

Legislative Brief

The Indian Post Office (Amendment) Bill, 2006

The draft of the proposed Bill has been posted on the Department of Posts' website for comments.

Highlights of the Bill

- ◆ The Indian Post Office (Amendment) Bill, 2006 seeks to amend the Indian Post Office Act, 1898.
- ◆ Every service provider, other than the Department of Posts (DoP), has to be registered.
- ◆ The Bill defines the term "letter" as any written or printed communication including documents. The central government retains exclusive privilege of carrying letters weighing up to 300 grams but allows private service providers to carry letters above this weight.
- ◆ The Bill sets up a Universal Service Obligation Fund (USO Fund), to which private service providers with at least Rs 25 lakh annual turnover would contribute 10% of their turnover. The government would use the USO Fund to fulfil its obligation of providing affordable postal service to every citizen.
- ◆ The Bill establishes an authority to regulate all service providers. It also sets up a Mail Disputes Settlement Tribunal to adjudicate on disputes between a registered service provider and the government or a group of consumers.

Recent Briefs:

The Seeds Bill, 2004
May 31, 2006

The Scheduled Tribes
(Recognition of Forest Rights)
Bill, 2005
April 6, 2006

Key Issues and Analysis

- ◆ The DoP's monopoly over the sub-300 gram letter segment would restrict the choice of consumers. The restriction applies even to delivery of documents and for premium services such as express delivery, which are currently being provided by private courier companies.
- ◆ The cost of contributing to the USO Fund could result in higher cost to the consumer. Also, the Bill does not exempt a service provider from contributing to the Fund even if he is willing to provide service in rural areas.
- ◆ Under this Bill, the consumer has no legal recourse against deficiency of service by DoP. This is a change from the current system under which the consumer may approach Consumer Courts.
- ◆ The Bill restricts foreign equity in private companies in the postal sector to 49 per cent. However, there are companies currently operating which have a higher percentage of foreign equity.

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PART A: HIGHLIGHTS OF THE BILL¹

Context

The Indian Post Office Act, 1898, presently governs the postal sector. Earlier attempts at amending the Act in 1982, 1986 and 2002 were not successful.² The draft Indian Post Office (Amendment) Bill, 2006 seeks to regulate the players (including courier and express delivery companies) in the sector, specify the monopoly rights of the Department of Posts (DoP) and provide for a fund to enable DoP meet its obligations of providing universal access to postal services.

Key Features

Modification of Exclusive Privilege

- The Bill defines the term “letter” as any written or printed communication including documents but excludes parcels and newspapers. It states that the DoP will have the exclusive privilege of collecting and delivering all letters below 300 grams. Letters above 300 grams can be carried by registered private agencies too.

Registration of Service Providers

- In order to carry or deliver any postal article, the Bill requires every service provider, other than the DoP, to get registered with a registering authority.
- The registration would be granted for a specified period and would be renewable. If a service provider operates within India, it would have to pay a one-time registration fee of Rs 25,000. If it operates both within and outside India, it would have to pay Rs 10 lakh. For renewal of registration, a service provider operating within India would have to pay Rs 10,000 per annum whereas a service provider operating within and beyond India will pay Rs 5 lakh.

Universal Service Obligation Fund

- Every registered service provider with a turnover of Rs 25 lakh or more is required to deposit 10 per cent of its annual turnover with the registering authority towards a Universal Service Obligation Fund (USO Fund). This fund will be used by DoP to meet its obligation of providing service to all locations in the country. The Central Government would specify the terms and conditions of universal service obligation.

Authorities for Regulating Mail Services

- The Bill establishes a Mail Regulatory and Development Authority (MRDA), which would make recommendations on matters such as cancellation of registration and promotion of competition. It would also regulate arrangements of revenue sharing between registered service providers and the DoP, protect consumer interest, and ensure compliance of universal service obligation. The three members of the MRDA would be serving or retired civil servants of Additional Secretary or Secretary rank, with a tenure of three years.
- A Postal Services Board would be set up to govern the functioning of DoP. Its powers and functions would be delineated by the Central Government.
- A Mail Disputes Settlement Tribunal (MDST) would adjudicate between the Central or State Government or a registered service provider or a local authority; between the MRDA and a registered service provider; between two or more service providers; and between a service provider and a group of consumers.
- The MDST cannot adjudicate on (a) disputes related to the Competition Act, 2002; (b) complaint of an individual consumer against a registered service provider; and (c) disputes related to services provided by the DoP. An individual consumer’s complaint against the services of a registered service provider would be addressed through the Consumer Protection Act, 1986.

