

Clarifications sought by Interested Bidders on Annexure 2 – Annexure 21 of the PIM for the Strategic Disinvestment of Air India Limited, including AI's shareholding interest in the AIXL and AISATS

The PIM (including the clarifications to the PIM) are subject to changes basis the finalization of the definitive documents. The definitive documents will be negotiated with the QIBs at the RFP stage. The GOI reserves the right to make any changes including consequent changes to the provisions of the PIM/ clarifications/ annexures submitted by the IBs basis such negotiations or otherwise.

Sl. No.	Query	Response
Queries related to Legalization/Notarization/Certification		
1.	While we note that the reference in the preliminary information memorandum (PIM) to legalization / apostille of foreign documents (and this appears to cover all documents as a part of the expression of interests (EOI) submission), we understand that foreign governments do not legalize documents other than formal licenses or certificates (e.g. constitutional documents, certificate of incorporation etc.). Accordingly, please let us know if self-certified documents (signed and stamped by the relevant authorized signatories of the PIM) can suffice where the relevant authorities have refused to legalize certain supporting documents and letters which form part of the EOI submission (e.g. declarations, statements, net worth certificates, audited financial statements etc. required for the EOI may not be legalized by the relevant governmental authority).	Self-certified documents will not suffice for submission of the EOI. In the event, a relevant authority outside India has refused to legalise certain documents which form part of the EOI submission, the IBs may consider to sign such documents in India and get them notarised in India. Please also refer to the Fifth Corrigendum to the PIM.
2.	If the PIM or formats under the PIM specify that certain documents need to be notarized, do they need to be notarized for a foreign entity or can they only be legalized?	The documents issued or executed in India need to be only notarised. Any document(s) which needs to be legalised or apostilled (as applicable) (as mentioned in clarification to point 1

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		<p>above), post such legalisation or apostilling (as applicable) need not be again notarised in India. Further, if as a part of the process of legalisation/apostilling in any country, there is also a requirement to get such documents notarised, in such a case, such documents need to be notarised in that overseas country.</p> <p>Please also refer to answer to query number 1 above and the table in Annexure 1 to these Clarifications which provides further EOI submission requirements with respect to each Annexure to PIM /supporting documents.</p>
3.	<p>In the event that a consortium consists of a foreign entity and an Indian entity, will the consortium agreement need to be legalized in a foreign jurisdiction, there will be challenges in authorized signatories of both parties to be in the same place for notarization and legalization. Accordingly, is it possible to only have the consortium agreement stamped in India and signed by both consortium members (i.e. without legalization and notarization)? If that is not possible, can only legalization be done for the agreement for the foreign consortium member be done, or only notarization in India for the India consortium member be done?</p>	<p>Please refer to the Fifth Corrigendum to the PIM.</p>
4.	<p>If the statutory auditors of an interested bidder / consortium member are unable to certify the shareholding pattern on their letterhead (due to applicable law or accounting standards in the relevant jurisdiction), can the interested bidder / consortium member self-certify the shareholding pattern on its letterhead, signed by its authorized signatory for the purposes of the EOI submission?</p>	<p>Please refer to the Fifth Corrigendum to the PIM.</p>

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5.	<p>Annexure 16, 16B & 16C – Certificates by Statutory Auditor of the IB / Affiliate</p> <p>Clarification Our statutory auditor (one of the Big 4 firms) has advised that they would be issuing an Assurance report in addition to the statutory auditor certificate (as per Annexures 16 / 16B / 16C), in accordance with the “Guidance Note on Reports or Certificates for Special Purposes (Revised 2016)” issued by ICAI in September 2016. Kindly confirm that the Assurance report would be accepted along with Annexure 16 / 16B / 16C.</p>	Please refer to the Fifth Corrigendum to the PIM.
Queries related to Formats / EOI		
6.	In relation to the net worth certificate, for conversion of USD to INR, what would be the relevant date for which the foreign exchange rate would be used? For example, should the conversion date be taken as the date of the net worth certificate or the date on which the audited financial statements were issued?	Please refer to Clause 10 of the Fourth Corrigendum and clause 12.11 of the PIM.
7.	<p><u>Annexure 12</u> Declaration For Security Clearance - Clause D</p> <p>Details of criminal cases, if any, against the Interested Bidder (sole bidder or each member of Consortium)/Affiliate (only in case IB is taking benefit of financial strength of such Affiliate) (including against Director(s) or Equivalent Persons)</p> <p>List of Criminal Cases against the Directors should be excluded.</p>	No change in the PIM provisions.

