
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

PRIVATISATION OF THE AVIATION SECTOR IN INDIA- Pratyusha Pradhan¹**Abstract**

The aviation industry in India has experienced rapid growth over the past three years, positioning India as the third-largest domestic aviation market globally. By 2024, India is expected to rank as the third-largest market for air passengers. To meet the needs of travellers, the Government of India is expanding the number of airports, with 103 operational airports reported in 2019. Despite notable recent accomplishments, significant gaps in development still need to be addressed. Given the escalating demand for air travel, India's aviation sector may require approximately 2,380 new commercial airliners by 2038.

This paper delves into the complex connection between the aviation sector and company law, examining how legal principles and regulatory frameworks intersect to regulate the operations of aviation companies. It explores different facets of company law relevant to the aviation industry, such as company establishment, corporate governance, fundraising, contracts, intellectual property, competition, and regulatory adherence. Analysing pertinent case laws and statutes identifies significant legal issues and obstacles encountered by aviation companies, providing valuable insights into effective practices and strategies for regulatory compliance.

The Indian Space Policy 2023 made a substantial change by favouring the privatisation of the space sector to encourage innovation, competition, and cooperation between the public and private sectors. This paper examines the effects of privatisation under the Companies Act 2013 regulations, emphasizing the connection between space exploration and corporate governance

¹ Pratyusha Pradhan, 4th Year law student pursuing BA-LLB at XIM University, Bhubaneswar, Email id: pratyushapradhan1973@gmail.com, Contact Info: +91 8117087050

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

principles. This paper discusses and analyses the aviation industry in India, with a focus on the privatisation process.

Keywords: Aviation sector, Company law, Corporate Governance, Competition law, Indian Space Policy 2023

Introduction

The aviation sector in the corporate world comprises various businesses engaged in aviation activities, such as airlines, aircraft manufacturers, airports, aerospace engineering firms, and service providers. These entities facilitate global connectivity, business travel, logistics, tourism, and trade. They perform tasks like operating flights, manufacturing aircraft, providing maintenance services, managing airport infrastructure, and offering aviation-related technology solutions. This sector is influenced by regulatory frameworks, market competition, technological advancements, and economic trends, which shape its operations and growth strategies.

The significant impact of privately held business, especially in the aviation sector, on our economy and society has become extensive, shaping our collective viewpoints. Aviation Corporate Law oversees the creation and functions of these organisations and is intently intertwined with mercantile law and the law of contacts. Corporations established under state laws are subject to state-specific regulations governing their setup, organisation, and termination. Through formal incorporation, a corporation forms a distinct legal entity capable of undertaking legal activities, including contractual agreements and legal disputes, separate from its shareholders.

The following regulations are outlined in the Companies Act 2013:

The Companies Act 2013 categorises companies based on their members, as outlined in its provisions:

- The idea of **One Person Company (OPC)** was introduced in India through Section 2 (62) of the Companies Act, 2013.² It's for those who run their businesses alone but want to become a company. This concept is not novel, as it has already been established in several other

²Companies Act, 2013, § 2(62), No. 18, Acts of Parliament, 2013 (India).

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

countries such as Australia, China, the UK, and Pakistan. An OPC (one-person company) is characterised by having a single owner and can be structured as a company with limited shares, guarantees, or unlimited liability. OPC amalgamates sole proprietorship and company structure features, leveraging streamlined legal formalities. Critical facets of OPC entail having a solitary shareholder, an Indian citizen residing in the country, and the inevitable necessity for a nominee shareholder in case the primary shareholder cannot fulfil his obligations. The OPC structure allows for appointing a single director to oversee operations, offering simplicity and efficiency. Furthermore, the flexibility of OPC regulations permits a maximum of 15 directors, providing versatility in governance and decision-making processes.³

- As delineated in Section 2 (68) of the Companies Act, 2013, a ‘**private company**’⁴ is characterised by a requisite minimum paid-up share capital as specified, along with articles that constrain the transfer of shares and limit the membership to two hundred individuals, except for a One Person Company. Furthermore, the Act prohibits any public solicitation for the subscription of the company’s securities. The Companies (Amendment) Act of 2015 has brought about a significant change by abolishing the necessity of a specific paid-up share capital for defining a Private Company. This change allows people to start a private company with just two rupees as the initial investment, with each person contributing only one rupee. Similarly, it also affects public companies, allowing them to be set up with a paid-up capital of only seven rupees.⁵
- As per Section 2 (71) of the Companies Act 2013, a ‘**public company**’ is characterised as a company that is not classified as a private company and possesses a minimum prescribed paid-up share capital.⁶ A public company must also have at least seven members for its

³ One Person Company (OPC).pdf, www.icsi.edu
<https://www.icsi.edu/media/webmodules/companiesact2013/ONE%20PERSON%20COMPANY.pdf> (last visited Mar 11, 2024)

⁴ Companies Act, 2015, § 2(68), No. 17, Acts of Parliament, 2015 (India).

