

Compliance Requirements to set up Special Economic Zone Units

written by Aurelia Menezes | May 28, 2019

Special Economic Zones ("SEZ") have been established in India with the objective of attracting Foreign Direct Investment

('FDI') and to create an opportunity for domestic entities in our country to compete in the global market. It has increased trade balance, employment, investments, and effective administration.

Under

the Special

Economic Zone Act, 2005 ("the Act") SEZ can be set up either jointly or severally by the Central Government, State Government, or any person

(including a private or public limited company, partnership or proprietorship)

for the following purposes:

- Manufacture of goods; or
- Services to be rendered; or
- Both manufacturing of goods and for rendering of services; or
- As a Free Trade and Warehousing Sector.

The key role of a SEZ is envisaged by the Act for the State Governments as Export Promotion and creation of related infrastructure. A Single Window SEZ Approval

mechanism has been provided through a 19-member inter-ministerial SEZ Board of

Approval ("BoA"). The applications duly suggested by the respective State Governments/UT Administration are considered by the BoA from time to time.

All

decisions of the BoA are decided by a general consensus of the members present.

Compliance Requirements

to set up a Company

When a company plans

to set up a unit in a specific SEZ, an application is required be made to the Development Commissioner's office under whose jurisdiction the Special Economic

Zones operate. For Example: Karnataka, Kerala, Lakshadweep and Mahe SEZs fall under the Cochin Special Economic Zone (CSEZ), with offices in Bangalore and Cochin.

Thus, a company intending to set up a

unit in a SEZ shall submit a consolidated proposal to the

Development Commissioner in Form F in five copies along with the following documents:

»	Copy of letter of willingness to allot space in the Zone issued by CSEZ/Developer
»	Application fees - DD for Rs.10,000/- drawn in favour of "The Pay & Accounts Officer, Cochin Special Economic Zone"

»	Affidavit of undertaking as prescribed in the Form-F in stamp paper of Rs.100/-.
»	Project Report indicating list of capital goods to be imported/procured, Description of raw materials and other imports, Technical Collaboration, Marketing Collaboration, activities proposes etc. (including a write up on the background of the promoters establishing their credentials and standing)
»	Copy of Certificate of Incorporation along with Articles of Association and Memorandum of Association in case of companies and attested copy of Partnership Deed in case of Partnership Firms
»	Income tax returns of proprietor/partners for the last 3 years. In case of company audited balance sheet for the last 3 years.
»	Copy of Pan Card of Promoters
»	Proof of residence of promoter (Copy of Ration Card, Voter ID Card, Passport, Driving License)

In addition to the
aforementioned, a company proposing to set a unit in SEZ, shall also be required to submit the following details pertaining to Setting up of units in SEZ; Annual permission for sub-contracting; Allotment of IEC Number; Allotment of land/industrial sheds in the SEZ; Water Connection; Registration-cum-Membership Certificate; Small Scale Industries Registration; Registration with Central Pollution Control Board; Power connection; Building approval plan; Sales Tax registration; Approval from Inspectorate of factories; Pollution control clearance, wherever required; Any other approval as may be required from the State Government.

This is a Single Window Clearance. The Development Commissioner will thereafter submit this proposal to the Approval Committee. The Approval Committee may either accept the proposal with or without modifications, or may reject the proposal. In case of modification or rejection, the Approval Committee is required to give an opportunity to be heard to the person concerned, after which such approval or rejection will be given.

Guidelines

for Approval

Pursuant to Rule 18(2) of the SEZ Rules 2006("Rules"), the Approval Committee scrutinizes the proposal based on the following parameters

- The proposal must meet with the positive net foreign exchange earning requirement calculated as per Rule 53[1] and prescribed value addition earning requirement[2] of the Rules.
- Availability of space and other infrastructure support applied for. Any lease agreement between a developer and the

Company is to be entered into after the Issuance the Letter of Approval by the Development Commissioner. A copy of such an Agreement must be furnished to the Development Commissioner within six months from the issuance of the Letter of Approval. Failure to do so may result in the cancellation of the Approval.

- The applicant undertakes to fulfill the environmental and pollution control norms.
- The applicant submits proof of residence, namely, passport or ration card or driving license or voter identify card or any other proof of the proprietor or the partners of partnership firms or Directors of the Company, to the satisfaction of Development Commissioner;
- The applicant submits the Income-tax returns, along with annexures, of the Proprietor or Partners, or in the case of a company, audited balance sheet for the previous three years.

Sector Specific Requirements

Certain sector specific requirements are prescribed under Rule 18(3) of the Rules:

- (a) Export of high-grade iron ore that is more than 63% Iron (except iron ore of Goa origin and Redi origin) requires approval of the BoA;
- (b) Sub-contracting or job work of polyester yarn is not permitted in Domestic Tariff Area or in Export Oriented Unit in other SEZs. This restriction does not apply to the Units which intend to send the fabric made by them out of polyester or texturised yarn for subcontracting.