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	<p>Rationale The bidding process is initiated by the bidding company in their own capacity as a bidder. The question of principal officer or any other officer does not arise.</p>	
8.	<p><u>Annexure 6</u> Outstanding Litigation/ Contingent Liability Requirement of list of all the outstanding litigation/Contingent Liabilities along with certificate that outcome of such litigation shall not have any impact on IB's capability to (a) participate in the Bid Process (b) undertake and consummate the Proposed Transaction and impact IB's qualification in terms of the Eligibility Criteria.</p> <p>Certification is sufficient for the purpose of EOI, requirement of mentioning all the outstanding litigation/contingent liabilities may not be asked.</p> <p>Rationale These facts are already mentioned in the Balance sheet of the Bidder.</p>	Please refer to Clause 9 of the Fourth Corrigendum.
9.	<p><u>Annexure 11</u> Declaration in relation to statement of legal proceedings Present declaration talks about the CEO/Principal Officers. It should be restricted to the Bidders only and not their CEO/Principal Officers.</p> <p>Rationale</p>	No change in the PIM provisions.

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	<p>The bidding process is initiated by the bidding company in their own capacity as a bidder. The question of principal officer or any other officer does not arise.</p>	
10.	<p>Annexure 11 (DECLARATION IN RELATION TO STATEMENT OF LEGAL PROCEEDINGS)</p> <p>Para 3 - <i>We further declare that we or our Affiliate (only in case IB is taking benefit of financial strength of such Affiliate) are not under any investigation pending before any regulatory authority or other authority.</i></p> <p>Clarification We request following be amended as follows: <i>“Except as set out below, we further declare that we or our Affiliate (only in case IB is taking benefit of financial strength of such Affiliate) are not under any investigation pending before any regulatory authority or other authority: [details to be inserted]”</i></p>	<p>Please refer to the Fifth Corrigendum to the PIM.</p>
11.	<p>Annexures 2 and 3 (Format For Letter of EOI (Sole Bidder) and (Consortium))</p> <p>We confirm and represent that we shall abide by the conditions set out as per clauses 12.2 and 12.16 of the PIM in the event we are finally selected to enter into definitive documents as per the RFP of the Proposed Transaction”</p> <p>Clarification We note clarifications 58, 134 & 138 which state that the clarifications sought would be considered / clarified at the RFP stage / in definitive documents. Accordingly, we</p>	<p>No changes in PIM provisions at this stage. However, as per clarifications already issued, IBs may note that the PIM (including the clarifications to the PIM) are subject to changes basis the finalization of the definitive documents. The definitive documents will be negotiated with the QIBs at the RFP stage. The GOI reserves the right to make any changes including consequent changes to the provisions of the PIM/ clarifications basis such negotiations or otherwise.</p>

