

**ASSOCIATION OF PRIVATE AIRPORT OPERATORS**

Regn No. S/64468/2009



APAO/MoCA/2014-15

Dated: 15<sup>th</sup> April 2014

**Shri. M Kannan,**  
**Economic Advisor,**  
Ministry of Civil Aviation,  
Rajiv Gandhi Bhavan,  
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New Delhi – 110 003

Subject: **Consultation Paper on Ombudsman for Civil Aviation**

Dear Sir,

With reference to the Consultation Paper on Ombudsman for Civil Aviation sector issued by Ministry of Civil Aviation ("**MoCA**") on 27<sup>th</sup> February 2014, we submit our comments for your kind consideration.

APAO places its deep appreciation and congratulates MoCA for initiating this bold step to address consumer interests. We understand that merely setting up of world class infrastructure alone will not ensure availability of world class service to the consumers. In a sector like Airport where the service delivery chain of this industry is large and exhaustive, weakness of any one system anywhere in the service delivery chain affects the consumer. Unfortunately it is generally perceived by the air passengers that often they are aggrieved by the deficiency in service rendered by the Airport Operator, though in fact the Airport Operator has no direct control over the multiple stakeholders and service providers (including Airlines, Cargo Agents, Ground handlers, Governmental agencies such as CISF, Customs, Immigration etc.) operating in the Airport premises.

Economic reforms in India have facilitated provision of infrastructure facilities and services in many sectors. With the entry of private players, Civil Aviation Sector too is witnessing world class airport, and other aviation facilities in the country for enhancing the comfort and convenience of passengers travelling by air. Setting up of Ombudsman will compel all the service providers to take utmost care to redress the grievance of consumers and ensure offering efficient services to the customers. This will help to generate and sustain the required service delivery levels and confidence among the consumers on the several service providers of this sector.

From a legal perspective, referred to by you in your communication, it may be appreciated that adequate monitoring of set performance standards for airports do exist which are under purview of AERA and also under provisions of Section 14 (t) of Civil Aviation Authority (CAA). Therefore, the jurisdiction of the proposed Ombudsman should ideally be on the activities of Airline Operators, where there is no effective regulatory mechanism existing today.

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Our comments on the specific issues highlighted in the Consultation Paper are furnished below:

**A. *Whether the legal basis explained in the Consultation Paper is sufficient for central government to take measures for protecting the interests of consumers including creating alternative dispute settlement machinery like Ombudsman without resorting to amendment of the Act.***

Amendment to the Aircraft Act 1934 must ideally be invoked when dealing with issues that affect general conditions for flying, conduct of flights, safety of flights, airworthiness, tariffs etc. Subject herein refers to deficiencies in Service Agreements/Service levels that may have a bearing on passengers and other stakeholders, causing grievances & thus resulting into a liability concern. A well-considered Aviation Ombudsman Act passed by the parliament may be in order with possible scenarios Listed along with resultant liability (where proven). This would in effect be the alternative dispute settlement mechanism for the Aviation sector in India, when established.

Alternatively an Ombudsman can be setup by concurrence of all the stakeholders as a voluntary initiative / scheme for the benefit of the passengers of the Aviation sector without amending any Rules or through an Act of Parliament etc.

**B. *Whether inclusion of disputes between users of airports like cargo agents and the airport operator/ custodian/ ground handling agent/carrier etc under the domain of Ombudsman will be consistent with the provisions of AERA Act.***

We feel that setting up and functioning of Ombudsman will not be inconsistent with the provisions of AERA Act and section 14 (t) of CAA subject that the provisions of existing concession agreements including OMDA are honoured.

Also, under the AERA Act, the powers & functions of Regulator include the monitoring of the set performance standards. If the Ombudsman is given any of the aforesaid powers, the same will be in contravention with the provisions of AERA Act and CAA.

It is a considered opinion that the jurisdiction of the Ombudsman must be extended to all the services offered in the Civil Aviation Sector except those matters which are sub-Judice. Further any provisions laid out in the Aviation Ombudsman Act should accordingly be aligned with the provisions of AERA act, for consistency.

**C. *What constitutes a dispute that can be handled by an Ombudsman.***

- (i) There needs to be a proper definition of service deliverables and how they should be done. The accountability and responsibility of various agencies be well defined. Only under such a regime can an airport with multi agencies involved in multitasking and engaged in a network of relationships provide measurable and tangible results to its customers.

