

## Special Economic Zone: Acts and Rules

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In a way Nandigram has been proved a milestone in the current battle between the Indian cohorts of Multinational corporations and the Indian peasantry. Piggybacking the demon of global capital, the left government of Buddhdeb Bhattacharjee took a plunge into the muddied water of Special Economic Zones, a new mantra for the economic development of third world countries, forgetting or rather ignoring the inherent exploitative nature of the global capital. The government perhaps overlooked the fact that if a demon could take you on a flight of fancy, he can also back-bite you and throw you down mid-air putting a sudden end to your adventurous flight of fancy. Alas! The realization came 14 deaths later. The large scale violence and killings unleashed by the West Bengal government under 'Operation Nandigram' told the tale of how a government always working in the interests of peasants and hence deriving its power to unchallenged rule, not from the barrel of gun, but from the agriculture belt of Bengal got so mesmerized by the global capital that it went berserk in punishing all those who stood in opposition to its vicious design of industrialization in Singur and Nandigram.

At the same time Nandigram marks the success story of people's or peasants' sustained resistance against state government's or for that matter Indian government's anti-peasant and neo-liberal economic policies. It proved beyond doubt that once people are united in their resistance to anti-people policies of the government and could sustain it for long, they could force the government to retrace its steps. This can best be seen in the statement of Buddhadeb made reluctantly in the aftermath of Nandigram turmoil. He is said to have admitted at the Left Front meeting on March 17 - "I take the full responsibility for the tragic and unfortunate event in Nandigram. I did not expect such bloodshed. I was given a wrong assessment and did not expect such stiff opposition." In the same meeting it was also decided that state government will not acquire any land for industry in Nandigram. Thus it was a clear case of victory for the people resisting the diktat of the state.

But such is the influence of global money and global corporates that the lessons learnt in Nandigram were soon forgotten by the Union Government. On 5th of April, the empowered Group of Ministers paved the way for the notification of 83 SEZs that were in limbo. It also lifted the ban on fresh proposals for setting up SEZs. Lo and behold! Immediately 37 SEZs were notified taking the total number to 100. Had it been a matter related to policy on people's welfare, the decision would certainly have taken months, nay years, to arrive at. It is being expected that 100 more SEZs from among those which have final approvals would be notified soon and 50 SEZs are expected to become operational by July 2007.

Nevertheless people's resistance in Nandigram did have its checkmating effect in the sense that empowered Group of Ministers capped the maximum area for an SEZ at 5,000 hectares which states could reduce further if they wish. Further a uniform limit of 50% on minimum processing area for all SEZs has been fixed whereas multi-product SEZs were hitherto required to have a processing area of only 35%. It might prevent SEZs from being used purely as commercial real estate. A further blow was inflicted on SEZs when states, recently, decided to levy taxes on goods consumed at non-processing areas of SEZs. This means that all supplies to non-processing areas of SEZs which house the social infrastructure like schools, residential premises, and shopping complexes will attract taxes levied by states like VAT, sales tax, octroi and entertainment tax.

In this issue of *Infopack* we are giving summary of various **Acts on SEZ** drafted or enacted by the Union Government and various State Governments.

## **The Special Economic Zones Act, 2005**

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By:

Ministry of Law and Justice  
(Legislative Department)

## **Bird's Eye View**

The document says that the Act be enacted by Parliament in the Fifty-Fifth year of the Republic of India. It says that the objective of this Act is to provide for the establishment, development and management of the Special Economic Zones (SEZs) for the promotion of exports and for matters connected therewith or incidental thereto.

This 53-page document is divided into eight chapters and also contains three Schedules.

In chapter I, the document talks about short title, extent and commencement of the said Act. It says that this Act may be called the Special Economic Zones Act, 2005, and be extended to the whole of India.

It also says that it shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act.

The document also gives a list of definitions of words and phrases related to Special Economic Zones Act. Some of the important definitions are:

- a) "appointed day" means the day on which the SEZ is notified by the Central Government;
- b) "authorised operation" means operations which may be authorised under sub-section (8) of section 4 and sub-section (9) of section 15;
- c) "Developer" means a person who, or a State Government which, has been granted by the Central Government a letter of approval under sub-section (10) of section 3 and includes an Authority and Co-Developer;
- d) "Domestic Tariff Area" means the whole of India including the territorial waters and the Continental Shelf but does not include the areas of the SEZs;
- e) "Entrepreneur" means a person who has been granted a letter of approval by the Development Commissioner under the sub-section (9) of section 15;
- f) "Development Commissioner" means the Development Commissioner appointed for one or more SEZs under sub-section (1) of section 11;
- g) "existing Special Economic Zone" means every Special Economic Zone which is in existence on or before the commencement of this Act;
- h) "existing Unit" means every Unit which has been set up on or before the commencement of this Act;
- i) "export" means taking goods, or providing services, out of India, from a SEZ, or from the Domestic Tariff Area to a Unit or Developer, or from one Unit to another Unit or Developer, in the same or different SEZ;
- j) "International Financial Services Centre" means an International Financial Services Centre which has been approved by the Central Government under sub-section (1) of section 18;
- k) "import" means bringing goods or receiving services, in a SEZ by a Unit or Developer from a place outside India, or from another Unit or Developer of the same SEZ or a different SEZ;
- l) "infrastructure facilities" means industrial, commercial or social infrastructure or other facilities necessary for the development of a SEZ or such other facilities which may be prescribed;
- m) "Offshore Banking Unit" means a branch of bank located in a SEZ and which has obtained the permission under clause (a) of sub-section (1) of section 23 of the Banking Regulation Act 1949;

- n) "person" includes an individual, whether resident in India or outside India, a Hindu undivided family, Cooperative Society, a company, whether incorporated in India or outside India, a firm, proprietary concern, or an association of persons or body of individuals, whether incorporated or not, local authority and any agency, office or branch owned or controlled by such individual, Hindu undivided family, co-operative, association, body, authority or company;
- o) "services" means such tradable Services which are covered under General Agreement on Trade in Services annexed as IB to the Agreement establishing the World Trade Organisation concluded at Marrakes on the 15th day of April, 1994; may be prescribed by the Central Government for the purpose of this Act; and earn foreign exchange;
- p) "Special Economic Zone" means each SEZ notified under the provision of sub-section (4) of section 3 and sub-section (1) of section 4 (including Free Trade and Warehousing Zone) and includes an existing SEZ;
- q) "Unit" means a Unit set up by an entrepreneur in a SEZ and includes an existing Unit, an Offshore Banking Unit, and a Unit in an International Financial Services Centre, whether established before or after commencement of this Act.

In chapter II, the document says about the procedure for making proposal to establish Special Economic Zone. Following are some of the important points related to the establishment of SEZ:

- 1) A SEZ may be established under this Act, either jointly or severally by the Central Government, State Government, or any person for manufacturing goods or rendering services, or for both, or as a Free Trade Warehousing Zone.
- 2) Any person, who intends to set up a SEZ, may, after identifying the area, make a proposal directly to the Board for the purpose of setting up the SEZ. Provided that such a proposal has been received directly from a person, the Board may grant approval and after receipt of such approval, the person concerned shall obtain the concurrence of the State Government within the period, as may be prescribed.
- 3) In case a State Government intends to set up a SEZ, it may after identifying the area, forward the proposal directly to the Board for the purpose of setting up the SEZ. Provided that the Central Government may, (a) after consulting the State Government concerned, (2) without referring to the the proposal for setting up the SEZ to the Board, and (3) after identifying the area; suo moto set up and notify the SEZ.
- 4) Without prejudice to the provisions contained in sub-section (8), the Board may, after receipt of the proposal, approve the proposal subject to such terms and conditions as it may deem fit to impose, or modify or reject the proposal.
- 5) the Central Government may prescribe the following requirements for the establishment of the SEZ, namely:
  - a) the minimum area of land and other terms and conditions subject to which the Board shall approve, modify or reject any proposal received by it; and
  - b) the terms and conditions, subject to which the Developer shall undertake the authorised operations and his obligations and entitlements. Provided that different minimum area of land and other terms and conditions referred to in clause (a) may be prescribed by the Central Government for a class or classes of SEZ;
- 6) If the Board;
  - a) approves without any modification, the proposal received under sub-section (2) to (4), it shall communicate the same to the Central Government;
  - b) rejects the proposal, it shall record the reasons therefor and communicate the rejection to the Central Government which shall intimate to the State Government or the person concerned;
  - c) the Central Government shall, on receipt of the communication, grant within such time as may be prescribed, a letter of approval on such terms and conditions and obligations and entitlements as may be approved by the Board, to the Developer, being the person or the State Government concerned;
  - d) the Developer shall, after the grant of letter of approval submit the exact particulars of the identified area referred to in sub-section (2) to (4) of that section to the Central Government and thereupon that the Government may, after being satisfied that the requirements under sub-section (8) of section 3 and other requirements, as may be prescribed, are fulfilled, notify the specifically identified area in the State as a Special Economic Zone;
- 7) The central Government, while notifying any area as a SEZ or an additional area to be included in the SEZ and discharging its functions under this Act, shall be guided by the following, namely :

- 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; and
- f) maintenance of sovereignty and integrity of India, the security of the State and friendly relations with foreign States.

The document further talks about the exemption from taxes, duties or cess. It says that any goods or services exported out of, or imported into, or procured from Domestic Tariff Area by a Unit in a SEZ or a Developer, shall, subject to such terms and conditions and limitations, as may be prescribed, be exempt from the payment of taxes, duties or cess under all enactments specified in the First Schedule.

In Chapter III the document deals with the constitution of Board of Approval and its powers and functions. It says that the Central Government shall, within fifteen days of the commencement of this Act, by notification, constitute, for the purposes of this Act, a Board to be called the Board of Approval.

Subject to the provisions of this Act, the Board shall have duty to promote and ensure orderly development of the SEZs.

