

A HANDBOOK ON SPECIAL ECONOMIC ZONE



The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

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Foreword

In India, the Government has been proactive in the development of the SEZs. Considering the need to enhance foreign investment and promote exports from the country and realising the need that a level playing field must be made available to the domestic enterprises and manufacturers to be competitive globally, the Government of India passed Special Economic Zone Act in 2005.

In the context of the changes and developments taken place subsequent to the last edition, the Committee on Economic, Commercial Laws & WTO considered it appropriate to revise the publication to bridge the knowledge gap in this vital legislation. The revised, updated and enlarged edition of the publication "A Handbook on Special Economic Zone" is being published for use of the members.

I wish to place on record my appreciation to CA. Rajkumar S. Adukia, Chairman, Committee on Economic, Commercial Laws & WTO and its members for their invaluable contribution in the revision of this publication.

I hope the members and other readers would find this publication immensely useful and it would serve as a handy tool in rendering professional services.

New Delhi
Date : 11th February, 2011

CA. Amarjit Chopra
President, ICAI

Preface

Projected as engines of economic growth, SEZs have created quite a stir in the country in the past few years, raising several issues including adequacy of the provisions of the Special Economic Zone (SEZ) Act, 2005. The enforcement of the Act, has seen a large number of developers applying for SEZ Approvals. The fundamental motto behind the enactment of this Act was to increase foreign investment and exports. It was passed with a vision to offer a globally aggressive and hassle free atmosphere for exports and make the domestic venture and firms globally viable. SEZ is recognized for diversity of reasons like, boost in investment and augment job opportunities and technical acquaintance and fetch certain tax improvements. SEZ are very advantageous from the point of vision of growth and development of a region. It increases income level of citizens, persuades competition, magnetizes FDI and lowers labor costs and exchange earnings. To facilitate our members to stay upto date with the latest developments taken in the SEZ laws and practical aspects and implications thereto, the Committee on Economic, Commercial Laws & WTO undertook the exercise of revising the publication –"A Handbook on Special Economic Zones".

I place on record my gratitude for the everlasting support and able guidance of CA. Amarjit Chopra, President, ICAI and CA. G. Ramaswamy, Vice-President, ICAI. in bringing out this book to whom I am personally indebted.

I also thank the Vice Chairman of the Committee CA. P. Rajendra Kumar and other colleagues of the Committee CA. Pankaj I. Jain, CA. Mahesh P. Sarda, CA. Shiwaji B. Zaware, CA. Devaraja Reddy M., CA. Manoj Fadnis, CA. Anuj Goyal, CA. Naveen N.D. Gupta, CA. Charanjot Singh Nanda, Dr. T.V. Somanathan, Shri Deepak Narain, Shri Sidharth Birla, CA. Vikrant K. Gugnani, CA. Vijay Kumar Choudhary, and CA. Sudhir Malik for their valuable involvement in various endeavours including this publication.

I would like to give my sincere thanks to Co-opted member CA. Asheesh Sharma

and Central Council Colleague CA. Vijay Garg who have immensely contributed in revising this publication. I would also like to place on record the appreciation for contribution made by CA. Anoop Dhanda Co-opted member and the Committee Secretariat, Rakesh Sehgal, Additional Secretary, Kuldeep Vashisht, Executive Officer and Kavita Adhikari, Section Officer towards this publication.

I hope that the readers would find the book interesting, useful and relevant in their professional work.

New Delhi

Date : 11th February, 2011

CA.Rajkumar S. Adukia

Chairman

Committee on Economic, Commercial Laws & WTO

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INTRODUCTION

A Special Economic Zone, in short SEZ, is a geographically bound zone where the economic laws in matters related to export and import are more broadminded and liberal as compared to rest of the parts of the country. SEZs are projected as duty free area for the purpose of trade, operations, duty and tariffs. SEZ units are self-contained and integrated having their own infrastructure and support services.

Within SEZs, units may be set-up for the manufacture of goods and other activities including processing, assembling, trading, repairing, reconditioning, making of gold/silver, platinum jewellery etc.

Generally, SEZs are constructed by utilizing an array of institutional compositions varying from complete government-owned organizations to privately-owned firms. In some cases, the government-owned organizations perform as quasi-government groups in which they follow a pseudo-corporate organization composition and have total control over their budget construction.

SEZs are also constructed under the tie-up of private and government organizations where the government sector offer's assistance by introducing provisions on infrastructure, investment, issue of bonds & debentures, etc. This enables the private industry to attain a considerable rate of return on the venture.

Hence, Special Economic Zones (SEZs) are specifically delineated duty-free enclaves treated as foreign territory for the purpose of trade operations, duties and tariffs. They offer total exemption from most of the duties and taxes.

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HISTORY OF SPECIAL ECONOMIC ZONE

World's first Free Zone concept started in Puerto Rico in 1947 with the aim of attracting firms from main land USA. In 1951 it passed the tax exemption law. The concept of Free Zone has greatly impacted the economy:

- Per Capita GNP grew over 45 times in 40 years
- Employment grew by 9% per annum
- Higher education went up from 2% to 60% in 40 years

India recognized the effectiveness of Export processing zone (EPZ) in mid sixties and came up with Asia's first structured EPZ at Kandla in 1965 followed by seven other such zones which were later set up in Mumbai, Chennai, Surat, Falta, Kochi, Noida and Vizag. The spread of SEZ in initial years was very slow and the concept gained popularity only after the success of Chinese SEZs.

The concept of SEZ can also be traced back to Ireland where the first Export Processing Zone was set up in 1960. However, it was in China that the SEZ model became a large scale success. Starting in 1980s, China today has more than 1500 open zones, under various names. According to World Bank estimates, there are about 3000 running place in SEZs in 120 countries.

EMERGENCE OF SEZ IN INDIA

Special Economic Zones in India were established in an attempt to accelerate foreign investment and encourage exports from India. They recognized the need of a global platform to expose the domestic firms and producers to the competitive world market.

For a faster economic growth, industrialization and development of infrastructure are two primary needs of the country. This naturally required a amount of capital outlay which could not be met by domestic investors and thus emerged the need for vast amounts of foreign capital (FDI). To attract Foreign Direct Investment (FDI) several measures have been taken which include attractive fiscal packages, both at the centre and state level, with minimum possible regulations (single window clearance).

The intention of the policy maker is to make SEZs an engine for economic growth.

History of SEZs in India

The seeds of the basic concept of Special Economic Zone (SEZ) were sown in the mid sixties. Further, the basic model of the present day Indian Special Economic Zone was structured with the establishment of the first Export Processing Zone (EPZ) at Kandla in the year 1965. Several other Export Processing Zones were set up in various parts of India in the subsequent years. But The lack of good economic policy and inefficient management hampered the success of these Export Processing Zones. Thus, the performance of these Export Processing Zones of India fell short of expectations.

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The modern day Special Economic Zone came into existence because the economic reforms incorporated in the early 1990s did not result in the overall growth of the Indian economy. The SEZ policy of India was devised to act as a catalyst to achieve the economic growth of the early 1990. The economic reforms formulated during the 1990s did not produce the desired results. The Indian manufacturing sector witnessed a sudden dip in the overall growth of the industry, during the second-half of 1990s. Red tape, lengthy administrative procedures, rigid labour laws and poor physical infrastructural facilities were the main cause of decline in Foreign Direct Investments (FDI) inflow into India. Further, the Indian markets were not mature enough to facilitate easy entry of Foreign Institutional Investors (FIIs) into the Indian economic system. Also, the legal framework of Indian economy was not strong enough to prevent misuse of Indian markets by the foreign investors. Thus, the lack of investor friendly environment in India prevented growth of Indian industry, in spite of implementation of liberal economic policy by the central government. This led to in the formation of a much larger and more efficient form with world-class infrastructural facility.

The present day Special Economic Zone policies of India are well complemented by the provisions of the Acts and Rules of Special Economic Zone. A number of meetings were held across India for the formulation of - 'The Special Economic Zones Act, 2005', which was subsequently passed by Parliament in May 2005. The SEZ Act, 2005 and SEZ Rules became effective on and from 10th February 2006. The SEZ Act 2005 defines the key role for the State Governments in Export Promotion and creation of infrastructural facilities. A Single Window SEZ approval mechanism has been facilitated through a 19 member inter-ministerial SEZ Board of Approval or BOA. And the decision of the SEZ Board of Approval is binding and final.

Salient features of Special Economic Zones

- Indian SEZs are developed by government, private and joint sector, unlike its international counterparts where zones are chiefly maintained by their respective governments. This provides equal prospects to both Indian and global players.
- Government has allocated a least favorable area of 1,000 hectares for greenfield SEZs. There is however, no limitation in the context of favorable area in constructing sector specific SEZs.

Emergence of SEZ in India

- 100% of Foreign Direct Investment is allowed for all endowments in Special Economic Zones, apart from activities cataloged under the unconstructive record.
- SEZ divisions are obligatory to encourage net foreign exchange yielders and are not entitled to any least amount of value addition guidelines or export responsibilities.
- Commodity surge from Domestic Tariff Area (DTA) into a SEZ is recognized as exports and commodity surge into DTA from SEZ are recognized as imports.

Benefits of Special Economic Zones

- Income tax exemption.
- Manufacturing industry is allowed an FDI influx of 100% via automatic channels excluding a few industries.
- Services can establish off-shore banking divisions in SEZs.
- Service Tax and Central Sales Tax exemption.
- External commercial lending of upto US\$500 million is allowed for SEZ divisions in a year sans any maturity limitations via certified banking networks.
- No import authorization obligations.
- SEZ franchisees are allowed 100% FDI in offering customary telephone facilities in the areas.
- No limitation of foreign endowments for small scale industry reticent products.
- Tax relief from sectoral authorization obligations for goods reticent for SSI industry.

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- Tax relief from custom tariff on import of merchandize, raw products, spare parts etc.
- Tax relief from Central Excise tariff on acquirement of merchandize, raw products, spare parts etc from the local market.
- No regular assessments by Customs for export and import freight.
- Capacity to comprehend and repatriate export advances within a year.
- Revenues permitted to be repatriated sans any dividend assessment needs.

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OVERVIEW OF LAWS REGULATING SEZs IN INDIA

With effect from 10th February, 2006 the activities relating to Special Economic Zones are guided by the provisions contained in the Special Economic Zones Act, 2005 and the Special Economic Zones Rules, 2006.

Previously Special Economic Zones in India were governed by Chapter X-A of the Customs Act, 1962, the Special Economic Zones Rules, 2003, and the Special Economic Zones (Customs Procedures) Regulations, 2003 and Chapter 7 and 7A of Foreign Trade Policy. After the enactment of the SEZ Act, 2005 Chapter X-A of the Customs Act, 1962, the Special Economic Zones Rules, 2003 and the Special Economic Zones (Customs Procedures) Regulations, 2003 are not in operation.

The laws governing SEZs in India are:

- Special Economic Zones Act, 2005
- Special Economic Zones Rules, 2006
- SEZ notifications
- SEZ instructions
- SEZ press notes
- State SEZ laws

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Apart from The Special Economic Zones Act, 2005, various States also have their acts, rules and policies pertaining to SEZ namely:

- Gujarat SEZ Act, 2004
- Haryana SEZ Act, 2005
- Indore SEZ (Special provisions) Act, 2003
- West Bengal SEZ Act, 2003
- Tamil Nadu SEZ Act , 2005
- Punjab SEZ Act, 2009
- Gujarat SEZ Regulations, 2007 also known as Gujarat SEZ Authority Rule
- Jharkhand Special Economic Zone Policy
- Uttar Pradesh SEZ Revised Policy – 2007
- Karnataka State Policy for Special Economic Zones – 2009
- Punjab Special Economic Zone Policy - 2005
- Chandigarh Administration Special Economic Zone Policy - 2005
- Kerala Special Economic Zone Policy-2008
- West Bengal Special Economic Zone Policy
- Maharashtra Special Economic Zone Policy
- Madhya Pradesh Special Economic Zone Policy

Special Economic Zones (SEZ) Act, 2005

The main objectives of the SEZ Act are:

- (a) generation of additional economic activity
- (b) promotion of exports of goods and services;
- (c) promotion of investment from domestic and foreign sources;
- (d) creation of employment opportunities;
- (e) development of infrastructure facilities;

The Act consists of VIII chapters, 58 sections and 3 schedules.

- Chapter I – Short title and definitions
- Chapter II – Establishment of Special Economic Zone
- Chapter III – Constitution of Board of Approval
- Chapter IV – Development Commissioner
- Chapter V – Single Window Clearance
- Chapter VI – Special Fiscal Provisions for Special Economic Zones
- Chapter VII – Special Economic Zone Authority
- Chapter VIII – Miscellaneous

Important features of the Act

- It provides a comprehensive SEZ framework to satisfy the requirements of all principal stakeholders in an SEZ – the developer and operator, occupant enterprise, out zone supplier and residents.

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- It provides expeditious and single window clearance mechanisms.
- The responsibility for promoting and ensuring orderly development of SEZ is assigned to the Board of Approval (BoA). It is to be constituted by the central government.
- While the central government may suo motu set up a zone, proposals of the state governments and private developers are to be screened and approved by the board.
- At the zone level, approval committees are constituted to approve/reject/modify proposals for setting up SEZ units.
- In addition, the Development Commissioner (DC) and his office are responsible for exercising administrative control over a zone. The labour commissioner's powers are also delegated to the DC.
- The Act also offers a highly attractive fiscal incentive package, which ensures -
 - o Exemption from custom duties, central excise duties, service tax, central sales taxes and securities transaction tax to both the developers and the units;
 - o Tax holidays for 15 years, i.e., 100 per cent tax exemption for 5 years, 50 per cent for the next five years, and 50 per cent of the ploughed back export profits for the next five years; and
- 100 per cent income tax exemption for 10 years in a block period of 15 years for SEZ developers.
- The establishment of free trade and warehousing zones to create world class trade-related infrastructure to facilitate import and export of goods aimed at making India a global trading hub.
- The setting up of offshore banking units and units in an international financial service centre in SEZs.
- Public private participation in infrastructure development.

Overview of Laws Regulating SEZs in India

- The setting up of a “SEZ authority” in each central government SEZ for developing new infrastructure and strengthening the existing one.

Special Economic Zones Rules, 2006

SEZ Rules 2006 are the rules which lay down the complete procedure which is required to be followed if one intends to develop a SEZ or establish a unit in SEZ. The benefits of various taxes available to a developer or a unit are also given in the SEZ rules.

The Rules consists of VIII chapters, 77 Rules and 2 annexure.

- Chapter I – Short title and definitions
- Chapter II – Procedure for establishment of Special Economic Zone
- Chapter III – Procedure for establishment of a Unit
- Chapter IV – Terms and conditions subject to which entrepreneur and developer shall be entitled to exemptions, drawbacks and concessions
- Chapter V – Conditions subject to which goods may be removed from a Special Economic Zone to the Domestic Tariff Area
- Chapter VI – Foreign Exchange Earning – requirements and monitoring
- Chapter VII – Appeal
- Chapter VIII – Miscellaneous

The Special Economic Zones Rules, 2006 provides for the following:

1. Simplification of procedures for development, operation, and maintenance of Special Economic Zones and for setting up and conducting business in SEZs;
2. Single window clearance for setting up of an SEZ;

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3. Single window clearance for setting up a unit in a Special Economic Zone;
4. Single Window clearance on matters relating to Central as well as State Governments;
5. Simplified compliance procedures and documentation with an emphasis on self-certification; and
6. A wide range of services to be rendered from SEZs.

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PROCEDURE FOR SETTING UP SPECIAL ECONOMIC ZONE

Special Economic Zones are specially demarcated geographical regions that have more liberal economic laws as compared to the centralized laws of the country. The very purpose of a SEZ is to develop the area covered under the special economic zone by the following special economic policies.

Who can set up SEZ?

A SEZ can be established either jointly or severally by

- a) the Central Government
- b) State Government
- c) any person

for manufacture of goods or rendering services or for both

or

- d) as a FTWZ (Free Trade and Warehousing Zone)

How to Apply?

As per the Special Economic Zones (Amendment) Rules, 2010, every proposal to set up a SEZ will have to be submitted to the concerned Jurisdictional

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Development Commissioner, who within a period of 15 days will forward it to the BoA along with the Inspection Report, SGR (State Government Recommendation) and other requisite details.

Every proposal for setting up of SEZ under sub section (2) to (4) of section 3 of SEZ Act, 2005 shall be made in **FORM-A**.

The following details should be mentioned in Form A -

- Location of SEZ
- Distance from the nearest Sea Port/Air Port/Rail or Road
- Details of Lease of Land
- Proposed investment details
- Means of financing
- Equity holdings
- Details of areas (Processing areas and non-processing area) used for various purposes in SEZ
- Activities Proposed in Processing and non-processing area
- Details of employment likely to be generated

The State Government shall forward the proposal within forty five days to the Board of Approvals (Deputy Secretary, Ministry of Commerce & industry, Department of Commerce, Udyog Bhawan, New Delhi-110011) after ensuring that the minimum land requirement as per Rule 5 of the SEZ Rules, 2006 has been complied with.

Minimum Land Requirement

Rule 5(2) of SEZ Rules, 2006 lays down the minimum area requirement for development of SEZ. The minimum area requirements stipulated for various categories of SEZ are:

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Type	Area	Area for Special Sates/ UTs
Multi-product	1000 hectares*	200 hectares
Multi-services	100 hectares	100 hectares
Sector specific	100 hectares	50 hectares
Electronic Hardware & Software Including ITES	10 hectares (and min. Built up area of 1 lakh Sq. Mtr. for IT)	10 Hectares
FTWZ	40 hectares (min. Built up area of 1 Lakh sq. mtr.)	40 hectares (min.built up area of 1 lakh sq. mtr.)
Handicraft	10 hectares (min. Built up area of 1 Lakh sq. mtr.)	40 hectares (min.built up area of 1 lakh sq. mtr.)
Bio Technology & Non Conventional Energy	10 hectares (min. Built up area of 40 Thousand sq. mtr.)	10 hectares (min.built up area of 40 thousand. Sq.mtr.)
Gems & Jewellery	10 hectares (min. Built up area of 50 Thousand sq. mtr.)	10 hectares (min.built up area of 50 thousand Sq.mtr.)

* Not exceeding 5000 hectares

As per proviso to sub Rule 2(a) Rule 5 of SEZ Rules, 2006 at least fifty per cent of the area shall be earmarked for developing the processing area. Development Commissioner of the SEZ shall be authority for demarcating the processing, non-processing area etc. in the SEZ.

Provided also that the Central Government may consider on merit the clubbing of contiguous existing notified Special Economic Zones notwithstanding that the total area of resultant Special Economic Zone exceeds 500 hectares.

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As per proviso to sub Rule 2 (c) Rule 5 of SEZ Rules, 2006, a Free Trade and Warehousing Zone may also be set up as part of a Special Economic Zone for multi-product. In a Special Economic Zone having area less than one thousand hectares, Free Trade and Warehousing Zone may be permitted with no minimum area requirement but subject to the condition that the maximum area of such Free Trade and Warehousing Zone shall not exceed twenty per cent of the processing area.

Acquisition of Land

In the wake of controversies on land acquisition, the Ministry of Commerce and Industry has advised all the State Governments that in case of land acquisition for setting up of Special Economic Zones, first priority should be the acquisition of waste and barren land and, if necessary, single crop agricultural land could be acquired for the SEZs. If perforce a portion of double cropped agricultural land has to be acquired to meet the minimum area requirements, especially for multi-product Special Economic Zones, the same should not exceed 10% of the total land required for the SEZ.

In pursuance of the decision taken by the Empowered Group of Ministers, the Commerce Secretary vide D.O. letter No. H.7/1/2007 dated 15 the June 2007, issued guidelines to the State Governments that the Board of Approval will consider only those cases where the land has been allotted by the State Government or its undertakings out of the land acquired by them for industrial purposes before 5th April, 2007 or where the land was acquired by the State Government/ its undertakings pursuant to SEZ in-principle approval and the land acquisition proceedings are over on or before 5th April, 2007 and there are no disputes relating to such land; or where no land acquisition is involved and the applicant is in possession of the land. The State Governments were informed that the Board of Approval will not approve any SEZs where the State Governments have carried out or propose to carry out compulsory acquisition of land for such SEZs after 5th April, 2007. The Board of Approval only approves those proposals which are duly recommended by the State Governments.

However, cases in which all persons interested in the land either have not submitted any objection or have withdrawn the objections submitted and have thus acquiesced in the proposed acquisition of land can be considered. In other cases, where there are objections, the Collector/Acquiring Authority may not

Procedure for Setting Up Special Economic Zone

proceed with the acquisition for the purpose of SEZ and such cases, if any, brought before the Board of Approval may not be considered.

Addition in Area and conversion of SEZ to other class

If a Developer subsequent to approval or notification of a Special Economic Zone acquires more contiguous and vacant land which makes the total area available, including the area already notified as Special Economic Zone, more than the minimum area required for another class of SEZ, the Board may consider such cases on a case to case basis for allowing conversion to another class of Special Economic Zone by subsuming such already approved or notified Special Economic Zone.

Certificate from Land Revenue department

1. The developer is required to submit a certificate issued by the concerned State Government or its authorized agency stating that

“the developer(s) have legal possession and irrevocable rights to develop the said area as SEZ and that the said area is free from all encumbrances”

Provided that where the Developer has leasehold rights over the identified area, the lease shall be for a period not less than twenty years.

2. The identified area should be contiguous and vacant and it shall have no public thoroughfare.

The Board may relax any or all of the conditions, except the condition regarding identified area to be a vacant land, specified in this sub-rule on a case to case basis on merits for reasons to be recorded in writing and with such conditions as the Board may decide.

The Central Government on the basis of approval by BOA may approve more than one Developer in Special Economic Zone in cases where one Developer does not have in his possession minimum area of contiguous land and each Developer shall be considered as Developer in respect of land in his possession.

Conditions for relaxation of contiguity criteria in respect of SEZs

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In terms of the proviso to sub-rule (2) of Rule 7 of the SEZ Rules, 2006 read with SEZ (Second Amendment) Rules, 2007 dated 16th March 2007, condition of contiguity may be relaxed by the Board in respect of SEZs subject to the following conditions (instruction No 27 dated 18th August 2009):

- (i) The developer shall maintain contiguity by dedicated security gates/over bridges/underpass/culverts and also fence side of the road facing the processing area.
- (ii) No tax benefits would be available for measures taken to establish contiguity.
- (iii) The entire processing area would be located on one side of the National Highway.
- (iv) The formal approval from authorities concerned like NHAI and others would be submitted to the Department of Commerce and work for establishing contiguity would be started only after obtaining the requisite approvals.
- (v) No Letter of Approval for any SEZ unit will be issued till the entire process to establish contiguity and securitization of the processing area is completed.
- (vi) The movement shall be restricted between the two SEZs till contiguity is established and the existing systems will continue.

Further BOA in its meeting held on 08.06.2010 has considered the problems faced by the Developers regarding contiguity issue the following guidelines:

Given the nature of land acquisition and the terrain, even small SEZs have been facing problems of contiguity due to a public thoroughfare or a water channel etc. passing through their SEZs. Further, the investment on construction of structures only adds to the cost of the project and also impacts the economic viability.

