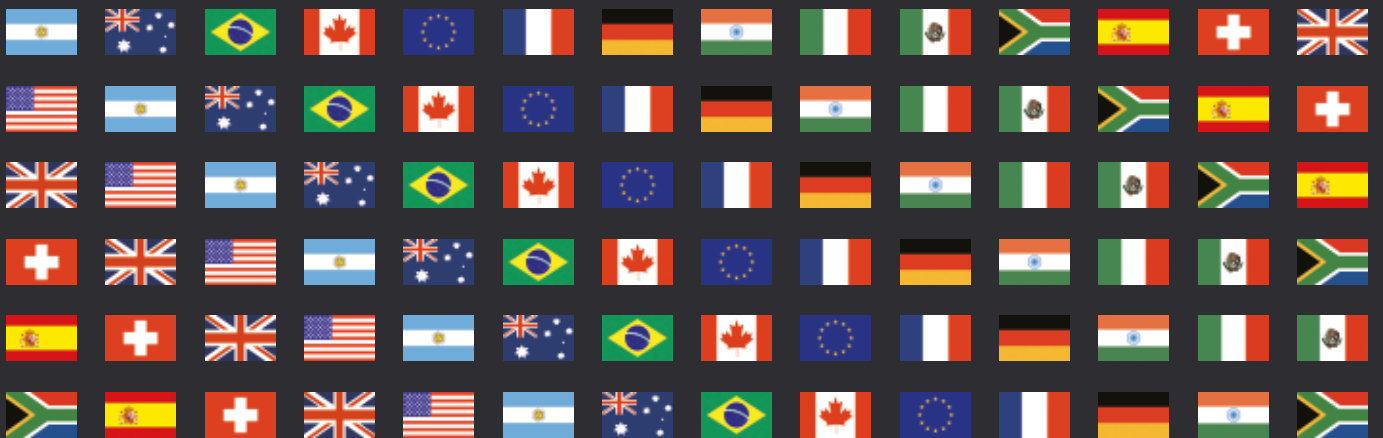


# Drone Regulation 2020

Contributing editors

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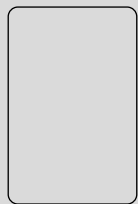
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# Drone Regulation 2020

**Contributing editors**

**Laura Pierallini, Francesco Grasseti and  
Francesco Paolo Ballirano**

Studio Pierallini

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Lexology Getting The Deal Through is delighted to publish the first edition of *Drone Regulation*, which is available in print and online at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Laura Pierallini, Francesco Grasseti and Francesco Paolo Ballirano of Studio Pierallini, for their assistance with this volume.



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# India

Nitin Sarin, Ritesh Aggarwal and Vinamra Longani Sarin & Co

## GENERAL FRAMEWORK

### Basic rules and regulators

- 1 | What basic rules govern the operation of remotely piloted aircraft and unmanned aircraft (drones) in your jurisdiction? Which regulatory bodies are charged with enforcing these rules?

Remotely piloted aircraft (RPAs) and unmanned aircraft (drones) are governed by the Civil Aviation Requirements (CAR) issued by the Directorate General of Civil Aviation (DGCA) from time to time. At the time of drafting, the relevant regulations that deal with RPAs and unmanned aircraft are (i) CAR section 3 – Air Transport Series – X Part 1 Issue I dated 29 August 2018; (ii) AIP Supplement 164 of 2018 issued by the Airports Authority of India dated 30 November 2019 and (iii) the DGCA RPAS Guidance Manual issued on 3 June 2019 by the DGCA.

The DGCA is the regulatory body charged with enforcing the above-mentioned rules.

- 2 | What are the penalties for non-compliance with the laws and regulations governing drones?

In the case of violation of the CAR, the following penalties may be imposed: an operator's unique identification number (UIN) or unmanned aircraft operator permit (UOAP) issued by the DGCA may be suspended or cancelled.

Breach of compliance to any of the requirements of the CAR and falsification of records or documents may attract penal action, including imposition of penalties as per the Indian Penal Code 1860 (IPC), which includes but is not limited to:

- section 287: negligent conduct with respect to machinery (carrying a maximum sentence of imprisonment that may extend to six months or a fine that may extend up to 1,000 Indian rupees, or both);
- section 336: act endangering life or personal safety of others (carrying a maximum sentence of imprisonment that may extend to three months or a fine that may extend to 250 rupees, or both);
- section 337: causing hurt by an act endangering the life or personal safety of others (carrying a maximum sentence of imprisonment that may extend to six months or a fine that may extend to 500 rupees, or both);
- section 338: causing grievous hurt by an act endangering the life or personal safety of others (carrying a maximum sentence of imprisonment that may extend to two years or a fine that may extend to 1,000 rupees, or both); or
- any other relevant section of the IPC.

