

## IN-SPACE READIES THE MILLENIUM FALCON - Releases Norms, Guidelines and Procedures for the Space Sector

### 1. INTRODUCTION

In a series of announcements by the Government of India (“GoI”) since the beginning of 2024 to develop the Indian space sector,<sup>1</sup> the most recent (and critical) one is the release of the Norms, Guidelines and Procedures for Implementation of Indian Space Policy-2023 on May 03, 2024 (“NGP”). The NGP describes a list of space activities which require an authorization from the Indian National Space Promotion and Authorization Centre (“IN-SPACE”) and Department of Space (“DOS”) and lays down the applicable guidelines and technical requirements to carry out space activities.

Post the recent amendments to the Indian Foreign Direct Investment (“FDI”) policy liberalising entry routes for FDI in space activities (*Missed these developments? Catch up [here](#) and [here](#)*), the publication of the NGP marks a significant step towards cementing GoI’s efforts in boosting the private sector participation.

### 2. SCOPE OF NGP

The NGP is designed to govern space activities carried out by Indian Entities<sup>2</sup> from the Indian Territory<sup>3</sup>. The scope of the NGP extends to, *inter alia* (i) space activities which require IN-SPACE authorization; (ii) criteria for granting authorization, (iii) timelines, conducts and guidelines to be adhered to for obtaining the IN-SPACE authorization and (iv) the regulatory framework based on the principles enshrined in the Indian Space Policy, 2023 (“ISP-2023”) for any private player embarking on space activities.

The NGP also takes into consideration the existing obligations of GoI, under various international space treaties and agreements,<sup>4</sup> thereby creating a regulatory framework for Indian Entities intending to carry out safe and reliable space activities from India.

### 3. AUTHORIZED SPACE ACTIVITIES UNDER NGP - ARE WE OPEN FOR BUSINESS?

#### a. What is a space activity?

---

<sup>1</sup> Cabinet’s liberalization of the FDI policy for the space sector in February, 2024, followed by the Department for Promotion of Industry and Internal Trade (“DPIIT”) release of [Press Note 1](#) of 2024, amending the FDI policy on space sector in March, 2024, and the latest [notification](#), amending the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 (“NDI Rules”) to revise the sectoral caps applicable to various space sector activities, in April, 2024 (“NDI Amendment”).

<sup>2</sup> As per the NGP, an “Indian Entity” includes an Indian Government Entity and Indian Non-Government Entity. A “Non-Government Entity” (“NGE”) is defined as (i) a company incorporated under the Companies Act, 2013 or (ii) a partnership firm established under the Limited Liability Partnership Act, 2008, (iii) a trust under the Indian Trusts Act, 1882, (iv) an association of persons or body of individuals incorporated under relevant statutes in India.

<sup>3</sup> As per the NGP, Indian Territory means territory within the jurisdiction of India including the area to the limit of Indian exclusive economic zone.

<sup>4</sup> The GoI is a signatory to various international agreements, including the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (1967), the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (1968), the Convention on International Liability for Damage Caused by Space Objects (1974), The Convention on Registration of Objects Launched into Outer Space (1972), the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (1979) and the Artemis Accords (2023).

The NGP defines, “Space Activity” as an activity pertaining to the space sector and includes, *inter-alia*, launch, operation, guidance and/or re-entry of any Space Object(s)<sup>5</sup> from outer space. As per the NGP, any space activity outlined in *Section 5* of the ISP-2023 shall require a prior authorization.

Broadly, space activities which require IN-SPACe authorization have been classified as follows:

- (i) Establishment and operation of Space Objects entailing, *inter alia*, space-based communication services, establishment and operation of satellites for remote sensing and amateur satellite systems, hosted payloads and establishment and operation of other Space Objects;
- (ii) Operations of space transportation systems including undertaking sub-orbital or orbital launches from India or outside India and setting up a launch facility;
- (iii) Planned re-entry of Space Objects;
- (iv) Establishment and/or operation of ground systems;
- (v) Dissemination of space-based Earth observation and remote sensing data; and
- (vi) Sale/purchase/transfer of Space Objects in-orbit.

#### **b. Eligible persons to obtain authorization**

As per the NGP, only an Indian Entity is permitted to apply to IN-SPACe for authorization to carry out space activities within India. A Non-Indian Entity can apply to IN-SPACe only through an Indian Entity which could either be its Indian subsidiary, joint venture or through any other collaboration arrangement that is recognised by the GoI.

