Aerospace Equipment Manufacturing: Navigating the Indian Legal Runway

India's aerospace equipment manufacturing industry is poised for rapid growth, driven by increasing passenger traffic, push for domestic manufacturing and global supply chain diversification. India's experience and expertise in precision manufacturing has given it a shot in the arm for being an integral cog in the global supply chain for the aircraft industry (reports of Indian sourcing reaching USD 2billion).

The sector is governed by a host of legal and regulatory considerations, many of which are industry specific. This piece outlines key considerations that commonly arise for investment into aerospace equipment manufacturing.

- **Gate or Gatekeeper - FDI limits and classifications:** While India permits 100% foreign direct investment (FDI) in aerospace equipment manufacturers, a key challenge that emerges is the primary classification and the end-use of the products. A number of products manufactured by these players may be used in both aerospace and defence. The FDI policy has guidelines and circulars on what is considered defence and accordingly, if companies are manufacturing critical components used in defence, the FDI norms change for such companies.

  While FDI in defence manufacturing is also permitted (under the automatic route up to 49% or 74% and under the approval route for investment beyond such limits), an important challenge for such FDI investments is that it requires prior security clearance of investors from the Ministry of Home Affairs. This entails a detailed process before the investment can actually be made and is hence critical for investors to evaluate from a future fund raising or exit perspective.

- **Contractual Considerations - 'Take it or leave it' terms**: Contractual arrangements for this space are designed to facilitate standardisation and risk containment. While customers (largely being OEMs) enter in to purchase orders or contracts, the terms of engagement are standard and uniform for all vendors for these OEMs and available on their websites, with little room for negotiation. These include detailed provisions on liability of suppliers, insurance requirements, product recall and rejection, among others (*detailed below*). The overall intent of these terms is to ensure that quality meets certain standards and suppliers are held responsible for them.

  - Raw material procurement: Most OEMs require that suppliers source raw material from customer-approved vendors to ensure traceability and quality. These could be approved on a case-by-case basis, or from a pre-approved list. To that extent, confirming / ensuring that companies use vendors from an approved list is critical.

  - Insurance Obligations: Considering the nature of the business, aerospace equipment manufacturers are typically required to maintain multiple insurance policies - covering general liability, workers' compensation, employer's liability, product liability, freight liability, and business automobile liability - with required coverage limits being significantly high, especially in light of smaller purchaser orders / order value. Given the high quantum, obtaining insurance can become commercially unviable, particularly for small and mid-sized manufacturers. Investors should assess whether such insurance obligations could materially strain the manufacturer's cost structure.

    Liability Exposure: Most contracts impose uncapped indemnities and liquidated damages on manufacturers for breaches such as product defects, warranty violations, or legal non-compliance. This stems from the inherently high-risk nature of aerospace equipment, wherein minor defect can trigger safety incidents, operational grounding or regulatory investigations. While from a legal perspective, this creates a one-sided risk profile for manufacturers, investors must carefully evaluate the actual possibility of these liabilities arising. These could be low in areas where orders are pre-approved through a rigorous process by the OEM, for instance.

- Product recall and rejection: Stringent product recall and rejection clauses to safeguard against operational and safety risks are commonplace in the industry. Implications of any defective or non-conforming goods include corrective measures or replacement of goods, return of goods for credit or refund, corrective measures undertaken by OEM itself at the cost of the supplier, or source replacements externally at the cost of the supplier. Repeated non-compliance may also result in disqualification from future orders, making internal quality checks and process discipline commercially critical.

- **Navigating the Regulatory Radar**
  - SCOMET and export control: Under the Indian Foreign Trade Policy, export of commodities classified as special chemicals, organisms, materials, equipment and technologies (SCOMET) items (which can be used for either civilian or military purposes) requires a license from the Directorate General of Foreign Trade (DGFT). This license must be obtained separately for each export transaction involving SCOMET-classified goods. Given the sensitive nature of such items, purchase orders commonly include an express requirement for manufacturers to secure this license prior to dispatch of goods. It will be pertinent for investors to evaluate applicability of these licenses appropriately.
  - Global compliance turbulence: Contracts involving export of goods require strict adherence to Indian and international trade control laws including U.S. Export Administration Regulations (EAR), International Traffic in Arms Regulations (ITAR), U.S. Customs and Border Protection rules, European export control directives, etc. These compliances are important to ensure lawful cross-border movement to protects both parties from regulatory and reputational risks, given non-compliance can lead to severe penalties, export bans, or contract termination.

- **Intellectual Property**
  - Ownership aspects: The treatment of intellectual property (IP) in aerospace equipment manufacturing POs/ agreements depends on the nature of the manufacturing arrangement. Where the manufacturer operates on a built-to-print or built-to-design model, the customer typically retains all IP rights, and the manufacturer acts purely as an executor / service provider. However, in built-to-specification models - the supplier contributes to or co-develop designs, allowing potential for shared or exclusive IP. The latter requires close contractual scrutiny, as it may offer opportunities for long-term value creation through derivative technologies or products.
  - IP risk in sub-contracting: Manufacturers often sub-contract manufacturing of smaller / minor parts or components of the overall product. These sub-contracts often lack appropriate IP protection. This creates a material risk of IP leakage, especially when proprietary customer designs are shared downstream. The absence of robust contractual safeguards across its supply chain such as IP assignment clauses, confidentiality agreements, and controlled access mechanisms can expose the manufacturers to legal and commercial liabilities vis-à-vis the OEM.

To sum up, aerospace equipment manufacturing is governed by a highly specialized legal environment—one shaped by national security sensitivities, export controls, and product-critical standards. These legal elements permeate every aspect of operations, from FDI structuring and licensing to IP ownership and supplier contracts. For investors, a thorough understanding of these legal nuances is critical not just to mitigate risk, but to identify sustainable value and avoid surprises in post-investment operations.

***Authors**:*

Khushi Totla, Abhinav Harlalka
Contact: khushi.totla@bombaylawchambers.com / abhinav@bombaylawchambers.com