The Board noted that the present proposal has two components -

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- (a) there will be no insistence on providing contiguity if any public utility service such as roads, water supply lines, sewerage lines, drains, canals or railway lines passing through the non-processing area of the zone and
- (b) if the developer wants to construct a structure to provide connectivity, the same can be approved by the Unit Approval Committee as part of the zone and would be entitled for duty free material.

During the course of the discussions, representatives from Department of Revenue (DoR) indicated that as far as the first portion on non-insistence of contiguity in case public utility services as indicated pass through the non-processing area is acceptable to them in principle.

As regards duty free material for providing connectivity, it was decided that BOA can consider each case on merit. Department of Revenue would subsequently confirm this position before next BOA, after due approval at appropriate levels in Department of Revenue.

The department of revenue has not come up on the second issue till date i.e. procurement of duty free material for providing connectivity.

Development Plan for SEZ

The Developer of the SEZ should make a Development Plan, keeping in view the following aspects:

- (i) Site analysis and assessment of physical and natural resources.
- (ii) Broad spatial plan showing land use pattern, road and other infrastructure.
- (iii) Activity nodes for location of industrial, commercial, trade and commerce and other employment generating activities serving as nucleus for development around which other activities are likely to come up.
- (iv) Sectoral infrastructure plan, including fast track and efficient linkages/provision of transportation with the mother city and other urban centres of the region.

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- (v) Development Plan for SEZ be prepared with a perspective of 20-25 years and shall be broken up into short term Action Plans of five years each.
- (vi) The plans need to be adequately backed by investment plans/programmes for infrastructure to be implemented in a phased manner.
- (vii) Planning of SEZs may adopt different kind of development: low-rise and low density development or high rise, medium density or high-rise and high-density urban form depending on the availability of land requirement of the operating units.
- (viii) Developers of the SEZs would strive to address environmental aspects as prescribed by law, planned green areas, ground water recharging areas and disaster mitigation aspects.

Check list of details to be submitted to Board of Approval along with the application for setting of Special Economic Zone

- 1) Name of the Developer.
- 2) Proposed area of the location of the SEZ.
- 3) Status of recommendation of the proposal by the State Government (if available).
- 4) Whether proposal is for formal or in-principle approval (In case land is in possession of the promoter, it is considered for formal approval).
- 5) Is it a multi-product SEZ?
- 6) Is it a sector specific SEZ and the nature of the sector?
- 7) Whether it meets the area requirements.
- 8) Area of the SEZ (in hectares).
- 9) Whether Form-A has been filed.
- 10) Whether undertaking and affidavit has been submitted.

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- 11) Whether project report has been submitted.
- 12) Whether land is owned/ leased and is in possession of the Developer.
- 13) Does the proposal meet the area requirements of the Rules?
- 14) Whether the land has existing structures or is vacant.
- 15) Whether the land is contiguous.
- 16) Projected investment in the project.
- 17) Projected exports from the project.
- 18) Projected employment from the project.
- 19) Share Capital and Reserves of the Developer Company.
- 20) Source of funds for the project.
- 21) Net worth of the Applicant (including Group companies) duly supported by Audited Accounts of the Developer for last 3 years (for all the constituents in case the Developer is a Special Purpose Vehicle (SPV)). If the company is a new company, audited accounts of Flagship Company/ promoters may be provided.
- 22) Extent of FDI (if any) in million U.S. Dollars.
- 23) Source of FDI (Country and Company details may be provided).
- 24) Whether provisions contained in the Press Note No. 5 (2005 Series), issued by the Ministry of Commerce and Industry have been followed in respect of Telecom/IT SEZ development?

Equity Pattern

Rule 5 (4) of SEZ Rules, 2006 specifies that the Developer or Co-developer shall have at least twenty-six per cent of the equity in the entity proposing to

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create business, residential or recreational facilities in a Special Economic Zone in case such development is proposed to be carried out through a separate entity or a special purpose vehicle (SPV) being a company formed and registered under the Companies Act, 1956.

Letter of Approval to Developer (LOA)

On receipt of completed application the Central Government shall, grant -

- (a) **formal approval** in the cases where land is in possession of the developer, in Form-B to the person or the State Government concerned or in Form-C, if the approval is for providing infrastructural facilities in the Special Economic Zone, incorporating additional conditions, if any, specified by the Board while approving the proposal;
- (b) **in-principle approval** in other cases, in Form-B 1 to the person or the State Government concerned, incorporating additional conditions, if any specified by the Board while approving the proposal.

Co-Developer

Any person who intends to provide infrastructure facility or undertake any authorized operation in SEZ may after entering into an agreement with the developer make a proposal to the board for its approval in **Form A1**. If BoA approves, the proposal, the person applying for such approval shall be considered as Co-Developer of the Special Economic Zone.

The Co-developer shall be considered as Developer for the purpose of applicability of all the provisions of SEZ Act and Rules.

Notification of Special Economic Zone

The Government may, after satisfactory fulfillment of the requirements, notify the specifically identified area in the State as a Special Economic Zone.

Validity of Letter Of Approval (LOA)

The letter of approval will be valid for a period of three years within which time at least one unit should commence production and the Special Economic Zone

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will become operational from the date of commencement of such production.

Where the Special Economic Zone becomes operational, the letter of approval shall be automatically valid till the period of validity of notification of such Special Economic Zone.

Further, the BoA, on an application by the Developer or Co-Developer can extend the validity period for a further period as it may deem fit. Extension of the validity period of a LoA issued to a Developer or a Co-Developer will have to be made in "Form C1" [*In case of Formal Approval*] or "Form C2" [*In case of In-principle Approval*] and submitted to the DC who in turn within a period of 15 days would submit the same with his/ her recommendations to the BoA for its consideration.

Review and amendment of Letter of Approval

The LoA issued to a Developer will be considered by the BoA and approved by the Government under the following circumstances:

- Change of the Sector (Application to be made in "Form C3");
- Increase in the area (Application to be made in "Form C4"); and
- Decrease in the area (Application to be made in "Form C5").

All such applications will have to be submitted to the DC who in turn within a period of 15 days would submit the same with his recommendations to the BoA for its consideration.

Demarcation of Area

The notified areas of the Special Economic Zones shall be demarcated by the concerned Development Commissioner as-

- (a) the processing area for setting up Units for activities, being the manufacture of goods, or rendering services; or
- (b) the area exclusively for trading or warehousing purposes; or

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- (c) the non-processing areas for activities other than those specified under clause (a) or clause (b).

Specified entry and exit

- 1) The processing area and Free Trade and Warehousing Zone shall have specified entry and exit points and be fully secured.
- 2) In case of a Special Economic Zone for information technology or information technology enabled services or electronic hardware or biotechnology, the area is much lesser than the multi product and sector-specific SEZ and there is also a requirement for minimum built up area, the Development Commissioner shall approve such measures and inform the Board accordingly.

Construction of wall

In respect of IT/ITES SEZs, the height of the wall will be decided by the DC. In case of other SEZs, the developer is required to create two hundred and forty centimeter high wall with top sixty centimeter being barbed wire fencing. The Development Commissioner will ensure compliance of all requirements.

Processing Area leased out to persons having valid LOA

1. The land or built up space in the processing area or Free Trade and Warehousing Zone shall be given on lease only to the entrepreneurs holding a valid Letter of Approval issued under Rule 19 of SEZ Rules, 2006.
2. The lease period shall not be less than five years.
3. The lease rights would cease to exist in case of expiry or cancellation of the Letter of Approval i.e. the period of lease should be co-terminus with the period of LOA.
4. The condition of valid LOA shall also apply in case of sub-lease.

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No vacant land in the non-processing area shall be leased for business and social purposes such as educational institutions, hospitals, hotels, recreation and entertainment facilities, residential and business complexes, to any person except a co-developer approved by the Board.

Whereas developer or co-developer may lease the completed infrastructure along with the vacant land appurtenant thereto for such purposes.

Important Note: The Developer should not sell the land in a Special Economic Zone.

Housing Facilities

The Developer or Co-Developer shall strive to provide adequate housing facilities not only for the management and office staff but also for the workers of the Special Economic Zones Units.

Five per cent of the total area should be used for constructing low cost housing and dormitories in all SEZs of a size of 100 hectares or more. In case of a SEZ of a size of less than 100 hectares, developers should provide low cost housing /dormitories to the employees depending upon the need of the SEZ as per the National Urban Housing Policy 2007. Developer should rent out these houses to the employees of units. The units could take these houses on long-term lease for renting out to their employees. The housing facilities created in the non-processing area could also be allowed to be used by persons who are working for establishment relating to SEZ developers, units and or are users of infrastructure facilities created in the SEZ. In case a unit, having houses on long lease closes down, these can be transferred to other working units or the developer.

Proper space for street vendors in the commercial areas should be provided keeping in view the National Policy on Urban Street Vendors, 2009.

The infrastructure required for business or social purposes in the Special Economic Zone, as may be approved by the Board, shall be eligible for exemptions, concessions, drawback and any such infrastructure created in addition or in excess thereof shall not be eligible for any exemptions, concessions and drawback.

Telecommunications

A Zone 'should' have optical fibre connectivity to provide state-of-the-art high speed communication link for audio and video to the users in the zone. There should be a video conferencing facility in the office of the Developer and the Development Commissioner in the Zone which should be operational for use by the DC for reviews as well as for meeting with the State Government Departments/ Central Government Departments as well as investors.

Mass Transportation

Developer should provide mass transportation facilities in the Zone. The State Government should provide appropriate connectivity for mass transportation from the nearby towns to the Zone and the Developer should take appropriate steps for the same.

Priority to Small Scale Units in SEZ

Setting up of "Small Scale Units" as defined under the Micro, Small and Medium Enterprises Development Act, 2006, in the SEZs, should be encouraged. Accordingly, the SEZ developers should make a conscious attempt to bring small scale units in the SEZs. Development Commissioners of the Central Government SEZs should ensure that preference is given to the small scale units while allotting space in the SEZs. Similarly in respect of other SEZs also the SEZ developer should give preference to the SSI units while allotting space in the SEZs.

Special Economic Zone shall be deemed to be Airport/ICD

The Special Economic Zone shall be deemed to be a port, airport, inland container depot (ICD), land customs station under Section 7 of the Customs Act, 1962 in accordance with the provisions of Section 53 of SEZ Act, 2005 from the date notified in this behalf.

The Specified Officer may designate any area or area(s) in the Special Economic Zone as an area for loading and unloading of import or export cargo.

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In case the said port, airport, inland container depot, land customs station area is to be used for loading and unloading of import or export cargo meant for Domestic Tariff Area importers and exporters also, storage for such cargo shall be in a separate enclosure and deliveries for such cargo shall be allowed by the Authorized Officer of the Special Economic Zone based on Bill of Entry, assessed by the Assistant or Deputy Commissioner of Customs having jurisdiction over the said customs station.

Transfer of In-principle or Formal approval issued to a SEZ Developer to its subsidiary or SPV

The Board in its meeting held on 15-01-2009 noted that there were a large number of cases pending for change of name/transfer of approvals. Since these approvals have not been effected, in many cases, the firms have not been able to make any progress in respect of the projects.

The key issue raised by the CBDT was that there is no provision in the SEZ Act, 2005 for considering such proposals and he stated that if a policy decision was to be taken then all stakeholders need to be consulted.

Further it would be desirable to amend the SEZ Act, 2005 or the SEZ Rules, 2006 as the case may be before these proposals could be considered.

It was brought out by the Department of Commerce representatives that the Board of Approval had in the past allowed the transfer of approvals to 100% subsidiaries or to such entities where the controlling interest of the original developer continued to be there. In other cases in which the names of the companies themselves had been changed these had been noted by the Board. It would not be possible for the SEZ Act and Rules to spell out every single activity and in many cases the General Clauses Act should be noted. The representative of the Department of Commerce also pointed out the cases under consideration could be described in four categories, viz.,

- (i) where the 100% subsidiary is being created and the ownership remained with the original developers;
- (ii) where an SPV had been constituted on account of the requirement as stipulated by the State Government or its Industrial Development Corporations which had provided the land to have at least a 10% share;

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- (iii) where the revised share-holding pattern was not available; or
- (iv) where there was a transfer of ownership. It was suggested that in the first two cases there should be no objection to the transfer as the ownership pattern remained by and large the same. There was also no question of any tax loss as these were still only at the stage of In-principle or Formal approvals.

Discussions then took place on the issue wherein all the representatives of the State Governments and other Central Ministries opined that there may not be any objection to the transfer of the formal approval/ in-principle approval in the first two categories mentioned above. Representatives of the Ministry of Law reiterated the opinion expressed by them earlier.

In the detailed discussions that followed, the Members of BOA and State Government representatives were of the opinion that in terms of normal trade practices and commercial transactions, formation of subsidiaries/SPVs/JVs are quite common. These entities are created to carry out the specific functions assigned to them and they also have all the legal obligations and duties as the Principals constituting them. As long as the original ownership pattern in the changed company remains, there can be no serious reservations about change of name. Further, the misuse of tax provisions in most of the cases may not happen as they have not been formally notified and are yet to commence any serious operations. It was also noted that in the past, change of name in respect of 100% subsidiary companies was being permitted. The representatives of Ministry of Law reiterated their earlier advice that it is for the administrative department to take policy decision whether to facilitate such transfers subject to the safeguards that the same is not misused or an amendment to the Act may be made. BoA took into account the advice of Ministry of Law and also the provisions under section 9 (2) of the SEZ Act, 2005. Accordingly, the Board decided to approve change of name/transfer of approvals in the following categories based on the above discussion:-

- (i) Category I – Where there is mere change in name and no change in share holding pattern of the original developer.
- (ii) Category II – Where approval is transferred to a 100% SPV or a wholly owned subsidiary (WOS) of the developer company.

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- (iii) Category III- De-merger in terms of a Court decision.
- (iv) Category IV- Where partly the equity is held by State Government or one of its organisations by virtue of the State Government's requirement

BOA further indicated that these guidelines will be valid henceforth with respect to change of name/ transfer of approval cases. It was further decided that in regard to the rest of the cases the Department of Commerce would separately examine the matter in consultation with the Department of Revenue.

EEFC Account – SEZ Developers

According to RBI Circular No.22 dated 29th December, 2009, SEZ developers are allowed to open, hold and maintain EEFC (Exchange Earner's Foreign Currency) Account and to credit upto 100 per cent of their foreign exchange earnings in the EEFC account.

6

AUTHORITIES FOR SINGLE WINDOW CLEARANCE

There are four Authorities which formulate and regulate the basic concept of Single window clearance for Special Economic Zones.

1. Board of Approval
2. Development Commissioner
3. Approval Committee
4. SEZ Authority

Functions of Board of Approval

- (a) granting of approval or rejecting proposal or modifying such proposals for establishment of the Special Economic Zones;
- (b) granting approval for authorised operations to be carried out in the Special Economic Zones by the Developer;
- (c) granting of approval to the Developers or Units (other than the Developers or the Units which are exempt from obtaining approval under any law or by the Central Government) for foreign collaborations and foreign direct investments, (including investments by a person resident outside India), in the Special Economic Zone for its development, operation and maintenance;

Authorities for Single Window Clearance

- (d) granting of approval or rejecting of proposal for providing infrastructure facilities in a Special Economic Zone or modifying such proposals;
- (e) granting, notwithstanding anything contained in the Industries (Development and Regulation) Act, 1951, a licence to an industrial undertaking referred to in clause (d) of section 3 of that Act, if such undertaking is established, as a whole or part thereof, or proposed to be established, in a Special Economic Zone;
- (f) suspension of the letter of approval granted to a Developer and appointment of an Administrator;
- (g) disposing appeals;
- (h) performing such other functions as may be assigned to it by the Central Government.

Development Commissioner (DC)

The Development Commissioner will be overall in charge of the Special Economic Zone and exercise administrative control. The DC is a Central Government employee not below the rank of Deputy Secretary.

Functions of Development Commissioner

- (a) guide the entrepreneurs for setting up of Units in the Special Economic Zone;
- (b) ensure and take suitable steps for effective promotion of exports from the Special Economic Zone;
- (c) ensure proper co-ordination with the Central Government or State Government Departments concerned or agencies with respect to, or for the purposes, of clauses (a) and (b);
- (d) monitor the performance of the Developer and the Units in a Special Economic Zone ;

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- (e) discharge such other functions as may be assigned to him by the Central Government under the SEZ Act, 2005 or any other law for the time being in force; and
- (f) discharge such other functions as may be delegated to him by the Board;
- (g) any question as to whether any goods or services are required for authorized operation or not, shall be decided by the Development Commissioner;
- (h) Development Commissioner shall do the demarcation of Processing and Non Processing area;
- (i) Development Commissioner will analyse all the proposals made by developer for consideration by BOA and send his comments to BOA for speedy disposal.

Approval Committee

The Central Government has to constitute a committee for every SEZ to be called the **Approval Committee** within six months from the date of establishment of such Special Economic Zone.

Every Approval Committee should consist of –

- (a) the Development Commissioner - Chairperson, ex officio;
- (b) two officers of the Central Government to be nominated by the Central Government-Members, ex officio;
- (c) two officers of the Central Government to represent the Ministry or Department dealing with revenue – Members, ex officio;
- (d) one officer of the Central Government to be nominated by that Government to represent the Ministry or Department dealing with the economic affairs (financial services) – Members, ex officio;
- (e) two officers of the State Government concerned to be nominated by that Stated Government – Member, ex officio;

Authorities for Single Window Clearance

- (f) a representative of the Developer concerned – Special invitee.

Powers and functions of Approval Committee

- (a) approve the import or procurement of goods from the Domestic Tariff Area, in the Special Economic Zone for carrying on the authorised operations by a Developer;
- (b) approve the providing of services by a service provider, from outside India, or from the Domestic Tariff Area, for carrying on the authorised operations by the Developer, in the Special Economic Zone;
- (c) monitor the utilisation of goods or services or warehousing or trading in the Special Economic Zone;
- (d) approve, modify or reject proposals for setting up Units for manufacturing or rendering services or warehousing or trading in the Special Economic Zone [other than the grant of licence under clause (e) of sub-section (2) of section 9 of SEZ Act, 2005] in accordance with the provisions of sub-section (8) of section 15 of SEZ Act, 2005 provided that where the Approval Committee is unable to decide whether a particular process constitutes manufacture or not, it shall refer the same to the Board of Approval for a decision;
- (e) allow, on receipt of approval under clause (c) of sub-section (2) of section 9 of SEZ Act, 2005, foreign collaborations and foreign direct investments (including investments by a person outside India) for setting up a Unit;
- (f) monitor and supervise compliance of conditions subject to which the letter of approval or permission, if any, has been granted to the Developer or entrepreneur; and
- (g) perform such other functions as may be entrusted to it by the Central Government or the State Government concerned, as the case may be.

For effective mechanism of single window concept the Board of Approval (BoA) has issued the following guidelines:

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- (a) It is essential that the meetings of Approval Committee are held on a fixed day as decided by the Development Commissioner once in a fortnight.
- (b) Wherever the Development Commissioner and Director STPI are located at the same place, the meeting of the UAC (Unit Approval Committee) shall be held at the Office of the Development Commissioner and it will be a combined meeting with separate agendas. Minutes of all the meetings will be issued separately.
- (c) If there is no matter for approval, this meeting should be used for reviewing the progress of development of the Zone and Unit therein.
- (d) The meetings should be held after issue of prior notice to the Members of the Committee.
- (e) These meetings could be done through Video Conference / Tele-Conference Mechanism as per the convenience of all concerned.
- (f) It is necessary to review the progress of the development of the Zone – new Zones which have not taken effective steps as per Rule 6(2)(a) of SEZ Rules, 2006 - once in a month and Zones which have taken effective steps – once a quarter.
- (g) The Approval Committee will also update a list of pending cases for approval before State or any Department of Commerce (DOC) and BOA. The information pertaining to DOC and BOA and in any other department of GOI shall be prepared separately for each category on the land attached and will be sent to Ministry of Commerce for being placed before the BOA.
 - (i) The review should include – development planning of infrastructure status of and implementation.
 - (ii) Marketing of the Zone along with the State Government to attract units.

SEZ Authority

Authorities for Single Window Clearance

1. The Central Government shall, constitute, for every Special Economic Zone Authority to exercise the powers conferred on, and discharge the functions assigned to, as per the provisions of SEZ Act, 2005.
2. SEZ Authority will be a body corporate, having perpetual succession and a common seal, with a power, subject to the provisions of the SEZ Act, 2005 to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue and be sued.
3. Every Development Commissioner of the Special Economic Zone shall be the chief executive of the Authority concerned and exercise such powers and perform such functions as may be prescribed.

Functions of SEZ Authority

It is the duty of each Authority to undertake such measures as it thinks fit for the development, operation and management of the Special Economic Zone.

- (a) the development of infrastructure in the Special Economic Zone;
- (b) promoting exports from the Special Economic Zone;
- (c) reviewing the functioning and performance of the Special Economic Zone;
- (d) levy user or service charges or fees or rent for the use of properties belonging to the Authority;
- (e) performing such other functions as may be prescribed.

State Perspective

Rule 5(5) of SEZ Rules, 2006 is the most important provision for the success of a SEZ according to which before recommending any proposal for setting up of a Special Economic Zone, **the State Government shall endeavor** that the following are made available in the State to the proposed Special Economic Zone Units and Developer, namely:—

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- (a) exemption from the State and local taxes, levies and duties, including stamp duty, and taxes levied by local bodies on goods required for authorized operations by a Unit or Developer, and the goods sold by a Unit in the Domestic Tariff Area except the goods procured from domestic tariff area and sold as it is;
- (b) exemption from electricity duty or taxes on sale, of self generated or purchased electric power for use in the processing area of a Special Economic Zone;
- (c) allow generation, transmission and distribution of power within a Special Economic Zone ;
- (d) providing water, electricity and such other services, as may be required by the developer, be provided or caused to be provided;
- (e) delegation of power to the Development Commissioner under the Industrial Disputes Act, 1947 and other related Acts in relation to the Unit;
- (f) delegation of power to the Development Commissioner under the Industrial Disputes Act, 1947 in relation to the workmen employed by the Developer;
- (g) declaration of the Special Economic Zone as a Public Utility Service under the Industrial Disputes Act, 1947;
- (h) providing single point clearance system to the Developer and unit(s) under the State Acts and rules.

Board of Approval has issued the following guidelines for State Level High Powered Committee

- (i) For effective disposal of cases by the State level Single Window Committee, it is necessary to provide a single interface on behalf of the Department of Commerce in each State. Hence, it has been decided that the Development Commissioners shall be the Zonal Development Commissioners for certain States.
- (ii) The Zonal Development Commissioners will have a compilation of all

Authorities for Single Window Clearance

matters pending before the State Level Single Window Committee pertaining to all SEZs in the State, including IT SEZs, and will work with the respective coordinating department of the State for having a meeting to get the clearance.

- (iii) Some States, namely Gujarat, Maharashtra, Karnataka, Andhra Pradesh, Tamil Nadu where a large number of SEZs are coming up, it may be necessary to have a monthly meeting to facilitate the development of SEZs. In other States, at least a meeting in each quarter should be held. This meeting may be used as an opportunity to apprise the State Government of benefits flowing to the State from SEZ by way of investment, direct / indirect employment, revenue (from DTA sale).
- (iv) After each meeting the Chief Secretary may be requested to issue a Press Note or hold a Press Conference on the subject; as may be deemed appropriate.
- (v) In each Zone one of the officers shall be nominated by the Development Commissioner as the Development Officer whose responsibility would be to facilitate clearances of the Developer and the Units which are pending with any Department of the State Government.