However, the NGP in some cases also permits an authorized representative/dealer of Non-Indian Entities to apply for an authorization for certain space activities, viz. authorization of non-Indian geo-stationary orbit and/or non-geo-stationary orbit satellite/constellation to enable provisioning of its capacity in India for communication services, or dissemination of remote sensing data, etc.

## **4. APPLICATION PROCESS AND TIMELINES**

The application process for seeking an authorization is fairly straight-forward. First, the applicants are required to submit their application on the IN-SPACe Digital Platform (“IDP”) and a preliminary assessment is undertaken based on the credentials and the capability of the applicant. IN-SPACe will scrutinise the applications as per its internally defined mechanisms based on safety, national security, compliance with national and international regulatory guidelines, etc. Thereafter, in certain cases a provisional authorization is issued by IN-SPACe, to enable the applicant to initiate the approval/license processes with other relevant ministries. Upon completing the internal approval process, IN-SPACe will issue its final authorization or rejection. In the event of a rejection, the applicant is permitted to submit a revised application along with suitable modifications to IN-SPACe

As per the NGP, the timeline envisaged to complete the authorization process is approximately 75 (seventy five) to 120 (one hundred and twenty) days. Accordingly, the DoS advises an applicant to initiate the process at least 6 (six) months in advance from the commencement of the proposed space activity.

Currently, non-Indian satellites provision their capacity in India either through lease agreements involving NewSpace India Limited or Antrix Corporation Limited or by directly leasing C-Band capacity from non-Indian satellite operators. With effect from April 01, 2025, regardless of the term of these arrangements, they will cease to be valid, and the non-Indian satellites will also require IN-SPACe authorization to operate in India.

## **5. CORNERSTONES: TERMS & CONDITIONS OF AN AUTHORIZATION**

---

<sup>5</sup> As per the NGP, a “Space Object” means (i) any object launched or intended to be launched into an orbital or sub-orbital trajectory around the earth or to a destination beyond earth orbit; (ii) any constituent element of an object referred to in sub-clause (i), or (iii) any other object as may be notified from time to time.

The NGP in Appendix-I details out certain terms and conditions which may be annexed to an authorization granted to an Indian Entity carrying out Space Activities. Every applicant is required to comply with such terms and conditions as may be imposed along with all laws, rules and regulations applicable in India and any non-compliance may result in the revocation of an authorization granted by IN-SPACe. The NGP stresses on the manner in which Space Activities can be carried out, such that it does not pose a threat to national defence, security or intelligence, public order, safety of people or their property or cause any harm to the environment, etc. We have briefly summarised below some of the key terms and conditions attached to an authorization.

#### a. Validity of Authorization

Authorization is typically provided for a certain period (“**Validity Period**”) and any space activity to be conducted beyond this Validity Period, will require an IN-SPACe approval. In case of satellite related activities, the validity of the authorization is 5 (five) years, or the period commensurate to the lifetime of the satellite/permission to use a third party’s satellite (as the case may be), whichever is earlier. However, for other space activities, the validity period will vary depending on the category of authorization and the application submitted by the applicant. For any extension of the stipulated space activity beyond the authorization period, an application needs to be made to IN-SPACe 12 (twelve) months prior to the expiry of the term initially authorized.

#### b. Standards for space activities

Where explicit standards for space activities are not provided for either in the NGP or applicable laws in India, an applicant is required to conform to globally accepted best practices in the industry. Every applicant must remain abreast with the best practices across domains comprising data encryption, cybersecurity, and related aspects, and integrate them to uphold optimal standards of safety, security, and performance.

It is important for the stakeholders to note that in 2023, the Bureau of Indian Standards, Indian Space Research Organization (“**ISRO**”) and IN-SPACe together unveiled the ‘*Catalogue of Indian Standards for Space Industry*’ which is aimed at standardising the processes and technologies in the Indian space industry.<sup>6</sup> While these regulations are not mandatory, compliance with these standards is advisable to uphold the quality of Indian space related products and services with those of top industry players across the world.

#### c. Applicant Disclosures to IN-SPACe

The applicant is required to furnish to IN-SPACe written documentation concerning any criminal actions or first information reports, allegations, trials, convictions by courts, etc., against the controlling shareholders, promoters, beneficial owners, directors, officers, partners or trustees of the applicant entity for offences (including aiding, abetting or conspiring to commit such crimes) under specific chapters of the Indian Penal Code, 1860, Official Secrets Act, 1923, Prevention of Corruption Act, 1988 and/or Prevention of Money Laundering Act, 2002. The applicant must update and inform IN-SPACe of these disclosures or any change to the disclosures, both at the time of submitting the application or after the issue of the authorization until the Validity Period. Basis such update, IN-SPACe has the right to reject or short-close the application or terminate/suspend/revoke the authorization.

