

8. Civil Aviation Authority (CAA)

The plan regarding Civil Aviation Authority was presented before the Federal Cabinet in its meeting held on 11th August, 2020 by the Aviation Division in the form of the following report of the Committee constituted for the purpose.

Background

1. In Pakistan, civil aviation activities are controlled and regulated according to the Civil Aviation Ordinance 1960. The President of Islamic Republic of Pakistan established the Civil Aviation Authority (hereinafter referred as “CAA”) by promulgation of an Ordinance, namely Pakistan Civil Aviation Authority Ordinance 1982, to be the national authority responsible to control civil aviation activities within Pakistan with an objective to promote and regulate civil aviation activities and to develop efficient, safe, adequate, economical and properly coordinated civil air transport services in Pakistan. Prior to the establishment of CAA in 1982, the civil aviation activities were monitored by Civil Aviation Department under administrative control of Ministry of Defence. It is important to clarify that Civil Aviation Ordinance 1960 is an implementing legislation with reference to Pakistan’s international obligations under the Convention on International Civil Aviation. The three core aspects of civil aviation activities are air transport, air navigation and airport services. Currently, CAA is acting as a licensor and regulator of all three core aspects and simultaneously acting as a service provider for airports and air navigation services.

2. To avoid this conflict of interest, the National Aviation Policy 2019 approved by the Federal Cabinet in March 2019 clearly specified that *“the role of PCAA as a regulator shall be made independent of service providers with financial and administrative autonomy within a period of two years. By setting up a Regulatory Cell within PCAA, organizational change modalities and structure of the Regulator shall be achieved with minimal adverse collateral disadvantage ...”*

3. To give effect to the National Aviation Policy decision, the Aviation Division presented a proposal to the Federal Government for “Separation of Regulatory and Service provider functions of CAA”. The “Federal Cabinet approved⁴ *in principle, the proposal for segregation of PCAA’s Regulatory and Service Provider function”*

4. Meanwhile, to implement the Federal Government directives in terms of the stated policy decisions a PCAA Change Management Committee, [CMC] of senior officers was constituted. The Change Management Committee considered various proposals for functional separation of Pakistan Civil Aviation Authority, leading to the complete segregation by establishing two separate authorities and forwarded the said recommendations to the competent authority.

5. The earlier Federal Cabinet directives were further clarified by the Federal Cabinet on 19th May 2020⁵ that , *segregation of regulatory and operational functions of the CAA should be completed, along with two draft legislations, by 30th June 2020, positively* and a Cabinet Committee was constituted comprising of following members to evaluate various options, while keeping in view segregation of regulatory and operational functions of the Federal Government, for outsourcing the major airports and recommend the way forward:

- i) Adviser to the Prime Minister on Commerce and Investment (Convener)
- ii) Minister for Aviation

⁴ Decision of Federal Cabinet Case no. 685/31/2019 dated 30th July, 2019

⁵ Decision of Federal Cabinet Case No. 341/18/2020, dated 19th May 2020

- iii) Adviser to the Prime Minister on OP & HRD
- iv) Adviser to the Prime Minister on Parliamentary Affairs
- v) Chairman Board of Investment
- vi) Secretary, Aviation Division

6. Dr. Ishrat Hussain, the convener of Institutional Reforms Committee also participated in the proceedings of this Committee.

Proceedings of the Committee

7. The Cabinet Committee for the assigned task has so far convened four meetings to discuss and deliberate on separation of the Regulatory function from Service Provider and Corporatization of Airports to invite the foreign investors to invest in Airports:

First Meeting	04 th June, 2020
Second Meeting	18 th June, 2020
Third Meeting	25 th June, 2020
Fourth Meeting	09 th July, 2020

8. Cabinet Committee was appraised at the outset that a Change Management Committee (CMC) was constituted in July 2019 for segregation of Regulatory functions. The CMC had proposed segregation of PCAA in two phases; initially the functions of PCAA be separated within the Organization, and in second phase the organizational separation of authority into two entities will take place i.e. Regulatory body and Services body will be established by ensuring uninterrupted operations at the Airports and resolution of potential impediments that may arise post segregation of PCAA.