Single Window Mechanism for granting Environmental Clearances

As per Instruction No. 73 dated 29th December, 2010, the State Pollution Control Boards (SPCBs) will adopt an integrated system for granting environmental clearances for setting up hazardous waste recycling units, including e-waste recycling facilities in SEZ.

7

PROCEDURE FOR APPROVAL OF AUTHORIZED OPERATIONS

The Developer at the time of filing application for setting up of Special Economic Zone or after notification of Special Economic Zone is required to file an application in Form C7 to the Development Commissioner who shall forward it within a period of 15 days to the Board with his recommendations and the details of operations proposed to be undertaken in the Special Economic Zone.

All the exemptions, drawbacks and concessions shall be available for the authorized operations as per the procedure specified in Rule 12 of SEZ Rules, 2006 after the Special Economic Zone had been notified under Rule 8 of SEZ Rules, 2006.

The Developer of an existing Special Economic Zone should submit to the Board the details of operations proposed to be undertaken in the Special Economic Zone for the purpose of availing exemptions, drawbacks and concessions.

The Central Government by Notification No.F.5/1/2010-SEZ, Instruction No.50, has issued a consolidated list of default authorised operations which can be undertaken by the developer/approved co-developer by default from the date of notification i.e. 15th March, 2010. Amendments have also been made to this notification by Instruction No.54 dated 30th April, 2010. For authorised activities not included in the list below, the developer/co-developer should obtain prior approval of the Board of Approval through the concerned Development Commissioner.

Procedure for Approval of Authorized Operations

(A) FOR ALL TYPES OF SEZs

1. Roads with Street lighting, Signals and Signage
2. Water treatment plant, water supply lines (dedicated lines up to source), sewage lines, storm water drains and water channels of appropriate capacity.
3. Solid and liquid waste collection, treatment and disposal plants including pipelines and other necessary infrastructure for sewage and garbage disposal, Sewage treatment plants.
4. Electrical, Gas and Petroleum Natural Gas Distribution Network including necessary sub-stations of appropriate capacity, pipeline network etc.
5. Telecom and other communications facilities including internet connectivity.
6. Rain water harvesting plant.
7. Fire protection system with sprinklers, fire and smoke detectors.
8. Landscaping and water bodies.
9. Boundary wall.
10. Office space for Development Commissioner, Customs, Security and State Governments staff.
11. Security offices, police posts, etc, at entry, exit and other points within and along the periphery of the site.
12. Effluent treatment plant and pipelines and other Infrastructure for Effluent treatment.
13. Common Data centre with inter-connectivity. Play ground.
14. Bus bays.
15. Wi Fi/Wi Max Services.

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16. Drip and Micro irrigation systems.
17. Parking including Multi-level car parking (automated / manual).
18. Recreational facilities such as Indoor/Outdoor games, gymnasium/ Employee's restroom in processing area.
19. Employee welfare facilities like Crèche, Medical center and other such Facilities.
20. Air conditioning of processing area.
21. Construction of all type of Buildings in processing area as approved by the Unit Approval Committee.
22. Power (including power back up facilities) for captive use only.
23. Access control and Monitoring system.
24. Space for Banks/ATMs
25. Warehouses as approved by the Unit Approval Committee.
26. Cafeteria/ Canteen for staff in processing area
27. Weigh Bridges
28. Library
29. Fuel storage and distribution system
30. Fire station and Police Station buildings and equipments

**(B) IT/ITES/EH&SW, Biotechnology/Gems and Jewellery
SEZ/Handicrafts/Nonconventional**

Energy including solar energy equipments [in addition to those listed at (A)]

1. One First-Aid post or 10-bedded Clinic/Poly clinic/Pharmacy/ Medical

Procedure for Approval of Authorized Operations

Center

(C) Sector Specific Special Economic Zones or one or more Services or in a port or airport [in addition to those listed at (A)]

1. First-Aid post or 20-bedded Clinic/Poly clinic/Pharmacy/ Medical Center, one hospital (up to 50 beds) (in the non-processing area only).
2. One Primary School (in the non-processing area only).

(D) Special Economic Zones for Free Trade and Warehousing [in addition to those listed at (A)]

1. One First-Aid post or 10-bedded Clinic/Poly clinic/Pharmacy/ Medical Center

(E) Multi-Product Special Economic Zones [in addition to those listed at (A)]

1. First-Aid post(s) and/or 20-bedded Clinic(s)/Poly clinic(s)/Pharmacy(s)/ Medical Center(s), one hospital (up to 50 beds) (in the non-processing area only).
2. One Primary School (in the non-processing area only).
3. Power (including power back-up facilities) subject to power guidelines.

Note: *“For IT/ITES/EHS, Bio-technology, Gems & Jewellery, Handicrafts sector, Non-Conventional Energy including solar energy equipments/cell and Stand alone FTWZs, SEZs of 100 Hectares or more also, the above guidelines for Multi product SEZs shall be applicable”.*

Prescribed Time limit for construction of SEZ [Rule 5 (7) of

SEZ Rules, 2006]

The Developer or Co-developer should construct the minimum built up area within a period of ten years from the date of notification of the Special Economic Zone in which at least fifty percent of such area should be constructed within a period of five years from the date of such notification.

Infrastructure requirements relating to Information Technology (Rule 5A)

In case of a Special Economic Zone relating to information technology, the following facilities should be ensured, namely:—

- (a) twenty-four hours uninterrupted power supply at stable frequency in the Zone;
- (b) reliable connectivity for uninterrupted and secure data transmission;
- (c) provision for central air-conditioning system; and
- (d) a ready-to-use, furnished plug and pay facility for end users.]

8

EXEMPTION FROM TAXES, DUTIES OR CESS

As per the provision of Section 7 of SEZ Act, 2005 any goods or services exported out of, or imported into, or procured from the Domestic Tariff Area by,

- (i) a Unit in a Special Economic Zone; or
- (ii) a Developer will be exempt from the payment of taxes, duties or cess under all enactments specified in the First Schedule.

The following Acts are specified in the First Schedule -

1. The Agricultural Produce Cess Act, 1940 (27 of 1940).
2. The Coffee Act, 1942 (7 of 1942).
3. The Mica Mines Labour Welfare Fund Act, 1946 (22 of 1946).
4. The Rubber Act, 1947 (24 of 1947).
5. The Tea Act, 1953 (29 of 1953).
6. The Salt Cess Act, 1953 (49 of 1953).

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7. The Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955).
8. The Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957).
9. The Sugar (Regulation of Production) Act, 1961 (55 of 1961).
10. The Textiles Committee Act, 1963 (41 of 1963).
11. The Produce Cess Act, 1966 (15 of 1966).
12. The Marine Products Export Development Authority Act, 1972 (13 of 1972).
13. The Coal Mines (Conservation and Development Act, 1974 (28 of 1974).
14. The Oil Industry (Development) Act, 1974 (47 of 1974).
15. The Tobacco Cess Act, 1975 (26 of 1975).
16. The Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978).
17. The Sugar Cess Act, 1982 (3 of 1982).
18. The Jute Manufactures Cess Act, 1983 (28 of 1983).
19. The Agricultural and Processed Food Products Export Cess Act, 1985 (3 of 1986).
20. The Spices Cess Act, 1986 (11 of 1986).
21. The Research and Development Cess Act, 1986 (32 of 1986).

Special Fiscal Provisions for Special Economic Zones

Every Developer and entrepreneur is entitled to the following exemptions, drawbacks and concessions as provided under Sec.26 of the SEZ Act, 2005: -

Exemption from Taxes, Duties or Cess

- (a) exemption from any duty of customs, under the Customs Act, 1962 or the Custom Tariff Act, 1975 or any other law for the time being in force, on goods imported into, or service provided in a Special Economic Zone or a Unit, to carry on the authorised operations by the Developer or entrepreneur;
- (b) exemption from any duty of customs, under the Customs Act, 1962 or the Customs Tariff Act, 1975 or any other law for the time being in force, on goods exported from, or services provided, from a Special Economic Zone or from a Unit, to any place outside India;
- (c) exemption from any duty of excise, under the Central Excise Act, 1944 or the Central Excise Tariff Act, 1985 or any other law for the time being in force, on goods brought from Domestic Tariff Area to a Special Economic Zone or Unit, to carry on the authorised operations by the Developer or entrepreneur;
- (d) drawback or such other benefits as may be admissible from time to time on goods brought or services provided from the Domestic Tariff Area into a Special Economic Zone or Unit or services provided in a Special Economic Zone or Unit by the service providers located outside India to carry on the authorised operations by the Developer or entrepreneur;
- (e) exemption from service tax under Chapter-V of the Finance Act, 1994 on taxable services provided to a Developer or Unit to carry on the authorised operations in a Special Economic Zone;
- (f) exemption from the securities transaction tax leviable under section 98 of the Finance (No. 2) Act, 2004 in case taxable securities transactions are entered into by a non-resident through the International Financial Services Centre;
- (g) exemption from levy of taxes on the sale or purchase of goods other than newspapers under the Central Sales Tax Act, 1956 if such goods are meant to carry on the authorised operations by the Developer or entrepreneur.

It is important to note that contractors including sub-contractors appointed by such Developer or Co-developer will also be entitled for exemptions, drawbacks

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and concessions on the goods and services allowed to a Developer or Co-developer, provided all the documents shall bear the name of the Developer or Co-developer along with the contractor or sub-contractor and these are filed jointly in the name of the Developer or Co-developer and the contractor or sub-contractor, as the case may be.

The Developer or Co-developer, as the case may be, will be responsible and liable for proper utilization of such goods in all cases.

Applicability of Income Tax Act, 1961 to Developers and Entrepreneurs

The provisions of Income-tax Act, 1961 will apply with certain modification in relation to Developers and entrepreneurs for carrying on the authorised operations.

Income Tax Exemption to SEZ Developer

SEZ Developers are entitled for Income Tax Exemption under Sec 80-IAB of the Income Tax Act, 1961 in respect of SEZ notified on or after 01.04.2005 whereas SEZ notified before 01.04.2005 will be allowed for exemption under section 80-IA of the Income Tax Act, 1961.

Allowable Deductions

A deduction equal to 100% of the profits and gains derived from such business for 10 consecutive assessment years will be available. The assessee has the option of claiming the said deduction for any 10 consecutive assessment years out of 15 years beginning from the year in which a SEZ has been notified by the Central Government.

Transfer of undertaking

If a taxpayer who develops a Special Economic Zone on or after April 1, 2005 ("transferor") transfers the operation/maintenance of such zone to another developer ("transferee"), then deduction shall be allowed to the transferee for the remaining period of 10 years as if the operation and maintenance were not so transferred.

Exemption from Taxes, Duties or Cess

Audit report

Accounts of the undertaking for the Previous year relevant to the Assessment year for which the deduction is claimed must have been audited, and the assessee must furnish, along with his return of income, the report of such audit in the prescribed form – Form 10 CCB (of Income Tax Act, 1961) duly signed and verified by the accountant.

Exemption from Dividend distribution tax

Sec 111-O (6) of Income Tax Act, 1961 provides that no tax on dividends would be chargeable in respect of the total income of an undertaking or enterprise engaged in:

- a developing a SEZ or
- b developing and operating a SEZ or
- c developing, operating and maintaining a SEZ

if such dividend (whether interim or otherwise) is declared, distributed or paid by such Developer or enterprise, on or after the 1st day of April, 2005 out of its current income. Further, there will be no tax either in the hands of the Developer or enterprise or person receiving such dividend.

Exemption from Minimum Alternate Tax

Minimum Alternate Tax under Sec.115JB of the Income Tax Act is not applicable to the income arising on or after 1st April, 2005 to SEZ units or developers of SEZs.

Exemption to SEZ Units

Sec 10 AA of Income Tax Act, 1961 provides for exemption to newly established units in Special economic zones on or after 01.04.2005.

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The conditions are as follows:

- a. assessee should be an entrepreneur (i.e. person who has been granted approval by Development Commissioner) as per Sec 2 (j) of SEZ Act,2005.
- b. unit should begin to manufacture or produce articles or things or provide any services during the Previous Year relevant to any Assessment Year commencing on or after 01.04.2006.
- c. assessee should export his goods or services by any mode-physical or otherwise.

Allowable Deductions for SEZ Units

1. 100% of Profits from export will be available for 5 consecutive years.
2. 50% of Profits from exports for further 5 assessment years.
3. 50% of Profits as credited to “Special Economic Zone Re-investment Reserve Account” will be available for further 5 assessment years. This Special reserve can be utilized for Acquiring machinery or plant within three years .Until the acquisition of the machinery or plant, the amount can be utilized for the purposes of the business of the undertaking other than
 - (i) for distribution by way of dividends or profits or
 - (ii) for remittance outside India as profits or
 - (iii) for the creation of any asset outside India

Audit report

Accounts of the undertaking for the Previous year relevant to the Assessment year for which the deduction is claimed must have been audited, and the assessee must furnish, along with his return of income, the report of such audit in the prescribed form duly signed and verified by the accountant.

Prevention of Shifting of existing Business to SEZ

In order to regulate shifting of existing businesses from DTA to SEZs to avail of the direct tax exemption on the export income, the government has substituted subsection (4) of Section 10AA of Income-tax Act as below:

“(4) This section applies to any undertaking, being the Unit, which fulfils all the following conditions, namely:

- (i) it has begun or begins to manufacture or produce articles or things or provide services during the previous year relevant to the assessment year commencing on or after the 1st day of April, 2006 in any Special Economic Zone;*
- (ii) it is not formed by the splitting up, or the reconstruction, of a business already in existence: Provided that this condition shall not apply in respect of any undertaking, being the Unit, which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section.*
- (iii) it is not formed by the transfer to a new business, of machinery or plant previously used for any purpose.*

Explanation: *The provisions of Explanations 1 and 2 to sub-section (3) of section 80-IA shall apply for the purposes of clause (iii) of this sub-section as they apply for the purposes of clause (ii) of that sub-section.”*

Relevant extract from Section 80IA of Income Tax Act, 1961 referred to in the new subsection are as below:

Explanations to sub-section (3) of Section 80 IA of Income Tax Act, 1961 :

Explanation 1.—For the purposes of clause (ii), any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or plant previously used for any purpose, if the following conditions are fulfilled, namely :—

- (a) such machinery or plant was not, at any time previous to the date of the*

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installation by the assessee, used in India;

- (b) such machinery or plant is imported into India from any country outside India; and
- (c) no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of this Act in computing the total income of any person for any period prior to the date of the installation of machinery or plant by the assessee.

Explanation 2.—Where in the case of an undertaking, any machinery or plant or any part thereof previously used for any purpose is transferred to a new business and the total value of the machinery or plant or part so transferred does not exceed twenty per cent of the total value of the machinery or plant used in the business, then, for the purposes of clause (ii) of this sub-section, the condition specified therein shall be deemed to have been complied with.

Exemption of capital gains from transfer of capital assets

The exemption is available to all categories of assesses on capital gain arising on the transfer of certain capital asset of industrial undertaking from urban area to SEZ (whether developed in an urban area or not) under Sec 54 GA of the Income Tax Act, 1961.

Conditions:

The Asset transferred should be machinery or plant or building or land or any rights in building or land.

The capital gain should be utilized within one year before or three years after the date of transfer for the specified purpose.

The amount of capital gain which is not so utilised for the specific purposes should be deposited in an account with any specified bank or institution and utilised in accordance with the scheme notified by the Central Government.

Exemption

Exemption from Taxes, Duties or Cess

The amount of exemption will be equal to (a) amount of capital gains in shifting or (b) cost and expenses incurred in shifting etc. whichever is lower.

Offshore banking unit and unit of International Financial Service centre

Sec 80 LA of the Income Tax Act, 1961 provides for full exemption from income to offshore banking unit and unit in International Financial service centre for first five years and 50 % exemption in subsequent five years.

The income includes the following incomes:

- from an Offshore Banking Unit in a Special Economic Zone; or
- from the business referred to in sub-section (1) of section 6 of the Banking Regulation Act, 1949 with an undertaking located in a Special Economic Zone or any other undertaking which develops, develops and operates or develops, operates and maintains a Special Economic Zone; or
- from any Unit of the International Financial Services Centre from its business for which it has been approved for setting up in such a Centre in a Special Economic Zone.

Conditions:

- a. a report from a Chartered Accountant in Form No. 10CCF (of Income Tax Act, 1961) certifying that the deduction has been correctly claimed in accordance with the provisions of this section should be submitted along with the return of income.
- b. a copy of permission obtained under section 23(1)(a) of Banking Regulation Act, 1949 should be submitted along with the return of income.

Developing and building housing projects

Sec 80-IB (10) of Income Tax Act, 1961 deals with deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings.

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The amount of deduction in the case of an undertaking developing and building housing projects approved before the 31st day of March, 2007 by a local authority shall be hundred per cent of the profits derived in the previous year relevant to any assessment year from such housing project if,

- a such undertaking has commenced or commences development and construction of the housing project on or after the 1st day of October, 1998 and completes such construction,
 - i. in a case where a housing project has been approved by the local authority before the 1st day of April, 2004, on or before the 31st day of March, 2008;
 - ii. in a case where a housing project has been, or, is approved by the local authority on or after the 1st day of April, 2004, within four years from the end of the financial year in which the housing project is approved by the local authority.
- b the project is on the size of a plot of land which has a minimum area of one acre:
- c the residential unit has a maximum built-up area of one thousand square feet where such residential unit is situated within the city of Delhi or Mumbai or within twenty-five kilometres from the municipal limits of these cities and one thousand and five hundred square feet at any other place; and
- d the built-up area of the shops and other commercial establishments included in the housing project does not exceed five per cent of the aggregate built-up area of the housing project or two thousand square feet, whichever is less.

Newly established undertakings in free trade Zones

A deduction of such profit and gains as are derived by an undertaking from the export of article or thing or computer software shall be allowed from total income of assessee.

Exemption from Taxes, Duties or Cess

Conditions:

- a it should begin manufacturing or producing articles/things or computer software during previous year
 - i assessment Year 1981-1982 or thereafter in any free trade zone.
 - ii 1993-94 or thereafter in any EHTP or STP
 - iii 2000-01 or thereafter in any special Economic Zone
- b it should not be formed by splitting up or reconstruction of an existing business.
- c it should not be formed by transfer of machinery or plant, previously used for any purpose to new business.
- d the sale proceeds of the article or thing should be brought into India by assessee in convertible foreign Exchange within 6 months from the end of the previous year.

Period of Exemption

The profits and gain will not be included in the total income of the assessee in respect of any 10 consecutive assessment years beginning with the year in which undertaking begins to manufacture, produce article or thing or computer software.

Section 10A (1A) of Income Tax Act, 1961 - Units established in special Economic Zone on or after 1.4.2002 -

- a a deduction of 100% of profit and gains from such business from the total income for first 5 assessment years.
- b thereafter 50% of such profits and gains for next 2 yrs.
- c deduction beyond 7 years mentioned above for next 3 years can be claimed if certain conditions are satisfied.

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Consequent to insertion of new section 10AA, providing for a tax holiday in respect of newly established Units in SEZ, sub-section (7B) has been inserted in section 10A of the Income Tax Act, 1961.

“The provisions of this section shall not apply to any undertaking, being a Unit referred to in clause (zc) of section 2 of the Special Economic Zones Act, 2005, which has begun or begins to manufacture or produce articles or things or computer software during the previous year relevant to the assessment year commencing on or after the 1st day of April, 2006 in any Special Economic Zone.”

Investors in SEZ

Exemption is provided to investors in special economic Zones under Sec.10 (23G) of the Income Tax Act, 1961.

Incomes not included in total income

Sec.10(23G) of Income Tax Act, 1961 - any income by way of dividends [, other than dividends referred to in section 115-O], interest or long-term capital gains of an infrastructure capital fund or an infrastructure capital company [or a co-operative bank] from investments made on or after the 1st day of June, 1998 by way of shares or long-term finance in [any enterprise or undertaking wholly engaged in the business referred to in sub- section (4) of section 80-IA or sub-section (3) of section 80-IAB] or a housing project referred to in sub-section (10) of section 80-IB] [or a hotel project or a hospital project] and which has been approved by the Central Government on an application made by it in accordance with the rules made in this behalf and which satisfies the prescribed conditions : [Provided that the income, by way of dividends, other than dividends referred to in section 115-O, interest or long-term capital gains of an infrastructure capital company, shall be taken into account in computing the book profit and income-tax payable under section 115JB.]

Income of a non-resident

a Interest received on a deposit made on or after the 1st day of April, 2005,

Exemption from Taxes, Duties or Cess

in an Offshore Banking Unit by

- i Non resident or
 - ii a person who is not ordinarily resident in India is exempt under (Section 10(15) (viii) of Income Tax Act, 1961)
- b Offshore Banking Unit is not required to make any tax deduction from the interest paid:
- i On deposit made on or after the 1st day of April, 2005, by a non-resident or a person not ordinarily resident in India; or
 - ii On borrowing, on or after the 1st day of April, 2005, from a non-resident or a person not ordinarily resident in India. (Sec 197 A (ID) of Income tax Act, 1961)

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IMPORT AND PROCUREMENT BY DEVELOPER

Procedure for Import and procurement of goods by the Developer- Rule 12 of SEZ Rules, 2006

The Developer can import or procure goods and services from the Domestic Tariff Area without payment of duty, taxes and cess for the authorities operations subject to certain conditions.

- (1) The Developer should make an application (after obtaining approval for the authorized operation) to the Development Commissioner, along with the list of goods and services, including machinery, equipments and construction materials required for the authorized operations.
- (2) The list of goods and services, including machinery, equipments and construction materials should be duly certified by a Chartered Engineer for approval by the Approval Committee.
- (3) The Developer should declare the place of storage of goods within the Special Economic Zone to the Specified Officer. If the storage is outside the processing area but within the Special Economic Zone, such storage should comply with such safeguards as may be necessary for the purpose and approved by the Specified Officer.
- (4) The goods imported or procured from the Domestic Tariff Area should be kept separately for inspection by the authorized officer before such goods are brought into use.

Execution of Bond-Cum-Legal Undertaking

The Developer should execute a Bond-cum-Legal Undertaking in Form D, jointly with the Development Commissioner and Specified Officer, with regard to proper accountal and utilization of goods for the authorized operations within a period of one year or such period, as may be extended by the Specified Officer.

Accounts and filing of returns

The Developer should maintain a proper account of the import or procurement of goods from the Domestic Tariff Area, consumption and utilization of goods and submit quarterly report in Form E to the Development Commissioner for placing the same before the Approval Committee for consideration.

The Developer should submit a half-yearly certificate for the period ending 31st March and 30th September of every financial year regarding utilization of goods from an independent Chartered Engineer, other than the one who has given a certificate for the purpose of approval mentioned above, to the Development Commissioner and Specified Officer and every certificate under this para should be filed within thirty days of the period specified, as the case may be.