⁵ Team Instabizfilings, Understanding Sec 2(68): Definition of “Private Company”, INSTABIZ FILINGS (Mar 11, 2024, 11:05 AM), <https://instabizfilings.com/blog/understanding-section-2-68-definition-private-company>

⁶ Companies Act, 2013, § 2(71), No. 18, Acts of Parliament, 2013 (India).

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

formation. It's important to highlight that a subsidiary of a non-private company is also deemed a public company under this Act, even if it maintains private company status in its articles. The Companies (Amendment) Act 2015⁷ has eliminated the necessity of a specific paid-up share capital from the definition of a Public Company, effective from May 25, 2015. This alteration permits the establishment of public companies with minimal paid-up capital.⁸

- The Companies Act 2013 talks about Section 2 (85),⁹ which is a 'small company'. It is a type of enterprise that meets reliable conditions except for the public ones. Its shared capital shouldn't go over an amount exceeding fifty lakhs INR limit set, not more than ten crore rupees. Additionally, its revenue in the preceding fiscal year must not surpass two crore rupees or an increased threshold, not exceeding one hundred crore rupees. Certain entities such as holding companies, subsidiaries, Section 8 companies, or those governed by unique Acts are exempted from these regulations.¹⁰ Small companies get some perks, like having to convene solely two board gatherings a year instead of four and not having to show cash flow statements with financial statements.¹¹

Now, let's delve into the case of **Vijay Mallya and Kingfisher Airlines**¹²:

- After Kingfisher Airlines ceased operations, it came to light that the corporation had breached numerous stipulations outlined in the Companies Act of 2013.
- One transgression entailed the neglect to convene an annual general meeting (AGM) for two successive years, as mandated by Section 96 of the Statute.¹³
- Another violation related to the postponement in furnishing audited financial statements to the Ministry of Corporate Affairs under Section 129, which has been mentioned in the Act.¹⁴

⁷ Companies (Amendment) Act, 2015, No. 21, Acts of Parliament, 2015 (India).

⁸ *Id.*

⁹ Companies Act, 2013, § 2(85), No. 18, Acts of Parliament, 2013 (India).

¹⁰ Anushka Singhal, Section 8 of Companies Act, 2013, IPLEADERS (Mar 11, 2024, 11:38 AM), <https://blog.ipleaders.in/section-8-of-companies-act-2013/>

¹¹ *Id.*

¹² Vilasini Pollisetty, The Case of Vijay Mallya and Kingfisher Airlines, THE SEVEN PILLARS INSTITUTE (Mar 11, 2024, 01:15 PM), <https://sevenpillarsinstitute.org/the-case-of-vijay-mallya-and-kingfisher-airlines/>

¹³ Companies Act, 2013, § 96, No. 18, Acts of Parliament, 2013 (India).

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

- Section 96 mandates that all companies conduct an AGM annually; non-compliance is considered a severe offence.¹⁵
- In the same way, section 129 requires companies to prepare and submit financial records within a designated period, and if they fail to do so, it undermines transparency and accountability.¹⁶
- These breaches led to significant consequences for Vijay Mallya, including his departure from the position of chairman at Kingfisher Airlines. Moreover, he encountered multiple criminal allegations associated with financial impropriety and illicit capital movement.¹⁷
- Kingfisher Airlines faced serious outcomes, culminating in its pronouncement of bankruptcy. This resulted in thousands of employees losing their jobs and loaners being left with significant outstanding liabilities.¹⁸

Aviation Sector

What are the following factors that are keeping Corporate and Dispute Practices engaged in 2024?

The aviation sector is an integral part of the amplification of economic progress, enabling connection, workforce expansion, tourism, and trade. India has witnessed an uptick in air travel demand fueled by a burgeoning middle class and improving discretionary incomes. Over the past years, the sector has seen large-scale growth, characterised by the inauguration of newly developed airports and terminals, enhancing the aggregate count of operational civil airports to 149. However, despite the growth potential, obstacles like high costs and unmanageable debt have led to the shutdown of multiple airlines, including NEPC, Kingfisher, Modiluft, Jet Airways, and most recently, Go First (formerly Go Air), which declared insolvency in the month of July 2023.¹⁹

¹⁴ Companies Act, 2013, § 129, No. 18, Acts of Parliament, 2013 (India).

¹⁵ *supra* note 13.

