

WHY TALK ABOUT INDIA NOW? A MACROECONOMIC SUMMARY

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India is one of the fastest growing economies and aviation markets in the world and is now the third-largest domestic aviation market globally. According to the International Air Transport Association's most recent findings, it is projected to overtake the United Kingdom as the world's third-largest air passenger market by 2024. In the financial year 2021 to 2022, domestic passenger traffic increased by 58.5% and international passenger traffic increased by 118%.

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Much of this growth can be attributed to a burgeoning and almost insatiable middle-class desire to fly better, cheaper and more often, with multiple low-cost carriers competing for their attention with competitive prices. India is also moving towards better domestic and global connectivity as it transitions to a cost-conscious 'service-based' economy.

Much is being done at the political level to support and meet the current and projected increase in demand for commercial air travel. The Indian government has recently made considerable investments in developing new airports and improving infrastructure at existing major airports in India. The government aims to develop 100 airports by 2024 under the UDAN Scheme and plans to invest US\$1.83bn in airport infrastructure by 2026.¹ This forms part of the government's aviation-friendly policy framework. The private sector is supporting this national ambition, with Indian airlines having placed significant orders for new aircraft with OEMs. India's domestic fleet is projected to quadruple in size by 2038, from its current, surprisingly modest, level of around 1,500 aircraft. Clearly there is much room for growth and expansion.

RECENT REGULATORY CHANGES IN THE COUNTRY

To match the implementation of economic measures to promote growth in the Indian aviation industry, the government is developing and investing in India's legal framework. These interventions are, amongst other things, targeted at improving stakeholder experience and confidence in dealing with the Indian market by removing existing impediments such as a lack of infrastructure, alignment with international treaties, the enforcement of security and the deregistration and repossession of aircraft. These changes are helping to alter the perception of some aviation investors in India have following well-publicised difficulties in past transactions. India has, however, come a long way in a relatively short period of time to improve its legal and investor framework.

Aircraft Rules, 1937 ("Aircraft Rules") amendment in 2015

The Aircraft Rules have been amended pursuant to the introduction of the new Rule 30(7) (the "Amendment") and are one of the principal set of regulations governing the aviation sector in India. The Amendment mandates the Directorate General of Civil Aviation ("DGCA") to cancel the registration of an aircraft registered in India within five working days of their receipt of an application from the registered Irrevocable Deregistration and Export Request Authorisation ("IDERA") holder. The holder must have in its possession the original notarized IDERA and a certificate which confirms that all registered interests ranked in priority to the holder have been discharged or the holders of such registered interests have given their consent to the deregistration and export of the aircraft. Anecdotaly, the DGCA is largely complying with this Amendment, although deregistrations are taking a few days longer than the mandated five days. Nevertheless, those exercising their rights in this respect seem pleased with the process, especially if they have had past experience of deregistering aircraft in India prior to the introduction of the Amendment.

June 2020 amendment to Civil Aviation Rules ("CARs") on Registration and Deregistration of aircraft

On 22 June 2020, the DGCA amended the CARs to include a new para, 7A, which provides for the recordation of IDERA holders and/or their certified designees in the prescribed format with the DGCA. This complements the Amendment to the Aircraft Rules and has contributed to the much-improved aircraft deregistration process using the IDERA process.

National Civil Aviation Policy 2016, increased Foreign Direct Investment in domestic airlines and heightened focus on regional connectivity schemes (UDAN Scheme)

The UDAN Scheme is an ambitious set of policy objectives to support rapid growth in Indian aviation by developing and creating infrastructure in order to make flying in, to and from India more affordable and convenient. The UDAND Scheme provides for concessions from the national government, state governments and airport operators to harmonise and promote growth in various subsectors including airlines, airports, cargo, MROs, general aviation, aerospace manufacturing and skill development. The UDAN Scheme clearly demonstrates India's understanding of the aviation industry and need to develop supply to meet demand and fulfil the country's potential in the sector.

September 2021 amendment to customs regulations relating to transfer of an aircraft lease

On 30 September 2021, the government amended its customs regulations permitting the transfer of aircraft from one lessee to another without re-exporting the aircraft, subject to prescribed conditions being satisfied. Prior to this amendment, aircraft had to be physically exported and then re-imported into India in order to transfer a lease from one lessee to another.