Some of the powers and functions of the Board are mentioned below:

1. Without prejudice to the other provisions of this Act, the Board shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on the questions of policy as the Central Government may give in writing to it from time to time.
2. If at any time the Board is of the opinion that a Developer -
  - a) is unable to discharge the functions or perform the duties imposed on him by or under the provisions of this Act or rules made thereunder; or
  - b) has persistently defaulted in complying with any direction given by the Board under this Act; or
  - c) has violated the terms and conditions of the letter of approval; or
  - d) whose financial position is such that he is unable to fully and efficiently discharge the duties and obligations imposed on him by the letter of approval, and the circumstances exist which render it necessary for it in public interest to do so, the Board may, on application, or with the consent of the Developer, or otherwise, suspend the letter of approval, granted to the Developer for a whole or part of his area established as SEZ, for a period not exceeding one year and appoint an Administrator to discharge the functions of the Developer in accordance with the terms and conditions of the letter of approval and manage the SEZ accordingly.
3. No letter of approval shall be suspended under sub-section (1) unless the Board has given to the Developer not less than three months' notice, in writing, stating the grounds on which it proposes to suspend the letter of approval, and has considered any cause shown by the Developer within the period of that notice, against the proposed suspension.
4. Where the Board suspends the letter of approval, under sub-section (5) section, in respect of any Developer, the following provisions shall apply, namely : --
  - ❖ the Developer may, after prior approval of the Board, transfer his letter of approval to any person who is found eligible by the Board for grant of such approval;
  - ❖ the Board shall invite applications for transferring the letter of approval of the Developer, whose approval has been suspended and select person or persons, in accordance with the procedure as may be prescribed, to whom the letter of approval of the Developer in the SEZ may be transferred;
  - ❖ upon selection of person or persons , the Board may, by notices in writing, require the Developer to transfer his letter of approval in a SEZ to the person or persons so selected, and thereupon the Developer shall transfer his interests, rights, and liabilities in the SEZ ( hereafter in this section referred to as the Transferee) who has been selected by the Board on such terms and conditions as may be agreed upon between the Developer and the Transferee;
  - ❖ all the rights, duties, obligations and liabilities of the Developer, on and from the date of suspension of letter of approval or on and from the date, if earlier, on which his letter of approval in the SEZ of the Developer has been transferred to the Transferee, shall cease absolutely except for any liabilities which have accrued prior to that date.

In Chapter IV, the document talks about the Development Commissioner appointed by the Central Government

for one or more SEZs. The document further says that every Development Commissioner shall be overall in charge of the Special Economic Zone and shall exercise administration control and supervision over the officers and employees appointed under sub-section (2) of section 11 (including the officials deputed to such Special Economic Zone) to discharge any of the functions under this Act.

Without prejudice to the provisions of sub-section (1) to (3), every Development Commissioner shall discharge such functions and exercise such powers as may be delegated to him by a general or special order by the Central Government or the State Government concerned, as the case may be.

Every Development Commissioner shall take all steps in order to discharge his functions under this Act to ensure speedy development of the SEZs and promotion of exports thereupon;

Without prejudice to the generality of the foregoing provisions, the Development Commissioner shall -

- a) guide and take suitable steps for effective promotion of exports from the SEZ;
- b) ensure proper co-ordination with the Central Government or the State Governments concerned to agencies with respect to, or for the purposes of clause (a) and (b);
- c) monitor the performance of the Developer and the Units in a SEZ;
- d) discharge such other functions as may be assigned to him by the Central Government and by the Board under this Act or any other law for the time being in force.

In Chapter V, the document points out to the Constitution of an Approval Committee and its powers and functions. It says that the Central Government shall, by notification, constitute an Approval Committee to exercise the powers and perform the functions specified in section 14, in case of existing SEZs, within six months from the date of commencement of this Act; and in case of other SEZs within six months from the date of establishment of such SEZs.

1. Every Approval Committee may discharge the functions and exercise the powers in respect of the following matters, namely:--

- ❖ approve the import or procurement of goods from the Domestic Tariff Area, in a Special Economic Zone and providing of services by a service provider from outside India or from the Domestic Tariff Area, for carrying on the authorised operations by a Developer in the SEZ;
- ❖ monitor the utilisation of goods or services or warehousing or trading in the SEZ;
- ❖ approve, modify or reject proposals for setting up Units for manufacturing or rendering services or warehousing or trading in the SEZ in accordance with the provisions of sub-section (8) of section 15;
- ❖ allow, or receipt of approval under clause (c) of sub-section (2) of section 9, foreign collaborations and foreign direct investment (including investment by a person outside India) for setting up a Unit;
- ❖ besides monitoring and supervising compliance of conditions, perform such other functions as may be entrusted to it by the Central Government or the State Governments concerned, as the case may be.

2. Any person, who intends to set up a Unit for carrying on the authorised operation in a SEZ, may submit a proposal to the Development Commissioner concerned in such a manner containing such particulars as may be prescribed and the Development Commissioner shall submit the same to the Approval Committee for its approval.

The Approval Committee shall, in case of modification or rejection of a proposal, shall afford a reasonable opportunity of being heard to the person concerned and after recording the reasons, either modify or reject the proposal.

3. Any person aggrieved by an order of the Approval Committee may prefer an appeal to the Board within such time as may be prescribed. An appeal may be admitted after the expiry of the period prescribed therefore if the appellant satisfies the Board on providing sufficient cause for not preferring the appeal within the prescribed time.

4. The Approval Committee may, at any time, if it has any reason or cause to believe that the entrepreneur has persistently contravened any of the terms and conditions or its obligations subject to which the letter of approval was granted to the entrepreneur, cancel the letter of approval on giving the entrepreneur a reasonable opportunity of being heard.

5. An application for setting up of an Offshore Banking Unit in a SEZ may be made to the Reserve Bank in such form and manner as may be prescribed.

6. The Reserve Bank may, by notification, specify the terms and conditions subject to which an Offshore Banking may be set up and operated in the SEZ.

7. The Central Government may approve the setting up of an International Financial Services Centre in a

SEZ and may prescribe the requirements for setting up and operation of such Centre.

8. The Central Government may, subject to such guidelines as may be framed by the Reserve Bank, the Securities and Exchange Board of India, the Insurance Regulatory and Development Authority and such other concerned authorities, as it deems fit, prescribe the requirements for setting up and the terms and conditions of the operation of Units in an International Services Centre.

9. The Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for purpose of this Act.

The document further talks about investigation, inspection and search or seizure and designated Courts to try suits and notified offences. It says that the agency, or officer, specified under section 20 or section 21, may with prior intimation to the Development Commissioner concerned, carry out the investigation or search or seizure in the SEZ or in a Unit if such agency or officer has reasons to believe that a notified offence has been committed or is likely to be committed in the SEZ.

The State Government, in whose State the SEZ is situated, may with the concurrence of the Chief Justice of the High Court of that State, designate one more courts to try all suits of a civil nature arising in the SEZ and to try notified offences committed in the SEZ.

Any person, aggrieved by any decision or order of the court, may file an appeal to the High Court within sixty days from the date of commencement of the decision or order of the Courts so designated on any question of fact or law arising out of such orders, provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing an appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

In Chapter VI, the document talks about the Special Fiscal Provisions for SEZ. It says that subject to the provisions of sub-section (2), every Developer and the entrepreneur shall be entitled to the following exemptions, drawbacks and concessions, namely:-

- ❖ exemption from any duty of customs, under Customs Act, 1962 or the Custom Tariff Act 1975, or any other law for the time being in force, on goods imported into, or services provided in or to a SEZ or to a Unit, to carry on the authorised operations by the Developer or entrepreneur; and on goods exported from or services provided from a SEZ or Unit to any place outside India;
- ❖ 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 the Domestic Tariff Area to a SEZ or Unit, to carry on the authorised operations by the Developer or entrepreneur;
- ❖ drawback or such other benefits as may be admissible from time to time on goods brought or services provided from the Domestic Tariff Area to a SEZ or Unit by the service providers located outside India to carry on the authorised operations by the Developer or entrepreneur;
- ❖ 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 the SEZ.
- ❖ exemption from securities transaction tax leviable under section 98 of the Finance (No. 2) Act, 2004 in case the taxable securities transactions are entered into by a non-resident through the International Financial Services Centre.

The Central Government may prescribe the period during which any goods brought into, or services provided in, any Unit or SEZ without payment of taxes, duties or cess shall remain or continue to be provided in such Unit or SEZ.

The provision of Income-Tax Act, 1961, as in force for the time being, shall apply to, or in relation to, the Developer or the entrepreneur for carrying on the operations in a SEZ or Unit subject to modifications specified in the Second Schedule.

The document also talks about the transfer of ownership and removal of goods and Domestic clearance by the Units. It says that the transfer of ownership in any goods brought into, or produced or manufactured in any Unit or SEZ or removal thereof from such Unit or SEZ shall be allowed, subject to such terms and conditions as the Central Government may prescribe.

Subject to the conditions specified in the rules made by the Central Government in this behalf :-

- a) any goods removed from a SEZ to the Domestic Tariff Area shall be chargeable to duties of Customs including anti-dumping, countervailing and safeguard duties under the Custom Tariff Act, 1975, where applicable, as leviable on such goods when imported; and
- b) the rate of duty and tariff valuation, if any, applicable to goods removed from a SEZ shall be at the rate

and tariff valuation in force as on the date of such removal, and where such date is not ascertainable, on the date of payment of duty.

In Chapter VII, the document mentions about the constitution of Special Economic Zone Authority and its powers and functions. It says that The Central Government shall, by notification in the Official Gazette, constitute, for every SEZ an Authority to be called the Special Economic Zone Authority to exercise the powers conferred on, and discharge the functions assigned to it under this Act.

Every Authority shall have the power, subject to the provision of this Act, to acquire, hold and dispose of property both movable and immovable, and to contract and shall sue and be sued.

Subject to the provisions of this Act, it shall be the duty of each Authority to undertake such measures as it thinks fit for the development, operation and management of the SEZ for which it is constituted. The measures referred to therein may provide for the development of infrastructure in the SEZ, promoting exports from the SEZ, reviewing the functioning and performance of the SEZ, levy user or service charges or fees or rent for the use of properties belonging to the Authority.

