



GOVERNMENT OF INDIA
OFFICE OF THE DIRECTOR GENERAL OF CIVIL AVIATION
OPPOSITE SAFDARJUNG AIRPORT, NEW DELHI-110003

PUBLIC NOTICE

F. No. AV. 14015/06/2014-AT-1
9th July 2014

Subject: Application for grant of permit to M/s. TATA SIA Airlines Ltd.

Placed below is the decision of the Director General on the representations made by public/ organizations in response to this office Public Notice dated 6th May 2014 inviting objections/ suggestions on the application for grant of Air Operators Permit (Scheduled) to M/s. TATA SIA Airlines Ltd.

Director General of Civil Aviation

Quote

After getting initial NOC from the Ministry of Civil Aviation, M/s. TATA SIA Airlines Ltd., submitted application for issue of Air Operator Permit (Scheduled) (AOP) on 22.04.2014.

2. As per the provision of Schedule XI of the Aircraft Rules, a Public Notice was issued on 06.05.2014 inviting objections/suggestions from public regarding grant of permit to M/s. TATA SIA Airlines Ltd. Total 6 representations were received through email/in writing. Certain other information/clarification were sought from M/s. TATA SIA Airlines Ltd., on 20.06.2014, the response of which has been received on 02.07.2014. Out of total 6 representations, 2 are in support of granting of AOP to TATA SIA Airlines Ltd. Two representations are regarding issues on the norms of hiring pilots, which has no relationship with the issue of grant of AOP. The other 2 representations submitted each by the Federation of Indian Airlines (FIA) and Mr. Jain have been examined in detail by the DDAT. The main issues raised in these objections relate to the following :-

- (I) FDI is not permitted in Greenfield airlines as per the applicable FDI Policy as the said Policy was devised to inject funds in the 'existing' cash starved domestic airline companies.
- (II) The Substantial Ownership and Effective Control does not vest in Indian nationals which is a fundamental requirement of the Schedule XI of the Aircraft Rules which also raises a grave question in relation to matters of security.
- (III) The matter is subjudice in the Hon'ble High Court of Delhi.

I agree with the detailed analysis and recommendation of the Air Transport Division. However, I would like to briefly examine the above objections in context of the provisions of the Schedule XI of the Aircraft Rules. As far as Schedule XI of the Aircraft Rules, the following conditions have been laid down as per Clause 1 (II) of Schedule XI of the Rules for granting an Air Operator Permit (AOP) to a company or a body corporate:-

- (i) It is registered and has its principal place of business within India;
- (ii) The chairman and at least 2/3rd of its Directors are citizens of India; and
- (iii) Its substantial ownership and effective control is vested in Indian nationals.

The status of TATA SIA Airlines Ltd., on all three requirements is as follows :-

(1) Registration and principal place of business of TATA SIA Airlines Ltd. :-

The Company is registered in India and has its principal place of business in New Delhi in India. Therefore, this condition is complied with.

(2) The Chairman and at least 2/3rd of its Directors are citizens of India :-

- (i) The Chairman shall always be appointed by the TATA Sons Ltd., (TATA), and shall be an Indian citizen.
- (ii) The present composition of the Board :-

S.No.	Name	Position	Nationality
1.	Mr.Prasad R Menon	Chairman	Indian
2.	Dr.Mukund Govind Rajan	Director	Indian
3.	Mr.Mak Swee Wah	Director	Singapore

- (iii) After issue of AOP, the Board shall be reconstituted and shall consist of 6 (six) Directors of which 4 (four) shall be nominated by TATA and 2 (two) by SIA.
- (iv) Further, in the event of the requirement of the Companies Act, there is a provision to reconstitute the Board which shall comprise of 10 (Ten) Directors of which, 4 (Four) shall be nominated by TATA and 3 (Three) shall be nominated by SIA and the remaining 3 (Three) shall be independent Directors as defined under Companies Act.

It is clear from the above that presently in the Board 2/3rd Directors are Indian citizens and chairman is also an Indian citizen. In the event of reconstitution of Board after grant of AOP permit (if it is granted), as per Shareholders' Agreement TATA shall appoint 4 (Four) out of 6 (six) Directors which again constitutes 2/3rd of the Board. The SIA shall have right to appoint only 2 (Two) Directors i.e., 1/3rd of the Board. If the Board is reconstituted again as per Companies Act, out of 10 (Ten) Directors, TATA shall nominate 4 (Four) and SIA shall nominate 3 (Three). The remaining 3 (Three) shall be independent Directors.

Therefore, presently, the Board of TATA SIA Airlines LTd., fully complies with this provision of Schedule XI. In future also, as per the provisions of the Shareholders Agreement and Companies Act, there is no reason to believe that when the Board will be reconstituted, the condition laid down in Clause 1(II)(b) shall not be fulfilled.

(3) Substantial Ownership and Effective Control (Substantial ownership and effective control to be vested in Indian nationals)

The term 'Substantial Ownership and Effective Control' is self-explanatory.

Substantial Ownership :- As per Webster's Encyclopedic Dictionary the word 'substantial' means 'of ample or considerable amount/ quantity/ size or something substantial or something of real value'. In my view 'Substantial' does not mean even majority ownership. As per FDI Policy, foreign airlines are allowed to invest in Indian

companies upto 49% of their paid up capital. The government, while framing the FDI Policy which allows upto 49% equity by the foreign airlines in the capital of Indian companies operating as scheduled air transport service, was aware of the Clause "Substantial Ownership and Effective Control" as one of the requirement for issue of AOP. After allowing maximum 49% equity by foreign airlines, the balance equity remains 51%, which needs to be invested by Indian nationals. A harmonious construction of the two makes it clear that if the balance 51% paid up capital is vested in Indian nationals, it would satisfy the condition of 'Substantial Ownership' (is vested in Indian nationals) and in that situation both i.e., substantial ownership is vested in Indian nationals & investment upto 49% by foreign airlines in the equity capital shall be met and co-exist.

