

Flying Drones? The Drone Rules, 2021 Clears The Sky!

Driven by innovation, technological advancements have touched human lives in an unparalleled manner. One such invention is that of drones or unmanned aircrafts. Since the inception, the technological innovation in this arena has been unprecedented and commercial usage of drones can be seen in different spheres of life ranging from delivery of products to usage of drones by government for tactical reasons, etc. Therefore, innovation of such complex use must be dealt with caution to avoid any misuse.

Considering the above, the Ministry of Civil Aviation vide its notification dated August 25, 2021, notified the Drone Rules, 2021 ('Drone Rules'). The said rules superseded the Unmanned Aircraft Systems Rules, 2021 ('UASR') as the UASR had met with a tepid reaction from the stakeholders. The UASR was perceived as limiting and not conducive to the drone market in India due to the several procedural requirements for registration, permissions for flying, and few green zones (airspace for operation of unmanned aircrafts). The government, through the Drone Rules, has tried to cutdown on the bureaucratic impediments that were seen as red flags by the stakeholders. Also, the Drone Rules, in its present form, is significantly liberalised and the intent of the government is to make India a global drone hub by the year 2030¹ in view of India's traditional strengths in innovation, frugal engineering, and huge domestic demand.

As per the government press release dated August 26, 2021², the Drone Rules has been built on a premise of trust, self-certification and non-intrusive monitoring, and is designed to usher in an era of growth while balancing safety and security concerns. This article aims to discuss some of the key features of the Drone Rules.

Applicability of the Drone Rules and categorization and classification of drones

'Drone' under the Drone Rules has been defined as an 'unmanned aircraft system'³ (UAS), and 'UAS' has been defined as 'an aircraft that can operate autonomously or can be operated remotely without a pilot on board'⁴.

The Drone Rules applies⁵ to all persons who own, possess or are engaged in leasing, operating, transferring or maintaining a UAS in India, all UAS that are registered in India, and all UAS that are being operated over or in India.

The UAS have been categorized⁶ into three categories: (a) aeroplane, (b) rotorcraft and (c) hybrid UAS. The said categories have been further subcategorized as: (a) remotely piloted aircraft system (RPAS); (b) model RPAS; and (c) autonomous UAS.

As per the Drone Rules, UAS has been classified⁷ based on maximum all-up weight including payload. Accordingly, the following categories have been formulated:

¹<https://pib.gov.in/PressReleaseDetailm.aspx?PRID=1749154>, last accessed on September 07, 2021, at 15:12 p.m.

²<https://pib.gov.in/PressReleaseDetailm.aspx?PRID=1749154>, last accessed on September 07, 2021, at 15:12 p.m.

³ Rule 3 (i) of the Drone Rules

⁴ Rule 3 (zb) of the Drone Rules

⁵ Rule 2 of the Drone Rules

⁶ Rule 4 of the Drone Rules

⁷ Rule 5 of the Drone Rules

- a. Nano UAS: weighing \leq 250 grams;
- b. Micro UAS: weighing \geq 250 grams, but \leq 2 kilograms;
- c. Small UAS: weighing \geq 2 kilograms, but \leq 25 kilograms;
- d. Medium UAS: weighing \geq 25 kilograms, but \leq 150 kilograms; and
- e. Large UAS: weighing \geq 150 kilograms.

Digital sky platform and ease of compliance under the Drone Rules

The extensive authorization process as mentioned in the UASR has been simplified to a great extent under the Drone Rules. The digital sky platform⁸ has been established as a single window platform hosted by the Directorate General of Civil Aviation for various activities related to the management of UAS including registration/ deregistration of UAS, transfer of UAS, etc.

To ensure minimum intrusions, all approvals related to UAS would have to be sought through the digital sky platform. Every UAS would have to obtain a type certificate and a unique identification number for each operating UAS, unless exempted by the Drone Rules. Further, the government will also publish a policy framework in respect of the UAS traffic management system and automated permissions as required under the Drone Rules.

Further, an interactive airspace map for UAS operations has been published on the digital sky platform segregating the entire airspace of India into three zones, (a) red, (b) yellow and (c) green, with a horizontal resolution equal to or finer than 10 meters⁹. Operation of UAS in the red and yellow zones is restricted and requires prior permission for operation as per the Drone Rules, and for operation in green zones no prior permission is required provided that the remote pilot mandatorily self-verifies the digital sky platform for restrictions.

Additionally, the onus of safety of operations has been entrusted with the remote pilot or drone operator. Although the safety perspective under the Drone Rules does appear to be rational, however, the government, in near future, would have to formulate a detailed framework to ensure that under no circumstances is the safety of individuals compromised. Due to lacunae in the Drone Rules regarding autonomous UAS, it is unclear on whom would the liability accrue in case of an accident by autonomous UAS as the same is not operated by a remote pilot. Therefore, while the Drone Rules may be a step in the right direction, the continuous legislation development in this area would be required to clear the issues relating to procedural lacunae.