In Chapter VIII, the document gives a list of some miscellaneous points. Some of these points are :

- ❖ notwithstanding anything contained in any other law for the time being in force, if any disputes of civil nature arises among two or more entrepreneurs or two or more Developers or between an entrepreneur and a Developer in the SEZ; and the Court or the Courts try suits in respect of such dispute had not been designated under sub-section (1) of section 23, such dispute shall be referred to arbitration and the same shall be settled or decided by the arbitrator to be appointed by the Central Government;
- ❖ the provisions of the Arbitration and Conciliation Act, 1996, shall apply to all arbitration under this Act;
- ❖ the period of limitation in the case of any dispute which is required to be referred to arbitration shall be regulated by the provisions of the Limitation Act, 1963, as if the dispute was a suit and the arbitrator is a civil court;
- ❖ the Central Government may, by notification, direct that any of the provisions of this Act or any other Central Act or any rules or regulations made thereunder or any notification or order issued or direction given thereunder specified in the notification, shall not apply to a SEZ or a class of SEZs or all SEZs, or shall apply with such exceptions, modifications and adaptation, as may be specified in the notification;
- ❖ the State Government may, for the purpose of giving effect to the provisions of this Act, notify policies for Developers and Units and take suitable steps for enactment of any law, namely, granting exemption from the State taxes, levies and duties to the Developers or the entrepreneur, and delegating the powers conferred upon any person or authority under any State Act to the Development Commissioner in relation to the Developer or the entrepreneur;
- ❖ A Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the Customs territory of India for the purposes of undertaking the authorised operation;
- ❖ A SEZ shall, with effect from such date as the Central Government may notify, be deemed to be a port, inland container depot, land station and land customs station, as the case may be, under Section 7 of the Custom Act, 1962.
- ❖ the Central Government may, by notification, make rules for carrying out the provisions of this Act;
- ❖ every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, 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 making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no-effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

The document further says that while the First Schedule contains the list of enactments, in the Second Schedule the document points out to the modifications to the Income-Tax Act, 1961. It says that this Act contains many provisions relating to SEZs. Some of the important indicated provisions are:

a) in Section 10,--

A) in clause (15), after sub-clause (vii), the following clause shall be inserted at the end, namely:--

(viii) any income by way of interest received by a non-resident or a person who is not ordinarily resident in India, on a deposit made on or after 1st day of April 2005 in an Offshore Banking Unit

referred to in clause (u) of section 2 of the SEZ Act, 2005;

- b) in Section 10A, after sub-section (7A), the following sub-section shall be inserted, namely:--  
"(7B) The provision of this section shall not apply to any undertaking, being a Unit referred to a clause (7c) of section 2 of the SEZ Act, 2005, which has began 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 SEZ";
- c) After section 10A, the following section shall be inserted, namely:--  
10AA. (1) Subject to the provision of this section, in computing the total income of an assessee, being an entrepreneur as referred to clause (j) of section (2) of the SEZs Act, 2005, from his Unit, who begins to manufacture or produce articles or things or provide any services during the previous year relevant to any assessment year commencing on or after the 1st day of April, 2006, a deduction of -
- i) hundred percent profit and gains derived from the export of such articles, or things or from services for a period of five consecutive assessment years beginning with the assessment year relevant to the previous year in which the Unit begins to manufacture or produce such articles or things or provide services, as the case may be, and fifty percent of such profits and gains for further five assessment years and there after;
  - ii) for next five consecutive assessment years, so much of the amount not exceeding fifty percent of the profit as is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account ( to be called the "Special Economic Zone Re-investment Reserve Account) to be created and utilised for the purposes of the business of the assessee in the manner laid down in sub-section (2).
- II) The deduction under clause (ii) of sub-section (1) shall be allowed only if the following conditions are fulfilled, namely:--
- a) the amount credited to the SEZ Re-investment Reserve Account is to be utilised (i) for the purpose of acquiring machinery or plant which is first put to use before the expiry of a period of three years following the previous year in which the reserve was created; and (ii) until the acquisition of the machinery or plant as aforesaid, for the purpose of the business of the undertaking other than for distribution by way of dividends or profits or for remittance outside India as profits or for the creation of any assess outside India;
  - b) the particulars, as may be specified by the Central Board of Direct Tax in this behalf, under clause (b) of sub-section (1B) of Section 10A have been furnished by the assessee in respect of machinery or plant along with the return of income for the assessment year relevant to the previous year in which such plant or machinery was first put to use.
- III ) Where any amount credited to the SEZ Re-investment Reserve Account under clause (ii) of sub-section (1), a) has been utilised for any purpose other than those referred to in sub-section (2), the amount so utilised; or b) has not been utilised before the expiry of the period specified in sub-clause(i) of clause (a) of sub-section (2), the amount not so utilised shall be deemed to be the profits, -- in a case referred to in clause (a), in the year in which the amount was so utilised; or in a case referred to in clause (b), in the year immediately following the period of three years specified in sub-clause (i) or clause (a) of sub-section (2), provided that where a Unit is located in any free trade zone or export processing zone is subsequently located in a SEZ by reason of conversion of such free trade zone or export processing zone into SEZ and has completed the period of ten consecutive assessment years referred to above, it shall not be eligible for deduction from income as provided in clause(ii) of sub-section (1) with effect from the 1st day of April 2006.
- IV) Where any undertaking being the Unit which is entitled to the deduction under this section is transferred before the expiry of the period specified in this section to another undertaking being the Unit in a scheme of amalgamation or demerger, -- i) no deduction shall be admissible to the amalgated or demerged Unit, being the company for the previous year in which the amalgamation or the demerger take place.
- V) For the purpose of sub-section (1), the profits derived from the export of articles or things or services shall be the amount which bears to the profits of the business of the undertaking, being the Unit, the same proportion as the export turnover in respect of such articles or things or services bears to the turnover of the business carried on by the assessee.

The document here says that "Export Turnover" means the consideration in respect to export by the undertaking, being the Unit of articles or things or services received in, or brought into, India by the assessee but does not



include freight, telecommunication charges or insurance attributable to the delivery of the articles, or things outside India or expenses, if any, incurred in foreign exchange in rendering of services outside India; and "Relevant Assessment Year" means any assessment year falling within a period of fifteen consecutive assessment years referred to in this section.

The document further says that after section 54G, the following section shall be inserted, namely :--

- 54GA. (1) Notwithstanding anything contained in section 54G, where the capital gain arises from the transfer of a capital asset, being machinery or plant or building or land or any rights in building or land used for the purposes of the business of an industrial undertaking situated in the urban area, or in consequence of the shifting of such industrial undertaking to any Soecial economic Zone, whethere developed in any urban area or any other area and the assessee has within a period of one year or three years after the date on which the transfer took place, --
  - ❖ purchased machinery or plant for the purposes of business of the industrial undertaking in the SEZ to which the said undertaking is shifted;
  - ❖ acquired building or land or constructed building for the purposes of his business in the SEZ;
  - ❖ shifted the original asset and transferred the establishment of such undertaking to the SEZ; or
  - ❖ incurred expenses on such other purposes as may be specified in a scheme framed by the Central Government for the purposes of this section, then instead of the capital gain being charged to Income-Tax as income of the previous year in which the transfer took place, it shall, subject to the provision of sub-section (2), be dealt with in accordance with following provisions of this section :
    - i) if the amount of the capital gain is greater than the cost and expenses incurred in relation to all or any of the purposes mentioned in clauses (a) to (d), the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; or
    - ii) if the capital gain is equal to, or less than the cost of the new asset, the capital gain shall not be charged.

The document further points out that after section 80-IA, the following section shall be inserted, namely :--

- 80-AB. (a) Where the gross total income of an assessee, being a Developer, includes any profits and gains derived by an undertaking or an enterprise from any business of developing a SEZ, notified on or after the 1st day of April 2005 under the SEZ Act, 2005, there shall, in accordance with and subject to the provisionns of this section, be allowed, in computing the total income of the assessee, a deduction of an amount equal to one hundred percent of the profits and gains derived from such business for the consecutive assessment years;
- the deduction specified in sub-section (1) may, at the option of the assessee, be claimed by him for any ten consecutive years out of fifteen years beginning from the year in which a SEZ has been notified by the Central Government.

The document also says that the income referred to sub-section (1) shall be the income,--

- a) from an Offshore Banking Unit in a SEZ; or
- b) from the business referred to sub-section (1) of section 6 of the Banking Regulation Act, 1949 with an undertaking located in a SEZ or any other undertaking which develops, develops and operates, or develops, operates and maintains SEZ;
- c) 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 SEZ.

It also says that no deduction under this section shall be allowed unless the assessee furnishes along with the return of income a report, in the form specified by the Central Board of Direct Taxes, of an accountant certifying that the deduction has been correctly claimed.

"Notwithstanding anything contained in this section, no tax on distributed profits shall be chargeable in respect of the total income of an undertaking or enterprise engaged in developing; developing and operating; developing, operating and maintaining a SEZ for any assessment year on any amount declared, distributed or paid by such Developer or enterprise, by way of dividends on or after the 1st day of April, 2005 out of its current income either in the hands of the developer or enterprise or the person receiving such dividend not falling under (23G) of section 10."

## **The Special Economic Zones Rules, 2006**

To be published in Part II, Section 3 Sub-section (1) of the Gazette of India Extraordinary dated February 10, 2006

Government of India, Ministry of Commerce and Industry (Department of Commerce)

### **NOTIFICATION**

New Delhi, The 10th February, 2006.

## **Bird's Eye View**

The document mentions GSR No: 54(E) in exercise of the powers conferred by section 55 of the Special Economic Zones Act, 2005 (28 of 2005), the Central Government hereby makes some important rules.

This is a 94-page document. Out of these 94 pages the main chapters are mentioned in the first 62 pages, and the rest contain other formats for the approval of the proposals. The first 62 pages of the document is divided into eight chapters.

In Chapter I, under Preliminary, the document gives short title and commencement of rules. It says that these rules may be called the Special Economic Zones Rules, 2006, and shall come into force on the date of their publication in the Official Gazette. The document also gives definitions of important words and phrases related to these rules. Some of the definitions are:

- "Advance Licence" means an Advance Licence issued under Duty Exemption and Remission Scheme of the Foreign Trade Policy;
- "Authorised Officer" means an Inspector or Preventive Officer or Appraiser or Superintendent of Customs posted in the Special Economic Zones and authorized by the Specified Officer to discharge any of his functions under these rules;
- "Capital Goods" means any plants, 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 for initial lining, refrigeration equipment, power generating sets, machine tools, equipment and instruments for testing, research and development, quality and pollution control system, for use in manufacturing, construction, mining, agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture and viticulture, and in the services sector;
- "Custodian" means any person referred to in section 45 of the Customs Act, 1962;
- "Customs Act" means the Customs Act, 1962;
- "Electronic Hardware Technology Park Unit" means a unit approved in accordance with the Electronic Hardware Technology Park Scheme framed under the Foreign Trade Policy;
- "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);
- "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 interconnecting 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;

■ "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;

■ "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;

■ "Special Economic Zone for Multi-product" means a Special Economic Zone where Units may be set up for manufacture of two or more goods in a sector or goods falling in two or more sectors or for trading and warehousing or rendering of two or more services in a sector or rendering of services falling in two or more sectors;

■ "Special 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;

■ "status holder" means an exporter recognised under the Foreign Trade Policy;

The document says that 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.