Penalties for contravention or failure to comply with any rules or directions issued under Rule 133A of the Aircraft Rules 1939 (the rule under which CARs are issued), are punishable to the extent of imprisonment

for a term not exceeding six months or a fine not exceeding 200,000 rupees or both.

### Classification

- 3 | Is there any distinction between public and private drones, as well as between leisure use and commercial use?

As such there is no distinction between public and private drones; however, there is a distinction in the process for obtaining a UIN depending on whether the operator of the drone is a public or private entity. To illustrate this further, drones owned wholly by the central or state government or by any company or corporation owned and controlled by either the central or state governments are exempted from obtaining security clearance from the Ministry of Home Affairs. Further, specific intelligence wings of the government such as the National Technical Research Organisation, Aviation Research Centre and Central Intelligence Agency are completely exempt from having to obtain a UIN or an unmanned aircraft operator permit (UAOP).

Further, there is no specific distinction between drones for commercial or leisure use; however, there is a clear distinction between the requirement of having to obtain a UOAP for drones that are usually used for commercial use and for drones that are usually used for leisure. An example is that operators of nano drones (see question 4 for classification of drones according to weight) operating below 15.24 metres above ground level (AGL) in uncontrolled airspace or enclosed premises and operators of micro drones operating below 60.96 metres AGL in uncontrolled airspace or enclosed premises do not require a UOAP, while all small, medium-sized and large drones require the operator to obtain a UOAP. Further, there is also a distinction in the requirement for remote pilot training – while drone pilots operating drones in the nano or micro category in uncontrolled airspace do not require formal ground or practical remote pilot training, remote pilots of all other categories of drones are required to complete fairly rigorous ground training following by practical training.

- 4 | Is there a weight-based classification system for drones resulting in the application of different rules?

Drones are classified on the basis of weight as below:

- nano: less than or equal to 250g;
- micro: greater than 250g and less than or equal to 2g;
- small: greater than 2kg and less than or equal to 25kg;
- medium: greater than 25kg and less than or equal to 150kg; and
- large: greater than 150kg.

There are also clear and distinct differences in the rules applied to different drones.

### UIN and UOAP requirements

Nano drones operating under 50ft in uncontrolled airspace or enclosed premises are exempted from obtaining a UIN, while nano and micro drones operating below 50 and 200ft respectively, are exempt from obtaining a UOAP.

### Remote pilot training requirements

Pilots of nano and micro drones intending to operate in uncontrolled airspace are exempt from the requirements of remote pilot training. All others, falling in any other category, except for the categories mentioned hereinabove, are required to obtain UINs, UOAPs and such remote pilots are also required to fulfil the requirements of the remote pilot training.

### Security and safety requirements

Operators of nano drones need not notify any incident or accident to the concerned authority, while all other operators must do so.

### Equipment requirements

Nano drones intending to operate up to 50ft in uncontrolled airspace or enclosed premises are exempt from mandatorily being equipped with features such as a global satellite system (GNSS); autonomous flight termination system or return to home options; flashing anti-collision strobe lights; app-based real-time tracking; fire-resistant identification plates with the UIN inscribed; and flight controllers with data logging capability.

### Operating requirements

Nano drone operators need not obtain permission before undertaking a flight, while all other categories must mandatorily obtain permission through the online app-based Digital Sky platform. Further, nano and micro drones intending to operate up to 15.24 metres and 60.96 metres in uncontrolled airspace or enclosed premises respectively need not file a flight plan 24 hours before actual operations and also are not required to obtain air traffic control (ATC) and air defence clearance. Nano drone operators operating below 15.24 metres are exempted from informing the local police office concerned in writing prior to commencing operations.

### Minimum standard for manufacturing of RPAs requirements

Nano drones are exempt from the requirement of the drone manufacturer providing a certificate of compliance to the DGCA.

#### 5 | Is there any distinction between completely autonomous drones and remotely piloted drones?

The CAR applies to RPAs and autonomous aircraft alike. The CAR specifically states that both RPAs and autonomous aircraft are various sub-sets of unmanned aircraft that are operated with no pilot on board. As such, there is no distinction between completely autonomous drones and remotely piloted drones.

