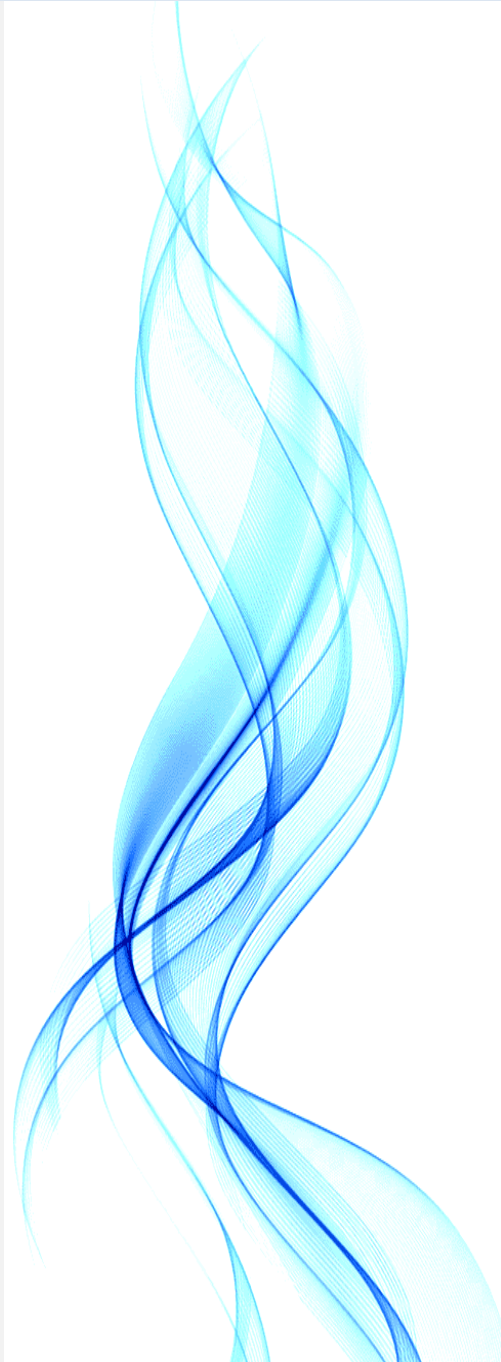




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SPECIAL ECONOMIC ZONES (SEZs) IN INDIA

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A special economic zone (SEZ) refers to a geographical region having more relaxed and liberal economic laws as compared to typical economic laws prevailing in other parts and regions of the country. The concept of SEZs was foreign to India, however there were some policies relating to SEZs which were contained in the Foreign Trade Policy. The Indian Parliament in the year 2005 passed the Special Economic Zone (SEZ) Act, 2005 in order to bring stable and long-term policy framework for regulation of SEZs in India. This was done with an objective to strike balance between different state economies and promote even development throughout India. SEZs are like industrial hotspots, a way for the Central and State Govts. to attract more foreign investment, encourage companies to invest in such SEZs and in return provide such companies relaxed and favourable economic laws along with various business incentives and exemptions under a variety of laws.

PROCEDURE FOR SETTING UP SEZ

In India a SEZ can be established either jointly or severally by the Central and State Govt. or by any other person/company dealing in manufacture business including a foreign company. Following are the steps for setting up SEZ in India:

STEP 1:	After identifying an area, a person wishing to establish a SEZ may make a proposal in FORM A (Rule 3) to the State Government.
STEP 2:	The proposal may directly be made to the Board of Approval (BOA)
STEP 3:	The State Government may, on receipt of the proposal, forward the same together with its recommendations to the Board of Approval.
STEP 4:	The BOA may, after receipt of the proposal, approve the proposal subject to terms and conditions as it may deem fit to impose, or modify or reject the proposal.

STEP 5:	The Central Government has prescribed the following requirements for establishment of a Special Economic Zone in terms of size of the land:																				
	<table border="1"> <thead> <tr> <th>SECTOR</th> <th>AREA (IN HECTARES)</th> <th>INVESTMENT (IN CRORES)</th> <th>NET WORTH (IN CRORES)</th> </tr> </thead> <tbody> <tr> <td>Multi Sector SEZ</td> <td>1000</td> <td>1000</td> <td>250</td> </tr> <tr> <td>Sector Specific SEZ</td> <td>100</td> <td>250</td> <td>50</td> </tr> <tr> <td>Free Trade and Warehousing Zones (FTWZs)</td> <td>40</td> <td>-</td> <td>-</td> </tr> <tr> <td>IT SEZS</td> <td>10</td> <td>-</td> <td>100</td> </tr> </tbody> </table>	SECTOR	AREA (IN HECTARES)	INVESTMENT (IN CRORES)	NET WORTH (IN CRORES)	Multi Sector SEZ	1000	1000	250	Sector Specific SEZ	100	250	50	Free Trade and Warehousing Zones (FTWZs)	40	-	-	IT SEZS	10	-	100
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STEP 6:	If the BOA approves the proposal or without any modifications it shall communicate the same to the Central Govt; if the BOA approves the proposal received with modifications, it shall communicate the same to Central Govt. only after accepting such modification; and if the BOA rejects the proposal, it shall record its reasons and communicate the same to central Govt. which shall intimate to the State Govt./person concerned																				
STEP 7:	Upon receipt of such communication, the Central Govt shall grant a letter of approval to the developer notifying the area proposed as a SEZ.																				