In Chapter II, the document talks about the procedure for establishment of Special Economic Zone. It says that;

1. Proposal for setting up of SEZ,- every proposal under sub-sections (2) to (4) of section 3 shall be made in Form - A.
2. Requirements for establishment of a SEZ, the Board may approve as such or modify and approve a proposal for establishment of a SEZ, in accordance with the provisions of sub-section (8) of section 3, subject to the requirements of minimum area of land and other terms and conditions indicated in sub-rule (2).

The requirements of minimum area of land for a class or classes of SEZ in terms of sub-section (8) of section 3 shall be the following, namely:-

- a) A SEZ for multi product shall have a contiguous area of one thousand hectares or more: Provided that such SEZ established exclusively for services may have a contiguous area of one hundred hectares or more;  
Provided further that in case a SEZ is proposed to be set up in Assam, Meghalaya, Nagaland, Arunachal Pradesh, Mizoram, Manipur, Union Territory, the area shall be two hundred hectares or more;  
Provided that at least twenty five percent of the area shall be earmarked for developing processing area;
  - b) A SEZ for a specific sector or in a port or airport, shall have a contiguous area of one hundred hectares or more;
  - c) A SEZ for Free Trade and Warehousing Zones shall have an area of forty hectares or more with a built up area of not less than one lakh square meters.
3. Before recommending any proposal for setting up of a SEZ, the State Government shall endeavor that the following are made available in the State to the proposed SEZ Units and Developer, namely:-
- ❖ exemption from the State and local taxes, levies and duties, including stamp duty, and taxes levied by local bodies on goods required for authorised operations by a Unit or Developer, and the goods sold by a Unit in the Domestic Tariff Area except the goods produced from Domestic Tariff Area and sold as it is;
  - ❖ exemption from electricity duty or taxes on sale, of self generated or purchased electric power for use in the processing area of a SEZ;
  - ❖ allow generation, transmission and distribution of power within a SEZ subject to the provisions of the

Electricity Act, 2003 (No.36 of 2003);

- ❖ providing water, electricity and such other services, as may be required by the Developer be provided or caused to be provided;
  - ❖ Delegation of power to the Development Commissioner under the Industrial Disputes Act, 1947 (No. 14 of 1947) and other related Acts in relation to the Unit;
  - ❖ Delegation of power to the Development Commissioner under the Industrial Disputes Act, 1947 (No. 14 of 1947) in relation to the workmen employed by the Developer;
  - ❖ Declaration of the SEZ as a Public Utility Service under the Industrial Disputes Act, 1947 (No. 14 of 1947);
  - ❖ Providing single point clearance system to the Developer and Unit under the State Acts and rules;
4. The State Government shall, while recommending a proposal for setting up of SEZ to the Board indicate whether the proposed area falls under reserved or ecologically fragile area as may be specified by the concerned authority.
5. The Central Government shall, within thirty days of the communication received by it under sub-section (10) of section 3 grant a letter of approval 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 SEZ, incorporating additional conditions, if any, specified by the Board while approving the proposal.
6. Details to be furnished for issue of notification for declaration of an area as SEZ-(a) The Developer shall furnish to the Central Government, particulars required under sub-section (1) of section 4 with regard to the area referred to in sub-section (2) or sub-section (4) of section 3, ( hereinafter referred to as identified area), with proof of legal and possession and a certificate from the State Government or the authorised agency that the said area is free from all encumbrances. Provided that where the Developer has leasehold right over the identified area, the lease shall be for a period not less than twenty years.
- (b) The identified area shall be contiguous and vacant and it shall have no public thoroughfare subject to third provision to clause (a) of sub-rule (2) of rule 5.
7. After the submission of details as required under rule 7 and other details, if any, required by the Central Government and on acceptance of the conditions specified in the Letter of Approval, the Central Government shall notify the identified area as a SEZ under sub-section (1) of section 4, if the area proposed for notification is not less than the minimum area prescribed under rule 5.
8. The Developer shall submit to the Board the details of operations proposed to be undertaken in the SEZ for obtaining authorization under sub-section (2) of section 4 at the time of seeking approval for setting up of SEZ or thereafter..
9. The Approval Committee may permit goods and services to carry on the operations authorized under rule 9.

Provided that exemptions, drawbacks and concessions on the goods and services allowed to a Developer or Co-Developer, as the case may be, shall also be available to the contractors appointed by such Developer or Co-developer and all the documents in such cases shall bear the name of the Developer or the Co-developer alongwith the contractor and these shall be filed jointly in the name of the Developer or Co-Developer and the contractor.

10. Processing and Non-Processing Area -

(1) The Development Commissioner of the concerned SEZ shall be the authority for demarcating the areas falling within the SEZ under the provision of section 6.

(2) The land or built up space in the processing area or Free Trade and Warehousing Zone shall be given on lease only to the entrepreneur holding a valid Letter of Approval issued under rule 19 and the lease period shall be co-terminus with the validity of the Letter of Approval.

Provided that the Developer may, with the prior approval of the Approval Committee, grant on lease or built up space, for creating facilities such as canteen, public telephone booths, first aid centres, creche and such other facilities as may be required for the exclusive use of the Unit.

(3) Any transfer by way of sub-lease or any other mode by the Developer shall be valid only if the same is made to a person holding a valid Letter of Approval issued by the Development Commissioner.

(4) The Developer shall not sell the land in a SEZ.

(5) The Developer may allot the land in the non-processing area for business and social purposes such as educational institutions, hospitals, hotels, recreation and entertainment facilities, residential and business

complexes.

11. Import and procurement of goods by the Developer -

- (1) The Developer may import or procure goods from the Domestic Tariff Area, without payment of duty, taxes and cess for the authorized operations, subject to the provisions contained in sub-rule(2) to (8).
- (2) The goods imported or procured from the Domestic Tariff Area by the Developer for authorized operations shall be kept in a clearly demarcated area for inspection by the authorized officer before such goods are brought into use.
- (3) The Developer shall execute a Bond-cum-Legal Undertaking in Form D, jointly with regard to proper account 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.
- (4) The Developer shall maintain a proper account of the import or procurement, consumption and utilization of goods and submit quarterly and half-yearly returns to the Development Commissioner in Form E for placing the same before the Approval Committee for consideration.
- (5) The Developer shall not remove goods from the SEZ to the Domestic Tariff Area except with the permission of the Specified Officer and on payment of duty applicable on such goods.

12. The Procedure applicable to Units on import or procurement of goods and services, their admission, clearance of goods, shall apply, 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 SEZ as well.

13. Transfer of Letter of Approval of Developer- The relevant provisions of section 3, and these rules, as far as may be, apply for transfer of Letter of Approval of a Developer under clause (a) of sub-section (9) of section 10.

In Chapter III, the document talks about the procedure for establishment of a Unit. It says that Proposal for Approval of Unit, a consolidated application seeking permission for setting up of a Unit and other clearances, including those indicated below, shall be made to the Development Commissioner, in Form F, in five copies, with a copy to the Developer;-

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

The document mentions about factors for consideration of proposals for setting up of Unit in a SEZ. Some of them are:

- 1) The Approval Committee may approve or approve with modification or reject proposals placed it under sub-rule (2) of rule 17, within fifteen days of its receipt. Provide that where the approval is to be granted by the Board in terms of sub-rule (3) of rule 17, the Board shall approve or approve with modification or reject such proposal within forty-five days of its receipt.
- 2) The Approval Committee shall approve the proposal if it fulfills the following requirements, namely:-
  - i. the proposal meets with the positive net foreign exchange earning requirement as provided in rule 53;
  - ii. availability of space and other infrastructure support applied for, is confirmed by the Developer in writing, by way of a provisional offer of space. Provided that the Developer shall enter into a lease agreement and give possession of the space in the SEZ to the entrepreneur only after the issuance of Letter of Approval by the Development Commissioner, and a copy of the registered lease deed shall

- be furnished to the Development Commissioner concerned within six month from the issuance of the Letter of Approval;
- 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 identity card or 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 annexures, of the Proprietor or Partners, or in the case of a company, audited balance sheet for the last three years.
3. No proposal shall be considered for :-
- a) recycling of plastic scrap, textile materials, or waste;
  - b) import of other used goods for recycling;
  - c) export of Special Chemicals, Organisms, Materials, Equipments and Technologies unless it fulfills the conditions indicated in the Import Trade Control (Harmonized System) Classifications of export and import items;
  - d) if there is any instance of violation of law or public policy by the promoters, having a bearing on the merits of the proposal.
4. The Units in Free Trade and Warehousing Zones or Units in Free Trade and Warehousing Zones set up in other SEZ, 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 repacking without any processing.
- Provided that 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.
- Provided further that these Units may also re-sell or re-invoice or re-export the goods imported by them; Provided also that all transactions by a Unit in Free Trade and Warehousing Zone shall only be convertible foreign currency.
5. Units may also be set up for providing services or manufacturing services to Overseas Entities subject to following conditions, namely :-
- a) Capital goods, raw materials including consumables sub-assemblies, components, semi-finished goods 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;
  - c) finished goods shall be exported out of the country or transferred to the Customs Bonded Warehouse to be maintained by the Overseas Entity
  - 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. " Overseas Entity" means a non-resident or a person of foreign origin and includes a company not incorporated in India.

In Chapter IV, the document talks about the Terms and Conditions subject to which Entrepreneur and Developer shall be entitled to Exemptions, Drawbacks and Concessions.

1. Terms and Conditions for availing exemptions, drawbacks and concessions to every Developer and entrepreneur for authorised operations,- (1) Grant of exemption, drawbacks and concession to the entrepreneur or Developer shall be subject to the following conditions, namely;-
  - ❖ the Unit shall execute a Bond-cum-Legal Undertaking in Form H, with regard to its obligations 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 earning;
  - ❖ the Developer and Co-Developer shall execute the Bond-cum-Legal Undertaking 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;

- ❖ the Bond-cum-Legal Undertaking shall be jointly accepted by the Development Commissioner and by the Specified Officer.