Removal of Goods to Domestic Tariff Area

The Developer shall not remove goods from the Special Economic Zone to the Domestic Tariff Area except with the permission of the Specified Officer and on payment of duty applicable on such goods.

It is important to note that the procedures applicable to Units on import or procurement of goods and services, their admission, clearance of goods, shall apply, mutatis-mutandis, to the Developer, except that in case of a Developer, goods imported or procured from Domestic Tariff Area shall be allowed to be moved or utilized for the purposes of authorized operations in the non-processing area of Special Economic Zone as well. The detailed procedure has been discussed in next section viz, setting up of unit in Special Economic Zone.

The utilisation of goods imported or procured from the Domestic Tariff Area by the Developer will be monitored by the Approval Committee.

Reimbursement of Duty (RoD) in lieu of drawback

1. The following procedure should be followed for Reimbursement of Duty (RoD) in lieu of drawback against supply of goods to SEZ Developers against Indian Rupees:-
 - (i) The Developer should file a duty reimbursement claim in prescribed format (Form '1') with the Development Commissioner within a period of twelve months from date of payment on a monthly or quarterly basis at the option of claimant.
 - (ii) On application received within six months after the expiry of last date, 2% cut shall be imposed. In case the application is received after this period but within another six months, 5% cut shall be imposed.
 - (iii) The developer shall enclose the following documents in original along with the self attested copies:
 - (a) Assessed triplicate copy of bill of export;
 - (b) Original invoice of the supplier issued under Rule 11 of Central Excise Rules 2002;
 - (c) Original ARE-1, if applicable;
 - (d) Proof of payment in (Form '2');
 - (e) Disclaimer Certificate from DTA supplier on letter head that no CENVAT on raw material has been availed.
2. Reimbursement of Duty (RoD) will be given on the basis of All Industry Rate of drawback. In case All Industry Rate of drawback is not available for the product on which reimbursement is sought, the developer can claim the reimbursement on the basis of actual duty paid subject to submission of original duty paid documents.
3. Application should be submitted at the Counter and on receipt of

Import and Procurement by Developer

application, complete in all respects, the Development Commissioner will process the reimbursement claim and if satisfied that the claim is in order, will sanction the claim within 30 days of such claim being filed.

4. After processing of reimbursement claim, original documents evidencing payment shall be defaced with the remark 'Duty Paid/Rejected'. 5% of Bank Certificates and Duty paying documents shall be sent for verification to the respective Banks/Commissionerates post sanction. Random selection of claims shall be done by Development Commissioner personally every 6 months.
5. The Reimbursement of Duty (RoD) can also be claimed by DTA supplier based on the disclaimer certificate issued by SEZ developer.
6. Such Reimbursement of Duty (RoD) will be admissible w.e.f. 10.2.06.

FORM '1'

FORMAT FOR DRAWBACK CLAIM UNDER RULE 30(8) OF SEZ RULES, 2006

1. NAME OF THE CLAIMANT & ADDRESS
2. LOA NO. & DATE
3. AMOUNT OF DRAWBACK CLAIM

S. No.	Invoice No. & date	Invoice amount	Name of Supplier	Excise Reg. No./ VAT	Description of goods	Drawback Rates with Schedule No.	Amount of drawback	Cheque/ DD No. and date
1.	2	3	4	5	6	7	8	9

-
4. PERIOD OF DRAWBACK CLAIM
 5. WHETHER CLAIMED AS PER ALL INDUSTRY RATES (IN CASE ON ACTUAL BASIS, DETAILS CHART OF CLAIM SHOULD BE ENCLOSED)
 6. LIST OF DOCUMENTS ENCLOSED

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Undertaking and Declaration

I/We hereby solemnly undertake/declare that the particulars stated above are true and correct to the best of my/our knowledge and belief.

I/We hereby declare that item on which drawback is claimed is not in the list of SCOMET items given in the Foreign Trade Policy.

I/We further declare that in respect of goods supplied on which drawback is claimed, the supplier has claimed the Cenvat credit/not claimed the Cenvat credit.

No other application for claiming Drawback has been made or will be made in future against this period/quarter.

Any information, if found to be incorrect, wrong or misleading, will render us liable to rejection of our claim without prejudice to any other action that may be taken against us in this behalf.

If as a result of scrutiny any excess payment is found to have been made to me/us, the same may be adjusted against any of the subsequent claims to be made by my/our firm or in the event no claim is preferred, the amount overpaid will be refunded by me/us to the extent of excess amount paid along with interest within 30 days of receipt of the Demand from the Office of the Development Commissioner in single installment failing which action under Foreign Trade (Development & Regulation) Act, 1992 shall be initiated to recover the said amount as arrears of Land Revenue.

Signature: Name in Block

Letters: Designation:

Name of the Applicant: Firm:

FORM '2'
BANK CERTIFICATE OF PAYMENTS TO DOMESTIC SUPPLIERS
TO BE ISSUED BY THE RESPECTIVE BANK

Import and Procurement by Developer

To

(Name and address of Development Commissioners of SEZ concerned).
We _____ (Name and address of the Developer/Co-Developer/
Contractor/Unit) hereby declare that we have made the payment through banking
channel in respect of suppliers availed as per details below:

Invoice No. & date	Name of Supplier	Description of goods	Amount of Invoice	Amount of duty	Total Amount	Date of Payment Cheque No./Date
1	2	3	4	5	6	7

We hereby declare that the aforesaid particulars are correct.

Signature of Authorized Signatory Name & Designation of the Signatory Name
& Address of the Developer/ Co-Developer/Unit/Contractor

BANK CERTIFICATE

This is to certify that we have made the payment as per details mentioned in
column 7 above.

Signature of the Banker Full address of the
Banker Branch and City

Official Stamp

Banker's Code No

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PROCEDURE FOR SETTING UP A UNIT IN SPECIAL ECONOMIC ZONE

How to establish a SEZ Unit?

A consolidated application in **Form –F** (Five copies) for setting up of a Unit and other clearances, should be made to the Development Commissioner who after completion of basic scrutiny shall place the proposal before the Approval Committee.

A Consolidated application may be filed for the following purposes:-

- (a) Setting up of unit in a Special Economic Zone;
- (b) Annual permission for sub-contracting;
- (c) Allotment of Importer-Exporter Code number;
- (d) Allotment of land/industrial sheds in the Special Economic Zone;
- (e) Water connection;
- (f) Registration-cum-Membership Certificate;
- (g) Small Scale Industries Registration;
- (h) Registration with Central Pollution Control Board;
- (i) Power connection;

Procedure for Setting up A Unit in Special Economic Zone

- (j) Building approval plan;
- (k) Sales tax registration;
- (l) Approval from Inspectorate of Factories;
- (m) Pollution control clearance, wherever required;
- (n) Any other approval as may be required from the State Government.

One copy of the application is also required to be sent to the Developer.

All proposals which include granting of approval for foreign collaborations and foreign direct investments or investments by a person resident outside India, shall be placed before the Board of Approval.

The proposals received under clauses (c) and (e) of sub-section (2) of section 9 of SEZ Rules, 2006 i.e. for foreign collaborations and industrial licence shall be placed before the Board by the Development Commissioner for its consideration.

Procedure for approval of proposals for setting up of Unit in a Special Economic Zone

- (1) The Approval Committee may approve or reject a proposal within fifteen days of its receipt.
- (2) Where the approval is to be granted by the Board, the Board shall approve or approve with modification or reject such proposal within forty-five days of its receipt.

The Approval Committee shall approve the proposal subject to fulfillment of the following requirements:-

- (i) The Unit should achieve Positive Net Foreign Exchange to be calculated cumulatively for a period of five years from the commencement of production.
- (ii) The unit should have provisional offer of space issued by Developer and

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it should have the clause that the final lease agreement shall be entered into only after the issuance of Letter of Approval by the Development Commissioner. The unit is required to submit the copy of registered lease deed within six months to the Development Commissioner.

- (iii) The applicant undertakes to fulfill the environmental and pollution control norms, as may be applicable.
- (iv) The applicant submits proof of residence, namely, passport or ration card or driving licence or voter identify card or any other proof of the proprietor or the partners of partnership firms or Directors of the Company, as the case may be, to the satisfaction of Development Commissioner;
- (v) The applicant submits the Income-tax returns, along with annexure, of the Proprietor or Partners, or in the case of a company, audited balance sheet for the last three years.

Sector specific requirements for approval of proposal —

- (a) Export of high-grade iron ore that is sixty-four per cent Fe and above, except iron ore of Goa origin and Redi origin, which would be subject to approval of Board;
- (b) No sub-contracting or job work of polyester yarn shall be permitted in Domestic Tariff Area or in Export Oriented Unit or Units in other Special Economic Zone.

This restriction will not apply to the Units which intend to send the fabric, made by them out of polyester or texturised yarn, for sub- contracting but the third party exports shall not be permitted.

The following proposals will not be considered -

- (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;

Procedure for Setting up A Unit in Special Economic Zone

- (c) Reprocessing of garments or used clothing or secondary textiles materials and other recyclable textile materials into clipping or rags or industrial wipers or shoddy wool or yarn or blankets or shawls;
- (d) Import of other used goods for recycling;

Reconditioning, repair, and re-engineering may be permitted subject to the condition that exports shall have one to one correlation with imports and all the reconditioned or repaired or re- engineered products and scrap or remnants or waste shall be exported and none of these goods shall 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.

Setting up of Units for providing services or manufacturing services to Overseas Entities –

- (a) capital goods, raw materials including consumables sub- assemblies, components, semi-finished goods shall 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 shall be taken into account for calculation of Net Foreign Exchange Earnings under rule 53 of SEZ Rules, 2006;
- (c) finished goods shall be exported out of the country or transferred to the Customs Bonded Warehouse to be maintained by the Overseas Entity.

Provided that any supplies of finished goods shall be as per the instructions of the Overseas Entity.

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- (d) The Unit shall receive the consideration for its manufacturing services in convertible foreign exchange directly from the said Overseas Entity;
- (e) In case the said manufacturing facility is used by the Unit for carrying out production on its own account, separate accounts shall be maintained for the manufacturing and service activity.

For the purpose of this clause “Overseas Entity” means a non-resident or a person of foreign origin and includes a company not incorporated in India.

Letter of Approval to a Unit

- (1) After fulfillment of requirement of Rule 18 of the SEZ Rules, 2006, the Development Commissioner will issue a Letter of Approval in **Form G** for setting up a Unit.
- (2) The Letter of Approval shall specify -
 - (a) the items of manufacture or particulars of service activity, including trading or warehousing,
 - (b) projected annual export,
 - (c) and Net Foreign Exchange Earnings for the first five years of operations,
 - (d) limitations, if any on Domestic Tariff Area, sale of finished goods, by-products and rejects,
 - (e) and other terms and conditions, if any, stipulated by the Board or Approval Committee.

The Approval Committee may also approve proposals for broad-banding, diversification, enhancement of capacity of production, change in the items of manufacture or service activity.

- (3) Change of Entrepreneur: The proposal for change of entrepreneur of an approved unit may also be considered by Approval committee, if the incoming entrepreneur undertakes to take over the assets and liabilities

Procedure for Setting up A Unit in Special Economic Zone

of the existing Unit.

- (4) An entrepreneur holding Letter of Approval shall only be entitled to set up a Unit in processing area.

Validity of Letter of Approval

The Letter of Approval will be valid for one year within which period the Unit should commence production or service or trading or Free Trade and Warehousing activity, and the Unit should intimate date of commencement of production or activity to Development Commissioner.

Extension of Letter of Approval

- (a) Upon a request by the entrepreneur, further extension may be granted by the Development Commissioner for valid reasons to be recorded in writing for a further period not exceeding two years.
- (b) The Development Commissioner may grant further extension of one year subject to the condition that 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 entrepreneur.

Lapse of Letter of Approval

If the Unit has not commenced production or service activity within the validity period or the extended validity period, the Letter of Approval shall be deemed to have been lapsed with effect from the date on which its validity expired.

Validity of approval after commencement of production

After commencement of commercial production, the Letter of Approval shall be valid for five years from the date of commencement of production or service activity and it shall be construed as a licence for all purposes related to authorized operations, and, after the completion of five years from the date of commencement of production, the Development Commissioner may, at the request of the Unit, extend validity of the Letter of Approval for a further period of five years at a

time.

An enterprise can have DTA and SEZ unit

If an enterprise is operating both as a Domestic Tariff Area unit as well as a Special Economic Zone Unit, it shall have two distinct identities with separate books of accounts, but it shall not be necessary for the Special Economic Zone unit to be a separate legal entity.

Unit of Foreign Companies in SEZ

Foreign companies can also set up manufacturing units as their branch operations in the Special Economic Zones in accordance with the provisions of Foreign Exchange Management (Establishment in India of branch or office or other place of business) Regulations, 2000 as amended from time to time.

Execution of Bond-cum-Legal Undertaking

- (i) Every Unit before availing exemption, Concession or drawback is required to execute Bond-Cum-Legal Undertaking in **Form-H** specifying its obligation regarding proper utilization and accountal of goods, including capital goods, spares, raw materials, components and consumables including fuels, imported or procured duty-free and regarding achievement of positive net foreign exchange earnings.
- (ii) Every Developer and Co-developer before availing exemption, Concession or drawback is required to execute Bond-Cum-Legal Undertaking in Form D in **Form D** with regard to their obligations regarding proper utilization and accountal of goods, including goods procured or imported by a contractor duly authorized by the Developer or Co-developer, as the case may be.
- (iii) The Bond-cum-Legal Undertaking will be jointly accepted by Development Commissioner and by the Specified Officer if the Bond-cum-Legal Undertaking executed by the Unit or the Developer including Co-developer shall cover one or more of the following activities, namely:—
 - o the movement of goods between port of import or export and the

Procedure for Setting up A Unit in Special Economic Zone

Special Economic Zone;

- o the authorized operations, as applicable to Unit or Developer;
- o temporary removal of goods or goods manufactured in Unit for the purposes of repairs or testing or calibration or display or processing or sub-contracting of production process or production or other temporary removals into Domestic Tariff Area without payment of duty;
- o re-import of exported goods.

Procedure for execution of Bond-cum-Legal Undertaking

- (a) The Bond-cum-Legal Undertaking, shall be executed by -
 - (i) the Managing Director or Director, where the entrepreneur or Developer is a company and the common seal of the company shall also be affixed;
 - (ii) the proprietor, in case the entrepreneur is a proprietorship concern;
 - (iii) the partner, where the entrepreneur is a partnership firm;
 - (iv) the Kartha, where the entrepreneur is a Hindu Undivided Family.
- (b) Value of Bond-cum-Legal Undertaking : The value of the Bond-cum-Legal Undertaking shall be equal to the amount of effective duties leviable (Duty foregone) on import or procurement from the Domestic Tariff Area of the projected requirement for three months of,
 - (f) capital goods,
 - (g) raw materials,
 - (h) spares,
 - (i) consumables,

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- (j) intermediates,
 - (k) components,
 - (l) parts,
 - (m) packing materials
- (c) If the value of Bond- cum-Legal Undertaking falls short on account in additional requirement of goods over and above as projected at the time of execution of original Bond- cum-Legal Undertaking, the Unit or the Developer shall submit additional Bond- cum-Legal Undertaking;
- (d) the Bond-cum-Legal Undertaking amount shall be monitored quarterly or yearly on the basis of Quarterly Progress Report or Annual Progress Report submitted by the Developer or Unit and there shall be no debit and credit and in case of any shortfall in the Bond- cum-Legal Undertaking amount, a fresh or additional Bond- cum-Legal Undertaking shall be furnished.

Note: *The Bond-cum-Legal Undertaking from the Units/Developers may be obtained on a non-judicial stamp paper of Rs. 100 bought in the State where the SEZ/Unit is located and notarized by a Notary Public registered in the concerned State.*

Lease of space on shift basis in IT/ITES SEZ

- (a) SEZ Developer can lease out space in the IT/ITES SEZ on a shift to shift basis.
- (b) Each unit will have some space leased in its name where it will store the goods.
- (c) The Developer will enter into contract with each unit for a shift. However, all goods which have been procured by the Unit will be removed by them and kept in the space allocated to them.

Accounting and Records

Procedure for Setting up A Unit in Special Economic Zone

Every Unit and Developer should maintain proper accounts, financial year wise, and such accounts should clearly indicate in value terms the goods imported or procured from Domestic Tariff Area, consumption or utilization of goods, production of goods, including by-products, waste or scrap or remnants, disposal of goods manufactured or produced, by way of exports, sales or supplies in the domestic tariff area or transfer to Special Economic Zone or Export Oriented Unit or Electronic Hardware Technology Park or Software Technology Park Units or Bio-technology Park Unit, as the case may be, and balance in stock. The records should be maintained for a period of seven years from the end of relevant financial year.

The unit engaged in both trading and manufacturing activities should maintain separate records for trading and manufacturing activities.

Annual Performance Report

The Unit should submit Annual Performance Reports in Form I, to the Development Commissioner and the Development Commissioner will place the same before the Approval Committee for consideration.

Dispute Resolution

The SEZ Act, 2005 provides that designated Courts shall try any suit of civil nature arising in the SEZ and from notified offences committed in an SEZ. Appeals against the Orders of designated Courts shall be filed before the High Court within 60 days from the date of communication of decision. Till such time as the designated Courts are set up, any dispute of civil nature arising between two or more entrepreneurs or two or more Developers or between an entrepreneur of a Unit and a Developer in the SEZ, shall be referred to Arbitration under the provisions of Arbitration and Conciliation Act, 1996.

IMPORT AND PROCUREMENT OF GOODS AND SERVICES BY A UNIT

As per Section 2 (o) “import” means-

- (i) bringing goods or receiving services, in a Special Economic Zone, by a Unit or Developer from a place outside India by land, sea or air or by any other mode, whether physical or otherwise; or,
- (ii) receiving goods or services by Unit or Developer from another Unit or Developer of the same Special Economic Zone, or a different Special Economic Zone.

As per Section 2 (j), “Domestic Tariff Area” means “the whole of India (including the territorial waters and continental shelf) but does not include the areas of the Special Economic Zones”.

Import and Procurement by Developer and Unit for Processing Area – (Rule 27 of SEZ Rules, 2006)

A Unit or Developer may import or procure from the Domestic Tariff Area without payment of duty, taxes or cess or procure from Domestic Tariff Area after availing export entitlements or procure from other Units in the same or other Special Economic Zone or from Export Oriented Unit or Software Technology Park unit or Electronic Hardware Technology Park unit or Bio-technology Park unit,

- all types of goods,

Import and Procurement of Goods and Services by a Unit

- including capital goods (new or second hand),
- raw materials,
- semi-finished goods (including semi-finished jewellery),
- component,
- consumables,
- spares goods and
- materials for making capital goods required for authorized operations

except prohibited items under the Import Trade Control (Harmonized System) Classifications of Export and Import Items.

Import and Procurement by Contractor

Contractors appointed by units for setting up and maintenance of the factory building shall also be entitled to avail exemptions from payment of duty, taxes or cess, drawbacks and concessions. In such cases all the documents should be filed jointly in the name of the unit and the contractor.

The unit will be responsible and liable for proper utilization of such goods and services in all cases.

Import for Construction in Non-Processing Area

1. The import of duty-free material for setting up educational institutions, hospitals, hotels, residential and/or business complex, leisure and entertainment facilities or any other facilities in the non-processing area of the Special Economic Zone will be as approved by the Board.
2. No duty-free material will be permitted for operation and maintenance of such facilities in Non-Processing Area.
3. No goods for the personal use of, or consumption by officials, workmen,

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staff, owners or any other person in relation to a Unit or Developer, will be eligible for exemptions, drawback and concessions or any other benefit.

Import of Capital Goods

A Unit or Developer may also source capital goods, without payment of duty, taxes or cess from a domestic or foreign leasing company, under a valid lease agreement, and in such cases the Unit or Developer and the domestic or foreign leasing company shall jointly file documents for import or domestic procurement, as the case may be.

Import for creating common facility

A Unit may import or procure from Domestic Tariff Area, all types of goods and services, without payment of duty, taxes or cess for creating a central facility for use by Units in Special Economic Zone and where such facility is created for software development, the same may also be accessed by software exporters of Domestic Tariff Area.

A gem and jewellery Unit may also source, on outright purchase basis or loan basis, gold or silver or platinum through the Nominated Agencies and where such sourcing is on loan basis, the same shall be subjected to the conditions applicable to such transactions under the provisions of the Foreign Trade Policy in force, provided that the conditions applicable to loan transaction will not apply where the Unit converts such loan into outright purchase by paying the outstanding loan amount and interest within the period for export prescribed under the Foreign Trade Policy applicable to the loan transaction.

No import or export of rough diamonds will be permitted unless the shipment parcel is accompanied by Kimberley Process Certificate issued by the Development Commissioner.

Treatment of Defective Goods

- (i) Where goods or parts thereof, imported or procured from domestic Tariff Area are found to be defective or otherwise unfit for use, or which have been damaged or become defective after such import or procurement, they may be sent outside the Special Economic Zone without payment of

Import and Procurement of Goods and Services by a Unit

duty for repairs or replacement, to the supplier or his authorized dealer or be destroyed.

- (ii) Where overseas supplier or the Domestic Tariff Area supplier of goods does not insist for re-export or for supply back to the Domestic Tariff Area of goods, the same shall not be insisted upon and such goods shall be destroyed with the permission of the Specified Officer.
- (iii) The goods which are sent for repairs are to be returned to the Special Economic Zone, within 180 days from the date of removal.
- (iv) In case of replacement, no Duty Entitlement Passbook Scheme, duty drawback or other export incentives shall be claimed on replaced goods.
- (v) In case of return of goods procured from the Domestic Tariff Area, the same shall be allowed on refund of the export entitlements which have been received or availed or claimed by the Domestic Tariff Area supplier or the Unit or the Developer, as the case may be.
- (vi) In case of precious and semi-precious stones and precious metals, destruction will not be permitted.

Import and procurement on self-declaration basis

1. The assessment of imports and domestic procurement by a Developer or a Unit, shall be on the basis of self-declaration and shall not be subjected to routine examination except in case of procurement from the Domestic Tariff Area under the claim of export entitlements:
2. Provided that where based on a prior intelligence the examination becomes necessary the same shall be carried out by the Authorised Officer(s) after obtaining written permission from the Development Commissioner or the Specified Officer.

Procedure for Import (Rule 28 of SEZ Rules, 2006)

- (1) A Unit or Developer may import goods directly into the Special Economic Zone or through any other—

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- (a) ports or airports;
 - (b) land customs stations;
 - (c) inland container depots;
 - (d) foreign post offices;
 - (e) authorized couriers; or
 - (f) through personal baggage of passengers authorized by the Special Economic Zone Unit; or
 - (g) via Satellite data communication such as internet or any other telecommunication link.
- (2) Goods imported through ports or airports, land customs stations, or inland container depots shall be allowed to be transferred -
- (a) in full cargo load (FCL) or
 - (b) less than container load cargo (LCL)
 - (c) by direct transfer from such port or airport or inland container depot or land customs station to the Special Economic Zone.
- (3) The import of Information Technology enabled services, including software, shall also be allowed through data communication link, internet, e-mail or any other electronic mode.
- (4) The Unit or Developer may also procure goods required for the authorized operations, without payment of duty, from International Exhibitions held in India or from bonded warehouses set up under the Foreign Trade Policy and under the Customs Act, 1962 in the Domestic Tariff Area.
- (5) The goods imported by the Unit or Developer shall be allowed to be transferred from the port or airport to the Special Economic Zone without examination by the Customs Authorities at the port or airport, as the case may be, provided that the goods may be examined with the prior

Import and Procurement of Goods and Services by a Unit

permission of the Assistant or Deputy Commissioner of Customs in writing in case there is specific adverse information or intelligence.