9. Representative from Privatization Commission suggested that instead of making a single company for different Airports, it may be suitable if a company is incorporated for each Airport separately. Further, as the Committee had suggested that Financial Adviser shall be appointed for Privatization of the Airports, it is to be noted that same needs to be processed through Privatization Commission. Addressing the same, Secretary Aviation clarified that Privatization is not the objective of the Committee rather it is the structural reforms of the CAA to attract the investors for development of Services at Airport and strengthening the Regulatory functions of the State by segregating it from the Service Providers.

10. The Committee initiated its proceedings with consideration of various models for outsourcing of Airports. The models depicted structures adopted by different countries to attract investment from Private sector for development of Services at Airports. The model one and two defined provisions to invite investment through Airport Service License terms and Concession fee, respectively, for which draft rules have already been prepared by the PCAA. Model III A involved inclusion of provision to transfer of Assets to corporate entities incorporated for operating Airports for which Legislative and Policy change is required; whereas, Model III-B required incorporation of Company by PCAA who shall operate Airports under Airport Operator License.

11. The Committee was further informed that draft for two legislative bills have been prepared within the timeline; one bill shall replace the existing CAA Ordinance 1960 while strengthening the scope of Regulatory body in accordance with the international commitments as a contracting state of ICAO and the second bill will propose amendments to the CAA Ordinance 1982 to ensure enabling provisions for: -

- vii) Establishment of an airport company under Companies Act 2017, limited by share;
- i) Enabling the Company to own the title & assets of airports ordered by Federal Government;
- ii) Federal Government shall have power to transfer shares of the company to private sector;
- iii) Transfer employees from CAA to Company on same terms and conditions or favorable conditions.

12. It was deliberated that a single legal instrument may be prepared amalgamating the provisions and laws defined in both the Ordinances i.e. 1960 and 1982. However, considering that the law constituting an authority or the national point of contact with reference to the international treaties is to be covered by a standalone law and state obligations are to be defined in another law. One shall define the regulatory framework and the other instrument shall outline the scope of services with provision to incorporate a corporate entity under Companies Act 2017, the Committee agreed to the two separate legal instruments.

13. While it was decided that regulatory functions shall be entrusted to an Authority under state; the structure for Service Provider entity remained under discussion. The Airport Services and Air Navigation Services currently being rendered by Pakistan Civil Aviation Authority involves management of 44 airports and oversight services for all aircrafts operating within the airspace of country.

14. Committee further decided that an Audit firm shall be engaged to devise proposals on the Corporate Structure of Services Entity. It was agreed that RFP / EOI shall be prepared in collaboration with Chairman Board in Investment

15. The Cabinet Committee was also informed about the Lahore High Court decision dated 06th November, 2018 on the aspects of outsourcing of Airports; the Court had limited the scope of outsourcing of Airports to provision of airport services from car park to terminal building only. The decision of Supreme Court of Pakistan dated 19th February, 2020 also came under discussion whereby it was directed that “no Land around Jinnah International Airport, Karachi will be used for any commercial exploitation, rather it shall be used as an amenity for the people and particularly, parks and thick urban forest for betterment of the environment in and around Jinnah International Airport, Karachi.

16. Considering the essential involvement of Defense Forces as a joint user at most of the PCAA Airports, Ministry of Defence (MoD) was also engaged in the process. The representatives from MoD and PAF apprised the Committee that regulatory frameworks for civil aviation are not applicable to PAF, however, for joint airspace management, separate infrastructure for both bodies is not advisable in the national security interest of Pakistan. The representatives from MoD were provided the draft Legal instruments prepared by CAA against which they submitted following observations for consideration: -

- i) Only commercial operations of the airport should be outsourced; whereas, security and flight operations should remain under the monitoring of the State
- ii) A provision be defined under the legislation which shall enable the Defense forces to take over the airports in case of War
- iii) Ownership of assets should not be transferred.
- iv) MoD should be consulted while making the amendments in law so that no provision in contradiction to the existing law (war book) is included
- v) Security clearance from ISI be made pre-requisite for company to which the operations at airports shall be outsourced

vi) It shall be covered through law that no foreign or dual national be allowed to work on the airport

17. While showing agreement to most of the observations raised by MoD, Dr. Ishrat Hussain stated that one of the objectives of this whole process is to attract investors from all over the globe for development of Airports; whereas, restricting the employment to only locals at the airports shall be a barrier and may discourage the interest of potential investors. Also, as per standard practice, security check of all foreign or dual nationalists is performed by the security agencies to ensure that security concerns are not compromised.