Establishment of a Unit

STEP 1:	Application to Development Commissioner's Office under FORM F (Rule 17)
STEP 2:	Based on Approval Committee's decision, Development Commissioner's Office will update the status (approved, rejected or approved proposal with modifications or approved proposal subject to conditions) in SEZ Online system.
STEP 3:	The applicant might have to explain in person that why they shall be issued a Letter of approval.
STEP 4:	After assessing viability of the project in terms of Foreign exchange earnings, compliance of applicable laws, the SEZ official can approve of the proposal. The SEZ Official can view and print letter of approval through SEZ Online system and despatch the same to applicant.
STEP 5:	After acceptance of Letter of Approval (within 45 days), the unit user shall enter into a lease agreement with the developer of the SEZ in which he is

	opening the unit. A copy of the agreement must be sent to the DC's office as well as updated on the SEZ Online System.
STEP 6:	As soon as the unit commences production, the date of commencement of production must be intimated to the DC's Office. The unit shall intimate the date online through SEZ system. In addition to intimation of the date, the DC may also require the unit to submit supporting documents in physical form.

RELEVANT LINKS:

SEZ INDIA FACTSHEET: <http://sezindia.nic.in/upload/5e68cb85d806eupdated%20factsheet.pdf>

LIST OF SEZs IN INDIA: <http://sezindia.nic.in/cms/list-on-notified-sezs.php>

FORM A & CHECKLIST: http://sezindia.nic.in/upload/uploadfiles/files/Form_A_and_checklist.pdf

FORM F: <https://www.nsez.gov.in/Resources/DownloadForms/FORM-F.pdf>

ADMINISTRATIVE SET UP

As per sections 8 to 14 of the SEZ Act, 2005, functioning of SEZ is governed by a three-tier administrative set up. The Board of Approval is the apex body and is headed by the Secretary, Department of Commerce. The Approval Committee at the Zone level deals with approval of units in the SEZs and other related issues. Each Zone is headed by a Development Commissioner, who is ex-officio chairperson of the Approval Committee.

1.

BOARD OF APPROVAL:

- The BOA, consisting of 19 members, has been constituted by the Central Govt. in exercise of the powers conferred upon it under the SEZ Act, 2005.
- All the major decisions are taken by the BOA.

APPROVAL COMMITTEE:

- All the requests for setting up of units in the SEZ are approved at the Zone level by the Approval Committee consisting of Development Commissioner after a discussion with the Customs authorities and representatives of State Govt.
- All post approval clearances in matters related to importer-exporter code number, change in the name of the company or implementing agency; broad banding diversification, etc. are given at the zonal level by the Development Commissioner.
- A separate unit is also there who monitor the performance of the SEZ units on a periodic basis and is governed by the Approval Committee.

DEVELOPMENT COMMISSIONER:

- Each Zone is headed by a Development Commissioner, who is ex-officio chairperson of the Approval Committee.
- Development Commissioner is the nodal officer for SEZs and help in resolution of problem, if any, faced by the units or developer.
- In all SEZs, the statutory functions are controlled by the Government while the rest of the operations are privatized.

INCENTIVES, BENEFITS AND EXEMPTIONS

Under Customs & Excise

1. SEZ units are allowed to import or procure from domestic sources, duty-free, without any license or specific approval.
2. Duty-free import and domestic procurement of goods for setting up of SEZ unit.
3. Goods imported or procured locally duty-free could be utilised over the approval period of 5 years.
4. Domestic sale of finished products, by-products on payment of applicable customs duty.
5. Domestic sale of rejects and waste and scrap on payment of applicable customs duty on the transaction value.

Tax Benefits & Exemptions

6. Duty free import/domestic procurement of goods for development, operation and maintenance of SEZ units
7. 100% Income Tax exemption on export income for SEZ units under Section 10AA of the Income Tax Act for first 5 years, 50% for next 5 years thereafter and 50% of the ploughed back export profit for next 5 years. (relevant to any assessment year commencing on or after the 1st day of April, 2006, but before the first day of April, 2021)
8. Exemption from GST under Section 16(3) and supplies to SEZs are zero rated under IGST Act, 2017. Refund of tax paid can be claimed under Section 54 of the act read with Rule 96.
9. Other levies as imposed by the respective State Governments. Single window clearance for Central and State level approvals.