¹⁶ *supra* note 14.

¹⁷ *supra* note 12.

¹⁸ *Id.*

¹⁹ Singhania & Partners LLP, Aviation Sector: What will keep Corporate and Disputes Practices busy in 2024, LEXOLOGY, Mar. 27, 2024, 12:12PM), <https://www.lexology.com/library/detail.aspx?g=2dccb8ff-0362-491b-9697-a87bbc292b70>.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

Exploring the difficulties in the Aviation Sector:

The issue arises: What prompts airlines to fail frequently in India? Analysing the situation of Go First offers valuable perspectives on typical obstacles. Go First attributed its difficulties to insufficient funds and a scarcity of parts supplied by Pratt and Whitney, the engine manufacturer for its Airbus A320 fleet. This mirrors a consistent pattern observed in the challenges faced by other airlines like Jet Airways and Kingfisher, which encountered analogous issues, resulting in their closure.²⁰

Jet Airways, the oldest privately-owned airline in India, encountered difficulties with its attempt to acquire Air Sahara. The subsequent endeavours and financial investments made to rejuvenate Air Sahara forced Jet Airways to divest a substantial portion of its ownership to Etihad Airways. Furthermore, the emergence of newly established budget-friendly airlines and the operational complexities of coordinating a diverse range of aeroplanes in their fleet intensified the challenges experienced by Jet Airways and other airlines in our country, India.²¹

Evolution of Legal system:

1. The **Ministry of Civil Aviation** ("MoCA") is the primary government department tasked with developing guidelines and statutes governing civil aviation within India. It is responsible for planning and executing initiatives to enhance commercial aviation, airport infrastructure, air traffic services, and the transportation of passengers and cargo by air.²² The MoCA oversees numerous key governing bodies operating under its jurisdiction. Some of the following principal regulatory authorities are as follows:
 - The **Directorate General of Civil Aviation** ("DGCA") enforces regulations for commercial aviation and oversees aerial transport services, protective guidelines, and airworthiness.²³
 - The Airports Authority of India ("AAI") is tasked with developing, improving, preserving, and overseeing aviation infrastructure, encompassing terrestrial and Indian airspace.²⁴

²⁰*Id.*

²¹*Id.*

²²Global Legal Group, *Aviation Laws and Regulations Report 2022-2023 India*, (Mar.27, 2024), <https://iclg.com/practice-areas/aviation-laws-and-regulations/india>.

²³ Directorate General of Civil Aviation, Ministry of Civil Aviation (Mar. 14, 2024), <https://www.civilaviation.gov.in/node/4366>.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

- The **Airport Economic Regulatory Authority** ("AERA") sets tariffs for aeronautical services and Passenger Service Fees to ensure adherence to performance standards related to service quality, consistency, and dependability.²⁵
 - The Office of Civil Aviation Security verifies that aerial safety criteria adhere to national and international commitments and agreements concerning aerial precaution, to which India has pledged its support.²⁶
2. The **Ministry of Corporate Affairs** has released Notification No. S.O. 4321(E), dated 03.10.2023, exempts transactions involving aircraft, aircraft engines, airframes, and helicopters from the moratorium regulations stipulated in the Insolvency and Bankruptcy Code of 2016.²⁷ The Ministry of Civil Aviation has demonstrated faith in aircraft lessors' post-announcement, resulting in positive feedback from the Aviation Working Group. The anticipated alterations are expected to favour lessors, creditors, and Indian aviation carriers, potentially resulting in diminished leasing and financing costs as confidence in the Indian legal framework strengthens.²⁸
3. Nonetheless, obstacles have emerged following the Notification from **MCA**.²⁹ There is uncertainty regarding whether the exclusion applies to continuous insolvency proceedings that have already been subjected to the moratorium. The absence of clarity on this matter has prompted Go First's lessor to pursue legal action for aircraft deregistration and seek clarification from the **Directorate General of Civil Aviation** (DGCA).³⁰ The determination of the amendment's applicability to the issue of ongoing proceedings appears to be pending resolution by the judiciary and tribunals.

²⁴*Airports Authority Of India*, (Category -1 Public Sector Enterprise) (Mar. 27, 2024), <https://www.aai.aero/>.

²⁵*AERA Home*, Airports Economic Regulatory Authority Of India, G <https://www.aera.gov.in/>.

²⁶*supra* note 22.

²⁷Insolvency and Bankruptcy Code, 2016, § 14(1), No. 31, Acts of Parliament, 2016 (India).

²⁸ Vikas Goel, *Aviation Sector: What will keep Corporate and Disputes Practices busy in 2024*, Lexology (Jan. 6, 2024), <https://www.lexology.com/library/detail.aspx?g=2dccb8ff-0362-491b-9697-a87bbc292b70>.