18. The Cabinet Committee after having detailed deliberations and considering the concerns raised by the Ministry of Defense / PAF, the employees' grievances and keeping in view the fact that only six out of 44 airports (26 Operational) are profitable, decided with consensus that two authorities shall be incorporated i.e. for Regulatory and Airport Services functions, enabling Airport Services body to have subsidiaries under it instead of being an independent Corporate entity.

Recommendations

19. Considering sensitivity of operations and involvement of strategic asset i.e. Airspace, the segregation of PCAA shall be performed by incorporating two authorities. The one shall be entrusted with Regulatory functions and the other one shall develop and manage functions of Airports, with provision to incorporate subsidiaries under the Companies Act, 2017. The incorporation of two separate authorities shall be performed in sync to ensure smooth transition and minimal impact on operations.

20. The Committee proposed that functional separation of Pakistan Civil Aviation Authority shall also be carried out by implementing structural reforms in the Organization. This shall ensure independent functioning of Regulatory body within one Organization; and shall remain intact till the pre-requisites for segregation of the Authority are finalized. The time schedule for both functional as well as organizational separation is given below:

a) Operational/ functional Separation

21. The functional separation of CAA shall be performed by obtaining approval from CAA Board. Following tasks have been completed for performing the separation of functions: -

Sr.	Description	Status	Approval By	Timeline
A	Approval of proposed Organograms for Regulatory and Airport Services Functions	Draft Prepared	CAA Board	Last week of July 2020
B	Separate Plan of Manpower/Establishment for Regulatory and Airport Services Functions	Draft Prepared	CAA Board	Last week of July 2020

C	Amendments in CAA Service Regulations	Draft Prepared	CAA Board	Last week of July 2020
D	Separation of Budget Allocation Proposal 2020-21 for both functions	Working Completed	CAA Board	Last week of July 2020
E	Proposal for allocation/ bifurcation of Assets of Regulatory and Airport Services Functions	Working Completed	CAA Board	Last week of July 2020
F	Separate Prescription of CAA Operational National Regulations pursuant to ICAO Annexes	Working Completed	CAA Board	Last week of July 2020

b) Segregation of PCAA into Pakistan Civil Aviation Regulatory Authority and Pakistan Airports Authority

22. The Organizational Separation of PCAA shall be performed by establishing two separate authorities by law, namely the Pakistan Civil Aviation Regulatory Authority (PCARA) and “Pakistan Airports Authority (PAA)”. Subsequent to the establishment of the two authorities, the Corporate Structure for the subsidiaries shall be devised in consultation with an Audit firm hired for the purpose. The outsourcing process shall be performed in two phases; the first phase shall be the Corporatization of the Airports as per decision of the Government for attracting Private investors, and in second phase the transaction shall be performed in consultation with Privatization Commission through the same or a Financial Adviser/ Investment Banking Firm. Following tasks will be completed for performing the Organizational Separation of PCAA: -

Sr.	Description	Status	Approval By	Timeline
A	Approval of proposed legislations Repeal of Ordinance 1960 Amendment in Ordinance 1982	Drafts Prepared	CAA Board	Last week of July 2020
B	Approval of both Legal instruments	Drafts Prepared	Parliament	-
C	Engagement of Audit firm for corporate structure, etc.,	RFP / EOI is in process	In consultation with Chairman BOI	04 months
D	Engagement of FA / Investment Banking Firm for Transaction	-	In consultation with Privatization Commission	

Decision

23. The Cabinet considered the above recommendations of the Committee in its meeting held on 11th August 2020 and approved the same. The Cabinet further approved that the

Committee under Advisor to PM on Commerce shall keep on overseeing the implementation of the recommendations.

24. Subsequently, Aviation Division initiated another summary for Cabinet which was considered in the meeting held on 1st September 2020. The Cabinet approved the proposal of Aviation Division to constitute a new Committee under the Chair of Aviation Minister for engagement of an audit firm to work out the most efficient structure of Pakistan Airports Authority and its corporatization.

Current Status

25. The new Committee was notified by the Aviation Division on 16th September 2020. The Committee has so far met for 4 times and has recommended the shortlisting of seven (7) audit firms for the purpose. Aviation Division is in the process of finalizing the RFPs for the audit firm which will be presented before the next meeting of the Committee.