- (6) The goods imported by a Developer or Unit shall be transhipped by the carrier or its agent directly to the Special Economic Zone.
- (7) Where import cargo destination is the Special Economic Zone, delivery shall be allowed at the destination port or airport on the strength of Bill of Entry assessed by Special Economic Zone Customs without any Transhipment Bond.
- (8) In case of high value goods imported through the airport, the goods may be transferred to the Custodian who shall transfer the same to a designated Customs Area located inside the Processing Area designated by the Specified Officer for further delivery to the Unit or Developer. Further, that the high value cargo imported through the airport may also be transferred under the Customs escort at the option of the Unit or the Developer.

Procedure for Direct Delivery/Clearance from Port or Airport or land customs stations or inland container depots (Rule 29 of SEZ Rules, 2006)

- (a) The Special Economic Zone Importer shall file Bill of Entry for home consumption in quintuplicate giving therein, description with specially stamped endorsement as "Special Economic Zone Cargo" along with Bill of Lading or Airway Bill and invoice and packing list with the Authorized Officer who shall register and assess the Bill of Entry.
- (b) Where the goods including Capital Goods are supplied free of cost or on loan or lease basis, the Bill of Entry shall be filed jointly in the name of the Special Economic Zone importer, and the supplier.
- (c) The registered or assessed Bill of Entry shall be submitted to the Customs Officer at the place of import and the same shall be treated as permission for transfer of goods to the Special Economic Zone Importer.
- (d) In case of sealed full container load (FCL), the goods shall be transferred

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to Special Economic Zone on the basis of registered or assessed Bill of Entry after verification of the seal, without customs escort.

- (e) In case of other cargo, goods shall be allowed to be transferred to Special Economic Zone on the basis of registered or assessed Bill of Entry either under customs escort or under transshipment procedure, at the option of Special Economic Zone Importer.
- (f) On arrival of goods as full container load cargo or sealed truck, seal on the container or the truck, as the case may be, shall be verified by the authorized officer, at the Special Economic Zone gate of entry.
- (g) On arrival of goods in less than container load cargo, verification of marks and numbers shall be carried out at random by the authorized officer at the Special Economic Zone gate of entry.
- (h) The Special Economic Zone Importer shall submit fifth copy of Bill of Entry bearing endorsement of the authorized officer that the goods have been received in Special Economic Zone, to the Customs Officer in charge of the airport or port or inland container depot or land customs station or post office or public or private bonded warehouses, as the case may be, within forty-five days from the date of clearance of goods.
- (i) Endorsement regarding verification of marks and numbers in case of less than container load cargo or inspection of seal in the case of full container load cargo or sealed truck by the authorised officer and the receipt of the goods by the Special Economic Zone importer shall be deemed to be the completion of the customs procedure for out of charge of the goods.

Procedure for Import Through Courier (Rule 29(2)(i) of SEZ Rules, 2006)

- (a) The authorized officer shall assess the goods.
- (b) The courier shall deliver the goods under customs escort or to the custodian for delivery of goods to Special Economic Zone Importer.
- (c) In case the Special Economic Zone is located away from the station

Import and Procurement of Goods and Services by a Unit

where the goods have been imported by the courier, the goods shall be transhipped to Special Economic Zone Importer under transhipment procedure.

- (d) If the Special Economic Zone Importer is not able to get the courier parcels duty free, the duty paid by the said Importer on such eligible goods shall be refunded by the Specified Officer as if the imported goods have been exported to the Special Economic Zone and such refund shall be in accordance with the provisions of Section 74 of the Customs Act, 1962.

Procedure for high value parcels imported by Gem and Jewellery Units (Rule 29(4) of SEZ Rules, 2006)

- (a) Where goods are consigned to an Inland Container Depot located in a Special Economic Zone, transfer of goods shall be by the carrier appointed for the purpose and the goods shall be delivered to the Inland Container Depot in the Special Economic Zone by the container line or custodian.
- (b) After receipt of goods in the Special Economic Zone Inland Container Depot, delivery of goods shall be made by the custodian of the Inland Container Depot after verification of marks and number of packages of less than container load cargo and verification of seal of full container load cargo, in the premises of the custodian on the basis of assessed Bill of Entry.
- (c) Filing of advance Bill of Entry may not be required before arrival of the goods in the Special Economic Zone and the Special Economic Zone Importer may, at his option, file the Bill of Entry before or after arrival of goods, provided that where verification cannot be undertaken in the premises of the custodian or if the Special Economic Zone Importer so requests, goods shall be allowed to be taken to the premises of the Special Economic Zone Importer, by the Specified Officer, and thereafter the goods may be verified there.
- (d) There shall be no examination of the goods and the goods shall be deemed to be out of charge on the day of handing over of the goods to

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the Special Economic Zone Importer.

Procedure for Import by Post - Rule 29(4) of SEZ Rules, 2006

Where goods are imported by post, the Special Economic Zone Importer should follow the same procedure as for import through courier and file the Bill of Entry with the authorized officer with clear marking as "Postal Imports" and subject to following conditions:—

- (a) The post-office registration number as indicated in the intimation letter issued by the post office shall be taken as the import general manifest and item number of the Bill of Entry.
- (b) The copy of intimation letter received from the post office shall be pasted on the reverse side of the original Bill of Entry.
- (c) Where Special Economic Zone is situated away from the foreign post office, goods shall be moved to Special Economic Zone under customs escort or shall be handed over to the custodian of Special Economic Zone or delivered to the Unit or its authorized representative after sealing of the parcel.

Import as Personal Baggage (Rule 29(5) of SEZ Rules, 2006)

The units may import goods as personal baggage through an authorized passenger subject to the following procedure:—

- (i) the authorized passenger bringing the precious goods shall declare the goods with the customs authorities at the airport in the arrival hall in the declaration form as specified by Commissioner of Customs in charge of the airport along with a duly acknowledged copy of intimation submitted to the authorized officer.
- (ii) the authorized passenger shall hand over the goods duly packed indicating name and address of the consignee Unit and accompanied by invoice and packing list to the customs authorities at the airport for detention in the warehouse under a detention receipt.

Import and Procurement of Goods and Services by a Unit

- (iii) the customs officer of the airport shall detain the goods and issue detention receipt.
- (iv) the Unit shall file Bill of Entry in quintuplicate along with a copy of invoice, packing list and declaration with the authorized officer, and the detention receipt number issued by the Customs Officer at the airport shall be treated as Import General Manifest (IGM) and item number.
- (v) after assessment of Bill of Entry, original Bill of Entry shall be retained by the authorized officer and the remaining copies shall be handed over to the authorized representative of the Unit for presenting at the airport detention counter where goods shall be allowed clearance after receiving the original detention receipt along with the authorization from the Unit, by making entries in the warehouse register and detention receipt register.
- (vi) after release, the goods shall either be moved to the Unit under the customs escort or shall be delivered to the Custodian or authorized representative of the Unit after sealing;
- (vii) the goods shall be allowed to be taken to the Unit after verification of marks and number of packages by the Authorized Officer at the gate of entry of the Special Economic Zone.

Procedure for Import of computer software or services through data communication or telecommunication links - Rule 29(6) of SEZ Rules, 2006

The Unit shall file consolidated Bill of Entry along with the invoice and other relevant documents for a month within three working days of the closure of the month and shall obtain notional 'out of charge' from the Authorized Officer, subject to the following conditions:

- (i) Import documents shall be routed through banks or advance payments for imports could be routed through Foreign Currency Account;
- (ii) Instructions, if any, issued by the Reserve Bank of India, from time to time, in this behalf shall be complied with.

Import of Defective goods exported by the Unit (Rule 29 (7) of SEZ Rules, 2006)

A Unit may import the goods exported by it which are either found to be defective or damaged by the overseas buyer or have not been taken delivery of by the overseas buyer or when the payment is not forthcoming from the buyer as per agreed schedule after having taken delivery of goods or when buyers return goods due to change of fashion and other market factors subject to:—

- (i) The procedure for import shall be same as prescribed under sub-rule (2) of Rule 29.
- (ii) The identity of the goods is established at the time of re-import and
- (ii) The goods are re-imported within the warranty period or the validity of the maintenance contract or a period of one year from the date of export, whichever is later.

Replacement of goods imported but found defective shall be allowed admission in Special Economic Zone by way of import or replacement through authorized dealer of the overseas supplier in India.

Procedure for procurements from the Domestic Tariff Area - Rule 30

- (a) The Domestic Tariff Area supplier supplying goods to a Unit or Developer shall clear the goods, as in the case of exports, either under bond or as duty paid goods under claim of rebate on the cover of serially numbered ARE-1 referred to in Notification number 42/2001-Central Excise (NT) dated the 26th June 2001 in quintuplicate bearing running serial number beginning from the first day of the financial year.
- (b) Goods procured by a Unit or Developer, on which Central Excise Duty exemption has been availed but without any availment of export entitlements, shall be allowed admission into the Special Economic Zone on the basis of ARE-1.

Import and Procurement of Goods and Services by a Unit

- (c) The goods procured by a Unit or Developer under claim of export entitlements shall be allowed admission into the Special Economic Zone on the basis of ARE-1 and a Bill of Export filed by the supplier or on his behalf by the Unit or Developer and which is assessed by the Authorised Officer before arrival of the goods.
- (d) If the goods arrive before a Bill of Export has been filed and assessed, the same shall be kept in an area designated for this purpose by the Specified Officer and shall be released to the Unit or Developer only after completion of the assessment of the Bill of Export.
- (e) A copy of the ARE-1 and/or copy of Bill of Export, as the case may be, with an endorsement by the authorized officer that goods have been admitted in full into the Special Economic Zone shall be forwarded to the Central Excise Officer having jurisdiction over the Domestic Tariff Area supplier within forty-five days otherwise duty shall be demanded from the Domestic Tariff Area supplier.
- (f) Where a Bill of Export has been filed under a claim of drawback or Duty Entitlement Pass Book, the Unit or Developer shall claim the same from the Specified Officer and jurisdictional Development Commissioner respectively and in case the Unit or Developer does not intend to claim entitlement of drawback or Duty Entitlement Passbook Scheme, a disclaimer to this effect shall be given to the Domestic Tariff Area supplier for claiming such benefits.
- (g) The Bill of Export shall be assessed in accordance with the instructions and procedures, including examination norms, laid down by the Department of Revenue as applicable to export goods.
- (h) On arrival of the goods procured from the Domestic Tariff Area at the Special Economic Zone gate, the Authorized Officer shall examine the goods in respect of description, quantity, marks and other relevant particulars given in the ARE-1, invoice, Bill of Export of packing list.
- (i) Drawback or Duty Entitlement Pass Book credit against supply of goods by Domestic Tariff Area supplier to the unit shall be admissible provided

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payments for the supply are made from the Foreign Currency Account of the Unit.

- (j) The reimbursement of duty in lieu of drawback or Duty Entitlement Pass Book credit against supply of goods by Domestic Tariff Area supplier to Special Economic Zone developers shall be admissible even if payment is made in Indian Rupees.
- (k) A copy of the Bill of Export and ARE-1 with an endorsement of the Authorised Officer that the goods have been admitted in full in the Special Economic Zone, shall be treated as proof of export.
- (l) Where the goods are to be procured by a Unit or Developer from a Domestic Tariff Area supplier who is not registered with the Central Excise authorities, the procedure shall be the same except that the goods shall be brought to the Special Economic Zone under the cover of an invoice and the ARE-1 shall not be required.
- (m) The Unit or Developer may also procure goods from Domestic Tariff Area without availing exemptions, drawbacks and concessions on the basis of invoice or transport documents, issued by the supplier wherein it should be endorsed on the documents that no exemptions, drawbacks and concessions have been availed.

Procedure for procurement from warehouse and international exhibitions (Rule 30(12) of SEZ Rules, 2006)

- (a) Where goods are to be procured from warehouse, a Unit or Developer shall file a Bill of Entry with the Specified Officer.
- (b) The Unit or Developer shall submit Bill of Entry assessed by the Authorized Officer to the Customs Officer in charge of the warehouse from where the Special Economic Zone Unit or Developer intends to procure the goods.
- (c) The Customs Officer in charge of the warehouse shall allow clearance of the goods from the warehouse for supply to the Unit or Developer without payment of duty on the cover of ex- bond Shipping Bill and on the basis of Bill of Entry duly assessed by the Authorized Officer.

Import and Procurement of Goods and Services by a Unit

- (d) Where the re-warehousing certificate by way of endorsement by the Authorized Officer on the copy of ex-bond Shipping Bill is not received by the Customs Officer in charge of warehouse within forty-five days, duty shall be demanded from the supplier.
- (e) The above procedure will be applicable for goods procured from international exhibitions held in India.
- (f) The above procedure will be applicable for goods or services procured without payment of duty from an Export Oriented Unit or Software Technology Park Unit or Bio-Technology Park Unit.

**Procedure for procurement of goods from another SEZ unit
Rule 30(15) of SEZ Rules, 2006**

A Unit or Developer may procure goods and services from another Unit located in the same or any other Special Economic Zone:—

- (i) the receiving Unit or Developer shall file Bill of Entry for home consumption with the Authorized Officer, in quintuplicate, giving description of the goods along with an invoice and packing list for assessment;
- (ii) On the basis of such assessed Bill of Entry, the goods shall be allowed to be transferred to the receiving Unit or Developer under transshipment permit;
- (iii) There shall be no requirement to file any additional document or bond(s) for the purpose of transshipment of goods and the transshipment permission shall be stamped on the Bill of Entry itself;
- (iv) The supplying Unit shall submit the re-warehousing certificate to the Specified Officer having jurisdiction over the supplying unit within forty-five days.
- (v) Where the supplying and receiving Units or Developer are located in the same Special Economic Zone, the provisions of sub- rules (i) and (iv) shall not apply and the movement of goods shall be allowed and such transactions shall be recorded in the regular books of accounts of the

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receiving Unit or Developer and the supplying Unit and no Bill of Entry shall be required to be filed.

Procurement of cut and polished diamonds and precious and semiprecious stones from Domestic Tariff Area

A gem and jewellery Unit may procure cut and polished diamonds and precious and semi precious stones from the Domestic Tariff Area, as per the following procedure, namely:—

- (i) the parcel shall be brought into the Zone in a sealed condition by the authorized representative of the Domestic Tariff Area supplier or Customs House Agent, who shall present the invoice clearly marked original, duplicate and triplicate to the Authorized Officer at the gate;
- (ii) the Authorized Officer shall register the invoice at the gate of Special Economic Zone and endorsing the registration number on the original and duplicate copies of the invoice and the parcel shall be allowed to be taken into the premises of the Unit and such goods shall be separately accounted for by the Unit.
- (iii) the duplicate copy of the invoice with the endorsement of the Authorized Officer shall be forwarded to the supplier in the Domestic Tariff Area for claiming Replenishment Licence from the Development Commissioner of the Special Economic Zone.

Procurement of Second Hand capital goods from DTA by SEZ Units

To address the apprehension of the Department of Revenue, in order to regulate shifting of existing businesses from DTA to SEZs to avail of the direct tax exemption on the export income, Board Of Approval has instructed that the sum total of Sl.No. 5 &6 of the enclosed annexure shall not exceed 20% of the sum total of Sl.No. 3,4,5 & 6 of the annexure below.

However, the units can shift used/second capital goods valuing more than 20% in which case they will not be entitled to benefits under the Income-tax Act, 1961.

Import and Procurement of Goods and Services by a Unit

For the purpose of shifting used/second capital goods, BOA has prescribed the following procedure for the guidance of the units in the SEZs:-

- (i) The units intending to move second hand capital goods from DTA should furnish details as prescribed in the enclosed annexure and must intimate the Development Commissioner before such movement. No second hand capital goods will be allowed to be moved into the Zone without prior intimation to the Development Commissioner.
- (ii) While computing the value of the used/second hand capital goods sought to be transferred into the Zone from DTA, including from an EOU, EHTP/STP/BTP unit, within the Zone or from any other Zone, the depreciation rates stipulated as per Rule 49(1)(c) of the SEZ Rules, 2006 will be adopted for arriving at the depreciated value of such second hand capital goods intended to be moved into the Zone.
- (iii) For each transfer of used/second hand capital goods from the DTA into the zone the unit has to compute the values as mentioned above and indicate at the relevant S. Nos. of the enclosed annexure.
- (iv) The details of such procurement of used/second hand Capital goods from DTA (including from an EOU, EHTP/STP/BTP unit) should be clearly mentioned in the Annual Performance Report submitted by the unit.
- (v) The limitation of 20% of the value of used goods/Capital goods that can move into the zone would not be applicable in respect of capital goods moved to DTA under Rule 50 of the SEZ Rules, 2006.

Annexure

- (1) Name of the unit
- (2) Date of Commencement of Commercial production
- (3) Original cost of the installed Capital goods (Imported) (New & used/second hand)
- (4) Original cost of the installed Capital goods (Procured from DTA) – (New)

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- (5) Depreciated Value of the installed Capital g on date of installation in the SEZ (Procured from DTA) – (used/second hand)
- (6) Value of the Capital Goods proposed to be procured from DTA - (used/second hand)

In addition to the above requirements, the units should also submit the following declaration -

Application for procurement of used capital goods from DTA (including from an EOU/EHTP/STP/BTP unit)

We hereby declare that this procurement of the above mentioned second hand capital goods is strictly in terms of the provisions of sub-section (4) of Section 10AA read with explanation to sub-section (4) of section 10AA read with explanation 1 & 2 to sub-section (3) of section 80-IA of the Income-tax Act 1961.

** Delete if not applicable

SIGNATURE OF THE UNIT

AUTHORISED SIGNATORY

Utilization of goods — Rule 34 of SEZ Rules, 2006

The goods admitted into a Special Economic Zone shall be used by the Unit or the Developer only for carrying out the authorized operations but if the goods admitted are utilized for purposes other than for the authorized operations or if the Unit or Developer fails to account for the goods as provided under these rules, duty shall be chargeable on such goods as if these goods have been cleared for home consumption.

In case a Unit is unable to utilize the goods imported or procured from Domestic Tariff Area, it may export the goods or sell the same to other Unit or to an Export-Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-technology Park Unit, without payment of duty, or dispose of the same in the Domestic Tariff Area on payment of applicable duties on the basis of an import licence submitted by the Domestic Tariff Area buyer, wherever applicable.

Co-relation of import consignment with corresponding export consignment — Rule 35 of SEZ Rules, 2006

1. The Unit shall account for the entire quantity of goods imported or procured duty free, by way of export, sales or supplies in Domestic Tariff Area or transfer to other SEZ Unit or EOU or EHTP Unit or STPU or Bio-technology Park Unit or Bonded warehouses and the balance held in stock.
2. At no point of time shall the Unit be required to co- relate every import consignment with its export or transfer to other Special Economic Zone Unit or Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-technology Park Unit or sales in Domestic Tariff Area or supply to bonded warehouses except in case of goods covered under proviso to clause (d) of sub-rule (4) of rule 18 and goods held as stock and the Unit may adopt 'First- in-First-Out' method and a consignment which has been received first, shall be deemed to have been utilized first.

Duration of goods or services in a Special Economic Zone - Rule 37 of SEZ Rules, 2006

- (1) The goods admitted to a Special Economic Zone shall be utilized, exported or disposed of in accordance with the Act and rules within the validity period of the Letter of Approval issued to the Unit or in the case of a Developer within a period of one year or such extended period as may be allowed by the Specified Officer.
- (2) If the goods are not utilized or dispose of as provided, such goods shall be liable for payment of duty as if the goods have been removed to Domestic Tariff Area.

Transfer of ownership and removal of goods — Rule 38 of SEZ Rules, 2006

The goods or services admitted into Special Economic Zone without payment of duty or manufactured or produced or partly processed or semi-finished goods

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may be transferred or given on loan to -

- (a) a Unit or
- (b) Developer within the same Special Economic Zone or
- (c) in another Special Economic Zone or
- (d) to an Export Oriented Unit or
- (e) to a unit in Electronic Hardware Technology Park or
- (f) to a Unit in Software Technology Park,
- (g) Bio-technology Park Unit

without payment of duty, subject to the following conditions, namely:—

- (i) the transferee or loanee Unit or Developer is entitled for duty free procurement of the goods for its authorized operations;
- (ii) the supplying and receiving Unit or Developer, as the case may be, shall maintain proper account of goods transferred or of goods given or taken on loan;
- (iii) the goods transferred or given on loan basis shall not be counted for the purpose of Net Foreign Exchange Earning by the Unit;
- (iv) the transferred goods (other than the raw material procured from Domestic Tariff Area) shall be accounted, as import by the receiving unit while the value of the same shall be deducted from the import of the transferring unit;
- (v) transfer or loan of goods to Units or Developers in other Special Economic Zones or to Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park unit or Bio-technology Park Unit shall be allowed with the prior written permission of the Specified Officer and subject to such conditions as may be imposed.

Destruction of goods — Rule 39 of SEZ Rules, 2006

- (1) After advance intimation of not less than seven days to the Specified Officer, a Unit may destroy, without payment of duty, goods including capital goods, procured from Domestic Tariff Area or goods imported or goods manufactured or produced by the Unit including rejects or waste or scrap or remnants within the Special Economic Zone subject to environmental clearance obtained by applicant.
- (2) Where it is not possible to destroy goods within the Special Economic Zone, destruction of goods under sub-rule (1) shall be carried out, outside the Special Economic Zone with the permission of Specified Officer and in the presence of the Authorized Officer.
- (3) Destruction of precious and semi-precious stones and precious metals shall not be allowed.
- (4) The Unit shall be required to pay back the drawback and Duty Exemption Pass Book credit availed in case of destruction of goods procured from Domestic Tariff Area.
- (5) Where any goods procured from Domestic Tariff Area under claim of drawback or Duty Entitlement Passbook Scheme credit or under any export promotion scheme are destroyed due to natural calamities, the zone unit shall be required to pay drawback or Duty Entitlement Passbook Scheme credit or any other export incentive claimed on such goods.
- (6) In case where the Unit has procured the goods from Domestic Tariff Area against payment of foreign exchange, the Unit shall not be liable to pay back drawback or Duty Entitlement Passbook Scheme credit or any export incentive claimed on such goods.

Procurement, Import and Export of Prohibited and Restricted Goods

- (i) The SEZ units are permitted to export prohibited items, provided they import raw- material for the same. However, each such case will be

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placed before BOA for approval so that views of DGFT, Department of Revenue and others can be considered before taking a decision.

- (ii) In respect of items which are prohibited for import, SEZ units will be permitted to import the same provided they export goods made out of the same. As in the case of exports, each such case will be placed before BOA for consideration and approval.

- (iii) In respect of supply of Restricted Items by a DTA unit to SEZ Developer/ Unit, the DTA unit can supply such items to a SEZ Developer or unit for setting up infrastructure facility or for setting up of a unit. It can also supply raw material to SEZ unit for undertaking a manufacturing operation except refrigeration, cutting, polishing and blending. However, it will require prior approval of BOA.