Provided that 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;-

- a) the movement of goods between port of import or export and the SEZ;
- b) the authorized operations, as applicable to Unit or Developer;
- c) 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 or production process or production or other temporary removal into Domestic Tariff Area without payment of duty
- d) re-import of exported goods...

The document says that the value of the Bond-cum-Legal Undertaking shall be equal to the amount of effective duties leviable on import or procurement from the Domestic Tariff area of the projected requirement of capital goods, raw materials, spares, consumables, intermediates, components, parts, packing materials for three months as applicable but which will not be levied on account of admission of such goods into the Unit or the amount of effective duties leviable on import or procurement from Domestic Tariff Area of the projected requirements of goods for the authorized operation by the Developer but will not be levied on account of admission of such goods into the SEZ.

2. Where an entrepreneur or Developer does not utilize the goods or services on which exemptions, drawbacks, cess and concessions have been availed for the authorized operations or unable to duly account for the same, the entrepreneur or the Developer, as the case may be, shall refund an amount equal to the benefits of exemptions, drawbacks, cess and concessions availed without prejudice to any other action under the relevant provisions of the Customs Act, 1962, the Customs Tariff Act, 1975, the Central Excise Act, 1944, the Central Excise Tariff Act, 1985, the Central Sales Tax Act, 1956, the Foreign Trade (Development and Regulation) Act, 1992 and the Finance Act, 1994 (in respect of service tax) and the enactments specified in the First Schedule to the Act, as the case may be.
3. 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 SEZ shall be as approved by the Board and import of no duty free material shall be permitted for operation and maintenance of such facilities. Provided further that any goods for the personal use of, or consumption by officials, workmen, staff, owners or any other person in relation to a Unit or Developer shall not be eligible for exemptions, drawbacks and concession or any other benefit in accordance with the provisions of sections 7 to 26.
4. A Unit or Developer may also source capital goods, without payment of duty, taxes, cess from a domestic or foreign leasing company, under a valid lease agreement and in such cases the Unit or the Developer and the domestic or foreign leasing company shall jointly file documents for import or domestic procurement, as the case may be.
5. The goods imported by a Developer or Unit shall be transhipped by the carrier or its agent directly to the SEZ.
6. Where import cargo destination is other than the SEZ, 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 Transshipment Bond.
7. The goods already imported or shipped or arrived before the issue of Letter of approval shall be eligible for duty free clearance provided customs duty has not been paid and goods have not been cleared from Customs or cleared and placed in Bonded Warehouse.
8. No import or export of rough diamond shall be permitted unless the shipment parcel is accompanied by Kimberley Process certificate issued by the Development Commissioner.
9. Where goods or parts thereof, imported or procured from Domestic Tariff Area and found to be defective or otherwise unfit for use or which have been damaged or become defective after such import or procurement, may be sent outside the SEZ without payment of duty for repairs or replacement, to the supplier or his authorized dealer or be destroyed.
10. If examination of any import or export of goods or goods procured from the Domestic Tariff Area is required, the same shall be carried out at the SEZ gate or if the same is not possible, in an area so notified by the Specified Officer for this purpose, and no examination shall be carried out in the premises of the Unit unless requested by the Unit and specifically permitted in writing by the Specified Officer.

11. For the import of computer software or services through data communication or telecommunication links, the Unit shall file consolidated Bill of Entry for a month within three working days of the closure of the month along with the invoice and other relevant documents and shall obtain notional 'out of charge' from the Authorized Officer, subject to the following conditions, namely:-
  - ❖ import documents shall be routed through banks or advance payments for imports could be routed through Foreign Currency Account;
  - ❖ instructions, if any, issued by the Reserve Bank of India, from time to time, in this behalf shall be complied with.
12. 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, by following the procedure under sub-rule (2) and subject to the following:-
  - ❖ the identity of the goods is established at the time of re-import; and
  - ❖ 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.
13. Drawback or Duty Entitlement Pass book credit against supply of goods by Domestic Tariff Area supplier shall be admissible provided payments for the supply are made from the Foreign Currency Account of the Unit.
14. The goods admitted into a SEZ 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 the Developer falls 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.
15. Filing of documents for admission and removal.- All documents for admission of goods into and out of SEZ shall be filed before the Authorized Officer of Customs.
16. The goods admitted to a SEZ shall be utilized, exported or disposed off in accordance with the Act and rules within the validity period of the Letter of Approval issued to the Unit or in case of a Developer within a period of one year or such extended period as may be allowed by the Specified Officer under sub-rule (5) of rule 12.
17. Transfer of ownership and removal of goods.- The goods or services admitted into SEZ without payment of duty or manufactured or produced or partly processed or semi-finished goods may be transferred or given on loan to a Unit or Developer within the same SEZ or in another SEZ or to an Export Oriented Unit or to a Unit in Electronic Hardware Technology Park or to a Unit in Software Technology Park, Bio-Technology Park Unit without payment of duty, subject to the following conditions, namely:-
  - ❖ the transferee or loanee Unit or Developer is entitled to duty free procurement of the goods for its authorized operations;
  - ❖ 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;
  - ❖ the goods transferred or given on loan basis shall not be counted for the purpose of Net Foreign Exchange Earning by the Unit;
  - ❖ 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.
17. A Unit engaged in trading or warehousing shall not be allowed the facility of sub-contracting of production or production process in the Domestic Tariff Area.
18. The Development Commissioner may also permit subcontracting of part of the production process abroad and in such cases, the goods may be exported from sub-contractor's premises abroad subject to following conditions, namely:-
  - ❖ sub-contracting charges shall be declared in the export declaration forms and invoices and other related documents;
  - ❖ the export proceeds shall be fully repatriated in favour of the Unit.
19. The Specified Officer may permit the Unit to export the finished goods directly from the sub-contractor's premises subject to following conditions, namely:-
  - ❖ 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;

- ❖ export of finished goods from the sub-contractor's premises shall be allowed only by way of direct export and not through third party;
- ❖ sample of goods exported from the sub-contractor's premises shall be sent by the sub-contractor in sealed condition, to the Specified Officer for establishing identity of the goods exported with the sample drawn at the time of taking out of the goods to the sub-contractor;
- ❖ shipping Bill for duty free goods shall be processed at the port of export as in the case of normal export and shipping Bill shall be filed in the name of the Unit and sub-contractor;
- ❖ goods for such export shall be removed from the sub-contractor's premises under bond.

Provided that 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.

20. Waste, scrap, or remnants generated during processes at the sub-contractor's premises may either be returned to the Unit or may be cleared on payment of duty as if the said waste or scrap or remnants have been cleared by the Unit or may be destroyed at the sub-contractor's premises in the presence of Jurisdictional Central Excise Officer if the subcontractor is a Central Excise registrant.

21. Contract Farming.- 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 or post harvest treatment, micro nutrients, plant and growth regulators and other organic and inorganic substances used for plant nutrition, insecticides, fungicide, weedicides, herbicides.

Provided that the removal of such items shall be subject to following conditions, namely:-

- ❖ supply of inputs by Unit to the contract farms shall be subject to the input-output norms as may be approved by the Board;
- ❖ there shall be contract farming agreement between the Unit and the Domestic Tariff Area farmers;
- ❖ the Unit has been in existence for last two years and is engaged in export of agriculture or horticulture products.

22. Exports.-

(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) The Foreign Trade Policy restrictions on State Trading Enterprises shall not apply to SEZ manufacturing Units, provided that export of iron ore shall be subject to conditions as may be laid down by the Central Government from time to time.

(3) The export of textile items shall be governed by bilateral agreements, if any.

23. A Unit may export goods to be carried by foreign bound passengers authorized by the Unit in this behalf as personal baggage, subject to a number of conditions.

24. Personal Carriage of any goods for exports by authorized passengers on Document Against Acceptance or Cash on Delivery basis may be allowed provided the Unit submits following documents, namely:-

- ❖ copy of Shipping Bill; and
- ❖ the bank Certificate for realization of proceeds shall be submitted within thirty days of delivery of the goods.

25. A Unit may display the goods in the showrooms set up at departure lounge in International Airports in India for sale to passengers leaving India subject to the conditions and procedures laid down by the Commissioner of Customs having jurisdiction of the Airport, provided that the items remaining unsold within a period of forty-five days shall be exported or returned to the Unit.

26. A Unit may export goods, including gems and jewellery, for display or sale in the permitted shops set up abroad or in the showrooms of their distributors or agents, provided that the items not sold abroad within a period of one hundred and eighty days from the date of their export shall be imported within a period of forty-five days.

27. A Unit may export goods and services, through another Unit or merchant exporter or status holder or Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-Technology Park Unit subject to condition that goods or services shall be manufactured or developed

in the Unit concerned, provided that such export shall be counted towards fulfillment of obligations of the Unit only.

28. A Unit may transfer goods, including goods imported or procured from Domestic Tariff Area, to another Unit or Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-Technology Park Unit, subject to certain procedure.
29. The Authorized Officer may permit a Unit to transfer goods to an Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-Technology Park Unit or to a bonded warehouse, without payment of duty subject to some conditions.

In Chapter V, the document mentions the conditions subject to which the goods may be removed from a Special Economic Zone to the Domestic Tariff Area. Some of the conditions are:

1. Sales in Domestic Tariff Area.-

- (i) A Unit may sell goods and services including rejects or waste or scraps or remnants or broken diamonds or by-products arising during the manufacturing process or in connection therewith, in the Domestic Tariff Area on payment of Customs duties under section 30, subject to certain conditions.
- (ii) Scrap or dust or sweeping of gold or silver or platinum may be sent to Government of India Mint or Private Mint from a Unit and returned in standard bars in accordance with the procedure specified by Customs Authorities or may be sold in the Domestic Tariff Area on payment of duty on the gold or silver or platinum content in the said scrap.
- (iii) Surplus power generated in a Special Economic Zone's 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 generating of power subject to the following conditions, namely;-
  - ❖ proposal for sale of surplus power received by the Development Commissioner shall be examined in consultation with the State Electricity Board, wherever considered necessary; provided that consultation with State Electricity Board shall not be required for sale of power within the same SEZ;
  - ❖ norms for production of a unit of power shall be approved by the Approval Committee;
  - ❖ for sale of surplus power in Domestic Tariff Area, the Unit shall obtain permission from the Specified Officer and the State Government Authority concerned.
- (iv) Valuation and assessment of the goods cleared into Domestic Tariff Area shall be made in accordance with Customs Act and rules made there under.