As per 18(4) of the Rules, Proposals will not be considered in the following cases:

- (a) Recycling of plastic scrap or waste
- (b) Enhancement of the approved import quantum of plastic waste and scrap beyond the average annual import quantum of the unit since its commencement of operation to the existing Units
- (c) Reprocessing of garments, used clothing, secondary textiles materials and other recyclable textile materials into clipping, rags, industrial wipers, shoddy wool, yarn, blankets or shawls
- (d) Import of other used goods for recycling. (This may be permitted on the condition that after reconditioning, repair, and re-engineering, the products and scrap, remnants or

waste will be exported and none of these goods will be allowed to be sold in the Domestic Tariff Area or destroyed;

(e) Export of Special

Chemicals, Organisms, Materials, Equipment and Technologies unless it fulfills

the conditions indicated in the Import Trade Control (Harmonized System)

Classifications of export and import items;

(f) If there is any

instance of violation of law or public policy by the promoters having a bearing

on the merits of the proposal

Units in Free Trade

and Warehousing Zones or such units set up in other Special Economic Zone will

be allowed to hold the goods on account of the foreign supplier for dispatches

as per the owner's instructions and will be allowed for trading with or without

labelling, packing or re-packing without any processing. Free Trade and Warehousing units undertaking these activities must allow refrigeration for the

purpose of storage and assembly of Completely Knocked Down or Semi Knocked Down

kits. The Units may also re-sell, re-invoice or re-export the goods imported by

them. All transactions by a Unit in Free Trade and Warehousing Zone must be in

convertible foreign currency.

Services

to Overseas

Units may also be set

up for providing or manufacturing services to Overseas Entities. But they are subject to the following conditions:

(a) capital goods, raw

materials including consumables sub-assemblies, components, and/or semi-finished

goods must be supplied by the Overseas Entity free of cost;

(b) capital goods for

setting up such facilities may also be supplied on loan or lease basis, provided the notional value of such capital goods be taken into account for calculation of Net Foreign Exchange Earnings under Rule 53;

(c) finished goods

must be exported out of the country or transferred to the Customs Bonded Warehouse to be maintained by the Overseas Entity, as per the instructions of the Overseas Entity.

(d) the Unit will

receive the consideration for its manufacturing services in convertible foreign

exchange directly from the Overseas Entity;

(e) in case the manufacturing

facility is used by the Unit for carrying out production on its own account,

separate accounts are to be maintained for the manufacturing and service activity.

Letter

of Approval

On approval of the

proposal, the Development Commissioner will issue a Letter of Approval in Form

G for setting up of the Unit. The Letter of Approval will contain specifications like the nature of business, production details, net foreign exchange details etc. The letter will be valid for one year within which time the Unit must commence production or service or trading or Free Trade and Warehousing activity. The date of Commencement must be intimated to the Development Commissioner. This time can be extended upto two years upon providing valid reasons to the Commissioner. An additional extension of one year will also be given if two-thirds of activities including construction, relating to the setting up of the Unit is complete and a chartered engineer's certificate to this effect is submitted by the Company.

The Letter of Approval

is valid for five years from the date of commencement of production or service

activity and can be used as a licence for all purposes related to authorized operations. After the completion of five years, the Development Commissioner may, at the request of the Unit, extend the validity for a further period of five years, at a time.

An entrepreneur

holding the Letter of Approval will only be entitled to set up a Unit in the processing

area of the SEZ or Free Trade and Warehousing Zone as per demarcations.

If an enterprise is

operating both as a Domestic Tariff Area unit as well as a SEZ Unit, it will have two distinct identities with separate books of accounts but the SEZ unit may

not be a separate legal entity.

Additional

Requirements as per State Policy

State policies may issue additional requirements to

be followed by SEZ units of their respective states. Following are some of the

conditions listed by the State High Level Clearance Committee, Karnataka[3]:

- Prepare a Human Resource Development plan to train the land losers / local persons and offer them employment opportunities.
- Provide a minimum 80% job to local people on overall basis.
- Wherever there is a scope for Vendor Development, Units must prepare a Vendor Development Plan and provide Entrepreneurship Development Training to the local persons and facilitate setting up of service / manufacturing vendor enterprises.
- Amenities created by SEZ units in the non-processing area of the SEZ like schools, colleges, hospitals etc. must be accessible to local person.

Transfer

of Units from one SEZ to another:

If a unit is to be transferred from one SEZ to

another, the Entrepreneur may make a proposal to the Department of Commerce for its Consideration and approval[4].

Conclusion:

The Central and State Government has ensured that the procedure to set up a business unit in a SEZ is easy and transparent to encourage investments businesses in this area. All procedures are explained in

detail in the Special Economic Zone Act of 2005, the Special Economic Zone Rules, 2006, and further amendments and circulars that have been issued by the

Government thereafter. All the Forms are available online on the SEZ websites.

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[1]

Special Economic Zones (Amendment) Rules, 2018

[2]

Special Economic Zones (2nd Amendment) Rules, 2019

[3]

Govt. Order No. CI 252 SPI 2001 dated 25.2.2002

[4] No.F.5/1/2019/SEZ

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