## DESIGN AND MANUFACTURE

### Regulation

#### 6 | Do specific rules regulate the design and manufacture of drones in your jurisdiction?

The CAR provides for extensive rules regulating the design and manufacture of all drones apart from nano and micro drones. These are contained in an annexure to the CAR (Annexure XIV) and regulate items such as all-up weight, wing span and rotor diameter, stall speed, cruise speed, range, endurance, operational altitude, ceiling height, propeller speed, powerplant, payload, shock absorbing mechanisms, type of data

link used for communication, type of material for construction, fabrication method, structural protection against deterioration or loss of strength, compliance with the Digital Sky platform specifications for No Permission – No Take-Off (NPNT), GNSS receivers for horizontal and vertical position fixing, geo-fencing capabilities, autonomous flight termination system or return to home function, flashing anti-collision strobe lights, RFID and GSM sim card, flight controller with flight data logging capability, ADS-B equipment, etc.

The CAR states that in relation to nano and micro categories of drones, the minimum standards for manufacturing as envisaged by the designer or original equipment manufacturer, shall be considered. Furthermore, for all other categories of drones, the manufacturer is also to provide a certificate of compliance along with NPNT compliance to DGCA.

The Guidance Manual further clarifies the matter by stating that a manufacturer should develop and ensure that their drones meet the minimum standards specified in the CAR, and should also carry out necessary tests as may be required on the test sites specified by the government.

### Manufacturing authorisation

#### 7 | Must drone manufacturers obtain any licences or other authorisation to carry out their business? Are manufacturers subject to any other specific rules?

At the moment, apart from the manufacturing requirements set out in question 4, no other licence or authorisation is required for drone manufacturers to carry out their business. No other specific rules apply.

### Product liability

#### 8 | Do general product liability rules (or other specific liability rules) apply to the manufacture of drones?

The CAR and other rules and regulations issued by the DGCA do not specifically deal with product liability; however, India has other laws that deal with liability for manufacturing or defective goods such as the Consumer Protection Act, 1986, other statutes and the general application of the Law of Torts.

## REGISTRATION AND IDENTIFICATION

### Registration

#### 9 | Must drones be registered in a specific national registry? If so, who is entitled to register drones and what requirements and restrictions apply? Is the registry organised as an operator registry or an owner registry?

All applicants, except those in the nano category, will have to apply to the DGCA to obtain a UIN, which will be valid for a particular make and model of RPA and any changes to it will have to be communicated to the DGCA and other concerned authorities.

### Requirements for issue of UIN

A UIN will be granted to those persons, if the RPA is wholly owned by:

- (1) a citizen of India; or
- (2) the central or any state government or any company or corporation owned or controlled by either of the said governments; or
- (3) a company or a body corporate provided that:
  - it is registered and has its principle place of business in India;
  - its chairman and at least two-thirds of its directors are citizens of India; and;
  - its substantial ownership and effective control is vested in Indian nationals; or

- (4) a company or corporation registered elsewhere than in India, provided that such company or corporation has leased the RPA to any organisation as mentioned in point (2) or (3) above.

### Documents required for registration of UIN

An applicant who is eligible as per the provisions laid down by the DGCA must submit a duly filled application along with requisite documents through the Digital Sky platform (CAR Series X Part I, section 3, paragraph 6.2 – Air Transport issued on 27 August 2018, effective from 1 December 2018) and must provide the following information:

- contact details of owners or lessee with a valid CIN, GSTIN or PAN card;
- purpose and base of operation;
- specification of the RPA;
- weight of compatible payload and maximum load carrying capacity of the RPA;
- RPA flight manual or manufacturer's operating manual (as applicable);
- manufacturer's maintenance guidelines for the RPA (as applicable);
- manufacturer's certificate of compliance with NPNT;
- ETA from WPC Wing, Department of Telecommunication for RPA; and
- security clearance (not older than five years from the date of application) for all – from the Ministry of Home Affairs (MHA) except in case of central government or state government or any company or corporation owned or controlled by either of the said governments.

In the case of a citizen, he or she may either obtain security clearance from the MHA or submit self-attested copies of at least two of three valid identity proofs such as passport, driving licence or Aadhaar card. And in the case of foreign remote pilots employed by Indian entities, the DGCA (except in the case of central or state governments or any company or corporation owned or controlled by them) shall forward the documents for security clearance to the security agencies in accordance with procedure being followed for foreign aircrew temporary authorisation in relation to airline pilots.