Sl. No.	Query	Response
	<p>request that this existing paragraph is replaced with the clause below:</p> <p><i>“We shall abide by conditions, if any, set out in the definitive documents with respect to lock-in provisions and disposal of AI & AIXL’s assets”</i></p>	
12.	<p><u>Annexure 2, Clause 5</u> Disposal of Assets</p> <p>Clarification/Suggestion Raise cap to > INR 5,000 Cr Upper cap on sale of assets of Rs. 1,000 crore limits ability to hive off or monetize non-core assets</p>	<p>No changes in PIM provisions at this stage. The comment is noted for due consideration at RFP stage. Please refer to the response to query 11 above.</p>
13.	<p><u>Annexure 2 & 3 (Format for letter of EOI (sole bidder) & Consortium)</u></p> <p>“We undertake that in the event we are finally selected to enter into definitive documents as per the RFP for the Proposed Transaction, we shall ensure that 3% of equity share capital of the Company is offered to the permanent employees of AI as per terms of an ESOP, on terms as may be specified at the RFP stage.”</p> <p>Clarification We note the PIM Clarifications at points 74, 109 and 238 regarding ESOPs which state that indicative terms of ESOPs have been included in the SPA. We also acknowledge the statement that the PIM (including the clarifications to the PIM) are subject to changes basis the finalization of the definitive documents.</p>	<p>No changes in PIM provisions at this stage. The comment is noted for due consideration at RFP stage. Please refer to the response to query 11 above.</p>

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	<p>Given that the provisions relating to ESOPs are subject to discussion at the RFP stage and will be included in the SPA to be executed between the parties, we request replacing this existing paragraph with the clause below:</p> <p><i>“We shall abide by conditions, if any, set out in the definitive documents with respect to ESOPs.”</i></p>	
14.	<p><u>Annexure 2, Clause 6</u> ESOP ESOP policy should be the prerogative of the SP and SP should have full flexibility in relation to the same</p>	<p>No changes in PIM provisions at this stage. The comment is noted for due consideration at RFP stage. Please refer to the response to query 11 above.</p>
15.	<p>Annexures 2 and 3 (Format For Letter of EOI (Sole Bidder) and (Consortium))</p> <p>“We undertake that in the event we are finally selected to enter into definitive documents as per the RFP for the Proposed Transaction, AI and AIXL shall continue their business of providing air transport services on a going-concern basis for a period of 3 (three) years from the date of the closing of the Proposed Transaction, as per conditions set out in clause 12.4 of the PIM and terms as may be specified in the definitive documents.”</p> <p>Clarification We note clarifications 99 and 135 which state that the terms clarifying the scope of this obligation will be specified in the definitive documents and that indicative terms have been set out in the SPA. Accordingly, we request that this existing paragraph is replaced with the clause below:</p>	<p>No changes in PIM provisions at this stage. The comment is noted for due consideration at RFP stage. Please refer to the response to query 11 above.</p>

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	<p><i>"We shall abide by conditions, if any, set out in the definitive documents with respect to continuing the business on a going-concern basis."</i></p>	
16.	<p><u>Annexure 2, Clause 7</u> Continuity of Business</p> <p>Clarification/Suggestion Time period should be consistent with lock in period. Buyer may not have stake after the lock in period of 1 year.</p>	<p>No changes in PIM provisions at this stage. The comment is noted for due consideration at RFP stage. Please refer to the response to query 11 above.</p>
17.	<p>The financial year for a consortium member / interested bidder situated outside India may end on 31 December rather than 31 March, and it is possible that the 31 December 2019 financial statements may still be in the process of being audited. As the deadline for the submission of the expression of interest has been shifted to 30 April 2020, would financial statements as of 31 December 2018 (which would become 16 months old) suffice for the EOI submission?</p>	<p>Please refer to the Fifth Corrigendum to the PIM.</p>