Penalties for Offences

- The Bill seeks to penalise the employees of registered service providers and DoP for offences such as theft, destruction of postal articles, intentionally sending postal articles without paying for the postage, and fraudulently altering Post Office documents. It also levies a fine of up to Rs 1,000 if a service provider violates the DoP’s exclusive privilege of carrying letters. If a registered service provider violates any of the provisions of the Act, it can be fined up to Rs 2 lakh.

PART B: KEY ISSUES AND ANALYSIS

The Indian Post Office (Amendment) Bill, 2006 was drafted with the purpose of liberalising the mail industry while ensuring that the Central Government is able to fulfil its obligation of providing universal postal service at affordable prices. We tabulate below a comparison of the provisions of the draft Bill, the lapsed 2002 Bill, the Standing Committee report (of the 2002 Bill) and the original Act.

Table 1: Comparison of the Bill with Existing Law and Earlier Proposals

	Indian Post Office (Amendment) Bill, 2006	Indian Post Office Act, 1898	Indian Post Office (Amendment) Bill, 2002 (Lapsed)	Standing Committee Report Recommendations for the IPO Bill, 2002
Definitions	<p>“Letter” means any written communication, or communication produced by mechanical, electronic or other means... documents... but does not include newspapers and parcels.</p> <p>“Person” means an individual who is a citizen of India... company in which not less than 51% of the paid up share capital is held by the citizens of India.</p> <p>“Postal article” includes... every article or thing transmissible by post or by any person or body authorised to carry such article under the provisions of the Act.</p>	<p>Not defined</p> <p>Not defined</p> <p>“Postal article” includes... every article or thing transmissible by post.</p>	<p>“Letter” means any written communication... includes letter-card, post-card and envelope but does not include newspapers and parcels.</p> <p>Not defined</p> <p>Same as 2006 Bill</p>	<p>No recommendation</p> <p>No recommendation</p> <p>No recommendation</p>
Exclusive Privilege	Allows other service providers to collect and deliver letters above 300 grams.	The Central Government has exclusive privilege of conveying letters.	The Central Government has exclusive privilege of conveying letters, except when no hiring or profit is involved.	No recommendation
Universal Service Obligation Fund	Every registered service provider with annual turnover of Rs 25 lakh or over has to deposit 10% of its annual turnover with the registering authority for the USO Fund.	No provision	No provision	No recommendation
Registration	No person can carry or deliver any postal article unless he is registered as a service provider with a registering authority to be decided by the Government.	No provision	The Central Government to make rules for granting registration to any party and set the terms on which a registered body can perform services that were carried out by the DoP.	The Central Government should retain exclusive privilege in letter category in public interest. So registration should be given only for carrying postal articles excluding letters.
	Registration fee for service providers operating within India is Rs 25,000 and for those operating both within and outside India is Rs 10 lakh. The renewal fee is Rs 10,000 and Rs 5 lakh respectively.	No provision	The fee for granting and renewing registration is Rs 50,000 per annum.	A fee of Rs 10,000 should be charged if a registered body operates within one state of India; in other cases it should be Rs 50,000.
Liability of DoP	The services provided by the DoP are exempted from liability under any law (including the Consumer Protection Act, 1986).	The Government would not incur any liability in case of loss, delay or damage of a postal article.	The services provided by the DoP are exempted from liability under the Consumer Protection Act, 1986.	The DoP should not be exempted from the Consumer Protection Act, 1986 or similar laws where they are performing similar duties as private agencies.