²⁹*Id.*

³⁰*supra* note 23.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

4. The **Ministry of Civil Aviation has implemented the Aircraft (Security) Rules, 2023**, to bolster civil aviation security by global standards. These regulations encompass various aspects of aviation security, delineating roles, duties, and security protocols. They play a pivotal role in protecting the aviation sector in India by addressing security issues and outlining measures to safeguard passengers, crew, and aviation assets. Effective execution will require consistent training, cooperation among involved parties, and updating on advancing security procedures to guarantee the ongoing security of aerial transportation in India.³¹

5. In the month of May 10, 2023, the **National Company Law Tribunal in New Delhi (NCLT)** approved the application submitted by Go Airlines (India) Limited, Occupying the third position among airline companies in India based on passenger market share in 2022, the company applied Section 10 of the **Insolvency and Bankruptcy Code, 2016 (IBC)**, leading to the enforcement of a moratorium on its operations.³² This voluntary bankruptcy petition has introduced intricate challenges within the highly cutthroat airline sector. The Corporation is also anticipated to encounter regulatory impediments as it addresses show cause notices and undergoes audits conducted by the **Directorate General of Civil Aviation (DGCA)**, actively pursuing strategies to revitalise its operations. Additionally, difficulties arise from aircraft lessors seeking to repossess their aircraft and competing airlines showing interest in acquiring the Corporation's holdings. Stakeholders anxiously await the denouement of the **Corporate Insolvency Resolution Process (CIRP)** to ascertain the Company's capability to effectively undergo restructuring or, akin to the destiny met by Jet Airways, Kingfisher Airlines, and Air Deccan, the potentiality of facing liquidation.³³

Mergers & Acquisitions

³¹*supra* note 28.

³² Insolvency and Bankruptcy Code, 2016, § 10, No. 31, Acts of Parliament, 2016 (India)

³³ Goel, Vikas. "Aviation Sector: What Will Keep Corporate and Disputes Practices Busy in 2024." *Lexology*, Singhania & Partners LLP, 2024, www.lexology.com/library/detail.aspx?g=2dccb8ff-0362-491b-9697-a87bbc292b70.

Two primary laws oversee mergers and acquisitions in India. The Companies Act of 1956³⁴ mandates that all planned mergers or amalgamations must receive approval from the High Court.³⁵ Additionally, the Competition Act scrutinises any merger or acquisition that could negatively impact the pertinent market.³⁶

I. Jet-Ethiad Acquisition:

In 2012, Etihad, a corporation incorporated in the United Arab Emirates, planned to acquire a 24% stake in Jet Airways. The proposition garnered the endorsement of the SEBI, FIPB, and the Cabinet Committee of Economic Affairs. Subsequently, the investment agreement, shareholders agreement, and collaborative business agreements between Jet and Etihad were presented to the CCI for approval. The submission of Jet-Etihad's³⁷ proposal to the CCI marked a significant event in the aviation sector. The CCI meticulously examined the potential effects of the arrangement concerning air passenger services and the competitive landscape in India.

The CCI, in reviewing the case before it, had to assess whether the transaction between the two parties would cause an Appreciable Adverse Effect on Competition (AAEC) in the relevant market of India.³⁸ The relevant market was delineated as the international passenger air transport market, segmented according to the point of origin and destination (O & D), with each route being considered distinct. The CCI noted that Jet and Etihad operated 38 routes to and from India, each with at least one competitor. Only seven destinations had a combined market share of over 50% for Jet and Etihad. The CCI recognised potential efficiencies from the combination, such as efficiencies in network operations and cost reductions.

Additionally, the CCI acknowledged the significance of the suggested equity injection for Jet, which is facing financial challenges. Consequently, the Commission, through a majority decision dated November 12, 2013, the CCI sanctioned the combination under Section 31(1) of the

³⁴Companies Act, 1956, § 391-396, No.1, Acts of Parliament, 1956 (India). The Companies Act of 1956 has been succeeded by the Companies Act of 2013.

³⁵ Companies Act, 1956, § 391-396, No.1, Acts of Parliament, 1956 (India).

³⁶ Competition Act, 2002, § 5 & § 6, No. 12, Acts of Parliament, 2002 (India).

³⁷ CCI, Combination Registration No. C-2013/05/ 122, dated 12.11.2013

³⁸ As per the guidelines outlined in the Competition Act of 2002, the Commission must initially determine whether a specific combination would result in any significant adverse impact on competition within India. Only upon reaching a positive conclusion regarding this matter does the investigation by the Director General commence.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

Competition Act. Nevertheless, the CCI cautioned that this endorsement did not confer immunity from subsequent proceedings for contraventions of the Competition Act.