EXPORT OF GOODS AND SERVICES

Section 2(m) of SEZ Act, 2005 defines “export” as

- (i) taking goods, or providing services, out of India, from a Special Economic Zone, by land, sea or air or by any other mode, whether physical or otherwise; or
- (ii) supplying goods, or providing services, from the Domestic Tariff Area to a Unit or Developer; or
- (iii) supplying goods, or providing services, from one Unit to another Unit or Developer, in the same or different Special Economic Zone;

General Conditions for Exports — Rule 45 of SEZ Rules, 2006

- (1) A Unit may export goods or services as per the terms and conditions of Letter of Approval including agro-products, partly processed goods, sub-assemblies and components except prohibited items under the Import Trade Control (Harmonized System) Classification of Export and Import Items and the Unit may also export by-products, rejects, waste scrap arising out of the manufacturing process.
- (2) A Unit, other than a trading or Free Trade and Warehousing or service Unit, may export to Russian Federation in Indian Rupees against repayment of State Credit or Escrow Rupee Account of the buyers, subject to clearance from the Reserve Bank of India, required, if any.

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- (3) A Unit engaged in development of computer software may undertake export, including export of professional services , using data communication links or do physical exports, including through courier service.
- (4) The Foreign Trade Policy restrictions on State Trading Enterprises will not apply to Special Economic Zone manufacturing Units but export of iron ore will be subject to conditions as may be laid down by the Central Government from time to time.
- (5) Minimum export price and requirements of export in consumer pack as provided for in the Foreign Trade Policy will apply in case the raw materials are procured indigenously and exported without further processing or manufacturing activities.
- (6) The export of textile items will be governed by bilateral agreements, if any.
- (7) A Unit may export free samples without any limit, including samples made in wax moulds or silver mould or non-precious metal alloy or rubber moulds through all permissible modes of export.

Procedure for Export from Special Economic Zone - Rule 46 of SEZ Rules, 2006

- (a) The Unit should file Shipping Bill, in quadruplicate, with the Authorized Officer of Customs in the Special Economic Zone together with relevant documents, namely, invoice, packing list and Currency Declaration Form (GR) (in duplicate).
- (b) No declaration in the form GR or SDF or PP or SOFTEX forms will be required, in respect of export value up to US \$ twenty-five thousand or as may be notified by the Reserve Bank of India.
- (c) The Shipping Bill should be registered, assigned a running serial number and assessed by the Authorized Officer in the manner and procedure as is followed in case of exports under free shipping bill without any requirement of the counter signature.

Export of Goods and Services

- (d) The goods will not be subjected to routine examination and 'Let Export Order' will be given on the basis of self certification by the Unit. This is applicable if the goods are sealed after examination, as per the norms prescribed for free shipping bills, at the option of the Unit, by the Authorized Officer and if the services are exported in non-physical form, the export value is to be furnished by the Unit on self certification basis as per the instructions of the Reserve Bank of India.
- (e) The goods may be examined at the port, airport, Inland Container Depot or Container Freight Station or Land Customs Station only in case of specific intelligence or information.
- (f) The Unit may export through Inland Container Depot located in the Special Economic Zone, or through any port or airport or Inland Container Depot. But in case of export of large quantities of cargo where it may not be possible to ship the cargo from the Special Economic Zone in one consignment, the Specified Officer may allow the export of such cargo on execution of a Bond for the duty involved subject to the condition that the Unit shall submit the proof of export within ninety days of removal of such cargo under Bond, failing which applicable duty on the goods not exported shall be payable in terms of the Bond.

Procedure for export of gems and jewellery

The shipping bill and the invoice along with packing list presented to the authorized officer should contain the following:—

- (a) description of the items;
- (b) weight and purity of gold or silver or platinum and the type of gems stone, such as, diamond, ruby, sapphire, cubic zircon and the like which has been used for studding and its weight in carats; and
- (c) free-on-board price rate of the jewellery item and quantity in pieces and the total value;

The Unit may export jewellery on the basis of a notional rate certificate issued by the Nominated Agency and this rate will be based on the prevailing Gold or

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US Dollar rate and the US Dollar or Indian Rupees rate given in the notional rate certificate. Provided that the certificate issued by the Nominated Agency shall not precede the date of shipment by more than three working days or as may be notified by Central Government.

The Unit obtaining gold or silver or platinum from the Nominated Agency on loan basis shall export gold or silver or platinum jewellery within the period prescribed for the same under the Foreign Trade Policy. Provided that the Unit can convert such loan into outright purchase by paying the outstanding loan amount plus interest, provided they exercise this option within the period prescribed under the Foreign Trade Policy.

In the case of export of jewellery on the basis of notional rate certificate issued by the Nominated Agency, the Unit may fix the price and repay the gold loan within the prescribed period for export as may be notified by the Central Government from time to time: Provided that the price shall be communicated to the Nominated Agency for issue of a certificate showing the final confirmation of the rate to the bank negotiating the document.

Procedure for export of software

- (i) A Unit may export software or processed data, including call center services via data link or internet or e-mail or through other electronic mode, and the Software Export Declaration Form for such exports duly certified by Development Commissioner under the Foreign Exchange Management (Export of Goods and Services) Regulations, 2000 should be submitted to the authorized dealer.
- (ii) A Unit may provide consultancy services “on site” abroad subject to submission of details of the contract or purchase order and foreign exchange remitted and the persons deputed abroad to the Authorised Officer;
- (iii) The consideration received by the Unit for providing on site consultancy services in convertible foreign exchange shall be counted for the purpose of calculating positive Net Foreign Exchange Earning.

Export through Post or Courier

- (a) The Unit may export goods by post subject to the procedure applicable to export through Foreign Post Office. (Rule 46 (4) of SEZ Rules).
- (b) Export through couriers will be allowed only if the courier is an authorised courier, being registered with the Commissioner of Customs having jurisdiction over the gateway airport and the procedure specified in the Courier Export and Import (Clearance) Regulations, 1998 is followed.
- (c) The goods shall be allowed to be handed over to the courier by the custodian as per the procedure specified by the Specified Officer.

Export through foreign bound passenger as personal Baggage - Rule 46(6) of SEZ Rules, 2006

A Unit may export goods to be carried by foreign bound passengers authorized by the Unit in this behalf as personal baggage, subject to the following conditions:

- (i) The Unit shall submit the shipping bill, invoice and Currency Declaration Form (GR) with the authorised officer;
- (ii) The shipping bill shall be assessed by the Authorised Officer in the same manner as is done in the case of exports under free shipping bill;
- (iii) The goods shall be transferred from the Special Economic Zone to the airport under the cover of assessed shipping bill by the authorized agency approved by the Specified Officer or under escort of Authorized Officer;
- (iv) The goods shall be deposited with the warehouse at the airport against a “detention receipt” issued by the Customs authorities at the airport;
- (v) The consignment shall be handed over to the authorized passenger at the time of departure on submission of original detention receipt;
- (vi) The Unit shall submit to the Specified Officer, the proof of export issued by the Customs authority at the airport within a period of fifteen days from

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the date of removal of the goods from the Special Economic Zone;

- (vii) Where the facility of custodian is available in the Special Economic Zone and the airport, goods shall be transferred and delivered to the authorized passenger at the airport by the custodian;
- (viii) Personal carriage of spare parts by foreign bound passenger shall be allowed in case the spare parts are required for repairs of exported goods at customer site and following documents shall be submitted as proof of export, namely:—
 - (a) permission letter from the authorised officer for exports; and
 - (b) invoice with value;
- (ix) Personal carriage of any goods for exports by authorized passenger on Document-Against-Acceptance or Cash-On-Delivery basis may be allowed provided the Unit submits following documents, namely:—
 - (a) copy of shipping bill; and
 - (b) the bank Certificate for realization of proceeds shall be submitted within thirty days of delivery of the goods;
- (x) Personal carriage of gems and jewellery items of the value not exceeding US \$ two millions or other goods not exceeding rupees five lakhs in value, for holding or participating in overseas exhibitions shall be permitted with the approval of the Development Commissioner.

Exports through Showroom at Airport

- (1) A Unit may display the goods in the show rooms set up at departure lounge in international Airports in India for sale to passengers leaving India.
- (2) The items remaining unsold within a period of forty- five days shall be exported or returned to the Unit.

Export for participation in Exhibitions - Rule 46(9) of SEZ

Rules, 2006

A Unit may export goods, including gems and jewellery for display or participation in exhibitions abroad subject to :

- (i) The Unit shall give advance intimation to the Development Commissioner to participate in the exhibition abroad or for taking goods abroad for display and sale.
- (ii) Shipping bill along with relevant documents shall be filed with the authorized officer.
- (iii) Photographs of the items being taken out for exhibition, attested by the Unit, shall be furnished in case of gems and jewellery.
- (iv) Goods unsold in the exhibition or display tour shall be imported within forty-five days from the completion of the exhibition or within such days as may be notified by the Central Government.
- (v) The Unit shall file Bill of Entry for import of unsold goods as required in case of imports.
- (vi) The goods so imported shall be allowed admission into the Unit free of duty, subject to examination up to ten percent for establishment of identity of the goods with reference to export documents.
- (vii) The Unit shall submit proof of inward remittance in respect of goods sold in the exhibition.

Export through other SEZ unit/EOU/EHTP/STP

- (a) Goods or services shall be manufactured or developed in the Unit concerned;
- (b) Requirements of positive Net Foreign Exchange Earning or any other conditions relating to authorized operations shall continue to be discharged by the Unit;
- (c) Export orders so procured shall be executed within the provisions of

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these rules and the goods shall be directly transferred from the Unit to the airport or port of shipment;

- (d) Fulfillment of positive Net Foreign Exchange Earning by the Unit shall be reckoned on the basis of the price at which the goods or services were supplied by the Unit to the status holder or merchant exporter or other Unit or Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-technology Park Unit.

Export through a merchant exporter or status holder

- (i) Goods may be exported directly from the Special Economic Zone or through any other port where the merchant exporter files his shipping bill, in which case the goods shall move directly from the Special Economic Zone to the said port of export on the basis of pink shipping bill as if this were movement of goods from one warehouse to another;
- (ii) Export document shall contain the name of the merchant exporter or the status holder and the Unit;
- (iii) Merchant exporter or status holder, as the case may be, shall export goods under a free Shipping Bill and submit a disclaimer that no Drawback, Duty Exemption Pass Book credit or fulfillment of export obligation under any export promotion scheme under the Foreign Trade Policy shall be availed by him on the goods so exported.

FREE TRADE WAREHOUSING ZONE (FTWZ)

Sec 2(n) of the Special Economic Zone Act 2005 defines “Free Trade and Warehousing Zone” as a Special Economic Zone wherein mainly trading and warehousing and other activities related thereto are carried on.”

All the provisions of Special Economic Zone Act 2005 and Special Economic Zone Rules, 2006 shall mutatis mutandis apply to “Free Trade and Warehousing Zone”. Therefore, these zones will operate in the same manner as general Special Economic Zone.

Objective

The objective is to create trade-related infrastructure to facilitate the import and export of goods and services with freedom to carry out trade transactions in free currency.

The scheme envisages creation of world-class infrastructure for warehousing of various products, state-of-the-art equipment, transportation and handling facilities, commercial office-space, water, power, communications and connectivity, with one-stop clearance of import and export formality, to support the integrated Zones as ‘international trading hubs’. These Zones would be established in areas proximate to seaports, airports or dry ports so as to offer easy access by rail and road.

Units in FTWZ

1. The Units in Free Trade and Warehousing Zones or Units in Free Trade and Warehousing Zone set up in other Special Economic Zone, shall be allowed to hold the goods on account of the foreign supplier for dispatches as per the owner's instructions and shall be allowed for trading with or without labelling, packing or re-packing without any processing:
2. The refrigeration for the purpose of storage and assembly of Completely Knocked Down (CKD) or Semi Knocked Down (SKD) kits shall also be allowed by the Free Trade and Warehousing units undertaking the said activities:
3. These Units may also re-sell or re-invoice or re-export the goods imported by them.
4. All transactions by a Unit in Free Trade and Warehousing Zone shall only be in convertible foreign currency.

Procedure to establish a Free Trade Warehousing Zone

1. Proposals for setting up of FTWZs in **FORM –A** may be made by
 - a. public sector undertakings or
 - b. public limited companies or
 - c. by joint ventures in technical collaboration with experienced infrastructure developers.
2. The proposals shall be considered by the Board of Approval in the Department of Commerce. On approval, the developer will be issued a letter of permission for the development, operation and maintenance of such FTWZ.
3. Foreign Direct Investment would be permitted up to 100% in the development and establishment of the zones and their infrastructural facilities.
4. The proposal must entail a minimum outlay of Rs.100 crores for the

Free Trade Warehousing Zone (FTWZ)

creation and development of the infrastructure facilities, with a minimum built-up area of five lakh sq.mts.

5. The developer shall be permitted to import duty free such building materials and equipment as may be required for the development and infrastructure of the zone. Such equipment and materials as are sourced from the DTA shall be considered as physical exports for the DTA suppliers.
6. Once it has developed the FTWZ, the developer shall also be permitted to sale/lease/rent out warehouses/workshops/office-space and other facilities in the FTWZ to traders/exporters.

Functioning of FTWZ

- a The Units in Free Trade and Warehousing Zones or units in Free Trade and Warehousing Zone set up in other Special Economic Zone, shall be allowed to hold the goods on account of the foreign supplier for dispatches as per the owner's instructions
- b The goods shall be allowed for trading with or without labeling, packing or re-packing without any processing.
- c Refrigeration for the purpose of storage and assembly of Completely Knocked Down or Semi Knocked Down kits shall also be allowed by the Free Trade and Warehousing units undertaking the said activities.
- d The units in Free trade and warehousing zones may also re-sell or re-invoice or re-export the goods imported by them.
- e All transactions by a Unit in Free Trade and Warehousing Zone shall only be in convertible foreign currency.

Net Foreign Exchange criteria

Units in FTWZs shall be net foreign exchange earners. Net foreign exchange earning shall be calculated cumulatively for every block of five years from the commencement of warehousing and/or trading operations as per formula applicable for SEZ units.

Benefits of FT&WZ

a Deferred Duty Benefits

Importers of goods into India have to pay significant duties at the time the goods are brought into the country. For a company having its operations within a FTWZ, the custom duty would be payable only at the time the commodities are sold into the DTA.

b Hubbing Opportunities

Under efficient infrastructure and superior operational dynamics, companies can utilize the FTWZ as a hub for its operations and services to other countries and regions. Multinational vendors can be located within the FTWZ to facilitate imports whereby the items imported from other countries can be stored without paying duties till the time they are actually moved into the Domestic Tariff Area (DTA). Similarly, domestic units located within the FTWZ can facilitate exports.

c Income & Service tax benefits

The zone would provide exemptions on income tax as highlighted in section 80IA of the Income Tax Act, 1961. Companies providing services from within the zone (such as logistics companies, warehouse/ storage providers, etc.) are exempt from payment of service tax, thereby reducing the logistics costs to users within the zone.

d Excise Duty Exemptions

All capital goods, spares, DG sets, packing materials etc. sourced from the domestic market for utilization within the zone, are exempt from excise duty, thereby providing significant savings

Benefit to Bulk Commodities such as fertilizers, dry

Free Trade Warehousing Zone (FTWZ)

chemicals, etc

Since the FTWZs would be in close proximity to the ports, transportation of bulk commodities can be made easier by delaying the requirements such as bagging and containerizing them.

Benefit to Export Commodities

Companies dealing in exports can receive their bills of lading on entering the FTWZ as all the goods entering the FTWZ would be deemed as exports.

GEMS & JEWELLERY UNIT IN SPECIAL ECONOMIC ZONE

Minimum Land requirement

In Gem and Jewellery Special Economic Zone the minimum area shall be ten hectares or more with a minimum built up area of fifty thousand square meters.

Terms and conditions for availing exemptions, drawbacks and concessions applicable to every Developer and entrepreneur for authorized operations -Rule 22 of SEZ Rules, 2006

The procedure applicable to other SEZ units shall mutatis mutandis be applicable to Gems & Jewellery units except the following:

- a. the value of the Bond-cum-Legal Undertaking in respect of gems and jewellery units shall be calculated on rates as notified by the Central Government, from time to time.
- b. As per Rule 27(6) of SEZ Rules, 2006, a gem and jewellery Unit may also source on outright purchase basis or loan basis, gold or silver or platinum through the Nominated Agencies and where such sourcing is on loan basis, the same shall be subjected to the conditions applicable to such transactions under the provisions of the Foreign Trade Policy in force.

Gems & Jewellery Unit in Special Economic Zone

- c. The conditions applicable to loan transaction shall not apply where the Unit converts such loan into outright purchase by paying the outstanding loan amount and interest within the period for export prescribed under the Foreign Trade Policy applicable to the loan transaction.
- d. As per Rule 27(8) of SEZ Rules, 2006, no import or export of rough diamonds shall be permitted unless the shipment parcel is accompanied by Kimberley Process Certificate issued by the Development Commissioner.

The procedure for high value parcels imported by gem and jewellery Units, located in Special Economic Zone shall be as under—Rule 29(3) of SEZ Rules, 2006:

- (i) Where goods are consigned to an Inland Container Depot located in a Special Economic Zone, transfer of goods shall be by the carrier appointed for the purpose and the goods shall be delivered to the Inland Container Depot in the Special Economic Zone by the container line or custodian;
- (ii) After receipt of goods in the Special Economic Zone Inland Container Depot, delivery of goods shall be made by the custodian of the Inland Container Depot after verification of marks and number of packages of less than container load cargo and verification of seal of full container load cargo, in the premises of the custodian on the basis of assessed Bill of Entry;
- (iii) Filing of advance Bill of Entry may not be required before arrival of the goods in the Special Economic Zone and the Special Economic Zone Importer may, at his option, file the Bill of Entry before or after arrival of goods:
- (iv) Where verification cannot be undertaken in the premises of the custodian or if the Special Economic Zone Importer so requests, goods shall be allowed to be taken to the premises of the Special Economic Zone Importer, by the Specified Officer and thereafter the goods may be verified there;
- (v) There shall be no examination of the goods and the goods shall be deemed to be out of charge on the day of handing over of the goods to

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the Special Economic Zone Importer.

Import as personal baggage through an authorized passenger - Rule 29 (5) of SEZ Rules, 2006

The units may import goods including precious goods namely gold or silver or platinum or gem and jewellery as personal baggage through an authorized passenger subject to the following procedure:—

- (i) The authorized passenger bringing the precious goods shall declare the goods with the customs authorities.
- (ii) The authorized passenger shall hand over the goods to the custom authorities duly packed, indicating name and address of the consignee Unit and accompanied by invoice and packing list.
- (iii) The customs officer of the airport shall detain the goods and issue detention receipt which shall be treated as Import General Manifest.
- (iv) The Unit shall file Bill of Entry.
- (v) After assessment of Bill of Entry, goods shall be allowed clearance after receiving the original detention receipt along with the authorization from the Unit, by making entries in the warehouse register and detention receipt register.
- (vi) After release, the goods shall either be moved to the Unit under the customs escort or shall be delivered to the Custodian or authorized representative of the Unit after sealing.
- (vii) The goods shall be allowed to be taken to the Unit after verification of marks and number of packages by the Authorized Officer at the gate of entry of the Special Economic Zone.

Procedure for procurement from Domestic Tariff Area –

Gems & Jewellery Unit in Special Economic Zone

Rule 30(16) of SEZ Rules, 2006 prescribes the procedure for Procurement of cut and polished diamonds and precious and semi- precious stones from Domestic Tariff Area.

A gem and jewellery Unit may procure cut and polished diamonds and precious and semi precious stones from the Domestic Tariff Area, as per the following procedure:—

- (i) The parcel shall be brought into the Zone in a sealed condition by the authorized representative of the Domestic Tariff Area supplier or Customs House Agent, who shall present the invoice clearly marked original, duplicate and triplicate to the Authorized Officer at the gate;
- (ii) The Authorized Officer shall register the invoice at the gate of Special Economic Zone and thereafter endorse the registration number on the original and duplicate copies of the invoice and the parcel shall be allowed to be taken into the premises of the Unit and such goods shall be separately accounted for by the Unit.
- (iii) The duplicate copy of the invoice with the endorsement of the Authorized Officer shall be forwarded to the supplier in the Domestic Tariff Area for claiming Replenishment Licence from the Development Commissioner of the Special Economic Zone.

Destruction of Goods - Rule 39(2) of SEZ Rules, 2006

Procedure regarding destruction of goods prescribed under Rule 39(2) of SEZ Rules, 2006 shall be applicable to the Gems & Jewellery Unit except that destruction of precious and semi-precious stones and precious metals shall not be allowed.

Sub Contracting - Rule 41 of SEZ Rules, 2006

A Gems & Jewellery Unit may sub-contract a part of its production or any production process, to

- i. a unit(s) in the Domestic Tariff Area or

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- ii. in a Special Economic Zone or
- iii. Export Oriented Unit or
- iv. a unit in Electronic Hardware Technology Park unit or
- v. Software Technology Park unit or

with prior permission of the Specified Officer to be given on an annual basis and subject to the following conditions:—

- (a) The finished goods requiring further processing or semi-finished goods including studded jewellery, taken outside the Special Economic Zone for sub-contracting shall be brought back into Unit within one hundred and twenty days or within such extended period.
- (b) Cut and polished diamonds and precious and semi-precious stones (except rough diamonds, precious or semi-precious stones having zero duty) shall not be allowed to be taken outside the Special Economic Zone for sub-contracting;
- (c) A gem and jewellery Unit may receive plain gold or silver or platinum jewellery from the Domestic Tariff Area or from an Export Oriented Unit or from a Unit in the same or another Special Economic Zone in exchange of equivalent content of gold or silver or platinum contained in the said jewellery after adjusting permissible wastage or manufacturing loss allowed under the provisions of the Foreign Trade Policy read with the Handbook of Procedures.
- (d) In sub-contracting or exchange, wastage shall be permitted as per the wastage norms admissible under the Foreign Trade Policy read with the Handbook of Procedures.
- (e) The total wastage of the Unit, including the wastage of the sub-contractor or the supplier of jewellery on exchange basis, shall not in any case exceed the wastage permissible under the Foreign Trade Policy read with the Handbook of Procedures;

Gems & Jewellery Unit in Special Economic Zone

- (e) The Domestic Tariff Area Unit undertaking sub-contracting or supplying jewellery against exchange of gold or silver or platinum shall not be entitled to export entitlements.

