

Special Economic Zones – An update ►►

As you are aware, the Special Economic Zones (“SEZ”) Act, 2005 was enacted by the Parliament on June 23, 2005. The SEZ Rules were notified on February 10, 2006. Subsequent to notification of SEZ Rules, the Finance Ministry, fearing large revenue leakages, raised serious concerns in relation to certain provisions of the SEZ legislation. In order to resolve these differences between the Commerce and Finance Ministries, an Empowered Group of Ministers (“EGoM”) was constituted.

In its last meeting on January 22, 2007, the EGoM had put a freeze on fresh approvals and notifications of SEZs on account of wide spread protests, caused due to compulsory land acquisitions and lack of clarity of final resettlement and rehabilitation policy of the Government of India. This temporary moratorium was put in place pursuant to a directive received by the EGoM from the Prime Minister’s Office.

The EGoM decided to meet on April 5, 2007 to put an end to the uncertainty surrounding the fate of the SEZ policy especially with regard to land acquisition, lifting of the ban on fresh proposals and a ceiling on the area for multi product SEZs amongst other issues.

The Government of India in a significant move, has also recently amended the principal SEZ Rules, 2006 vide the SEZ (Second) Amendment Rules, 2007 (“Amendment Rules”) with effect from March 16, 2007.

This Special Bulletin provides an update of the key decisions at the meeting of the EGoM and the latest amendments to the SEZ Rules.

Key decisions at the meeting of the EGoM ►►►

Freeze on grant of fresh approvals lifted

Board of Approvals (“BoA” -nodal agency for granting SEZ approvals) can now consider all new proposals in its forthcoming meetings and grant more SEZ approvals. However these approvals are likely to be granted to Developers with land already in their possession.

Moratorium on notifications rolled back

EGoM had granted its approval to the Ministry of Commerce and Industry, New Delhi (“MoC”) to notify formally approved cases where the Developers have submitted all land documents and completed all related formalities for notification of the facility. Pursuant to this, a list of eighty three (83) formally approved cases has been collated which will now be notified by the MoC.

Multi-product SEZs

- Maximum area for the development of multi-product SEZs has been capped at 5,000 hectares. This is likely to have an adverse impact on some of the large multi-sector SEZs that were being planned by Developers
- State governments will be competent to further reduce the maximum area for development of multi-product SEZs within the State to below 5,000 hectares
- Retrospective amendment in SEZ rules (likely) whereby limit for minimum processing area in a multi-product SEZ would be increased to fifty percent (50%)

Land acquisition and resettlement policy

States have been barred from making compulsory land acquisitions under the Land Acquisition Act, 1894 for development of SEZs. The Developers would have to acquire land directly from the land owners. In addition to paying compensation, the new Resettlement and Rehabilitation Policy which is likely to be finalized soon may also contain provisions requiring at least one person from each displaced family to be given employment within the SEZ.

It may be noted that there is no formal communication from the Government on the decisions taken at the meeting of the EGoM held on April 5, 2007 and the above is based on press and other media reports.

Amendment to the SEZ Rules ▶▶▶

Minimum processing area

The minimum processing area requirement for multi-services SEZs has been rationalized in line with sector specific SEZs other than for IT /ITES, gems and jewelry, and biotechnology. Developers of such multi services SEZs will now have to develop at least fifty percent (50%) of the total area of the SEZ as processing area as against the previous limit of thirty five percent (35%).

Change in categorization of SEZs – permissible

As per the Amendment Rules, a Developer is permitted to apply to the BoA for change in existing categorization of the approved SEZ upon acquisition of more vacant land contiguous to the existing SEZ.

The BoA based on the merits of the case can allow the conversion of the existing categorization to another class of SEZ by subsuming such already approved or notified SEZ with the newly acquired vacant and contiguous land parcel. Therefore, if a Developer of a sector specific SEZ has an approval for 700 hectares and it were to acquire a further 300 hectares, such SEZ can now be re-categorized as a multi product zone. The principal SEZ Rules did not permit such a change in the classification.

Validity period of in principle approvals reduced

The validity of an in principle approval granted by the BoA has been reduced to one year from the previous period of three years. The Developer has to submit a suitable proposal for formal approval in Form A within the period of validity.

However, upon submission of an application citing reasonable reasons, the Developer / Co-developer can request for grant of extension, pursuant to which the validity of an in-principle approval may be extended for a further period of two years by the BoA.

A new format for in-principle approval letter in Form B1 has been appended to the Amendment Rules.

BoA – power to relax criteria for development of a SEZ

The BoA has been empowered (based on the merits of each case) to relax the condition for contiguity of the identified area due to the presence of public thoroughfares at the site.

However, the Amendment Rules clearly state that the criterion for the identified area to be vacant cannot be relaxed by the BoA.

Thus it appears that with this amendment, the BoA now has the discretionary power to classify a contiguous area as one which has public thoroughfares like a road or railway line running through it. Upon relaxation of the stipulated criteria the reasons for the same have to be recorded in writing.

SEZ Unit Contractor

Benefits, exemptions, concessions from payment of duties, taxes, cess etc available to a SEZ Unit for setting up and maintenance of the factory building under the SEZ legislative regime have been extended to a Contractor specifically appointed by such SEZ Units.

All documents in such cases would need to bear the name of the Contractor and the SEZ Unit jointly and would need to be so filed as well.

Sub-contracting by a SEZ Developer / Co-developer - permissible

The Amendment Rules provide that a SEZ Developer / Co-developer or Contractor can sub-contract a process to a place in the Domestic Tariff Area or to a Unit in the same or another SEZ or to a Export Oriented Unit or to a Unit in a Electronic Hardware Technology Park, Software Technology Park or Bio-technology Park.

The SEZ Developer / Co-developer can temporarily remove duty free goods to the sub-contracting site by following the procedure laid down for a SEZ Unit. However, a bank guarantee has to be executed to cover the duty forgone on the materials temporarily being removed for sub-contracting by the Contractor.

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