### Requirements for issue of UAOP

Except for (i) nano category RPAs operating below 50ft in uncontrolled or enclosed airspace and (ii) micro RPA operating below 200ft in uncontrolled or enclosed airspace with prior intimation to the local police, all civil RPA operators require a UAOP. This would mean that nano and micro category RPAs (ie, RPAs weighing less than or equal to 2kg) shall not be required to obtain UAOP (CAR Series X Part, I section 3, paragraph 7 – Air Transport issued on 27 August 2018, effective from 1 December 2018).

Other civil RPAs (except as mentioned in the preceding paragraph) are required to submit an application along with the requisite fee for issuance of UAOP (Annexure VI) with the DGCA at least seven working days prior to actual commencement of operations, along with several documents as listed in Annexure VI of the CAR.

The UAOP will be issued by the DGCA within seven working days provided all the documents are complete. Such UAOP shall be non-transferrable and will be valid for a period of five years from the date of issuance. Further, a copy of UAOP shall be, for their information, provided to the MHA, Bureau of Civil Aviation Security (BCAS), Indian Air Force, Air Traffic Services providers and the District Administrator (Superintendent of Police).

In the case of RPAs taken on lease by an Indian entity from a foreign entity, the UAOP shall only be issued to the Indian organisation. The renewal of UAOP shall be subject to fresh security clearance from the MHA.

### Identification

- 10 | Are drones identified through a marking system similar to that used for manned aircraft?

All RPAs (except for nano category intending to operate up to 15 metres AGL in uncontrolled airspace or enclosed premises) are identified through an UIN inscribed on a fire-resistant identification plate. The marking system used for manned aircraft is not used here.

## CERTIFICATION AND LICENSING

### Basic requirements and procedures

- 11 | What certificates or licences are required to operate drones and what procedures apply?

As stated above, a drone must have been issued a UIN by the DGCA while all operators, apart from nano and micro drone operators, must obtain a UAOP from the DGCA. The training requirements are also applicable, as mentioned herein in question 4.

The detailed procedure is reproduced in question 9.

### Taxes and fees

- 12 | Are certification and licensing procedures subject to any taxes or fees?

The various fees payable by an applicant are as follows:

- for grant of UIN – 1,000 Indian rupees;
- for a grant of UAOP – 25,000 rupees; and
- for renewal of UAOP – 10,000 rupees.

### Eligibility

- 13 | Who may apply for certifications and licences? Do any restrictions apply?

With the exception of foreign nationals, all others can apply for grant of a UIN. The CAR states that the following persons can apply for UIN:

- (1) a citizen of India; or
- (2) central government or any state government or any company or corporation owned or controlled by either of the said governments; or
- (3) a company or a body corporate provided that:
  - it is registered and has its principal place of business within India;
  - its chairman and at least two-thirds of its directors are citizens of India; and,
  - its substantial ownership and effective control is vested in Indian nationals; or
- (4) a company or corporation registered elsewhere than in India, provided that such company or corporation has leased the RPAs to any organisation mentioned in point (2) or (3) above. In the case of point (4), the UIN will be issued in the name of the Indian company.

### Remote pilot licences

- 14 | Must remote pilots obtain any certifications or licences to operate drones? If so, do the relevant procedures differ based on the type of drone or operation?

Operators of nano drones below 15.24 metres AGL in uncontrolled airspace or enclosed premises and operators of micro drones operating below 60.96 metres AGL in uncontrolled airspace or enclosed premises do not require a UAOP while all small, medium and large drone operators require a UAOP. Further, there is also a requirement for remote pilot training – while drone pilots piloting drones in the nano or micro

category in uncontrolled airspace do not require formal ground or practical remote pilot training, remote pilots of all other categories of drones are required to complete fairly rigorous ground training following by practical training.

### Foreign operators

15 | Are foreign operators authorised to fly drones in your jurisdiction? If so, what requirements and restrictions apply?

Foreign nationals are not permitted to operate drones in India. There is, however, only one exception to the rule, that is, foreign operators who are employed by Indian entities can operate in India; however, the DGCA shall forward their documents for a rigorous security clearance to security agencies in accordance with the procedure being followed by pilots giving the foreign aircrew temporary authorisation. In a practical sense, it is virtually impossible for foreign nationals to fly drones legally in India.