2. Procedure for Sale in Domestic Tariff area.-

- a) Domestic tariff Area buyer shall file Bill of Entry for home consumption giving therein complete description of the goods and/or services namely, make and model number and serial number and specification along with invoice and packing list with the Authorised Officer.  
Provided that the Bill of Entry for home consumption may also be filed by a Unit on the basis of authorization from a Domestic Tariff Area buyer.
- b) Valuation of the goods and/or services cleared into Domestic Tariff Area shall be determined in accordance with provisions of Customs Act and rules made thereunder as applicable to goods when imported into India.

3. Domestic Tariff Area Removals - abatement of duties in certain cases. -

- (1) A Unit may remove capital goods to Domestic Tariff Area after use in SEZ on payment of duty.
- (2) Goods supplied by a Unit to Domestic Tariff Area on payment of duty may be brought back to the Unit for the purpose of repair within a period of six months from the date of clearance, or within such period as may be extended by the Specified Officer or within the warranty period whichever is later, on payment of duty on the value of repairs subject to the condition that the identity of goods is established to the satisfaction of the Specified Officer.
- (3) A Unit may remove following goods from the SEZ to Domestic Tariff Area without payment of duty;-
  - (a) goods imported and admitted into the SEZ after payment of applicable duty and such goods are cleared into Domestic Tariff Area, without any processing, subject to the condition that the identity of goods is established to the satisfaction of the Specified Officer;
  - (b) used packing materials except metal containers;
  - (c) Computer and computer peripherals, including printer, plotter, scanner, monitor, key board and storage

units ( whether imported or procured from Domestic Tariff Area) donated with the approval of the Specified Officer to the recognized non-commercial educational institutions or registered charitable hospitals or public libraries or public funded research and development establishments or organizations of Government of India or Government of a State or Union Territory, after two years of admission of goods and use by a Unit.

4. Temporary Removals to Domestic Tariff Area.- The Unit may temporarily remove following goods to Domestic Tariff Area without payment of duty, namely;-
  - ❖ capital goods and parts thereof for repairs and return thereof;
  - ❖ goods for display, export promotion, exhibition and return thereof;
  - ❖ goods for job work, test, repair, refining and calibration and return thereof;
  - ❖ laptop or notebook computer or video projection systems and return thereof.
5. Other Entitlements.-
  - (1) Supplier of precious and semi-precious stones and synthetic stones and processed pearls from Domestic Tariff Area to Units shall be eligible for grant of Replenishment Licence as provided under the Foreign Trade Policy and Handbook.  
Provided that the application for the Replenishment Licence shall be made to the Development Commissioner.
  - (2) A Unit may retain hundred per cent of their export proceeds in their Foreign Currency Account.
  - (3) Software units may be allowed to use the computer system for training purpose (including commercial training) subject to the condition that no computer terminal shall be installed outside the SEZ premises for this purpose.

In Chapter VI, the document talks about Foreign Exchange Earning - Requirements and Monitoring.

Net Foreign Exchange Earning.-shall achieve Positive Net Foreign Exchange to the calculated cumulatively for a period of five years from the commencement of production .

In Chapter VII, the document refers to APPEAL.

1. Form of Appeal.- Any person aggrieved by an order passed by the Approval Committee under section 15 or against cancellation of Letter of Permission under section 16, may prefer an appeal to the Board in the Form J within a period of thirty days from the date of communication to him of the order of the Approval Committee under rule 18.
- 2 When the appeal is preferred after the expiry of the period of thirty days, it shall be accompanied by an application supported by an affidavit setting forth the facts on which the appellant relies to satisfy the Board that he has sufficient cause for not preferring the appeal within the said period of thirty days..  
Provided that if the Board is satisfied with the reasons given in writing by the appellant, it may admit the appeal after the expiry of the aforesaid period but before the expiry of forty-five days from the date of communication to him of the order of the Approval committee.
3. Payment of fees. - Every appeal shall be accompanied by a fee of rupees two thousand and five hundred.
4. Where a fact which cannot be borne out by, or is contrary to, the record is alleged, it shall be stated clearly and concisely and supported by a duly sworn affidavit.
5. Right of Appellant to appear before the Board.- Every appellant may appear before the Board in person or authorize one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of his or its officers to present his or its case before the Board.
6. The Board shall communicate, before considering the appeal, to the appellant the date and place of the hearing of the appeal.
7. Hearing of Appeal.-
  - (1)On the fixed or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal. The Board shall, then, if necessary, hear the Approval Committee or its representative against the appeal and in such case the appellant shall be entitled to reply.
  - (2) In case the appellant does not appear in person or through an authorized representative when the appeal is called for hearing, the Board may dispose of the appeal on merits.

Provided that where an appeal has been disposed of as provided above and the appellant appears afterwards and satisfies the Board that there was sufficient cause for his non-appearance, when the appeal was called for hearing, the Board shall make an order setting aside the ex parte order and restore the appeal.

In Chapter VIII, the document gives a list of miscellaneous points. Some of these are:

1. Identity Cards.- The entry of persons to the processing area of the Special Economic Zone shall be regulated by the Development Commissioner through issue of identity cards which shall be valid upto a period of five years and shall be issued, in the format given in Form K, to the entrepreneurs and regular employees of the Units.
2. Temporary identity card may be issued by the Development Commissioner to the casual visitors and contractors and a proper record to such entries shall be maintained at the SEZ Gate.
3. Revival of Sick Units.-
  - (1) A Unit which has been declared sick by the appropriate authority shall submit a revival package through Development Commissioner to the Board for consideration and the Board shall consider the extension of the period for fulfillment of Positive Net Foreign Banking Exchange for a further period up to a maximum of five years at the prevalent norms.
  - (2) Where a Unit is granted extension of period for fulfillment of Positive Net Foreign Exchange Earning under sub-rule (1), the space would continue to be in its possession.
  - (3) Where a Unit is taken over by another Unit, the liability shall pass on to the new Unit which is taking over the sick Unit.
4. Exit of Units.-
  - (1) The Unit may opt out of SEZ 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.
  - (2) The following conditions shall apply on the exit of the Unit, namely,-
    - ❖ penalty imposed by the competent authority would be paid in case an appeal against an order imposing penalty is pending, exit shall be considered if the unit has obtained a stay order from the competent authority and has furnished a Bank Guarantee for the penalty adjudicated by the appropriate authority unless the appellant authority makes a specific order exempting the unit from this requirement;
    - ❖ in case the Unit failed to fulfill the terms and conditions of the Letter of Approval and penal processings 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.
5. Where in the case of an entrepreneur whose Letter of Approval has been cancelled and who fails to comply with the conditions of removal of all goods within the prescribed period as provided in sub-rule (2), the Development Commissioner shall take over possession of such goods excluding hypothecated goods and dispose off the same through public auction subject to the condition that the sale proceeds of such auction shall be deposited in a designated account and apportionment of such proceeds shall take place in the manner as approved by the Central Government.
6. An entrepreneur whose Letter of Approval has been cancelled and has failed to meet Positive Net Foreign Exchange Earning as required under rule 52, it shall be liable for payment of penalty as may be imposed by the adjudicating authority in accordance with the provisions of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992).

## **Government of Orissa's Policy on SEZ**

Government of Orissa  
Department of Industries  
2003

### **Bird's Eye View**

The Special Economic Zones in Orissa will be primarily led by private sector Developers and Investors who will plan, develop, finance, manage, market and maintain the Zones. The Government's role will be to facilitate creation of external linkages and social infrastructure and also to provide a legal and policy framework for the SEZ Developer and the Enterprises to come therein.

The Orissa Government has submitted a proposal to the Government of India to set up Special Economic Zones at Paradip and Gopalpur.

The Orissa Industrial Infrastructure Development Corporation (IDCO) is the nodal agency for development of SEZs in the State.

The State Government has decided to formulate the following policy which will be applicable to the proposed SEZs at Gopalpur and Paradeep and any other SEZs in Orissa subject to the guidelines for SEZs determined by the Government of India from time to time.

### **Policy**

#### **1. Conducive Business Environment**

- ❖ The Government will make all efforts to create a conducive business environment in which the entrepreneurs and enterprises have complete freedom to conduct their business operations and to become globally competitive.
- ❖ The SEZ will provide a Single Window Clearance facility for approvals for the investors. The Single Window to be under the Development Commissioner would cover State subjects like Commercial Taxes, Power, Water pollution Control and Environment, Labour etc.

#### **2. Environment and Pollution**

NOCs, consents and other clearances required from the Orissa Pollution Control Board for the Units and activities within the SEZs would be granted by the designated Development Commissioner.

#### **4. Power**

- ❖ Power consumed (both purchased and self generated) in development, operation and management of the SEZ by the SEZ Developer also consumed by the Units/establishments within the SEZ would be exempted from the payment of electricity duty/ tax for a period of 20 years. There will be no exemption from payment of electricity duty / tax on sale of power outside the SEZ.
- ❖ The SEZ Developer shall have freedom to fix tariff for the consumers within the SEZ.

#### **5. Infrastructure Linkages**

The State Government will provide infrastructure linkages required for the SEZ on priority basis either on its own or through the Central Government, wherever required.

#### **6. State Taxes, Duties, Local Taxes and Levies**

- ❖ The Developers of SEZs, industrial units and other establishments within the SEZs including infrastructure meant for the SEZs will be exempted from all State and local taxes and levies, including Sales Tax, Contracts Tax, Purchase Tax, VAT, Entry Tax, Entertainment Tax, Luxury Tax, Octroi, Cess etc. in respect of all transactions made between the Developer/Units/ establishments within the SEZ, and also in respect of supply of goods and services from the Domestic Tariff Area.
- ❖ Under Industrial Policy 2001 the stamp duty & registration charges for transfer of Government land or acquired private land from Government to IDCO is fully exempted.

- ❖ Other instruments such as loan agreements, credit deeds, mortgage/ hypothecation deeds, rent agreement executed by the SEZ units in respect of assets in the SEZ will be fully exempted from stamp duty and registration charges.