2022 Bill to implement Cape Town Convention in India

India ratified the Cape Town Convention on International Interests in Mobile Equipment (“Cape Town Convention”) and the Protocol to the Cape Town Convention on International Interests in Mobile Equipment (the “Protocol”) on 31 March 2008. However, the Cape Town Convention and Protocol has not yet been fully implemented. To address this, the Ministry of Civil Aviation (“MOCA”) has published the Protection and Enforcement of Interests in Aircraft Objects Bill, 2022 (“CTC Bill”), which seeks to implement the Cape Town Convention and Protocol in India with a view to discharging their treaty obligations and to take advantage of the benefits of the Indian accession to the Cape Town Convention. The CTC Bill not only provides for remedies related to repossession of aircraft but also for insolvency remedies. Imperatively, the CTC Bill includes a provision that will accord primacy to the provisions of the Cape Town Convention and Protocol in cases of conflict with any other law and empowers the government to make rules, if necessary, for implementing the Convention and the Protocol in India.

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India has matured and moved on from the turbulence experienced by many in the insolvency of Kingfisher Airlines insolvency and repossession case, noting that many of the leases entered into by Kingfisher Airlines were pre-Cape Town Convention. The Jet Airways bankruptcy in 2019, and other deregistrations and repossessions of aircraft in 2022, were far more constructive for international investors. Whilst the deregistration process has been more predictable following the amendment to the CAR, this Bill will provide much needed framework and certainty in the context of an airline insolvency.

INDIA'S VERY OWN FINANCING AND LEASING CENTRE – GIFT CITY

In a bid to support the growing civil aviation sector and Indian carriers, the government announced its intention to develop an aircraft financing and leasing hub in India's first International Financial Services Centre (“IFSC”) – Gujarat International Finance Tec-City (“GIFT City”).² The objective, inter alia, is to attract foreign banks, aircraft lessors, investors and other stakeholders to set up their base in India and deal in freely convertible foreign currency. GIFT City offers an ‘off-shore’ set up, free from India's sometimes onerous bureaucratic red tape and tax regime, providing certain tax incentives to encourage foreign entities to set up there. As of May 2022, there are 17 aircraft lessors operating out of GIFT City and 60 aircraft are expected to be leased out of there by the end of March 2023.

While GIFT City has tried to match the incentives available to lessors leasing aircraft out of established jurisdictions like Ireland, Singapore and Hong Kong, many are seeking clarification as to what benefits there are to aircraft lessors in addition to those afforded by the double taxation avoidance agreements (“DTAAs”) India has signed with various countries, including Ireland. In addition, there is currently an absence of an aviation industry financing framework in GIFT City, unlike in Ireland (through European banks' support), Singapore (through government owned Temasek Holdings as well as Singaporean banks) and Hong Kong (through Hong Kong banks). The need of the hour is for more Indian banks and financiers to enter GIFT City and the government and other regulatory bodies need to do more to incentivise banks to fund transactions there.

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The legal enforcement of lessor security and the dispute resolution system is yet to be tested. Investor confidence in India as a jurisdiction may be enhanced by the introduction of a GIFT City judicial system, akin to the one established in Dubai International Financial Centre that is staffed by experienced commercial judges from India and other commonwealth countries that much more speedily recognises English and New York court judgments and whose judgments are also automatically recognised onshore in India.

There is much excitement around enabling a favourable environment for lessors and investors in GIFT City and the government is positive and pro-active in receiving feedback and introducing policy interventions to make this initiative more attractive and to develop the framework further.

Considering India's massive growth in the aviation section supported by an

increasing passenger demand and airlines' order book, a thriving domestic leasing industry with the right infrastructure and fiscal support is surely be the way of the future.

WFW has expert and experienced professionals in aircraft leasing and finance in India. If you would like to know more, please contact your WFW professional.

[1] www.makeinindia.com, a GOI website.

[2] For more information on GIFT City, please see our article '[Could India be the next financing and leasing hub for aircraft?](#)'.

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