The approach taken by the CCI draws inspiration from the merger between British Airways and Iberia, where the European Commission determined that competition would not be adversely affected as long as practical and credible competitors existed in the relevant market.³⁹

II. Tata Sons Ltd. – Singapore Airlines (SIA):

J. R. D. Tata is frequently referred to as the pioneer of aviation in India. This title is well-deserved given his pivotal role in conceptualising and financing the inaugural air mail carrier flight from Karachi to Mumbai on October 15, 1932, during which he also served as the pilot.⁴⁰ In 1937, the mail carrier airline underwent expansion to include passenger transportation services. Following World War II, Tata Airlines, in which the Government held 49%, Tata held 25%, and public shareholders owned the remaining shares, commenced international flights.⁴¹

1946 Tata Airlines underwent a public offering and was rebranded as Air India. When the government decided to take control of all airlines in 1953, Tata exited the aviation industry. Despite previous efforts by the Tata Group to re-enter the Indian aviation sector, such as procuring a 30% stake in Air Asia India, their significant restoration to the Indian aviation industry came with the establishment of Vistara. Vistara, in which Tata holds majority control (51%), was established as a joint venture with Singapore Airlines (SIA).⁴² After obtaining FIPB approval in 2013, it took the companies nearly two years to get the remaining government clearances, which included acquiring the air operating permit from the DGCA.⁴³ Vistara commenced its maiden flight from Delhi to Mumbai on January 9, 2015.⁴⁴

³⁹CUTS Institute for Regulation & Competition, <https://www.circ.in/competition-issues-case-study-18.php>.

⁴⁰ India Today, Tata Group may combine airline businesses if Air India acquisition succeeds: Report, India Today (Mar. 27, 2024, 11:05PM), <https://www.indiatoday.in/business/story/tata-group-air-india-bid-plan-to-combine-vistara-airasia-india-1857719-2021-09-27>.

⁴¹*Id.*

⁴² Business Today, “With Vistara a Tata airlines is reborn”, (Mar. 28, 2024), <http://www.businesstoday.in/sectors/aviation/fipb-approves-tata-singapore-airline-venture/story/199983.html>.

⁴³ PR Sanjai, Livemint, Tata-SIAs Vistara gets India operating license, LIVEMINT (last visited Mar. 28, 2024, 11:15 AM), <https://www.livemint.com/Companies/BzczCiICRg68yhIecC3IBN/TataSIAs-Vistara-gets-India-operating-licence.html>.

⁴⁴*Id.*

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

III. Mergers before the Competition Commission of India (CCI):

A. Air India-Indian Airlines:

Air India, formerly known as Tata Airlines, and Indian Airlines, a merger of seven domestic airlines, were nationalised under the Air Corporations Act of 1953. Despite fifteen years of liberalisation in the aviation sector, both national carriers faced challenges due to fierce competition. To address this issue, the Union Cabinet sanctioned a merger between the two airlines on March 1, 2007. The resulting entity retained the name Air India. On August 22, 2007, the Ministry of Corporate Affairs sanctioned the Scheme of Amalgamation, merging Air India Limited and Indian Airlines Limited with the National Aviation Company of India Ltd (NACIL). Following the amalgamation, the resulting entity operated under the name Air India.

Despite expectations of net synergy benefits totalling Rs. 2.8 billion, the merged airline incurred a loss amounting to Rs. 280 billion between 2007 and 2012.⁴⁵ This was mainly attributed to the mismatch in aircraft types between Air India and Indian Airlines. Air India operated Boeing aircraft primarily for long-distance international routes, while Indian Airlines used Airbus aircraft mainly for domestic flights.⁴⁶ Consequently, synergies related to operational crews, engineers, technicians, etc., could not be fully optimised. Additionally, Air India faced stiff competition from airlines like IndiGo, Jet Airways, and Spice Jet, which were profiting from significant market traction.⁴⁷

B. Jet-Sahara:

Jet procured complete ownership of Air Sahara for Rs. 1,450 crores 15 months after the initial purchase accord.⁴⁸ Following the acquisition, the airline underwent rebranding as "JetLite" and was positioned as Jet Airways' budget carrier. Jet aimed to recapture some of the market share lost to competitors like IndiGo by venturing into the low-cost segment. However, JetLite

⁴⁵Case Studies and Management Resources, https://www.icmrindia.org/casestudies/Case_Studies_Industry_Wise.asp?Industry=Aviation (last visited Mar. 28, 2024)