Under Company Law

10. Enhanced limit of Rs.2.4 crores per annum allowed for managerial remuneration.

Banking, Insurance & External Commercial Borrowing

11. Setting up of off-shore banking units is allowed in SEZs.
12. Freedom to bring in export proceeds without any time limit.
13. External commercial borrowings by units up to \$500 million a year allowed without any maturity restrictions.
14. OBUs allowed 100% income tax exemption on profit for 3 years and 50% for the next 2 years.

- 15. Flexibility to keep 100% of export proceeds in EEFC account. Freedom to make the overseas investment from it.
- 16. Commodity hedging permitted.
- 17. Exemption from interest rate surcharge on import finance.
- 18. SEZ units allowed to write off unrealised export bills.

FDI Benefits

- 19. 100% FDI under the automatic route is allowed in the manufacturing sector in SEZ except for arms and ammunition, explosive, atomic substance, narcotics and hazardous chemicals, distillation and brewing of alcoholic drinks and cigarettes, cigars and manufactured tobacco substitutes.
- 20. No cap on foreign investments for Small Scale Industries reserved items.

Licences & Approvals

- 21. SEZs are permitted to have non-polluting industries in IT and facilities like golf courses, desalination plants, hotels and non-polluting service industries in the coastal regulation zone area.
- 22. SEZ units are exempted from a public hearing under Environment Impact Assessment notification.
- 23. SEZ units enjoy exemption from port restriction under Drugs & Cosmetics Rules.

OBLIGATIONS

- SEZ Units to achieve positive Net Foreign Exchange (NFE) in accordance with the formula provided under Rule 53 of the SEZ Rules, 2006.

The net foreign exchange criteria is determined by subtracting the value of imported inputs, input services and capital goods along with the value of all payments made in foreign exchange from the value of exports.

$$\text{Positive NFE} = A - B > 0$$

Where, **A**: 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; **B**: consist of sum of Cost of Insurance of imported inputs, Value of Goods from other inputs, Cost Insurance Freight value of the goods and services including pro-rata Cost Insurance Freight of capital goods and annual calculation of Net Foreign Exchange.

- SEZ Units are required to execute bond-cum-legal undertaking and submit Form-H, prescribed under the SEZ Rules, to the Development Commissioner.

Form H: <https://www.nsez.gov.in/Resources/DownloadForms/FORM-H.pdf>

- SEZ Units are required to submit Annual Performance Report (in Form-I) to the Development Commissioner.

Form I: <https://www.nsez.gov.in/Resources/DownloadForms/FORM-I.pdf>

- SEZ Units shall abide by the local laws, rules, regulations, byelaws in respect of area planning, sewerage disposal, pollution control, etc.
- SEZ Units to comply with Industrial and Labour Laws, as are applicable locally. It may be noted that the labour laws will apply to all the Units inside the SEZ. However, the respective State Governments may declare Units within the SEZ as public utilities and may delegate the powers of Labour Commissioner to the Development Commissioner of the SEZs.

LABOUR LAW COMPLIANCE

As per section 49 of the SEZ Act, 2005 applicability of labour laws such as one related to trade union, industrial and labour dispute welfare of labour including condition of work, provident funds, employers' liability, workmen compensation etc. cannot be suspended.

EXIT FROM SEZ

As per Section 74 of the SEZ Rules, 2006, a SEZ unit may opt out of Special Economic Zone with the approval of the Development Commissioner and such exit shall be subject to payment of applicable duties on the imported or indigenous capital goods, raw materials, components, consumables, spares and finished goods in stock: Provided that if the unit has not achieved positive Net Foreign Exchange, the exit shall be subject to penalty that may be imposed under the Foreign Trade (Development and Regulation), Act, 1992.

SEZ unit may also be permitted by the Development Commissioner, as one-time option, to exit from SEZ scheme on payment of duty on capital goods under the prevailing EPCG Scheme, subject to the unit satisfying the eligibility criteria of that Scheme and standard conditions for exit.

EPCG Scheme: Export Promotion Capital Goods Scheme or EPCG Scheme enables an importer (being an export-oriented business) to import capital goods that are used in the pre-production, production, and post-production at zero rates of customs duty.

Standard Conditions for Exit:

- Penalty imposed by the competent authority is to 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 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.

- In case the Unit has failed to fulfil 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.
- The Unit shall continue to be treated a Unit till the date of final exit.

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.

The Unit opting out from Special Economic Zone shall execute a legal undertaking in Form L.

FORM L: <http://blr.stpi.in/images/pdf/Exit-LegalUndertaking.pdf>