Annexure 1 to clarifications above

Annexure Reference	Description	Documents executed and issued outside India	Documents executed and issued in India
Annexure 2, 3	FORMAT FOR LETTER OF EOI	Conforming Apostle certificate or/legalised	Notarise
Annexure 4, 5	STATEMENT OF LEGAL CAPACITY	Conforming Apostle certificate or/legalised (Board resolution as per clause 5 of the Annexure 5 should also have Conforming Apostle certificate or/legalised)	Notarised (Board resolution as per clause 5 of the Annexure 5 should also be Notarised)
Annexure 6	FORM A	Conforming Apostle certificate or/legalised	Notarise
Annexure 7	POWER OF ATTORNEY	Conforming Apostle certificate or/legalised + appropriately stamped in India as per the Stamp Act, 1899, as amended	Notarise + appropriately stamped in India as per the Stamp Act, 1899, as amended
Annexure 8	FORMAT FOR CONSORTIUM AGREEMENT	Conforming Apostle certificate or/legalised + appropriately stamped in India as per the Stamp Act, 1899, as amended	Notarise + appropriately stamped in India as per the Stamp Act, 1899, as amended
Annexure 9	CONFIDENTIALITY UNDERTAKING	Conforming Apostle certificate or/legalised + appropriately stamped in India as per the Stamp Act, 1899, as amended	Notarise + appropriately stamped in India as per the Stamp Act, 1899, as amended
Annexure 10	DEPARTMENT OF INVESTMENT AND PUBLIC ASSET MANAGEMENT (DIPAM) GUIDELINES	NA	NA

Annexure Reference	Description	Documents executed and issued outside India	Documents executed and issued in India
Annexure 11	DECLARATION IN RELATION TO STATEMENT OF LEGAL PROCEEDINGS	Conforming Apostle certificate or/legalised	Notarise
Annexure 12	DECLARATION FOR SECURITY CLEARANCE	Conforming Apostle certificate or/legalised	Notarise
Annexure 13	GUIDELINES FOR MANAGEMENT-EMPLOYEE BIDS IN STRATEGIC SALE	NA	NA
Annexure 14	POWER OF ATTORNEY FOR EMPLOYEE PARTICIPATION	Conforming Apostle certificate or/legalised + appropriately stamped in India as per the Stamp Act, 1899, as amended	Notarise + appropriately stamped in India as per the Stamp Act, 1899, as amended
Annexure 15	DIPAM GUIDELINES FOR EMPLOYEES BIDS	NA	NA
Annexure 16	FORMAT FOR CERTIFICATE OF FINANCIAL CAPABILITY (NET WORTH/ ACI)	Conforming Apostle certificate or/legalised	Notarise
Annexure 16-A	FORMAT FOR CERTIFICATE OF FINANCIAL CAPABILITY (NET WORTH) – APPLICABLE FOR EMPLOYEES	Conforming Apostle certificate or/legalised	Notarise

Annexure Reference	Description	Documents executed and issued outside India	Documents executed and issued in India
Annexure 16-B	FORMAT FOR COVERING LETTER FOR CERTIFICATE OF FINANCIAL CAPABILITY (NET WORTH/ ACI)	Conforming Apostle certificate or/legalised	Notarise
Annexure 16-C	ANNEXURE 16 C: FORMAT FOR CERTIFICATE OF FINANCIAL CAPABILITY (NET WORTH) – APPLICABLE FOR IB'S TAKING BENEFIT OF FINANCIAL STRENGTH OF AFFILIATE	Conforming Apostle certificate or/legalised	Notarise
Annexure 17	FORMAT FOR CERTIFICATE OF OUTSTANDING LITIGATION	Conforming Apostle certificate or/legalised	Notarise
Annexure 18	FORMAT FOR CERTIFICATE OF CONTINGENT LIABILITIES	Conforming Apostle certificate or/legalised	Notarise
Annexure 19	FORMAT FOR CERTIFICATE ON NO PROHIBITION	Conforming Apostle certificate or/legalised	Notarise
Annexure 20	AFFIDAVIT	Conforming Apostle certificate or/legalised + appropriately stamped in India as per the Stamp Act, 1899, as amended	Notarise + appropriately stamped in India as per the Stamp Act, 1899, as amended
Annexure 21	FORMAT FOR CONFIRMATION BY AFFILIATE	Conforming Apostle certificate or/legalised	Notarise

Annexure Reference	Description	Documents executed and issued outside India	Documents executed and issued in India
Supporting documents in English language and executed in India		NA	Notarise (in accordance with Clause 10.1 of the PIM)
Supporting documents in language other than English or in English but executed outside of India		Conforming Apostle certificate or/legalised (in accordance with Clause 10.1 and 10.11 of the PIM)	NA