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸Times of India, Jet disbands JetKonnnect, to be all full service and single brand, available at <https://timesofindia.indiatimes.com/business/india-business/Jet-disbands-JetKonnnect-to-be-all-full-service-and-single-brand/articleshow/40068848.cms> (last visited Mar. 28, 2024, 12:17PM)

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

struggled to gain momentum, and Jet's subsequent rebranding effort as JetKonnnect also proved unsuccessful.⁴⁹ In 2014, Jet announced plans to dissolve its low-cost carrier and revert to operating as a single full-service airline.⁵⁰

Complications in Aviation Sector

The aviation sector confronts numerous obstacles that impede its growth potential:

- **Multi-faceted Regulatory System:** The complex system of rules overseeing the aviation sector in India creates uncertainties for stakeholders, possibly deterring investment and creativity.
- **Regulatory turbulence:** The recurrent revisions and erratic nature of regulations might deter prospective investors and undermine the streamlined operation of airlines.
- **Taxation on Aviation Turbine Fuel (ATF):** This results in increased airline expenses due to the lack of Goods and Services Tax (GST), Which influences passenger affordability while impeding the profitability and expansiveness of the industry.⁵¹
- **Insolvency Law Challenges for Lessors:** The discordance between the regulations outlined in the Aircraft Rules of 1937 and the provisions delineated within the Insolvency and Bankruptcy Code could potentially prejudice lessors by adversely affecting leasing rates and security deposits.
- **Intense Competition:** The fiercely competitive and price-sensitive characteristic of India's domestic aviation market may lead to legal entanglements from an antitrust perspective.
- **The nebulous delineation of governmental function within the regulatory:** Ambiguities within the governmental function and regulatory structure present formidable obstacles to adherence due to indeterminate roles in resolving aviation dilemmas and regulatory incongruities.

⁴⁹*Id.*

⁵⁰*Id.*

⁵¹ Diksha Tripathy, *Higher ATF prices, weaker Rupee to drag aviation sector profitability despite strong fares*, The Economic Times (Mar. 27, 2024), <https://economictimes.indiatimes.com/industry/transportation/airlines/-/aviation/higher-atf-prices-weaker-rupee-to-drag-aviation-sector-profitability-despite-strong-fares/articleshow/92801680.cms>.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

- **Foreign Direct Investment (FDI)** is fraught with uncertainty stemming from convoluted bureaucratic processes and protracted authorisation procedures, impeding the inflow of foreign capital into the aviation industry.
- **Facilitating adherence to stringent safety protocols and standards:** Preserving safety standards necessitates a delicate equilibrium between growth imperatives and adherence to established safety protocols, necessitating concerted efforts with international aviation bodies and the enactment of optimal methodologies to ensure the welfare of passengers and crew.

Conclusion

India's robust economic growth and expanding global trade have increased aviation freight volume. However, the air cargo industry in India faces several challenges that impede its growth. These challenges include inadequate airport infrastructure and capacity, outdated cargo-handling facilities, shortage of skilled labour, high operational costs, and regulatory restrictions. Despite these obstacles, the Indian air freight market shows promising growth potential, driven by the rise of e-commerce, increasing demand for quick delivery services, and the growing middle class with higher disposable incomes.

The Indian government has implemented various initiatives to address these challenges, including developing cargo airports, modernising existing facilities, improving customs processing, and incentivising air cargo operations. While hurdles exist, the Indian air freight industry holds significant opportunities for economic growth and expansion in global trade.

The COVID-19 pandemic has brought about amendments to Indian aviation regulations. These revisions have placed greater emphasis on ensuring the safety of passengers and crew, assisting the airline industry, and facilitating the repatriation of Indian citizens. This proactive initiative underscores the necessity for change in response to the evolving situation.

The Companies Act 2013 serves as a crucial framework for enhancing transparency and identifying potential risks for companies. Every company must adhere to the regulations outlined in the Act and strive to improve accountability across all aspects of their operations. Learning

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

from the experiences of others and prioritising compliance with the Act is essential for ensuring the smooth functioning of a company and avoiding legal troubles. This applies to all aviation companies in India, including private entities like Indigo, SpiceJet, and Vistara, which are subjected to the statutes of the Companies Act.⁵²

Way Forward

In light of the significant impact of COVID-19 on the aviation sector, India is in a pressing need for a seamless supply of aircraft. Airlines often lease due to the high costs involved in this trend, primarily sourced from foreign markets. Despite initial appearances suggesting a conflict between the Cape Town Act and the Insolvency and Bankruptcy Code (IBC), a closer examination reveals their alignment, serving a shared objective of positioning India as a global hub for investors.