#### **7. Labour Regulation**

- ❖ The powers of Labour Commissioner, Government of Orissa shall be delegated to the designated Development Commissioner or other Authority in respect of the area within the SEZs. Powers of State Government would also be delegated to the Development Commissioner under various Labour Laws for the SEZ.
- ❖ All industrial Units and other establishments in the SEZs will be declared as "Public Utility Services" under the provisions of the Industrial Disputes Act.

#### **8. Mineral Resources**

The industrial units to come-up within the SEZ will get due priority in allocation of mining leases of minerals available in the State based on this policy.

#### **9. SEZ as Industrial Township**

The State Government will take appropriate steps to declare the SEZs as Industrial Township Areas to enable the SEZs to function as self-governing, autonomous municipal bodies. On being declared as an Industrial Township Area, the SEZ shall cease to be under the jurisdiction of any other Municipal Corporation, Municipality, Gram Panchayat or any other local body.

## **Madhya Pradesh Act**

No. 23 of 2003  
The Indore Special  
Economic Zone  
( Special Provisions) Act,  
2003

## **Bird's Eye View**

This Act may be called the Indore Special Economic Zone ( Special Provision) Act, 2003, and extends to the Indore Special Economic Zone. It shall come into force on such date as the State Government may, by notification appoint.

### **1. Powers and Functions of the Development Commissioner**

The development Commissioner shall supervise, oversee and coordinate the activities of agencies engaged in the development of the Zone and may exercise all powers and functions as may from time to time be vested in him by the Central Government or the State Government.

### **2. Land for the Zone**

- (1) The State Government may transfer land owned, acquired or controlled by the State Government to the Developer on such terms and conditions as the State Government may prescribe.
- (2) The Developer may acquire land independently from private parties by purchase, lease or otherwise.
- (3) Notwithstanding anything contained in the Madhya Pradesh Land Revenue Code 1959, all land located within the Zone and held in Bhumiswami rights shall be deemed to have been diverted to non-agricultural purpose, as from the date of transfer of possession of such land to the Developer.

### **3. Power of Developer in respect of Land and Levy of Charges**

- (1) The Developer, may fix rates for transfer of land, building or installations by way of sale, lease, or otherwise from time to time.
- (2) For the Purpose of providing, maintaining or continuing any amenity

and infrastructure in the SEZ, the Developer may levy such charges, as he may consider necessary in respect of any land, building, installations or any other infrastructure from the occupier thereof.

(3) Where any infrastructure or amenity is provided, the Developer shall have the power to levy charges for the use of service provided.

#### **4. Generation and Supply of Electricity**

(1) The Unit established in Zone shall be entitled to generate electricity either individually or in association with other Units in the Zones for captive use and consumption of such Unit or Units or sell and supply electricity to other units in the Zone.

(2) The tariff terms and conditions of the generation, transmission, distribution, sale, supply and use of electric energy in the Zone shall be subject to such regulations as may be made by the Development Commissioner.

(3) The provisions of levying electricity duty and cess under Madhya Pradesh Electricity Duty Act 1949 (9 of 1949) and Madhya Pradesh Upkar Adhinyam 1981 (1 of 1982) shall not be applicable to sale or supply of electricity to the Zone and generation, transmission, distribution and consumption within the Zone.

#### **5. Exemption from State Taxes, Duties, Cess and Levies**

The following shall be exempted from payment of any tax, fees, cess, or any other levies under any State law namely:-

- (1) any goods exported out of or imported into the Zone;
- (2) inter Unit transactions of goods within the Zone;
- (3) goods from the Zone sent for value addition to the Domestic Tariff Area and returned to the Zone thereafter; and
- (4) services that provide value addition to a product within the Zone.
- (5) All transactions and transfers of immovable property or documents related thereto within the Zone shall be exempted from Stamp Duty.

#### **6. Power to make Rules and Regulations**

The state Government may, by notification, make rules to carry out the purpose of this Act.

The Development Commissioner may make regulations not inconsistent with this Act and rules made thereunder for the purpose of giving effect to the provisions of this Act.

#### **7. Saving Operation of other Laws**

Nothing in this Act shall affect-

- ❖ any rights, privilege, obligation or liability acquired or incurred under any other law;
- ❖ any penalty, forfeiture, or punishment incurred under any other law;
- ❖ any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability; and
- ❖ any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed.

# Maharashtra's government Policy

Maharashtra SEZ Act 2003  
(Draft)

## Bird's Eye View

An Act to provide for the development, operation, maintenance, management and administration of a Special Economic Zone (Zone) by a person in the State of Maharashtra.

The Act is enacted by the Legislature of the State of Maharashtra in the 54th year of the Republic of India.

This Act may be called the Maharashtra SEZ Act, 2003 and extends to the whole of the State of Maharashtra. It shall come into force from the date as is specified by the Government by issue of notification in Government Gazette.

### 1. Application

- ❖ All Legislations/Acts in force in Maharashtra shall apply to the Zone except as provided in this Act.
- ❖ In the event of contradictions/conflicts between the provisions of existing Acts and the Act shall prevail in the matters relating to the Zone and activities therein.

### 2. Special Economic Zone (SEZ) and Designated Area (DA)

Any Developer or Co-Developer may develop, build, design, promote, finance, market, operate, maintain, manage and administer a part or whole of the infrastructure(s) and other facilities of SEZ in the State of Maharashtra as per the guidelines of the Government of India. The Government may specifically notify certain Area(s) as the Designated Area.

### 3. Unit Approval

There shall be a Unit Approval Committee constituted for the Zone as notified by the Government of India.

The Government of Maharashtra may delegate such of its power to the Unit Approval Committee as it deems fit to facilitate achieving the objectives of this Act.

### 4. Facilities by the Government:

The Governor may-

- ❖ Authorize Development Commissioner of the Zone to exercise power of the Government or a body;
- ❖ Exempt from applicability of any law or one or more provisions of any law in force; and
- ❖ Form separate rules under any law.

### 5. Fiscal Benefits:

- ❖ The transactions between the Domestic tariff area and the Zone shall be treated as exports and imports as notified by the Government of India.
- ❖ All such exports from the Domestic tariff Area to the Zone and all sales transactions between Zones and/or within the Zones would be exempted from the following state taxes, levies, cess, and duty for a period of 20 years from the commencement of this Act.
- ❖ Any tariff for supply of water outside the Zone shall be subject to applicable rules of the appropriate Regulatory Authority.

### 6. Provision of Services

Freedom to provide services and charges tariff:

- a) Notwithstanding anything in any other Act/ Agreement/Licenses the Developer/ Co-Developer/agent of the developer of the Zone shall be free to develop, construct, install, operate, manage, and maintain any or all of the following services for the purpose of providing services to Zone, without any License, namely,-
  - ❖ Generation and supply of electricity
  - ❖ Water extraction, treatment, transmission and distribution
  - ❖ Waste water treatment and solid waste management
  - ❖ Provision of port, jetties and related services
  - ❖ Provision of roads, bridges and highways
  - ❖ Any other services as may be provided in the Zone
- b) Notwithstanding anything contained in any other Act, the provider of the



services to the Zone shall be free to any charge/levy fee for providing such services.

- ❖ Any sale of electricity to the Zone shall be exempted from payment of Electricity Duty.
- ❖ The Developer and /or his agent shall be permitted to act and collect tariffs for the supply of water and management and treatment of waste water and solid waste within the Zone.
- ❖ The Developer and/or any of his agents shall be permitted to develop, operate and maintain the road network, bridges, transportation services and any transportation system under the state jurisdiction within the Zone and to charge and retain fee/toll for the same.

## **7. Labour**

- ❖ GOM shall delegate all the powers of Labour Commissioner under various labour related laws to the Development Commissioner of the Zone.
- ❖ Layoff, retrenchment, closure and compensation:
  - (1) Section 25 A(1) of the Industrial Disputes Act 1947, shall be amended to provide for following clauses to be added namely,
  - (c) To Industrial establishments set up in the zone notified by the Government of India.

In section 25 K (1) of the Industrial Disputes Act 1947, following exclusion shall be added, namely:

"Exclusion: For the purpose of industrial establishments in the Zone, Chapter V-B of Industrial Disputes Act shall not apply".

- ❖ Amendment to Contract Labour (Regulation and Abolition) Act, 1970:
  - (1) Section (2) (e) (iii) of the Contract Labour (Regulation and Abolition) Act 1970, shall be amended to provide for the following:

"Any place excluding a SEZ, notified by Government of India, where any industrial activity, trade, business or any such occupation is carried out".
- ❖ Amendment to Trade Unions Act, 1926:

"Provided further that where the employer in the Developer or the Unit established in the Zone, a Trade Union or its office bearer in respect thereof shall consist only of ordinary members, notwithstanding anything contained in clause (e) of section 6".
- ❖ There are also Amendments to more Acts like Amendments to Employees Provident Fund & Miscellaneous Provisions Act, 1952, to Employees State Insurance Act, 1948.
- ❖ Amendment to Factories Act, 1948:
  - (1) Provisions of section 63 and Section 66 of Factories Act 1948 shall not be applicable to industrial establishments in the SEZ.
  - (2) GOM appoints the Development Commissioner of Zones as Chief Inspector for the purpose of Factories Act 1948, it shall further empower the Development Commissioner to undertake inspections as deemed necessary through designated persons from his office and/or through accredited agencies.
- ❖ Non-applicability of laws:
  - (1) The following Acts shall not apply in the Zone:
    - (a) Bombay Industrial Relation Act, 1946 shall not apply to the Zone
    - (b) Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act
    - (c) Urban Land Ceiling Act
    - (d) Bombay Rents, Hotel and Lodging House rent Act
    - (e) Maharashtra Ownership Flats Regulation of Promotion of Construction, Sale, management and Transfer Act, 1963
    - (f) Maharashtra Zilla Parishad and Panchayat Samities act, 1961
    - (g) Maharashtra Land Revenue Code 1966
    - (h) Second Schedule of MRTP Act, 1966.

## **8. Dispute Resolution**

- ❖ Any dispute and/or difference of view between Development Commissioner

## **Policy Framework for Special Economic Zones in Jharkhand**

Government of Jharkhand  
Department of Industries  
2003

and/or Authority and/or Developer shall be resolved amicably by mutual discussion. In case of failure to resolve such matters amicably, they shall be resolved as under:

All Regulatory and administrative issues including those relating to Unit approval by reference to the Secretary/ Principal Secretary In-charge of Industries Department of Government of Maharashtra, whose decision shall be final.