### Certificate of airworthiness

16 | Is a certificate of airworthiness required to operate drones? If so, what procedures apply?

A certificate of airworthiness is not required for operation of a drone in India.

## OPERATIONS AND MAINTENANCE

### One drone, one pilot

17 | Does the 'one drone, one pilot' rule apply in your jurisdiction?

Yes, the CAR specifically prohibits the operation of more than one drone by a single remote pilot at the same time.

### Maintenance

18 | Do specific rules regulate the maintenance of drones?

The CAR, which regulates operations of drones in India, specifically provides that maintenance of the drone should be carried out as per the approved procedures provided by the manufacturer. It also requires ground equipment to be maintained as per the recommendations of the manufacturer.

### Basic operational rules and restrictions

19 | What rules and restrictions apply to flights performed in 'visual line of sight' (VLOS) and 'beyond visual line of sight' (BVLOS)? Is there a distinction in this regard?

Under the present CAR, drone operations are only permitted within the VLOS although the DGCA has invited expressions of interest from experts for conducting experimental BVLOS drone operations in India.

20 | What rules and restrictions apply to critical and non-critical operations? Is there a distinction in this regard?

As of now, the regulations do not per se differentiate between critical or non-critical operations. As per the CAR, all drone operations have to be done during daylight, and night operations are prohibited. However, if the drone is a nano or a micro drone and the operations are being conducted in an enclosed area then they may be conducted at night.

### Transport operations

21 | Is air transport via drone (eg, cargo and mail) regulated in your jurisdiction? If so, what requirements, limitations and restrictions apply?

As per the current regulatory framework, drones cannot be used for any such purpose.

22 | Do any specific provisions governing consumer protection and tracking systems apply with respect to cargo and delivery operations via drone?

Not applicable.

### Insurance requirements

23 | What insurance requirements apply to the operation of drones?

The regulations require drone operators to have third-party liability insurance. However, there is no minimum prescribed amount that has to be insured. The amount of insurance cover is to be assessed by the operator himself or herself.

### Safety requirements

24 | What safety requirements apply to the operation of drones?

The following are the prescribed safety requirements that are applicable to the operation of drones in India.

- Before commencing a flight, a drone operator is required to carry out a safety risk assessment to include (i) hazard identification, (ii) determination of severity and likelihood of hazard on the operation, (iii) mitigation measures to reduce the risk identified, and (iv) verification of mitigation actions of the RPA operations including that of launch or recovery sites. The site (including emergency operation zone and any safety zone for the operation of RPAs) shall be under the full control of the operator.
- Designated safe areas should be established by the RPA operator for emergency RPA holding and flight terminations.
- The take-off and landing areas should be properly segregated from public access.
- For operations in the controlled airspace, the remote pilot shall establish and maintain contact with ATC prior to entering the controlled airspace.
- No person shall act as a remote pilot for more than one RPA operation at a time. If two or more persons are available as remote pilots for a flight, at any given moment, there shall be only one person acting as a remote pilot in command.
- RPAs shall, at all times, give way to manned aircraft.
- RPAs shall not discharge or drop substances unless specially cleared and this is mentioned in the UAOP.
- RPAs shall not transport any hazardous material such as explosives or animal or human payload.
- RPAs shall not be flown in a manner to cause danger to any person or property.

The regulations place the onus of safe custody and operations of a drone on the operator, who is required to report the loss of any drone to the local police, the DGCA and the BCAS. If the drone is damaged beyond repair, the same needs to be intimated to the DGCA. The operator of the drone is also required to ensure the optimal safety of the ground control station. Lastly, it is the responsibility of the operator to ensure that a BCAS-approved security programme is followed before each flight.



## AIRSPACE

### Air traffic control

25 | How is air traffic control regulated in your jurisdiction? Which authority provides air traffic control services for drones?

Air traffic in India is jointly regulated by the DGCA and the Airports Authority of India, although in the future it is expected that the DGCA shall be the sole regulator of air traffic in India. The air traffic services are, in general, provided by the Airports Authority of India with regard to drones, except for nano and micro drones, which are intended for operation within 15.24 metres and 60.96 metres in uncontrolled airspace respectively. All drone operators intending to operate in controlled airspace are required to establish and maintain contact with the nearest ATC unit. As such, ATC services for drones are provided by the Airports Authority of India.

### Restrictions

26 | Are there any airspace restrictions on the operation of drones?