A comprehensive analysis of the Bill's implications, especially when considered alongside existing laws, indicates numerous positive outcomes for the aviation industry. It would streamline the insolvency process and inspire confidence among aircraft financiers to engage actively in leasing by offering incentives like the Cape Town Discount. Enactment of the Bill would simplify the aircraft acquisition process by consolidating and replacing various statutory timelines, thereby reducing complexity. Consequently, reintroducing the Cape Town Convention Bill 2018 to the forefront is deemed essential to catalyse the revival of India's airline sector.

The Indian Space Research Organization (ISRO) unveiled the "**Indian Space Policy 2023**" following extensive consultations and reviews. This policy revitalises the Indian space sector by fostering more significant investments and private sector involvement. Despite being a space-capable nation, India has had limited participation in the global space industry, with the private sector primarily serving as suppliers to government space projects.⁵³

⁵² Ms. Kashvi Rajvansh, Companies Act and the legal aspects of corporate aviation, AISHWARYA SANDEEP PARENTING & LAW (last visited Mar. 28, 2024, 02:15PM), <https://aishwaryasandeep.in/companies-act-and-the-legal-aspects-of-corporate-aviation/#>.

⁵³ Savleen Kaur, India Space Policy, 2023: The Way Forward, IMPRIINDIA (last visited Mar. 28, 2024, 02:08PM) <https://www.impriindia.com/insights/policy-update/space-policy-way-forward/>.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

Recognising the need to foster greater involvement of **Non-Governmental Entities (NGEs)** in the country's space program and to enhance India's standing in the global space economy, significant reforms were initiated by the Government of India in the space domain in 2020. These reforms aimed to create an enabling environment for NGEs to contribute actively, fostering a thriving ecosystem. They were crafted in response to various rapidly evolving geopolitical, economic, and technological developments worldwide, serving as a precursor to the current Indian space policy.⁵⁴

References

² Companies Act, 2013, § 2(62), No. 18, Acts of Parliament, 2013 (India).

³ One Person Company (OPC).pdf, [www.icsi.eduhttps://www.icsi.edu/media/webmodules/companiesact2013/ONE%20PERSON%20COMPANY.pdf](https://www.icsi.edu/media/webmodules/companiesact2013/ONE%20PERSON%20COMPANY.pdf) (last visited Mar 11, 2024)

⁴ Companies Act, 2015, § 2(68), No. 17, Acts of Parliament, 2015 (India).

⁵ TeamInstabizfilings, Understanding Sec 2(68): Definition of “Private Company”, INSTABIZ FILINGS (Mar 11, 2024, 11:05 AM), <https://instabizfilings.com/blog/understanding-section-2-68-definition-private-company>

⁶ Companies Act, 2013, § 2(71), No. 18, Acts of Parliament, 2013 (India).

⁷ Companies (Amendment) Act, 2015, No. 21, Acts of Parliament, 2015 (India).

⁸ *Id.*

⁹ Companies Act, 2013, § 2(85), No. 18, Acts of Parliament, 2013 (India).

¹⁰ Anushka Singhal, Section 8 of Companies Act, 2013, IPLEADERS (Mar 11, 2024, 11:38 AM), <https://blog.ipleaders.in/section-8-of-companies-act-2013/>

¹¹ *Id.*

⁵⁴*Id.*

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

¹² Vilasini Pollisetty, The Case of Vijay Mallya and Kingfisher Airlines, THE SEVEN PILLARS INSTITUTE (Mar 11, 2024, 01:15 PM), <https://sevenpillarsinstitute.org/the-case-of-vijay-mallya-and-kingfisher-airlines/>

¹³ Companies Act, 2013, § 96, No. 18, Acts of Parliament, 2013 (India).

¹⁴ Companies Act, 2013, § 129, No. 18, Acts of Parliament, 2013 (India).

¹⁵ *supra* note 13.

¹⁶ *supra* note 14.

¹⁷ *supra* note 12.

¹⁸ *Id.*

¹⁹ Singhania & Partners LLP, Aviation Sector: What will keep Corporate and Disputes Practices busy in 2024, LEXOLOGY, Mar. 27, 2024, 12:12 PM), <https://www.lexology.com/library/detail.aspx?g=2dccf8ff-0362-491b-9697-a87bbc292b70>.

²⁰ *Id.*

²¹ *Id.*

²² Global Legal Group, *Aviation Laws and Regulations Report 2022-2023 India*, (Mar.27, 2024), <https://iclg.com/practice-areas/aviation-laws-and-regulations/india>.

²³ Directorate General of Civil Aviation, Ministry of Civil Aviation (Mar. 14, 2024), <https://www.civilaviation.gov.in/node/4366>.