In the present case, the shareholding is as follows :-

- (a) TATA - 51%
- (b) SIA - 49%

Therefore, the condition of 'Substantial Ownership' is fulfilled in the case of TATA SIA Airlines Ltd.

Mr. Jain has raised an issue of 18.5% foreign shareholding of TATA arguing that the effective shareholding of Indian Company (TATA) becomes less than 51%. He argues that 18.5% shareholding with foreign nationals in TATA makes effective equity contribution by TATA in M/s.TATA SIA Airlines Ltd., less than 51%. As per reply given by TATA SIA Airlines Ltd., this information given by Mr. Jain is factually incorrect and 18.47% of the paid-up capital of TATA is held by 2 (two) Indian entities and only 0.03% is held by foreign nationals. Therefore, the contention given by Mr. Jain is not sustainable. TATA SIA has also submitted that as per Consolidated FDI Policy Circular of 2014, which prescribes guidelines for calculation of total foreign investment i.e., direct and indirect foreign investment in an Indian company, foreign investment of 0.03% through Indian owned and controlled investing Indian company viz., TATA would not be considered for calculation of the indirect foreign investment in Indian company viz., TATA SIA Airlines Ltd. I agree with the argument by TATA SIA Airlines Ltd. Moreover, the TATA is an Indian Company regulated under Indian laws, therefore, the objection of Mr. Jain is not sustainable. The requirement of 'substantial ownership is vested in Indian nationals' is, therefore, complied with by TATA SIA Airlines Ltd.

Effective Control : Regarding 'Effective Control', the word 'control' has been defined in AIC 12/2013 which is an inclusive definition and includes, the right to appoint majority of Directors or to control the management or policy decision'. As per Webster's Encyclopedic Dictionary, the word 'effective' means 'adequate to accomplish a purpose or producing intended or expected results'. Therefore, vesting of 'effective control' in Indian nationals means vesting of control of M/s. TATA SIA Airlines Ltd., in Indian nationals which is adequate to accomplish the purpose of appointing majority (2/3rd) of its Directors, or controlling the management or policy decision of the Company. This needs to be read in conjunction with the other requirement for issuing AOP to a scheduled air transport service prescribed in Clause 1(II)(b) of Schedule XI, i.e., the chairman and at least 2/3rd Directors should be citizens of India. In my view this condition has been put under the Schedule XI to ensure that the effective control remains in the hands of Indian citizens/nationals. If

the Board of TATA SIA Airlines Ltd., satisfies this condition, it may be inferred that the effective control vests in Indian nationals.

A company is controlled by the board of directors. Since the company is only a body, its brain is the board of directors and the control of the body lies in the brain i.e., in the board of directors. In the board of directors if 2/3rd of the directors and chairman are Indian citizens, it can be said that the effective control vests in Indian nationals because the management/policy decisions shall always be taken by the TATA SIA Airlines Ltd., Board where the majority lies with the Indian citizens/nationals. In the case of M/s.TATA SIA Airlines Ltd., the authority to appoint the Chief Executive Officer, Chief Commercial Officer and the Chief Finance Officer, lies with the Board of TATA SIA Airlines Ltd., as per Shareholders Agreement, which further gives the control of the Company in the hands of Indian nationals making it more effective. Besides, the right to appoint 2/3rd (majority) of Directors remains with the Indian company i.e., TATA. Therefore, I have no doubt to believe that the 'Effective Control' of TATA SIA Airlines Ltd., remains in the hands of Indian nationals.

FIA's objection on issues of Security, since 2/3rd of the Directors of the Board shall be Indian nationals and all Directors need to be security cleared by the Ministry of Home Affairs before being appointed as Directors has no force.

Regarding the objection raised by Federation of Indian Airlines (FIA) that as per the FDI policy, the FDI by foreign airlines is not allowed in the Greenfield airlines, the issue has already been examined by the FIPB at the time of allowing 49% equity participation by SIA in M/s. TATA SIA Airlines Ltd. Moreover, this issue has been challenged by the FIA in the Hon'ble High Court, Delhi, which is still subjudice.

After the detailed examination of objections/issues raised in the representations, the response of M/s. TATA SIA Airlines Ltd., and various Rules and other Provisions for issuance of Air Operator Permit, I am of the view that the representationists have not been able to make out any case against M/s. TATA SIA Airlines Ltd., for refusing to consider its application for grant of AOP (Scheduled). I, therefore, do not find any reason for not considering the application of M/s. TATA SIA Airlines Ltd., for grant of AOP(Scheduled). In view of the above, the objections raised by the representationists are not sustainable. It is, therefore, decided to consider the application of M/s. TATA SIA Airlines Ltd., for issuance of AOP (Scheduled) subject to the compliance of various requirements in terms of Rules, CAR, CAP 3100 and other applicable Circulars. However, this decision shall be subject to any interim/final order of the Hon'ble High Court, Delhi. M/s. TATA SIA Airlines Ltd., may be informed accordingly for completion of formalities as per Rules/Provisions in this regard. This decision may also be uploaded on the DGCA's website.

Sd/-
(Dr. Prabhat Kumar)
Director General Civil Aviation,
09.07.2014

Unquote