Procedure for export of gems and jewellery— Rule 47(2) of SEZ Rules, 2006

- (i) The shipping bill and the invoice along with packing list presented to the authorized officer shall contain the following:—
 - (a) description of the items;
 - (b) weight and purity of gold or silver or platinum and the type of gems stone, such as, diamond, ruby, sapphire, cubic zircon and the like which has been used for studding and its weight in carats; and
 - (c) free on board price rate of the jewellery item and quantity in pieces and the total value;
- (ii) The Unit may export jewellery on the basis of a notional rate certificate issued by the Nominated Agency, and this rate will be based on the prevailing Gold or US Dollar rate and the US Dollar or Indian Rupees rate given in the notional rate certificate.
- (iii) The certificate issued by the Nominated Agency shall not precede the date of shipment by more than three working days or as may be notified by Central Government;
- (iv) the Unit obtaining gold or silver or platinum from the Nominated Agency on loan basis shall export gold or silver or platinum jewellery within the period prescribed for the same under the Foreign Trade Policy;
- (v) the Unit can convert such loan into outright purchase by paying the outstanding loan amount plus interest, provided they exercise this option within the period prescribed under the Foreign Trade Policy;
- (ii) in the case of export of jewellery on the basis of notional rate certificate

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issued by the Nominated Agency, the Unit may fix the price and repay the gold loan within the prescribed period for export as may be notified by the Central Government from time to time;

- (iii) the price shall be communicated to the Nominated Agency for issue of a certificate showing the final confirmation of the rate to the bank negotiating the document.

Exit of Gems & Jewellery Unit

In the event of a gems and jewellery unit ceasing its operation, gold and other precious metals, alloys, gem and other materials available for manufacture of jewellery shall be handed over to an agency nominated by the Central Government at a price to be determined by that agency.

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SUB-CONTRACTING

Rule 41 of SEZ Rules, 2006 deals with Sub-contracting.

A Unit may with prior permission of the Specified Officer (annual basis) sub-contract a part of its production or any production process to:

1. a unit(s) in the Domestic Tariff Area or
2. in a Special Economic Zone or Export Oriented Unit or
3. a unit in Electronic Hardware Technology Park unit or
4. Software Technology Park unit or
5. Bio-technology Park unit
 - (a) The finished goods requiring further processing or semi-finished goods including studded jewellery, taken outside the Special Economic Zone for sub-contracting shall be brought back into Unit within one hundred and twenty days or within such period as may be extended by the Specified Officer for reasons to be recorded in writing for grant of such extension.
 - (b) Wastage shall be permitted as per the wastage norms admissible under the Foreign Trade Policy read with the Handbook of Procedures:
 - (c) The value of the sub-contracted production of a Unit in any financial year shall not exceed the value of goods produced by the Unit

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within its own premises in the immediately preceding financial year.

- (d) A Unit, sub-contracting part of the production or production process to other Unit in the same Special Economic Zone shall not require the permission of the Specified Officer provided that both the supplying and receiving Units shall maintain proper account of the goods involved in the sub- contracting.
- (e) Sub-contracting Facility shall not be allowed to trading or warehousing unit.
- (f) A Unit may remove, with the permission of Specified Officer, moulds or jigs or tools or fixtures or tackles or instruments or hangers and patterns and drawings to the premises of sub- contractor(s), subject to the condition that these shall be brought back to the premises of the Unit immediately on expiry of such sub-contracting arrangement and submission of a quarterly verification report from the Central Excise Officer having jurisdiction over the sub-contractor that such goods are lying in the sub-contractor's premises and are being used for production of goods on account of the Unit.

Meaning of sub-contracting of a part of production

The expression "sub-contracting" of a part of its production under this rule shall mean sub-contracting all the production processes for conversion of raw material into finished products but only for a part of the quantity of the finished products exported during the year or in the first year of production. The value of the goods sub-contracted shall not exceed the value of goods produced by the unit in its own premises during the first year of production.

Sub-Contracting out of India [Rule 41 (2) of SEZ Rules, 2006]

The Development Commissioner, subject to following conditions, may permit sub-contracting of part of the production process abroad and in such cases, the goods may be exported from the sub-contractor's premises:—

- (a) sub-contracting charges shall be declared in the export declaration forms and invoices and other related documents;

Sub-contracting

- (b) export proceeds shall be fully repatriated in favour of the Unit.

Sub-Contracting by Developer or Co-Developer

A Developer or a co-developer or on their behalf their contractor, as the case may be, may also temporarily remove the goods, procured or imported duty free by them for their authorized operations, to

- (a) a place in the Domestic Tariff Area or
- (b) a unit in the same or another Special Economic Zone or
- (c) Export Oriented Unit or
- (d) a unit in Electronic Hardware Technology Park Unit or
- (e) Software Technology Park Unit or
- (f) Bio-technology Park Unit,

for sub-contracting a process, with prior permission of and subject to such conditions as may be prescribed by the Approval Committee.

Procedure for sub-contracting by Developer or Co-Developer

The procedure for sub-contracting by a unit in special Economic zone shall mutatis mutandis apply to the Developer or a co-developer or on their behalf their contractor except that the Bank Guarantee to cover the duty foregone on the materials being sent for sub-contracting shall apply only in case of temporary removal of goods by the contractor.

Procedure for sub-contracting by unit in special Economic zone (Rule 42 of SEZ Rules, 2006)

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- (a) The unit shall file an application containing
 - (i) the name and address of the sub-contractor(s),
 - (ii) Central Excise registration number in the case of the Domestic Tariff Area sub-contractor, if registered, and
 - (iii) details of the processes to be carried out, or
 - (iv) quantum of production sought to be carried out at the sub-contractor's premises, and
 - (v) self certified input-output ratio for the said processes.
- (b) **Bank Guarantee:** the Unit, removing goods for sub-contracting into the Domestic Tariff Area, shall furnish bank guarantee to Specified Officer to cover the duty foregone on materials being taken out for sub- contracting.

A unit whose turnover is rupees one crore or above or where the unit is in the Special Economic Zone for more than a period of two years with an unblemished track record, shall not be required to furnish Bank Guarantee.

- (c) A Unit shall remove the goods under serial numbered challans pre-authenticated by the owner or Managing Director or working partner or the company secretary or by any person duly authorized in this behalf by the company or firm, as the case may be, and complete description of goods shall be provided on the challan.
- (d) The goods sent out for sub-contracting shall be returned to the Unit within one hundred and twenty days from the date of removal, or within such period as may be extended by the Specified Officer.
- (e) In case of failure by the Unit to bring back the goods after sub-contracting within the period under sub-clause (h), action shall be taken by the Specified Officer to recover the duty on the goods taken out for sub-contracting.

Export of finished goods directly from the sub-contractor's premises subject

Sub-contracting

to the following conditions:—

- (i) the sub-contractor is an Export Oriented Unit or an Electronic Hardware Technology Park Unit or Bio-technology Park Unit or a Special Economic Zone Unit or a Domestic Tariff Area Unit which is registered with the Central Excise Department;
- (ii) export of finished goods from the sub-contractor's premises shall be allowed only by way of direct export and not through third party;
- (iii) sample of goods exported from the sub-contractor's premises shall be sent by the sub-contractor in sealed condition to the Specified Officer;
- (iv) shipping Bill for duty free goods shall be processed at the port of export as in the case of normal export and common shipping bill shall be filed in the name of the Unit and sub-contractor;
- (vi) goods for such export shall be removed from the sub-contractor's premises under bond;
- (vii) In case of sub-contracting abroad, the goods shall either be returned to the Unit or may be sold to buyers in that country or any third country.

Treatment of waste, scrap or remnants accrued during production process at Sub-Contractor's premises

- (1) Waste, scrap or remnants generated during process may either be
 - (a) returned to the Unit or
 - (b) cleared on payment of duty or
 - (c) destroyed at the sub-contractor's premises in the presence of jurisdictional Central Excise Officer if the sub-contractor is a Central Excise registrant

In case of (b) & (c) above the same shall be in accordance with the Standard Input Output Norms notified for the Duty Exemption Entitlement Scheme under the Foreign Trade Policy or as fixed by Approval Committee.

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In case where the sub-contractor's premises are located abroad, the scrap, waste or remnants generated at the sub-contractor's premises may either be returned to the Unit or may be disposed off abroad.

Sub-contracting with-in the zone

A Unit may sub-contract a part of production or production process in another Unit within the same Special Economic Zone subject to the following conditions:-

- (i) the movement of goods shall be under serially numbered challans and record of such movement of goods shall be maintained by the Unit;
- (ii) raw material imported or procured by the Unit for manufacture of capital goods may be transferred to another unit for the purpose of manufacture or fabrication of capital goods for use by the Unit which had imported or procured the raw materials.

Sub-contracting by SEZ unit for Domestic Tariff Area unit for export—

A Unit may, on the basis of annual permission from the Specified Officer, undertake sub-contracting for export on behalf of a Domestic Tariff Area exporter, subject to following conditions:—

- (a) All the raw materials including semi-finished goods and consumables including fuel shall be supplied by Domestic Tariff Area exporter.
- (b) Finished goods shall be exported directly by the Unit on behalf of the Domestic Tariff Area exporter.
- (c) In case of sub-contracting on behalf of an Export Oriented Unit or an Electronic Hardware Technology Park unit or a Software Technology Park unit or Bio-technology Park unit, the finished goods may be exported either from the Unit or from the Export Oriented Unit or Electronic Hardware Technology Park unit or Software Technology Park unit or Bio- technology Park unit.

Sub-contracting

- (d) Export document shall be jointly in the name of Domestic Tariff Area exporter and the Unit.
- (e) The Domestic Tariff Area exporter shall be eligible for refund of duty paid on the inputs by way of brand rate of duty drawback.

Contract Farming (Rule-44 of SEZ Rules, 2006)

A Unit engaged in production or processing of agriculture or horticulture products, may, on the basis of annual permission from the Specified Officer, remove to a farm in the Domestic Tariff Area, inputs, namely, seeds, fertilizers and chemicals for pre- and post- harvest treatment, micro-nutrients, plant and growth regulators and other organic and inorganic substances used for plant nutrition, insecticides, fungicides, weedicides, herbicides and the following equipments:—

- (a) Filters;
- (b) Dripliers, Driplines and Drip-fittings;
- (c) Micro sprinklers and misters;
- (d) Agriculture sprinklers;
- (e) Fertilizer tanks;
- (f) Valves;
- (g) Fertilizer pumps and chemical injections;
- (h) Crates, drums and preservation media (such as acetic acid and vinegar);
- (i) Grading tables;
- (j) Green House equipment, accessories, heated rooting tables, propagation trays, seeding machines;
- (k) Plants or parts thereof, seeds, saplings, tubers, bulbs, rhizomes, root cuttings, all types of grafts, tissue culture material and other vegetatively

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propagated material utilized for sowing or planting;

- (l) Growing media such as Peat Moss (including peat litres whether or not agglomerated), Pearlite/ vermiculite, rockwool, coca peat, hydrocorn, foam based medium and other cultivation medium:

The removal of above items shall be allowed only after furnishing of Bank Guarantee equivalent to the amount of duty foregone on the capital goods or inputs and fulfillment of following conditions:

- (i) supply of inputs by Unit to the contract farm(s) shall be subject to the input-output norms as may be approved by the Board;
- (ii) there shall contract farming agreement between the Unit and the Domestic Tariff Area farmer(s);
- (iii) the Unit has been in existence for at least two years and is engaged in export of agriculture or horticulture products.

No Bank guarantee is required if the unit has been in existence for more than two years.

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CALCULATION OF NET FOREIGN EXCHANGE EARNINGS

Rule 53 of SEZ Rules, 2006 deals with Net Foreign Exchange Earnings.

The Unit shall achieve Positive Net Foreign Exchange to be calculated cumulatively for a period of five years from the commencement of production according to the following formula:—

$$\text{Positive Net Foreign Exchange} = A - B > > 0$$

Where :—

A : is Free on Board value of exports, including exports to Nepal and Bhutan against freely convertible currency, by the Unit and the value of following supplies of their products:—

- (a) supply of goods against Advance Licence or Duty Free Replenishment Certificate under the Duty Exemption or Remission Scheme or Diamond Imprest Licence under the Foreign Trade Policy;
- (b) supply of capital goods to holders of licence under the Export Promotion Capital Goods Scheme under the Foreign Trade Policy;
- (c) supply of goods to projects financed by multilateral or bilateral agencies or funds as notified by the Department of Economic Affairs, Ministry of Finance under International Competitive Bidding in accordance with the procedures of those agencies or funds, where the legal agreements provide for tender evaluation without including the customs duty;

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- (d) supply of capital goods, including those in unassembled or disassembled condition as well as plants, machinery, accessories, tools, dies and such goods which are used for installation purposes till the stage of production and spares to the extent of ten per cent. of the free on rail value to fertilizer plants provided the supplies shall be as per the terms and conditions of the respective duty exemption notified by the Central Government, in the Ministry of Finance
- (e) supply of goods to any project or purpose in respect of which the Ministry of Finance, by a notification, permits the import of such goods at zero customs duty provided the supplies shall be as per the terms and conditions of the respective duty exemption notified by the Central Government, in the Ministry of Finance;
- (f) supply of goods to the power projects and refineries not covered in above, provided the supplies shall be as per the terms and conditions of the respective duty exemption notified by the Central Government, in the Ministry of Finance;
- (g) supply to projects funded by United Nations Agencies provided the supplies shall be as per the terms and conditions of the respective duty exemption notified by the Central Government, in the Ministry of Finance;
- (h) supply of goods to nuclear power projects through competitive bidding as opposed to International Competitive Bidding, provided the supplies shall be as per the terms and conditions of the respective duty exemption notified by the Central Government, in the Ministry of Finance;
- (i) supply made to bonded warehouses set up under the Foreign Trade Policy or under section 65 of the Customs Act and free trade and warehousing zones, where payment is received in foreign exchange;
- (j) supply against special entitlements of duty free import of goods under the Foreign Trade Policy, provided the supplies shall be as per the terms and conditions of the respective duty exemption notified by the Central Government, in the Ministry of Finance;
- (k) export of services by service units including services rendered within Special Economic Zone or services rendered in the Domestic Tariff Area

Calculation of Net Foreign Exchange Earnings

and paid for in free foreign exchange or such services rendered in Indian Rupees which are otherwise considered as having been paid for in free foreign exchange by the Reserve Bank of India;

- (l) supply of Information Technology Agreement items and notified zero duty telecom or electronic items, namely, Color Display Tubes for monitors and Deflection components for colour monitors or any other items as may be notified by the Central Government;
- (m) supply to other units and Developers in the same or other Special Economic Zone or Export Oriented Unit or Electronic Hardware Technology Park or Software Technology Park Unit or Bio-technology Park Unit provided that such goods and services are permissible for import or procurement by such Units and Developers provided the supplies shall be against procurement certificate.
- (n) supply of goods to Domestic Tariff Area against payment in foreign exchange from the Exchange Earners Foreign Currency account of the Domestic Tariff Area buyer or Free Foreign Exchange received from overseas;
- (o) supply of goods against free foreign exchange by a Free Trade and Warehousing Zone Unit.

B : Consists of the sum of the following:—

- (a) sum total of the Cost Insurance and Freight value of all imported goods used for authorized operations during the relevant period and the Cost Insurance and Freight value of all imported capital goods including goods purchased on high seas basis even though paid for in Indian Rupees and the value of all payments made in foreign exchange by way of export commission, royalty, fees, dividends, interest on external commercial borrowings during the first five-year period or any other charges;
- (b) value of goods obtained from other Unit or Export Oriented Unit or Electronic Hardware Technology Park or Software Technology Park Unit or Bio-technology Park Unit or from bonded warehouses or procured from international exhibitions held in India or precious metals procured

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from nominated agencies;

- (c) the Cost Insurance Freight value of the goods and services, including pro-rata Cost Insurance Freight of capital goods, imported duty free or leased from a leasing company or received free of cost and/or on loan basis or on transfer for the period they remain with Unit.
- (d) for annual calculation of Net Foreign Exchange, value of imported capital goods and lump sum payment of foreign technical know-how fee shall be amortized at the rate of ten per cent. every year from the first year to tenth year.

Explanation : “Inputs” means raw materials, intermediates, components, consumables, parts and packing materials.

Important Note:

NFE is to be calculated in rupee terms only. In case a unit is NFE negative and claims that it is due to foreign exchange fluctuation, the Approval Committee may consider such cases provided that the unit gets the computations certified by the Authorised Bank, on a case-to- case, basis.

EXIT OF UNITS OUT OF SPECIAL ECONOMIC ZONE

Rule 74 deals with exit of units out of Special Economic Zone.

The SEZ Unit at any time may opt to come out of Special Economic Zone with the approval of the Development Commissioner. In such Case the unit shall be liable to pay applicable duties on capital goods, raw materials, components, consumables, spares whether imported or indigenous and finished goods lying in stock on the date of application to the Development Commissioner. They shall be computed on depreciated value of capital goods and depreciation shall be allowed as per Rule 49(1).

In case the unit has not achieved positive Net Foreign Exchange, it shall be liable to penalty that may be imposed under the Foreign Trade (Development and Regulation) Act, 1992.

Exit from Special Economic Zone under EPCG Scheme

Development Commissioner may permit a Unit, as one-time option, to exit from Special Economic Zone on payment of duty on capital goods under the prevailing Export Promotion Capital Goods Scheme under Chapter 5 the Foreign Trade Policy subject to the Unit satisfying the eligibility criteria under that Scheme.

Conditions Appling on the exit of the Unit:—

- (i) Penalty imposed by the competent authority would be paid and in case an appeal against an order imposing penalty is pending, exit shall be considered if the unit has obtained a stay order from competent authority

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and has furnished a Bank Guarantee for the penalty adjudicated by the appropriate authority unless the appellate authority makes a specific order exempting the Unit from this requirement;

- (ii) In case the Unit has failed to fulfill the terms and conditions of the Letter of Approval and penal proceedings are to be taken up or are in process, a legal undertaking for payment of penalties, that may be imposed, shall be executed with the Development Commissioner;
- (iii) The Unit shall continue to be treated as a unit till the date of final exit.

Depreciation shall be allowed on straight line method as per rates below (Rule 49(1) of SEZ Rules, 2006) as specified below, namely:

Item	Ist Yr.	IInd Yr.	IIIrd Yr.	IVth Yr.	Vth Yr.	VI Yr.
						onwards
Computer and Computer Peripherals	10% for Every Quarter	8% for Every Quarter	5% for Every Quarter	1% for Every Quarter	1% for Every Quarter	—
Other Capital Goods	4 % for Every Quarter	3 % for Every Quarter	3 % for Every Quarter	2.5 % for Every Quarter	2.5 % for Every Quarter	2 % for Every Quarter

OVERRIDING EFFECT AND AMENDMENT TO CERTAIN ACTS

According to Section 51(1) of the SEZ Act, 2005 the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Amendment to The Insurance Act, 1938

1. In section 2C, in sub-section (1), after the third Proviso, insert –“Provided also an insurer being an Indian Insurance Company, insurance co-operative society or a body corporate referred to in clause (c) of this sub-section carrying on the business of insurance, may carry on any business of insurance in any Special Economic Zone as defined in clause (za) of section 2 of the Special Economic Zones Act, 2005.”.
2. After section 2C insert –“2CA. The Central Government may, by notification, direct that any of the provisions of this Act,
 - (a) shall not apply to insurer, being an Indian Insurance Company, insurance co-operative society or a body corporate referred to in clause (c) of this sub-section (1) of section 2C, carrying on the business of insurance, in any Special Economic Zone as defined in clause (za) of section 2 of the Special Economic Zones Act, 2005; or

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- (b) shall apply to any insurer being an Indian Insurance Company, insurance co-operative society or a body corporate referred to in clause
- (c) of sub-section (1) of section 2C, carrying on the business of insurance, in any Special Economic Zone as defined in clause (za) of section 2 of the Special Economic Zones Act, 2005 only with such exceptions, modifications and adaptations as may be specified in the notification.”.

Amendment to the Banking Regulation Act, 1949 (10 of 1949)

1. Section 53 shall be renumbered as sub-section (1) thereof and in sub-section (1) as so re-numbered, for “banking company or institution or to any class of banking companies”, substitute,

“banking company or institution or to any class of banking companies or any of their branches functioning or located in any Special Economic Zone established under the Special Economic Zones Act, 2005.”.

2. After sub-section (1) as so numbered, the following sub-section shall be inserted:-

“(2) A copy of every notification proposed to be issued under sub- section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.”.

Amendment to The Indian Stamp Act, 1899 (2 of 1899)

In section 3, in the proviso, after clause (2), insert,-

“(3) any instrument executed, by, or, on behalf of, or, in favour of the

Exit of Units out of Special Economic Zone

Developer, or Unit or in connection with the carrying out of purposes of the Special Economic Zone.

Explanation.- For the purposes of this clause, the expressions “Developer”, “Special Economic Zone” and “Unit” shall have meanings respectively assigned to them in clause (g), (za) and (zc) of section 2 of the Special Economic Zones Act, 2005.”.

Clarifications/Guidelines issued by BOA regarding exemption or Refund of Stamp Duty

- (i) Whether exemption or refund of stamp duty can be given in respect of purchase of land by the Developer for the purpose of setting up of a SEZ, even if eventually no SEZ is set up?

Clarification:-

There are 3 stages of approvals for setting up an SEZ.

- first issues an in-principle approval,
 - thereafter a formal approval, and
 - finally, the SEZ notification.
1. For the purchase of land after the formal approval (which will be after the in-principle approval, but before the SEZ notification), the State Governments are expected to give full exemption of stamp duty as provided for in the SEZ Act, 2005.
 2. For the purchase of land before the formal approval, but after the in-principle approval, the State Government may either give the exemption of stamp duty upfront (subject to final setting up of the SEZ) or insist that the developer pay the stamp duty but refund the same after the formal SEZ notification is issued.
 3. For the purchase of land even before the in-principle approval, the potential

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developer has to pay the stamp duty upfront, but it may be refunded by the State Government after the SEZ notification is issued.

In all cases, if the SEZ is not actually commissioned within the time indicated in the approval, or if the SEZ notification is cancelled, the State Governments will be entitled to withdraw the concession of stamp duty and recover the same from the developer.

- (ii) Whether stamp duty will be payable in respect of purchase of land by the Developer for activities ancillary to the SEZ, e.g. housing, hotel, recreation, entertainment, golf, etc.?

Clarification:-

The facility of exemption from stamp duty on purchase of land by the SEZ developer for activities like housing, hostel, recreation, entertainment, golf etc. would be available only with respect to the land which falls within the SEZ area. Any facility falling outside the SEZ area will not be eligible for exemption from stamp duty.

- (iii) Whether stamp duty would be payable in respect of sale or conveyance of the land developed by the Developer only to the units in the SEZ or to any other person or entity as well?

Clarification:-

Land, buildings, etc. falling outside the notified SEZ will not be eligible for exemption from stamp duty. Also, under the rules governing SEZ, sale of SEZ land to units or other persons or entities is not allowed. Similarly, conveyance of land, buildings, premises, etc. by lease or otherwise (but not by sale) in an SEZ can be made only to the units in the SEZ or entities permitted to carry out operations within the SEZ areas as per SEZ Rules. In such cases above, the concession of stamp duty exemption will be allowed. Other persons or entities will not be eligible for concession.

- (iv) Whether stamp duty would be payable in respect of purchase or sale of land, buildings, etc. by the Developer at a place outside the SEZ?

Exit of Units out of Special Economic Zone

Clarification:-

The facility of exemption of stamp duty to a Developer will not be available for purchase or sale of any land or building at a place outside the notified SEZ.