Source: Respective Bills and Standing Committee Report; PRS

Universal Service Obligation

The DoP is required to provide access to postal service to all locations within the country on account of its affiliation to Universal Postal Union.³ The draft Bill seeks to compensate DoP for this obligation by providing it with two distinct privileges. First, the DoP will have a monopoly on letters below 300 grams. Second, a USO Fund will be created to subsidize the DoP. Issues relating to these privileges are discussed below.

Promote or Restrict Competition

The Indian Post Office Act, 1898, gives the exclusive privilege of carrying and delivering letters to the postal department. However, the Act does not define the word “letter” leaving it open to interpretation. Private courier companies have been conveying various types of written and printed communications without calling them letters.⁴

The Bill allows the postal department to retain the exclusive privilege of carrying and delivering letters up to 300 grams and defines the term “letter” to mean all written and printed communication including documents. The postal department’s monopoly includes express mail services. Given that nearly half the business of private service providers is in the below 300 grams segment,⁵ it could result in loss of business as well as loss of employment.⁶ This could be significant because the private courier industry is already established in India with around 2,500 operators⁷ and an estimated revenue of Rs 4,000 crore.⁸

The DoP has cited international examples to strengthen its case for retaining exclusive privilege.⁹ While most countries allow the official postal department to reserve certain segments of the postal business, the international trend is toward opening up the postal sector. For example, the European Union has made it mandatory for its members to open up the postal sector by 2009.¹⁰ Japan plans to completely privatize Japan Post, a state owned entity, by 2007.¹¹ However, Argentina’s experiment of privatising postal services in 1997 failed, and it was renationalised in 2003.

Table 2 illustrates that many countries employ a combination of weight restriction and tariff. That is, private operators can operate as long as they charge a minimum specified price or the postal article is of a minimum specified weight. Combining a price multiple option with minimum weight monopoly would allow the private service providers as well as the postal department to operate on a level playing field without limiting the choice for consumers.

Universal Service Obligation Fund

In order to recover the losses incurred by the DoP (in 2004-05 DoP had a deficit of Rs 1,382 crore¹²) on account of its universal service obligation, every private service provider with an annual turnover of Rs 25 lakh or more is required to give 10% of its annual turnover to a Universal Service Obligation Fund (USO Fund). The cost of such a provision could be passed on to the consumer. Also, it could hinder the growth of the private service providers and lead to cases where companies could use accounting practices to show a lower than Rs 25 lakh annual turnover. For example, a growing company could split into several smaller companies in order to stay below the Rs 25 lakh turnover level.

Table 2: Postal Monopoly in Other Countries

Country	Status of Postal Monopoly
USA	US Postal Service has monopoly on letters up to 31.8 kg. However, there are exceptions. Private carriage of letters is permitted if the amount paid is the higher of \$3 or twice the applicable postage.
United Kingdom	Postal service operators have to get a licence from the regulator (Postcomm) for items below the threshold of 350 gm and £1. Above 350 gm/£1, the market is deregulated and fully open to competition.
The Netherlands	TPG Post has exclusive right to deliver letters up to 50 grams and postage of not more than 2.5 times the basic tariff for a 20 gm letter. It excludes direct mail and there is no monopoly on parcels of any weight. It plans to liberalize fully by 2007.
Germany	Deutsche Post AG has a monopoly on letter items up to 50 gm and 2.5 times the price of a 20 gm letter and direct mail items up to 50 gm. Full liberalization is scheduled for 1 January 2008.
Australia	Australia Post has exclusive right to carry letters weighing up to 250 grams. It is subject to a number of exceptions such as carrying letters for a charge that is at least 4 times the rate of postage, catalogues, leaflets, and letters in the course of a document exchange.
New Zealand	New Zealand Post does not have a monopoly on standard letters. Anyone can process and deliver mail, at any cost, as long as they register as a postal operator with the Ministry of Economic Development.

Source: Respective country’s official website of the postal sector; Status and Structures of Postal Administrations - June 2006, Universal Postal Union.