²⁴ *Airports Authority Of India*, (Category -1 Public Sector Enterprise) (Mar. 27, 2024), <https://www.aai.aero/>.

²⁵ *AERA Home*, Airports Economic Regulatory Authority Of India, G <https://www.aera.gov.in/>.

²⁶ *supra* note 22.

²⁷ Insolvency and Bankruptcy Code, 2016, § 14(1), No. 31, Acts of Parliament, 2016 (India)

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

²⁸ Vikas Goel, *Aviation Sector: What will keep Corporate and Disputes Practices busy in 2024*, Lexology (Jan. 6, 2024), <https://www.lexology.com/library/detail.aspx?g=2dccf8ff-0362-491b-9697-a87bbc292b70>.

²⁹ *Id.*

³⁰ *supra* note 23.

³¹ *supra* note 28.

³² Insolvency and Bankruptcy Code, 2016, § 10, No. 31, Acts of Parliament, 2016 (India)

³³ Goel, Vikas. “Aviation Sector: What Will Keep Corporate and Disputes Practices Busy in 2024.” *Lexology*, Singhania & Partners LLP, 2024, www.lexology.com/library/detail.aspx?g=2dccf8ff-0362-491b-9697-a87bbc292b70.

³⁴ Companies Act, 1956, § 391-396, No.1, Acts of Parliament, 1956 (India). The Companies Act of 1956 succeeded by the Companies Act of 2013.

³⁵ Companies Act, 1956, § 391-396, No.1, Acts of Parliament, 1956 (India).

³⁶ Competition Act, 2002, § 5 & § 6, No. 12, Acts of Parliament, 2002 (India).

³⁷ CCI, Combination Registration No. C-2013/05/ 122, dated 12.11.2013

³⁸ As per the guidelines outlined in the Competition Act of 2002, the Commission must initially determine whether a specific combination would result in any significant adverse impact on competition within India. Only upon reaching a positive conclusion regarding this matter does the investigation by the Director General commence.

³⁹ CUTS Institute for Regulation & Competition, <https://www.circ.in/competition-issues-case-study-18.php>.

⁴⁰ India Today, Tata Group may combine airline businesses if Air India acquisition succeeds: Report, India Today (Mar. 27, 2024, 11:05 PM), <https://www.indiatoday.in/business/story/tata-group-air-india-bid-plan-to-combine-vistara-airasia-india-1857719-2021-09-27>.

⁴¹ *Id.*

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

⁴² Business Today, “With Vistara a Tata airlines is reborn”, (Mar. 28, 2024), <http://www.businesstoday.in/sectors/aviation/fipb-approves-tata-singapore-airline-venture/story/199983.html>.

⁴³ PR Sanjai, Livemint, Tata-SIAs Vistara gets India operating license, LIVEMINT (last visited Mar. 28, 2024, 11:15 AM), <https://www.livemint.com/Companies/BzczCiICRg68yhIecC3IBN/TataSIAs-Vistara-gets-India-operating-licence.html>.

⁴⁴ *Id.*

⁴⁵ Case Studies and Management Resources, https://www.icmrindia.org/casestudies/Case_Studies_Industry_Wise.asp?Industry=Aviation (last visited Mar. 28, 2024)

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Times of India, Jet disbands JetKonnnect, to be all full service and single brand, available at <https://timesofindia.indiatimes.com/business/india-business/Jet-disbands-JetKonnnect-to-be-all-full-service-and-single-brand/articleshow/40068848.cms> (last visited Mar. 28, 2024, 12:17 PM)

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Diksha Tripathy, *Higher ATF prices, weaker Rupee to drag aviation sector profitability despite substantial fares*, The Economic Times (Mar. 27, 2024), <https://economictimes.indiatimes.com/industry/transportation/airlines/-/aviation/higher-atf-prices-weaker-rupee-to-drag-aviation-sector-profitability-despite-strong-fares/articleshow/92801680.cms>.

⁵² Ms. Kashvi Rajvansh, Companies Act and the legal aspects of corporate aviation, AISHWARYA SANDEEP PARENTING & LAW (last visited Mar. 28, 2024, 02:15 PM), <https://aishwaryasandeep.in/companies-act-and-the-legal-aspects-of-corporate-aviation/#>.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

⁵³ Savleen Kaur, India Space Policy, 2023: The Way Forward, IMPRIINDIA (last visited Mar. 28, 2024, 02:08 PM) <https://www.impriindia.com/insights/policy-update/space-policy-way-forward/>.

⁵⁴ *Id.*

BIBLIOGRAPHY

TAXMANN'S Corporate Laws, 48th Edition, July 2023.



For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>