting up 'lessors' in GIFT City.

Whilst these are certainly encouraging developments, the Government should consider taking additional steps such as passing a specific law dealing with the implementation of the Cape Town Convention in India and its interplay with the Insolvency and Bankruptcy Code.

POTENTIAL FOR INDIAN LESSORS

These recent developments aim to encourage the established global aircraft finance and leasing entities to set up in India. However, these developments could result in the establishment and growth of Indian-owned aircraft finance and leasing companies. Entities set up in the IFSC are essentially treated as 'persons resident outside India' for the purposes of Indian foreign exchange control regulations. This will give Indian-owned 'lessors' set up in IFSCs access to (cheaper) debt from the international markets and the ability to freely transact in foreign currency with respect to aircraft and associated assets, essentially United States Dollar assets.

We will track key developments supporting India's drive to become an aircraft financing and leasing hub and provide regular updates.

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