Drones can fly only up to an altitude of 121.92 metres and cannot enter restricted airspace.

### Take-off and landing

27 | Must take-off and landing of drones take place in specific areas or facilities?

The regulations do not prescribe any particular area or facility for the take-off or landing of drones. The only requirement that has been mandated is that drones should take off and land at places that are segregated from public access.

## LIABILITY AND ACCIDENTS

### Cargo liability

28 | Are there any specific rules governing the liability of drones for losses or damage to cargo?

As drones are not permitted to be used for cargo operations, there are no rules governing this aspect.

### Third-party liability

29 | Are there any specific rules governing the liability of drones for damage to third parties on the surface or in the air?

Apart from the requirement for each drone operator to have valid third-party liability insurance cover, there are no specific rules that govern liability of drones for damage caused to a third party. The rules provide that it shall be the responsibility of the drone operator to ensure that the drone remains clear of all manned and unmanned air traffic. Further, it requires the drone to be operated in a manner that poses no danger to any person or property.

### Accident investigations

30 | How are investigations of air accidents involving drones regulated in your jurisdiction?

The regulations mandatorily require the operator of a drone to report any incident or accident involving the drone to the Director of Air Safety, DGCA. The DGCA in turn has to inform the Indian Air Force and the Airports Authority of India. The DGCA, being the authority tasked with the safety and registration of drones, is the regulator tasked with

investigating air accidents involving drones. However, as this technology is fairly new, there would be a tremendous amount of support from both the Indian Air Force and Airports Authority of India in such an accident investigation.

### Accident reporting

31 | Is there a mandatory accident and incident reporting system for drone operators in your jurisdiction?

Yes, operators of all drones except nano drones are mandatorily required to report any incident or accident to the Director, Air Safety or the DGCA. The reporting has to be done via the Digital Sky platform and in a particular format that has been provided in the CAR.

### Safety management and risk assessment

32 | Are drone operators required to implement safety management systems and risk assessment procedures within their organisation?

The regulations require the operator of a drone to establish a standard operating procedure, which shall encompass various aspects associated with the safety of the drone, including safety management and risk assessment. The regulations specifically require the operator to carry out a risk assessment of drone operations, including of take-off and landing sites.

## ANCILLARY CONSIDERATIONS

### Import and export control

33 | Do specific import and export control rules apply to drones in your jurisdiction?

Yes, the regulations do govern imports of drones in India as drones are included in the 'restricted' list of items that may be imported into India, which means that without prior approval, no drone may be imported into the country. Before an operator can import a drone into India he or she must obtain an equipment type approval from the Department of Telecommunication for operating the drone on a delicensed frequency band. Once the approval is granted, the operator has to then approach the DGCA to obtain an import clearance. Once the import clearance is granted an applicant must approach the Director General of Foreign Trade for the issuance of an import licence. Thereafter, on the grant of the import licence, the drone may be imported into India.

### Data privacy and IP protection

34 | How are personal data privacy and IP protection regulated in your country with specific reference to drone operations?

The drone regulations require the operator to ensure that privacy standards of any entity or organisation are not breached. Apart from the limited mention of privacy in the regulations, there are no specific rules or regulations that govern personal data privacy or IP protection with regard to drones. There are, however, regulations regarding privacy under the general laws of the country governing IP and privacy. India is yet to frame its privacy legislation.



**UPDATE AND TRENDS****Sector trends and regulatory developments**

35 | Which industry sectors have seen the most development in the use of drones in your jurisdiction and which sectors are expected to see further development in future? Have there been any notable recent regulatory developments relating to drones?

Primarily, it is the military and defence sector that has seen the maximum application of drone technology, although sectors such as agriculture and infrastructure are catching up. However, as the regulations do not permit BVLOS operations, the full potential of drone technology has not been exploited. The CAR is intended to be amended in the near future to cater to the dynamic industry and to expand the ambit of the regulations to give a boost to the industry as a whole.



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Corporate Governance	High-Yield Debt	Private Client	Telecoms & Media
Corporate Immigration	Initial Public Offerings	Private Equity	Trade & Customs
Corporate Reorganisations	Insurance & Reinsurance	Private M&A	Trademarks
Cybersecurity	Insurance Litigation	Product Liability	Transfer Pricing
Data Protection & Privacy	Intellectual Property & Antitrust	Product Recall	Vertical Agreements
Debt Capital Markets		Project Finance	
Defence & Security Procurement		Public M&A	
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