- (ii) A dispute may involve any aviation stakeholder (Government or Private) such as Airlines, Ground Handling Service, Public & Private Airports, Cargo service providers, Inflight Catering, Govt. agencies providing sovereign functions such as CISF, Customs, Excise, Immigration etc., resulting in an aggrieved party.
- (iii) One of the pre-requisite conditions to approach the Ombudsman shall be that the consumer has given the concerned service provider a reasonable opportunity to address the complaint.
- (iv) In such an eventuality where proceedings have been initiated with the Ombudsman, the proceedings against parties found "not responsible" be immediately dropped.
- (v) A dispute shall be considered valid when a written complaint is made within a 15 days of the consumer becoming aware of the circumstances surrounding the complaint. Considering the large number of passenger complaints raised against Government services such as Customs, Immigration and Central Industrial Security Force etc must also be brought under the ambit of the Ombudsman for fair redressal.
- (vi) Where the deficiency in service is by a service provider, disputes from such incidents are to be addressed primarily between the direct customers (passenger and airline) and in turn to be resolved between the ultimate agencies. In such cases, even when the services are outsourced, the directly responsibility lies with the direct and immediate service provider.

**D. *What should be the Organisational setup?***

For an unbiased approach, the Ombudsman may be drawn preferably from Judicial services. Any exception may be as a last resort.

The Ombudsman must be proficient to provide a fair process to redress grievances from aviation stakeholders and passengers. Due to the range of grievances in the backdrop of a multiple stakeholder scenario, the team at the Ombudsman must be ably assisted by eminent professionals from Aviation and Consumer Affairs background. The term of office for Ombudsman team could be three years. In the start-up phase, the Ombudsman could have branch offices in important state capital in India in addition to a HQ in Delhi. We suggest that the complaint must be entertained by the Ombudsman if it is lodged within a period of maximum 15 days from the date of disposal of the case at the concerned service provider / company to which the case pertains.

**E. *(1) Should the funding pattern be on lines of the Insurance and Delhi Ombudsman model wherein service providers fund the Ombudsman's budget in a predetermined proportion?***

In order to ensure the independence and effectiveness of the Ombudsman scheme, it is important that the funding of the Ombudsman must preferably be borne by the Government itself. We are also of the opinion that availing the service of the Ombudsman must not be made free of charge for the consumers to avoid frivolous complaints and

eliminate misuse of this system by non-serious complainants. We suggest that a token amount of say Rs. 500 be fixed as fee to the complainant so that the system remains accessible for dispute settlement to genuine passengers/ complainants. Funding for the Ombudsman from the service providers / operators will weaken the institution of Ombudsman.

***(2) If parties engaged in commercial pursuit are brought under the ambit of the Ombudsman, then should any dispute settlement facility be made available to them for a nominal fee?***

We are of the opinion that the parties engaged in commercial pursuit should not be brought under the ambit of the Ombudsman. Ombudsman should not be burdened with disputes from parties engaged in commercial pursuits. Further the Ombudsman should be available only to the stakeholders covered under the ambit of Ombudsman from a service provision perspective.

**F. *Should there be an upper limit for the amount under dispute that can be entertained by Ombudsman?***

Every complaint or grievance of the consumer cannot be quantified in terms of money for e.g. harassment, flight delay / cancellation of the flight and other attendant problems meted out by the consumer in any of the supply chain network and also many of the services are intangible in nature. Hence, there should not be any upper limit on the amount under dispute and should be left to the discretion of the ombudsman based on the gravity of the grievance.

**G. *What should be the territorial limits to the office of Ombudsman.***

The territorial limit to the office of Ombudsman should initially be pan India. Subsequently when Ombudsman are set up at state levels then the territorial jurisdiction should be the respective State capitals with the proviso that complaint can also be lodged at a place where the deficiency is said to have occurred. Online registration of complaint should be encouraged.

**H. *Whether there is a requirement for creation of Appellate body***

We are of the opinion that a separate Appellate body need not be set up since it is not practical or cost effective. Moreover, the role of an Ombudsman is only that of a conciliator / mediator but not of a Court. The consumer / service provider can approach other Judicial forums in the case of disagreement with decision of the ombudsman. If any complainant is not satisfied with the decision of the Ombudsman, either party can approach proper judicial forum for redressal.

**I. *Principle of Exclusivity***

Consumer forums are set up under a Special Statute. By appointing an Ombudsman, the right of a consumer to approach consumer forum cannot be curtailed by stating that the

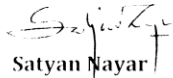
consumer chose to approach an Ombudsman. However in case the complainant chooses one of the above options the other options should automatically cease, which gives exclusivity to each resolution mechanisms. Further the consumer has all the right to approach the consumer forum, if he/she is not fully satisfied with the decision of the Ombudsman.

We would request MoCA to kindly take into account our suggestions while finalising the Consultation Paper on Ombudsman for Civil Aviation Sector.

We will be happy to provide any further inputs / clarifications in the matter.

Thanks & Regards

**For Association of Private Airport Operators**



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