#### d. Material Adverse Event

Upon the occurrence of a material adverse event in respect of a space activity (“**MAE**”)<sup>7</sup>, the Indian Entity is required to notify IN-SPACe within 24 (twenty-four) hours and submit a report on the

<sup>6</sup> See: [https://www.inspace.gov.in/inspace/sys\\_attachment.do?sys\\_id=3657ed7987193110de76a8660cbb3544](https://www.inspace.gov.in/inspace/sys_attachment.do?sys_id=3657ed7987193110de76a8660cbb3544) (accessed on May 15, 2024 at 15:26 hours, Indian time).

<sup>7</sup> MAE is defined as events or incidents which threaten human life, environment or property, national security, threat to other objects in space, risk to public order and events which expose India to third-party liability under international law or international treaties.

mitigation measures undertaken within 7 (seven) days of occurrence of the MAE. Similarly, any incident or event which does not qualify as an MAE but could impact the design, intent and overall nature of an IN-SPACE authorized space activity is classified as a change event (“**Change Event**”) and Indian Entity is required to notify IN-SPACE within 30 (thirty) days of its occurrence. Upon the occurrence of the MAE or the Change Event, IN-SPACE reserves the right to withdraw and/or terminate the authorization granted with a prior written notice of 7 (seven) days to the applicant.

**e. Change in Management and Control**

If an Indian Entity whose application is under consideration or has received an authorization from IN-SPACE has any change in the management and control<sup>8</sup> or change in shareholding pattern/partnership/trust, is required to intimate such change to IN-SPACE within 48 (forty-eight) hours of such change. IN-SPACE has the discretion to reject the application or revoke, modify or issue new authorization in case of such change. Further, a fresh application for authorization will be required to be made by the applicant if the change in management and control results in a transfer of control to a Non-Indian Entity, or if the entity is no longer under Indian management and control<sup>9</sup>.

**f. Transferability of Authorization**

Any authorization given by IN-SPACE is an exclusive permission to the applicant and any transfer of the authorization to a third party is subject to prior approval of IN-SPACE. IN-SPACE may grant such an approval upon the relevant third-party transferee meeting all the applicable criteria. The approval to be granted by IN-SPACE for the transfer is based on the following requirements:

- i. Prospective transferee has the same or better technical, financial, and other capabilities than the applicant;
- ii. Prospective transferee undertakes to comply with the terms in the authorization certificate and other domestic and international laws;
- iii. Applicant executes an unconditional performance guarantee for a term identified by IN-SPACE to act as a surety for compliance of laws by the prospective transferee.

**g. Termination of Authorization**

In case of national emergencies or in the interest of national security, IN-SPACE and GoI have the right to impose control on operations or instruct to switch-off/suspend the authorized Space Objects and/or space activities. IN-SPACE may, at its discretion provide a prior notice of such imposition of control/termination.

The NGP also mandates that the applicant shall provide true and correct information to IN-SPACE and shall adhere to the terms and conditions of its authorization during the validity period. If any information shared by an applicant is found to be incorrect or any terms and conditions of the authorizations are breached, then IN-SPACE shall have the right to terminate/suspend the authorization or restore the authorization if the breach is rectified to its satisfaction.

**h. Discontinuation/ withdrawal from Space Activity**

An Indian Entity wishing to cease operations of the authorized space activity, partially or completely, during the Validity Period, is required to notify IN-SPACE in writing stating reasons for such discontinuation or withdrawal. However, if such authorized space activity caters to the masses or affects public interest or national security, a prior notice of at least 30 (thirty) to 180 (one hundred and eighty) days (depending on the type of the authorised activity) is to be given before terminating or withdrawing from the authorized space activity. Failure to adhere to this notice period, or a failure to provide justifiable reasons, may lead to immediate termination of the authorization and a financial

<sup>8</sup> As per the NGP, “Management and Control” is defined as persons or entities that exercise control over and have the power to control and manage the affairs of the entity, and shall include the ‘key managerial personnel’ of the entity.