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POWER GENERATION, TRANSMISSION AND DISTRIBUTION IN SPECIAL ECONOMIC ZONE (SEZS) AND SALE OF SURPLUS POWER IN DOMESTIC TARIFF AREA

According to Rule 5(5)(c) of SEZ Rules, 2006, the State Government shall allow generation, transmission and distribution of power within a Special Economic Zone. Consultation with State Electricity Board shall not be required for sale of power within the same Special Economic Zone.

Sale of Surplus Power Rule 47(3)

Surplus power generated in a Special Economic Zones Developer's Power Plant in the SEZ or Unit's captive power plant or diesel generating set may be transferred to Domestic Tariff Area on payment of duty on consumables and raw materials used for generation of power subject to the following conditions, namely:—

- (a) Proposal for sale of surplus power received by the Development Commissioner shall be examined in consultation with the State Electricity Board, wherever considered necessary.
- (b) Norms for production of a unit of power shall be approved by the Approval Committee.

Power Generation, Transmission and Distribution in Special Economic...

- (c) Sale of surplus power to other Unit or Developer in the same or other Special Economic Zone or to Export Oriented Unit or to Electronic Hardware Technology Park Unit or to Software Technology Park Unit or Bio-technology Park Unit, shall be without payment of duty.
- (d) for sale of surplus power in Domestic Tariff Area, the Unit shall obtain permission from the Specified Officer and the concerned State Government authority.
- (e) duty on sale of surplus power to the Domestic Tariff Area shall be as provided for in this rule.

Guidelines for Power Generation, Transmission and Distribution in Special Economic Zone (Notification dated 27 February 2009).

Generation, transmission and distribution of power in SEZs

- (i) Power plant set up by developer/Co-developer

A power plant to be set up by developer/ co-developer in an SEZ as part of infrastructure facility will be in the non processing area of SEZ and will be entitled to fiscal benefits only for its initial setting up and no fiscal benefit would be admissible for its operation and maintenance in terms of Rule 27(3) of the SEZ Rules. There will be no obligation to achieve positive Net Foreign Exchange Earning (NFE) for such power plants.

Constituents to whom it can supply power:

Such a power plant can supply power to other facilities located in the non processing area of the same SEZ/facilities located in the non processing area of other SEZs, SEZ units located in the processing area of the same SEZ/SEZ units located in the processing area in other SEZs, facilities located in the processing area of the same SEZ/facilities located in the processing area of other SEZs and also Domestic Tariff Area (DTA).

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(ii) A unit set up within the SEZ

A unit can be set up within the SEZ to generate power as a product or have a captive power plant and will be located in the processing area. Such a power plant will be entitled to all the fiscal benefits covered under section 26 of the SEZ Act including the benefits for initial setting up, maintenance and the duty free import of raw materials and consumables for the generation of the power in such plants.

With respect to SEZs in sectors such as IT/ITES, Gem and Jewellery, Biotech, etc. where a minimum built up area is stipulated under the SEZ Rules and in respect of which generation of power has been approved by the Board of Approval as authorized operation to the Developer/Co-developer within the processing area, in such cases generation of power will be carried out as a unit without any separate demarcation of the area for that purpose. However, such unit will maintain separate accounts as a power generating unit.

These units will enjoy duty free import of capital goods, raw materials and consumables for the generation of power and such duty free imports of capital goods, raw material and consumables etc. would be counted towards the NFE obligations of the unit.

Constituents to whom it can supply power:

Such a unit can supply power to other SEZ Units located in the processing area of the same SEZ/SEZ units located in the processing area of other SEZs, facilities located in the non-processing area of the same SEZ/ facilities located in the non-processing area of other SEZs, facilities located in the processing area of the same SEZ/ facilities located in the processing area of other SEZs and DTA.

(iii) A single power plant in an SEZ

A single stand alone power plant can be set up in an SEZ in which there would be no other units. Such a power plant will be treated as a unit in the processing area and will be entitled to all fiscal benefits covered under Section 26 of the SEZ Act including benefits for initial setting up, maintenance and the duty free imports of raw material and consumables for generation of power in such a plant.

The duty free-import of capital goods, raw material and consumables etc. would

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be counted towards the NFE obligation of the unit as applicable to such units under Rule 53 of the SEZ Rules, 2006.

Constituents to whom it can supply power:

Such a power plant can supply power to the facilities in the non processing area of the same SEZ/facilities in the non processing area of other SEZs, SEZ units located in other SEZs and DTA.

Requirement of Licence

While a generating company may establish, operate and maintain a generating station without obtaining a license under Electricity Act, 2003 subject to compliance of the technical standards as specified in the said Act and conforming to the definition of generating company under the provisions of the said Act, distribution of power is a licensed activity as specified in section 14 of the Electricity Act 2003 except the situation specified in the 8th proviso to the said Section.

Determination of tariff

Tariff of the electricity for any sales within SEZs shall be determined in accordance with the provisions of the Electricity Act, 2003/ Rules made thereunder.

Creation of separate entities

Separate entities can be created for generation/transmission and distribution of power.

DTA clearance/clearance from processing area to non-processing area and duties thereon

In respect of power supplied from processing area to constituents in non-processing area or from processing area/ non-processing area to DTA, it should be at such a price as agreed by the regulator and the unit. For such clearance, the quantity of duty shall be leviable at such rate as may be notified as customs tariff by the Department of Revenue on the advice of the Ministry of Power and the Ministry of Commerce, read with Section 30 of SEZ Act, 2005. Such power

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plants would ensure maintenance of separate meter for supply of power from processing to constituents in non processing area or from processing area to DTA and amount of power so supplied should be submitted to the Unit Approval Committee for every quarter.

Exemption to SEZ Developers from obtaining distribution licence

The Central Government vide **Notification dated 03rd Mach 2010** has notified that all the provisions of clause (b) of section 14 of the Electricity Act, 2003 (36 of 2003), as apply to all Special Economic Zones notified under sub section (10) of section 4 of The Special Economic Zones Act 2005, subject to the following conditions:-

In clause (b) of Section 14 the Electricity Act, 2003 (36 of 2003), the following proviso shall be inserted:-

“Provided that the developer of a Special Economic Zone notified under sub section (10) of section 4 of The Special Economic Zones Act 2005, shall be deemed to be a licensee for the purpose of this clause, with effect from the date of notification of such Special Economic Zone.”

Benefits for Power Plants in SEZ

The following benefits are available for Power Plants –

1. Power Plant set up by developer/co-developer
 - a. A power plant to be set up by developer/ co-developer in an SEZ as part of infrastructure facility will be in the non-processing area of SEZ and will be **entitled to fiscal benefits only for its initial setting up** and no fiscal benefit would be admissible for its operation and maintenance.
 - b. There will be no obligation to achieve positive Net Foreign Exchange Earning (NFE) for such power plants.
2. A Unit set up within the SEZ

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- a. Such power plant will be entitled to all the fiscal benefits covered under section 26 of the SEZ Act including the **benefits for initial setting up, maintenance and the duty-free import of raw materials and consumables for the generation of the power in such plants.**
 - b. With respect to SEZs in sectors such as IT/ITES, Gem and Jewelry, Biotech, etc, these units will enjoy duty free import of capital goods, raw materials and consumables for the generation of power and such duty free imports of capital goods, raw material and consumables etc. would be counted towards the NFE (net foreign exchange) obligations of the unit.
3. A single power plant in an SEZ
- a. Such a power plant will be treated as a unit in the processing area and will be **entitled to all fiscal benefits** covered under Section 26 of the SEZ Act including **benefits for initial setting up, maintenance and the duty free imports of raw material and consumables for generation of power in such a plant.**
 - b. The duty free import of capital goods, raw material and consumables etc. would be counted towards the NFE obligation of the unit as applicable to such units under Rule 53 of the SEZ Rules, 2006.

FREQUENTLY ASKED QUESTIONS

- Q. What is a Special Economic Zone?
- A. Special Economic Zone (SEZ) is a specifically delineated duty-free enclave and shall be deemed to be foreign territory for the purposes of trade operations and duties and tariffs.
- Q. Who can set up Special Economic Zone?
- A. A SEZ can be established either jointly or severally by
- a the Central Government,
 - b State Government
 - c any person
- Q. Can Foreign Companies set up SEZs?
- A. Yes. Foreign companies can set up manufacturing units as their branch operations in the Special Economic Zones.
- Q. What is a Multi-Product SEZ?
- A. Multi-Product SEZ means where units may be set up for manufacture of any type of goods or rendering of two or more services or for Trading & Warehousing.
- Q. What is the minimum Land requirement for Multi Product SEZ.?

Frequently Asked Questions

- A. The Multi Product SEZ should have a minimum area of 1000 hectares but not more than 5000 hectares.
- Q. What is the role of State Governments?
- A. In setting up of a Special Economic Zone, the State Government plays a significant Role. The Developer is required to obtain the State Government Recommendation (SGR) to be sent directly to BOA without which BOA will not consider the proposal for final Notification.
- Q. What is sector Specific SEZ?
- A. Sector- specific SEZ means a SEZ which is meant exclusively for one or more products in a sector OR for one or more services in a sector.
- Q. What is the minimum Land requirement for Sector- specific SEZ?
- A. The Sector- specific SEZ for manufacture or for services should have a minimum area of 100 hectares. In case of Sector-Specific SEZ for IT & ITES the minimum area required is 10 hectares.
- Q. What are the facilities Incentive/ Facilities available to SEZ Developer?
- A. — Income Tax benefit under (Sec.80 (IA) of Income Tax Act, 1961) to developers for any block of 10 years in 15 years.
- Duty free import/domestic procurement of goods for development, operation and maintenance of SEZs.
- Exemption from Service Tax /CST.
- Developer permitted to transfer infrastructure facility for operation and maintenance.
- Generation, transmission and distribution of power in SEZs allowed.
- Full freedom in allocation of space and built up area to approved SEZ units on commercial basis.

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- Authorised to provide and maintain services like water, electricity, security, restaurants and recreation centres on commercial lines.
- 100% FDI allowed.

Q. What are the incentive/facilities available for SEZ units?

A. Following incentives are available to units in SEZ:

- 100% income tax exemption for the first 5 years
- 50% income tax exemption for the next 5 years
- Income tax exemption for the next 5 years to the extent of profits Reinvested (Maximum 50%)
- Exemption from Dividend Distribution Tax
- Exemption from Excise and Customs Duties
- Exemption from Central Sales Tax / VAT
- Exemption from Service Tax
- Exemption from local taxes
- Single Window Clearance
- 100% FDI through automatic route
- Domestic Sales on payment of applicable duty
- External commercial borrowings by units up to \$ 500 million a year allowed without any maturity restrictions
- Flexibility to keep 100% of export proceeds in EEFC account
- Offshore banking unit

Frequently Asked Questions

- On-site custom house
- Self-certification
- Warehouses/ICD

Q. What are the obligations of the Unit?

A. SEZ units have to achieve positive net foreign exchange earned in a block of five years i.e. Exports (FOB value of all exports) - Imports (CIF value of all imports) > 0.

Q. What is the processing area?

A. The processing area is the bonded area within the SEZ where all manufacturing, services and trading units can be set up.

Q. What is the non-processing area (NPA) in a SEZ?

A. The NPA is the area which is other than the Processing Area within the SEZ earmarked for residential, commercial and recreational development etc.

Q. Which type of industries are permitted in a SEZ?

A. Any type of industry can be located in a SEZ with the appropriate approvals and clearances from the Pollution Control Board.

Q. Can units operate both in the domestic tariff area (DTA) and SEZ area?

A. Yes, it can have two distinct identities with separate books of accounts, but it shall not be necessary for the Special Economic Zone unit to be a separate legal entity.

Q. Can SEZ units sell to the domestic market?

A. Yes. SEZ units can sell goods and services, including rejects and scrap or other by-products of the manufacturing process in the domestic market on payment of applicable customs and excise duties.

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Q. Can SEZ units subcontract part of their production process to units in the DTA?

A. Yes. On the basis of annual permission granted by the Specified Officer, SEZ units can subcontract to units in the DTA and even abroad, provided goods sent for job work must be returned within 120 days (or within extended period) from the date of its removal.

Q. Can SEZ units undertake job work for domestic companies?

A. Yes. A SEZ unit, on the basis of annual permission by the specified officer, can undertake sub contracting for domestic companies for exports, provided all raw material including semi-finished goods and consumables including fuel is supplied by the DTA exporter.

The finished goods must be directly exported from the SEZ unit on behalf of the DTA exporter. The export document is jointly in the name of the DTA unit and the SEZ unit. The DTA exporter is eligible for refund of duty paid on the inputs by way of brand rate of duty drawback.

Q. Can goods be directly exported from the sub-contractor's premises in the DTA?

A. Yes. Goods can be exported directly from the DTA units registered with the Central Excise Department. This is allowed only by way of direct export and not through third parties.

Q. Have SEZs been exempted from Labour laws?

A. No. Normal Labour Laws shall be applicable to SEZs, which are enforced by the respective state Governments. However the state Governments have been requested to simplify the procedures/returns and for introduction of a single window clearance mechanism by delegating appropriate powers of Labour Commissioner to Development Commissioners of SEZs.

Q. What are the facilities/benefits available for Domestic suppliers for supply of goods to Special Economic Zone?

A. a. Supplies from Domestic Tariff Area (DTA) to SEZ to be treated as

Frequently Asked Questions

physical export.

- b. Drawback/DEPB allowed
- c. CST Exemption
- d. Exemption from State Levies
- e. Discharge of EO if any on the suppliers

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IMPACT OF PROPOSED DIRECT TAX CODE ON SEZs

1. Earnings of a Developer after recovery of project cost are taxable whereas in the present Income Tax Act, 1961 the exemption is available in a block of 10 years out of 15 years.
2. MAT is applicable to SEZ Developer and SEZ units and is to be calculated on the gross value of assets with no carry forward, whereas in the current Income Tax Act, 1961 it is calculated as % of book profit and can be carried forward and be adjusted in subsequent years.
3. No exemption from Dividend Distribution Tax is available to the developer and it is taxable @ 15% whereas in the current Income Tax Act, 1961 it is fully exempt.
4. No tax exemption is available to SEZ units whereas 100% tax exemption (5+5) is available to SEZ units in the current Income Tax Act, 1961.
5. No tax exemption is available to OBU/IFS in SEZ whereas 100% (5+5) tax exemption is available to OBU/IFS in SEZ in the current Income Tax Act, 1961.

STRATEGIC REQUIREMENTS FOR FUTURE

- a) There must be a mechanism to provide land to the tune of say 5-10% of the total land by the State Government so as to remove the bottleneck inherent in the contiguity of the land condition.
- b) Single Window Clearance must be implemented effectively. The Central and State Government should synchronize their policies to give maximum benefit as per the basic regime of SEZ policy.
- c) Relaxation in the labour laws on the China model which includes flexible working hours, employment of seasonal labour, freedom to hire labour through contractor must be made.
- d) Regional inequalities are also one of the contentious issues between and within the states. There are no restrictions or additional incentives for setting up SEZs in backward areas. Therefore most of the SEZs are coming up in the developed region of the country.
The government should formulate a rational policy to overcome the situation of regional inequalities.
- e) The Government should formulate a policy to emphasize on creating new manufacturing base. At present almost 70% of total SEZs are of IT/ITES sector and they will not generate mass employment opportunities in terms of the capital employed as compared to the manufacturing sector.
- f) Proposed DTC should have all the incentive schemes at par with the

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current Income Tax Act otherwise the investment already made in SEZs would be adversely affected.

- g) The Central Government should exercise the power given by Section 49(1) of the SEZ Act, 2005 according to which -

“The Central Government may, by notification, direct that any of the provisions of this Act (other than sections 54 and 56 of SEZ Act, 2006) or any other Central Act or any rules or regulations made thereunder or any notification or order issued or direction given thereunder (other than the provisions relating to making of the rules or regulations) specified in the notification—

- (a) shall not apply to a Special Economic Zone or a class of Special Economic Zones or all Special Economic Zones; or
- (b) shall apply to a Special Economic Zone or a class of Special Economic Zones or all Special Economic Zones only with such exceptions, modifications and adaptation, as may be specified in the notification.

Last but not the least, there should have been a significant improvement in the quality of infrastructure and governance with effective single window clearance.

DEFINITIONS

As per Rule 2 the Definitions are as follows unless the context otherwise requires,—

- (a) “**Act**” means the Special Economic Zones Act, 2005 (28 of 2005);
- (b) “**Advance Licence**” means Advance Licence issued under the Duty Exemption and Remission Scheme of the Foreign Trade Policy and includes advance authorisation;
- (c) “**Authorised Officer**” means an Inspector or Preventive Officer or Appraiser or Superintendent of Customs posted in the Special Economic Zone and authorized by the Specified Officer to discharge any of his functions under these rules;
- (d) “**Bio Technology Park unit**” means a unit approved under the Bio-Technology Park Scheme of the Foreign Trade Policy;
- (e) “**capital goods**” means any plant, machinery, equipment or accessories required for manufacture or production, either directly or indirectly, of goods or for rendering services, or for development of Special Economic Zone, including those required for construction, replacement, modernization, technological upgradation or expansion and also include material handling equipment, packaging machinery and equipments, refractories machine tools, equipment and instruments for testing, research and development, quality and pollution control system, for use in manufacturing, construction, mining, agriculture, aquaculture, animal

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husbandry, floriculture, horticulture, pisciculture, poultry, sericulture and viticulture, and in the services sector;

- (f) **“component”** means one of the parts of a sub-assembly or assembly of which a manufactured product is made up and into which it may be resolved and includes an accessory or attachment to the component;
- (g) **“consumable”** means any item, (including fuels, high speed diesel oil, light diesel oil and other such petroleum products) which is required for a manufacturing process, which may or may not be substantially or totally consumed during a manufacturing process but does not necessarily form part of the end product;
- (h) **“custodian”** means any person referred to in section 45 of the Customs Act, 1962;
- (i) **“Customs Act”** means the Customs Act, 1962 (52 of 1962);
- (j) **“drawback”** means drawback referred to in the Customs Act, 1962;
- (k) **“Duty Entitlement Pass Book Scheme”** means the Duty Exemption Pass Book Scheme framed under the Foreign Trade Policy;
- (l) **“Duty Free Replenishment Certificate”** means Duty Free Replenishment Certificate issued under the Foreign Trade Policy;
- (m) **“Electronic Hardware Technology Park unit”** means a unit approved in accordance with the Electronic Hardware Technology Park Scheme framed under the Foreign Trade Policy;
- (n) **“Export Oriented Unit”** means a unit approved in accordance with the Export Oriented Unit Scheme framed under the Foreign Trade Policy;
- (o) **“Foreign Trade Policy”** means the Foreign Trade Policy notified from time to time by the Central Government under section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992);
- (p) **“Form”** means the form appended to these rules;

Definitions

- (q) **“Handbook”** means the Handbook of Procedures framed under the Foreign Trade Policy;
- (r) **“Import Trade Control (Harmonized System) Classifications of Export and Import Items”** means the items notified from time to time by the Central Government under section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992);
- (s) **“infrastructure”** means facilities needed for development, operation and maintenance of a Special Economic Zone and includes industrial, business and social amenities like development of land, roads, buildings, sewerage and effluent treatment facilities, solid waste management facilities, port, including jetties, single point moorings, storage tanks and inter- connecting pipelines for liquids and gases, Inland Container Depot or Container Freight Station, warehouses, airports, railways, transport system, generation and distribution of power, gas and other forms of energy, telecommunication, data transmission network, information technology network, hospitals, hotels, educational institutions, leisure, recreational and entertainment facilities, residential and business complex, water supply, including desalination plant, sanitation facility;
- (t) **“Nominated Agency”** means—
 - a) the MMTC Ltd., being a company registered under the Companies Act, 1956 (1 of 1956),
 - b) the Handicraft and Handloom Export Corporation Limited, being the company registered under the Companies Act, 1956 (1 of 1956),
 - c) the State Trading Corporation of India Limited, being the company registered under the Companies Act, 1956 (1 of 1956),
 - d) the Projects and Equipment Corporation of India Limited being the company registered under the Companies Act, 1956 (1 of 1956), and
 - e) any other agency authorized by the Reserve Bank of India;

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- (u) **“raw material”** means—
 - (a) basic materials which are needed for the manufacture of goods, but which are still in a raw, natural, unrefined or unmanufactured state, and
 - (b) any materials or goods which are required for the manufacturing process (including catalysts for initial charge), packing material, whether they have actually been previously manufactured or are processed or are still in a raw or natural state;
- (v) **“Replenishment Licence”** means the Replenishment Licence issued under the Foreign Trade Policy;
- (w) **“Section”** means the section of the Act;
- (x) **“Sector”** means one or more products or one or more services falling under a category such as engineering, textiles and garments, pharmaceuticals and chemicals, handicrafts, gem and jewellery, electronics hardware and software, including information technology enabled services and bio-technology;
- (y) **“Software Technology Park unit”** means a unit approved under the Software Technology Parks Scheme of the Foreign Trade Policy;
- (z) **“spares”** means a part or a sub-assembly or assembly for substitution, that is ready to replace an identical or similar part or sub-assembly or assembly and includes a component or an accessory;
- (za) **“Special Economic Zone for multi-product”** means a Special Economic Zone for more than one sector where Units may be set up for manufacture of goods falling in two or more sectors or rendering of services falling in two or more sectors or any combination thereof including trading and warehousing.
- (zb) **“Special Economic Zone for specific sector”** means a Special Economic Zone meant exclusively for one or more products in a sector or one or more services in a sector;

Definitions

- (zc) **“Special Economic Zone in a port or airport”** means a Special Economic Zone in an existing port or airport for manufacture of goods in two or more goods in a sector or goods falling in two or more sectors or for trading and warehousing or rendering of services;
 - (zd) **“Specified Officer”** in relation to a Special Economic Zone means Joint or Deputy or Assistant Commissioner of Customs for the time being posted in the Special Economic Zone;
 - (ze) **“Status holder”** means an exporter recognized under the Foreign Trade Policy.
 - (zf) **“Vacant Land”** means the land where there are no functional ports, manufacturing units, industrial activities or structures in which any commercial or economic activity is in progress.
- (2) All other words and expressions used in these rules and not defined but defined in the Act shall have the meanings respectively assigned to them in the Act.

USEFUL WEBSITES

1. Special Economic Zones in India
<http://www.sezindia.nic.in/index.asp>
2. SEZ online
<http://www.sezonline-ndml.com/about-sez-online.htm>
3. Free Trade and Warehousing Zones (FTWZ)
<http://www.ftwz.com/>
4. Central Board of Excise and Customs
www.cbec.nsdl.com
5. Cochin Special Economic Zone
www.csez.com
6. Noida Special Economic Zone
www.nsez.gov.in
7. Kandla Special Economic Zone
www.kasez.com
8. Santacruz Electronics Export Processing Zone
www.seepz.com
9. Visakhapatnam Special Economic Zone
www.vsez.gov.in

Useful Websites

10. MEPZ Special Economic Zone
www.mepz.gov.in
11. Falta Special Economic Zone
www.fsez.nic.in
12. Mumbai Software Technology Park of India
www.mumbai.stpi.in

References

1. The Special Economic Zone Act, 2005 (Published by EPCES)
2. The Special Economic Zone Act, 2006 (Published by EPCES)
3. Notifications/Circulars/Instructions issued by Ministry of Commerce & Industry, Department of Commerce
4. Web Site referred www.sezindia.nic.in