In order to finance universal service obligations in the postal sector, the European Commission allows its member states to reserve certain segments for the universal service providers. For example, in U.K, a segment of the postal sector is reserved for those operators who provide universal service within the national boundary. But any operator willing to provide universal service is allowed to operate in the reserved segment. The EC also has a provision for a compensation fund for providers of universal service,¹³ which has only been implemented in Italy.¹⁴

The Bill does not exempt a private service provider from such a fee even if it is willing to provide service to the rural sector. Also, it is not clear whether a private service provider can avail of the USO Fund if it is willing to provide service in the rural sector. The telecom sector differs in this respect. The USO Fund is available for every eligible operator who is willing to provide universal service.¹⁵ Also, whereas in the telecom sector, all service providers (government companies such as BSNL and MTNL) are required to contribute to the Telecom USO Fund, in the postal sector the Bill proposes to exempt the DoP from contributing to the Postal USO Fund.

Lack of Liability of DoP

The Bill states that the DoP cannot be held liable for lapses in services either by the Mail Disputes Settlement Tribunal or by any law in force. This is in contradiction to the Consumer Protection Act, 1986, (CPA, 1986) which states that the Act would apply to all goods and services unless the Central Government makes an exemption by notification.¹⁶ Such notification has not been issued with regard to postal services and certain court judgements have ruled in favour of the consumer in cases where an individual consumer has filed a case against the DoP for not providing the promised service.¹⁷

If the DoP is not liable under the CPA, 1986, it is implied that the consumer (who is deprived of the choice of using private services to send letters less than 300 grams) is denied any mechanism to seek redressal if the DoP does not perform as promised. However, the consumer can seek redressal against private service providers under the CPA, 1986. There could be a case for bringing the services of the DoP too under the purview of CPA, 1986. Indeed, the Standing Committee Report on the 2002 version of the Bill recommended that DoP should be made liable under the CPA, 1986. [see Table 1]

Restriction of Foreign Investment

The Bill defines a “person” as a citizen of India and a company in which at least 51% paid up share capital is held by citizens of India. The Bill also states that a person has to register as a service provider in order to carry and deliver any postal article. Presently, Foreign Direct Investment (FDI) up to 100% is permitted in courier services (excluding distribution of letters).¹⁸ There are companies in the sector with more than 49% of foreign equity. The proposed provision will necessitate restructuring of such companies to bring the foreign ownership to below 49%. In contrast, the FDI limit for the telecom sector has recently been raised to 74% from 49%.¹⁹

Regulatory Structure

There are two different authorities governing the postal sector. One is the registering authority and the other is a regulatory authority.

Registration

Registration is not an automatic process under the Bill. It requires the approval of the registering authority. It is not clear whether this process is ‘registration’ or ‘licensing’.

Regulation

All three members of the MRDA are current or former civil servants. There could be conflict of interest because the DoP is in direct competition with private service providers. Also, keeping in view the technical, legal and financial knowledge that would be required to formulate policies to regulate the postal sector, there could be a case for appointing independent experts in the MRDA.

Notes

1. The draft of the Proposed Indian Post Office (Amendment) Bill, 2006 was posted on the website of the DoP (<http://www.indiapost.gov.in/>). The DoP invited comments from the general public. The last date of sending the comments was May 10, 2006. The comments had to be sent to the Director General, Department of Post.
2. 1982 and 2002: The Bills lapsed on the dissolution of the Lok Sabha. 1986: The Bill, passed by both Houses of Parliament, was returned by the President to the Rajya Sabha for reconsideration. The Bill was later withdrawn by the government.
3. Frequently Asked Questions on Draft Proposal on Indian Post Office (Amendment) Bill, 2006 (see <http://www.indiapost.gov.in/FAQ2006.pdf>).