Relaxed legal regime to attract investors

To accelerate growth and make Indian markets more viable for domestic drone start-ups and foreign investors, the process of operating and manufacturing drones has been simplified under the Drone Rules. The government, under the Drone Rules, has not placed any restrictions on foreign-owned and controlled Indian companies to operate drones in India. Hence, the ease of operation reflected in the Drone Rules is expected to bring in foreign investment. In addition to cutting down on bureaucratic hindrances, the Drone Rules has significantly eased the requirements for conducting research and development (R&D) for UAS. Any manufacturer can conduct R&D without obtaining a type certificate if they have a goods and services tax (GST) identification number. Generally, the compliance requirements act as an entry barrier for market players; however, the relaxed framework under the Drone Rules would considerably boost market interest and encourage investment.

⁸ Rule 3(g) of the Drone Rules

⁹ Rule 19 of the Drone Rules

Import of UAS

The Drone Rules provide that import of UAS shall be regulated by the Directorate General of Foreign Trade or any other entity authorised by the Central Government¹⁰ in addition to the applicable provision of the Drone Rules.

Remote pilot licence

Only the holder of the remote pilot license enlisted on the digital sky platform would be able to operate UAS except for operating nano UAS and micro UAS for non-commercial purposes. Further, an individual desirous of obtaining a remote pilot licence for any category, sub-category, or class of the UAS, or a combination thereof, would be required to complete the training specified by the Directorate General of Civil Aviation for such category, sub-category or class, and pass the tests conducted by the authorised remote pilot training organisation. Pursuant to completion of the training and passing the test, the procedure for obtaining the pilot license is laid down under the Drone Rules, which is not complicated.

Production Linked Incentive (PLI) scheme

On September 15, 2021, the government of India has approved a PLI scheme for drones and drone components¹¹. The key features of the PLI scheme include *inter alia* an allocation of INR 1.2 billion for drones and drone components over three (3) financial years. The total PLI per manufacturer is capped at INR 300 million, and PLI can be as high as twenty percent (20%) of the value addition made by the said manufacturer. Micro, Small and Medium Enterprises and start-ups with annual sales turnover of INR 20 million (for drones) and INR 5 million (for drone components) would also be eligible for incentives under the PLI scheme. The PLI scheme also covers

developers of drone-related IT products. The detailed guidelines related to PLI scheme would be notified separately. The PLI scheme is expected to lead to indigenisation and aid the manufacturers of drones and drone components to scale up their production in India.

Privacy and safety concerns

While the Drone Rules bring procedural clarity on many aspects for manufacturers and operators of the UAS, the lack of clarity with regard to the privacy and safety is concerning. Some of the issues for which procedural clarity is not provided under the Drone Rules are as follows:

- a. whether green zones for operating UAS would include civilian or residential areas or not;
- b. data collection by the UAS and treatment of such data *vis-à-vis* privacy laws;
- c. inbuilt safety measures in the UAS and carriage of payload;
- d. no tracking of the R&D operations of UAS.

Although the Drone Rules have addressed most of the concerns of stakeholders by providing a conducive environment for drones, yet the lack of clarity on public safety and privacy requirements would have to be closely examined. The Drone Rules does contain a provision whereby the government can issue further directions regarding UAS. Therefore, it is possible that the government may issue guidelines in the near future addressing the aforesaid concerns.

Conclusion

The Drone Rules is a welcome regulatory breakthrough for the drone sector in India. The Drone Rules coupled with the PLI scheme is likely to provide the necessary boost to the

¹⁰ Rule 11 of the Drone Rules
¹¹ <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1755157>, last accessed on October 07, 2021, at 13:39 p.m.

sector as the number of procedural requirements as compared to the UASR have been watered down and manufacturers are eligible for incentives as mentioned in the scheme. However, certain regulatory concerns with respect to the privacy and data related aspects have been raised by stakeholders and the public at large as the Drone Rules do not make any mention relating to the said aspects. Even though the superseded UASR had, albeit briefly, assigned the obligation on an authorised drone operator to 'ensure the privacy of a person and its property during operation', yet a similar provision in the Drone Rules is absent. Therefore, it would be interesting to see how the regulation relating to drones

further unfolds to address the growing concerns relating to privacy. It may be the case that the much-awaited data protection laws in India may address the said concerns relating to privacy and surveillance in a composite manner.

Further, the Drone Rules is liberalised in many aspects; however, in the said rules, the government has been provided with unfettered powers whereby it may, in the future, issue notifications/orders on various aspects. Therefore, tracking regulatory developments for this sector is necessary to see how the legal framework relating to drones' sector evolved in India.

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