<sup>9</sup> As per the NGP, “Indian Management and Control” is defined as the Management and Control wherein the majority of the ‘key managerial personnel’ are Indian citizens and the majority of the ‘control’ is with Indian citizen(s).

penalty levied by IN-SPACE. The penalty is based on factors such as nature of space activity, motive of the applicant and the impact on Indian users or national interest.

#### i. Other Conditions

Every applicant is required to provide an undertaking that it shall take all suitable measures to limit the generation of space debris in accordance with the *Space Debris Mitigation Guidelines of the Committee on the Peaceful Uses of Outer Space* (2007) and limit any adverse environmental effects on Earth or to the atmosphere. The applicant is also required to ensure adherence to third party liability policy guidelines laid down in the NGP and the *Convention on International Liability for Damage Caused by Space Objects*. In the event of any conflicting terms between the authorization and any agreements related to the launch of a Space Object or license agreement with the Department of Telecommunications (“DoT”), the terms of authorization will take precedence.

### 6. REGISTRATION OF SPACE OBJECTS

Article II of the *Convention on Registration of Objects Launched into Outer Space* (1974) mandates that when an object is launched into the Earth’s orbit or beyond, the launching State shall be required to register the Space Object in a registry (“**National Registry**”). In furtherance of these obligations<sup>10</sup>, the Indian National Registry is maintained by the DOS, which provides relevant information to the various international bodies as per the provisions of the international treaties.

Only Space Objects which are owned and controlled by an Indian Entity are eligible to be considered for registration in India’s National Registry. In case of a partnership, joint venture, franchise, or a subsidiary involving a Non-Indian Entity, the consent from both the applicant (Indian Entity) and the Non-Indian Entity should be provided, affirming that the Indian Entity has complete control over the Space Object. Space Objects which are manufactured in India but owned by Non-Indian Entities are not normally considered for registration. Furthermore, payloads which are inseparable from the launch vehicle and cannot operate as an independent object are not eligible for registration. IN-SPACE may provide for registration of such payloads on a case-to-case basis.

The NGP lays down the Standard Operating Procedures to be followed by Indian Entities in connection with registration of the Space Object in the National Registry. The application for such registration is to be made to IN-SPACE through the IDP. Basis the application, IN-SPACE will provide necessary inputs to ISRO to carry out a technical analysis and upon completion of the diligence, IN-SPACE shall recommend the registration in the National Registry maintained by the DOS.

### 7. ITU FILINGS

Any Indian Entity can establish or operate Space Objects in both geo-stationary orbits and non-geo-stationary orbits, to service customers in or outside the Indian territory. As per the ISP-2023, use of Indian or Non-Indian Orbital Resources<sup>11</sup> is essential for establishing or operating such Space Objects. Accordingly, the NGP identifies 3 (three) conceivable scenarios of use of the said orbital resources by the Indian Entity, viz:

- (i) use of unutilized coordinated/registered ITU filings<sup>12</sup> under the WPC<sup>13</sup> or unutilized ITU allotment/assignment to WPC (“**Unutilized Coordinated/ Allotted Orbital Resource**”);

<sup>10</sup> India acceded to the Registration Convention in 1982.

<sup>11</sup> As per the NGP, “Indian Orbital Resource” is defined as any Orbital Resources acquired or in the process of being acquired by the Indian Administration through an ITU Filing. Further, “Non-Indian Orbital Resource” is defined as any Orbital Resource acquired or in the process of being acquired by any country other than India.

<sup>12</sup> As per the NGP, “ITU Filing” is defined to mean an application submitted to ITU (International Telecommunication Union) for acquiring the orbital resources.

<sup>13</sup> As per the NGP, “WPC” shall mean the Wireless Planning & Coordination Wing of Department of Telecommunications, Ministry of Communications, which is the nodal agency that represents India at ITU. WPC Wing of DoT is responsible for radio spectrum management in the country and acts as the notifying administration for India at ITU for international frequency coordination, notification and recording in the Master International Frequency Register.

- (ii) use of unutilized ITU filings in coordination stage with WPC (“**Unutilized ITU Filing**”) and
- (iii) making a fresh ITU filing through the WPC (“**Fresh Application**”).

While Unutilized Coordinated/ Allotted Orbital Resource and Unutilized Filing is to be allotted by way of an ‘announcement of opportunity’ (“**AO**”) by IN-SPACe, only entities under Indian Management and Control are eligible for participating in an AO application.