4. Kaushik Basu, "How not to protect the state sector," BBC News, February 28, 2006 (see http://news.bbc.co.uk/1/hi/world/south_asia/4742608.stm).
5. Economic Times, April 23, 2006 (see <http://economictimes.indiatimes.com/articleshow/1500399.cms>).
6. According to a survey done by FICCI in 2004-05, the private courier industry employs around 250,000 people (see <http://www.ficci.com/surveys/service-report.pdf>).
7. Position Paper on Indian Post Office (Amendment) Bill, 2006, Express Industry Council of India ([http://www.eiciindia.org/frontsite/Position%20Paper%20\(dated%20210206\).pdf](http://www.eiciindia.org/frontsite/Position%20Paper%20(dated%20210206).pdf)).
8. Refer Note 7.
9. Refer Note 3.
10. Directive 2002/39/EC of the European Council provides for a time-table for opening the letter market to competition (see <http://www.industrie.gouv.fr/poste/textes/2002anglais.pdf>).
11. Conference on Development Models, Organized by the Universal Postal Union on April 28, 2006 (see http://www.upu.int/news_centre/2006/en/2006-04-28_conference.html).
12. Annual Report 2005-2006, Department of Posts, Ministry of Communications and Information Technology.
13. Directive 97/67/EC of the European Council (see <http://www.legaltext.ee/text/en/T61316.htm>).
14. PostEurop's Position Paper on the WIK Study on "The Evolution of the Regulatory Model for European Postal Services," March 22, 2006 (see <http://www.posteurop.org/newspdf/WIKEN.pdf>).
15. The Indian Telegraph (Amendment) Act, 2003 and Indian Telegraph (Amendment) Rules, 2004.
16. Clause 1(4) of the Consumer Protection Act, 1986.
17. National Consumer Disputes Redressal Commission – First Appeal No. 129 of 1995 decided on September 27, 2001.
18. Manual on Foreign Direct Investment in India – Policy and Procedures, May 2003, Ministry of Commerce and Industry, Government of India (see http://dipp.nic.in/manual/manual_0403.pdf).
19. "Enhancement of the Foreign Direct Investment ceiling from 49 per cent to 74 per cent in the Telecom sector," Press Note No. 5 (2005 Series), Ministry of Commerce and Industry, Government of India (see <http://www.dot.gov.in/ip/fdi2005.pdf>).

Legislative Activity in Monsoon Session Till Date

Bills Passed

Short Title	Status
The Government Securities Bill, 2004	Passed by Lok Sabha on August 7, Pending in Rajya Sabha.
The Spirituous Preparations (Inter-State Trade and Commerce) Control (Repeal) Bill, 2006	Passed by Rajya Sabha on May 15, Passed by Lok Sabha on August 3.
The Protection of Human Rights Amendment Bill, 2005	Passed by Rajya Sabha on August 3, Pending in Lok Sabha.
The Produce Cess Laws (Abolition) Bill, 2006	Passed by Lok Sabha on August 3, Pending in Rajya Sabha.
The Assam Rifles Bill, 2006	Passed by Lok Sabha on August 3, Pending in Rajya Sabha.
The Actuaries Bill, 2005	Passed by Lok Sabha on August 2, Passed by Rajya Sabha on August 10.
The Juvenile Justice (Care and Protection of Children) Amendment Bill, 2005	Passed by Lok Sabha on August 2, Pending in Rajya Sabha.
The Food Safety and Standards Bill, 2005	Passed by Lok Sabha on July 26, Passed by Rajya Sabha on August 2.
The Cantonments Bill, 2003	Passed by Rajya Sabha on August 1, Pending in Lok Sabha.
The Parliament (Prevention of Disqualification) Amendment Bill, 2006	Passed by Rajya Sabha on July 27, Passed by Lok Sabha on July 31.

Source: Lok Sabha and Rajya Sabha Bulletins. Status as on August 10.

Bills Introduced

Short Title	House	Introduced on
The Pondicherry (Alteration of Name) Bill, 2006	Lok Sabha	July 25
The Sashastra Seema Bal Bill, 2006	Rajya Sabha	July 28
The Sikkim University Bill, 2006	Rajya Sabha	July 31
The Tripura University Bill, 2006	Rajya Sabha	July 31
The Rajiv Gandhi University Bill, 2006	Rajya Sabha	July 31
The Constitution (Scheduled Tribes) Order Amendment Bill, 2006	Rajya Sabha	July 31
The Payment and Settlement Systems Bill, 2006	Lok Sabha	July 31
The Aircraft (Amendment) Bill, 2006	Lok Sabha	August 7

Source: Lok Sabha and Rajya Sabha Bulletins. Status as on August 10.

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- **Session Alert:** Likely legislative agenda for the upcoming session of Parliament. These Alerts are issued at the beginning of each session.

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