In case of a Fresh Application, an application is to be made to IN-SPACe on the IDP. After the evaluation of the application, IN-SPACe will issue an advisory note to the applicant to submit the ITU filing to WPC. In this regard, it is anticipated that the DoT is expected to release a new framework titled “*Guidelines and procedures for submission of satellite network filings to ITU by Indian Entities*”, which will set out the filing process for a Fresh Application for activities including establishment and/or operation of a satellite or constellation for communication, remote sensing and amateur purposes.

## 8. KEY OBSERVATIONS AND RECOMMENDATIONS

### a. Independence of IN-SPACE

IN-SPACe was set up as a single-window nodal agency to govern all space sector activities and is expected to function as an autonomous agency within the DOS. In essence, it is supposed to act as the regulator in India for all space activities undertaken by both ISRO and private players. Interestingly, the Chairperson of ISRO is also the Secretary of DOS, who heads the DOS. This results in a situation where the regulator IN-SPACe, which should monitor activities of ISRO and other private players, is being subject to the guidance of ISRO.

Along with providing authorizations for space activities, IN-SPACe is also responsible for promoting space activities by NGEs in India. ISRO’s control over IN-SPACe could potentially hinder fair-play, market competition and equitable treatment of NGE’s and GE’s. To ensure that IN-SPACe creates a fair regulatory environment, it needs to be independent of ISRO and operate as a separate body on similar lines as other sectoral regulators in India.

Currently, the ISP-2023 and the NGP have only been released in the form of guidelines and policy documents formulated by the DOS and IN-SPACe. It is explicable that since this sector is of national importance, the liberalisation of the same can only be undertaken in a phased manner. However, to ensure that space regulations are conducive to private players, it is time that a statute to this effect is legislated to fortify the roles and responsibilities of IN-SPACe, after taking into consideration inputs from the industry bodies.

### b. Absence of an appellate mechanism

The NGP does not contemplate an appellate mechanism for review of the applications made to IN-SPACe. For instance, while an entity whose application is rejected, is permitted to re-apply with updated information, however, the power to review the revised application continues to rest with IN-SPACe. It appears that the NGP does not adhere to principles of natural justice, as in this case, IN-SPACe would act as a judge in its own cause. Further, in case of a subsequent rejection, there is no mechanism to appeal to another regulatory body.

### c. Manufacturing of Satellites and Components

The amended provisions of the NDI Rules state that the investee entity wherein FDI in the space sector is made shall be subject to sectoral guidelines as issued by the DOS from time to time. The NGP aims to fill in this gap and lays down certain guidelines to be followed by Indian Entities engaging in space activities. What is interesting to note is that while most of the activities defined under the NDI Amendment are classified as “space activities” under the NGP, manufacturing of

satellites and related components are not included within space activities regulated under the NGP. Accordingly, no authorisation from IN-SPACE will be required for these.

## 9. CONCLUSION

Regulatory certainty is extremely vital for all the stakeholders of a sector of national and strategic significance. The policymakers have attempted to do the same for the space ecosystem with a comprehensive document in the form of the NGP. While it won't be an exaggeration to take a view that the guidelines prescribed and the powers vested in the regulators are extensive, it must necessarily be viewed through the lens of the strategic importance that the space sector holds for the integrity and national security of India.

The government through the amendments to the FDI policy had announced its clear intent to allow for healthy competition of both domestic and international players. The NGP is an extensive set of regulations applicable to the Indian space players and spans around 150 (one hundred and fifty) pages. It strives to maintain certain checks and balances and even out the scale for relatively new domestic stakeholders in the sector. By way of this update, we have only attempted to cover the key areas of the NGP and over the next series of issues, we plan to cover the various themes in the NGP with greater detail.

Exciting times lie ahead of us in human-kind's quest to a land far far away. Keep following us to keep up with the break-neck developments on India's space journey.

*For the uncharted space odyssey ahead of us,*

*Wish we really do,*

*O dear reader, may the force be with you!*

**Authors:** Revathy Murali | Anurag Shankar Prasad | Aryan Mohindroo | Ayushi Suman

**Practice Area:** M&A, PE, and Transaction Advisory

**Date:** June 15, 2024

## DISCLAIMER

This alert is for information purposes only. Nothing contained herein is, purports to be, or is intended as legal advice and you should seek legal advice before you act on any information or view expressed herein.

Although we have endeavoured to accurately reflect the subject matter of this alert, we make no representation or warranty, express or implied, in any manner whatsoever in connection with the contents of this alert.

No recipient or reader of this alert should construe it as an attempt to solicit business in any manner whatsoever.