### **Bird's Eye View**

The Jharkhand Government intends to exploit the SEZ concept determined by GOI for impacting the State's socio-economic fabric through enhanced job opportunities and industrial development.

With the background of GOI guidelines for SEZs, the State has decided to formulate the following SEZ policy to provide a comprehensive framework for development operation and sustainability of the SEZ in the State. This policy will have overbearing power on existing state policies on above issues.

### **Policy Framework**

#### **1. Industrial Department**

The department of Industries will be the nodal department of Government of Jharkhand (GOJ) for SEZ.

The SEZ of GOJ will provide for a Single Window Clearance for approval and clearance for investors.

Self-certification will be enabled for all industries using empanelled private sector inspection agencies.

There will be exemption for small scale industries and IT industries from registration.

#### **2. Revenue Department**

- ❖ Fifty percent exemption will be allowed on Stamp Duty and Registration Fee on transfer of lands meant for Industrial use in the SEZ area.
- ❖ Complete exemption of stamp duty and registration fee for loan agreements, credit deeds, mortgages and hypothecation deeds executed by the SEZ Units for assets in the SEZ in favour of banks or financial institutions.
- ❖ The State Government also proposes to extend exemptions on other State taxes including sales tax, luxury tax and entertainment tax and state duties on transaction within SEZ.

#### **3. Labour Department**

The State Government delegates power of Labour Commissioner to the Development Commissioner (DC).

The State Government approves simplified submissions of reports by SEZ and create a Consolidated Annual Reporting System. Self-Certification is also approved.

For inspections relating to workers' health and safety, the State Government permits Units to undertake inspection by accredited agencies notified by DC.

#### **4. Environment Department and Jharkhand State Pollution Control Board.**

SEZ does not require Environment Impact Assessment (EIA) approval. Industrial Approval for Non-Polluting Units: Approval will be based on SEZ, EIA Master Plan. DC will provide consent for Establishment and Operation.

For Polluting Units: SEZ Level Empowered Committee will assist DC in speedy approvals to polluting Units. Such Units will approach Ministry

of Environment and Forests, GOI and receive consent on EIA within 45 days.

5. Urban Development Department and Panchayati Raj Department.  
The State Government will declare the SEZ as local authority, which shall replace the existing Panchayats. Such local authority will be vested with all powers and shall carry out all functions in the existing provisions.

#### **6. Home Department.**

The State Government will process requirement of extra State Police, Fire Services and Home Guard structure for SEZs for maintenance of Law & Order and provide the same.

#### **7. Law Department**

Special territorial jurisdiction will be accorded to SEZ as necessary in the SEZ in consonance with High Court approvals. Prescribed court fee and suitable service fees may be notified for such Courts.

#### **8. Education Framework.**

The education policy for SEZ aims to create highly skilled and managerial human resource bases in line with needs and dynamics of international markets.

#### **9. Other Policies**

All other policies of the State would remain in force for the SEZs unless they are amended by the appropriate authority.

## **Policy Framework For Special Economic Zones (SEZs) in Andhra Pradesh**

Government of Andhra  
Pradesh

Department of Industries  
and Commerce  
2002

## **Bird's Eye View**

In the context of the guidelines of the Government of India, the Government of Andhra Pradesh intends to exploit the SEZ concept for impacting the the State's socio-economic fabric through industrial development and enhanced job opportunities.

The Andhra Pradesh Industrial Infrastructure Corporation Limited (APIIC) designated to the Nodal Agency by the Government of Andhra Pradesh in respect of Special Economic Zone being develop at Achutapuram-Rainbilli Mandals of Visakhapattam District and also for future SEZ developments in the State of Andhra Pradesh. APIIC will also perform as Interim Development Commissioner

To facilitate speedy development of the SEZ at Achutapuram-Rainbilli Mandals as a first step in the direction of establishing more SEZs in the State, the Government of Andhra Pradesh has decided to formulate the following SEZ policy, with the background of the Government of India guidelines for SEZs.

### **Policy Framework**

#### **1. Industries Department**

- ❖ Single Window Clearance: The Special Economic Zone will provide for a Single Window Clearance for approvals and clearances for investors.
- ❖ Self-Certification will be enabled for all industries using empanelled private sector inspection agencies.
- ❖ Exemption for small scale industries and IT industries from registration.
- ❖ SEZ company will provide necessary infrastructure for Development Commissioner (DC) and pay equitable amounts as salary and prerequisites to the DC's office staff.

#### **2. Revenue Department**

- ❖ Fifty percent exemption will be allowed on Stamp Duty, registration Fee on transfer of lands meant for industrial use in the SEZ area.

- ❖ Complete exemption of Stamp Duty and Registration Fee for loan agreements, credit deeds, mortgages and hypothecation deeds executed by the SEZ Units for assets in the SEZ in favour of banks or financial institutions will also be allowed.

- ❖ Exemption being given to other State taxes including sales tax, VAT, luxury tax and entertainment tax and state duties on transactions within SEZ.

### **3. Energy Department**

- ❖ The State exempts Power in SEZ from Electricity Duty and Tax.

- ❖ Captive Power will be allowed in SEZ and the State Government will exempt SEZ Units from wheeling charges and grid protection charges levied on Captive power.

### **4. Water Supply**

The SEZ company will ensure the provision of adequate water supply within the SEZ.

### **5. Labour Department**

- ❖ The State Government approved simplified submissions of reports by SEZ Units and created a Consolidated Annual Report System. Self-Certification is also approved.

- ❖ For inspection relating to workers' health and safety, the State Government permits units to undertake inspection by accredited agencies notified by DC.

### **6. Environment Department and Andhra Pradesh Pollution Control Board.**

- ❖ In respect of inspections pertaining to pollution control, these would be taken up by the Pollution Control Staff deputed to the Development Commissioner of SEZ.

- ❖ SEZ does not require Environment Impact Assessment (EIA) approval.

- ❖ Periodic self-certification for all industries in the SEZ, assisted by private certification agencies. Random sampling monitoring by DC of Units for environmental management.

### **7. Municipal Administration Department and Panchayat Raj Department:**

- ❖ The State Government will declare the SEZ as a local authority, which shall replace the existing Panchayats. Such local authority will be vested with all powers. The State Government may further declare this local authority as a Municipality.

- ❖ The SEZ Master Plan will be undertaken in accordance with international best practice in town planning and Environment and Social Management Planning norms.

### **8. Law Department**

Special territorial jurisdiction will be accorded to Special Courts as necessary in the SEZ, in consonance with High Court approvals. Prescribed court fee and suitable service fees may be notified for such courts.

### **9. Education Framework**

The State Government will facilitate development and augmentation of education and training facility through suitable formats including private sector formats. The education policy for SEZ aims to create highly skilled and managerial human resource bases in line with the needs and dynamics of international markets.

**10.** All other policies of the State would remain in force for the SEZ, unless they are amended by the appropriate authority.

# Policy Framework for Special Economic Zones (SEZs) in Tamil Nadu

Government of Tamil Nadu  
Department of Industries  
and Commerce  
2003

## Bird's Eye View

The Government of India have announced the concepts of Special Economic Zones (SEZs) in the year 2000 through a revision in the Export-Import Policy 1997-2002 with a view to provide an intertionally competitive and hassel free environment for export production all over India.

As per the guidelines of Government of India on SEZs, all State Governments of India have adopted some policies on establishment of SEZs.

The State Agency viz Tamil Nadu Industrial Development Corporation Limited has taken the lead to set up a SEZ at Nanguneri in Tirunelveli district. In the context of Government of India guidelines for the establishment of SEZs, the Government of Tamil Nadu has decided to adopt the following policy that will be applicable to all SEZs in the State.

### 1. Legislation Support

The Government India has sent a model SEZ Act to be enacted by the States Govrnments, which contain provisions for declaration of SEZ area with residential/commercial areas as an Industrial Township Area and other facilities to be provided by the State Government. These provisions will be examined and a suitable legislation will be undertaken.

### 2. Environment

The activities/projects which fall within the ambit of Environment Impact Assessment Notification, 1994 will have to attain environment clearance from the Ministry of Environment & Forests, Government of India.

### 3. Water Supply

The SEZ Developer in conjunction with the Government Agencies concerned will ensure the provision of adequate water supply within the SEZs, subject to water availability clearance from the authorities concerned.

### 4. Power

- (i) Tamil Nadu Electricity Board (TNEB) will ensure quality power supply to the SEZ Units without power cut.
- (ii) Any Independent Power Plant (IPP) supplying power to the Units in the Zone will be permitted. Individual Units within SEZ will be permitted to put up their own Captive Power Plant (CPP).
- (iii) SEZs are free to fix tariff for its consumers for the power to be produced from their CPP.

### 5. Sales Tax, Duties, Local Taxes and Lavies

Developers of SEZs, Industrial Units and other establishments within the SEZs will be exempted from all local taxes and levies, including Sales tax, Turnover Tax, VAT, Purchase Tax, Mandi Tax, Octroi, Electricity Cess of the State Government in respect of all transactions and supply of goods an services from Domestic Tariff area to Units/ establishments in SEZs.

All Industrial Units and their expansion to be located in the SEZs will be exempted from payment of Stamp Duty and Registration Charges towards land transactions.

### 6. Labour Regulations

Labour laws/rules will be examined and steps taken to simplify the same.

New concepts like Self-certification, Flexi Time, Working Time for women etc. will be introduced.

All industrial Units in the SEZs will be declared as 'Public Utility Service' under the provisions of the Industrial Disputes Act, 1947.

## **Rajasthan's Government Policy**

### **Rajasthan Government's SEZ's Act**

#### **Law (Legislative Drafting) Department**

The Rajasthan Special Economic Zones

Development Ordinance, 2003

(Ordinance No. 03 of 2003)

#### **7. Single Window Clearance**

Tamil Nadu Industrial Guidance & Export Promotion Bureau viz., GUIDANCE, may provide necessary assistance in this regard only for such clearances which will be outside the ambit of the Single Window Clearance.

#### **8. Law and Order**

The State Government shall make appropriate and exclusive arrangements within the SEZ for the maintenance of law and order, and the control of crime. the Indian laws will be applicable to all members of the SEZ in all matters of adjudication or disputes.

#### **Bird's Eye View**

This Ordinance may be called the Rajasthan Special Economic Zones Development Ordinance, 2003. It will extend to the whole of the State of Rajasthan and shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint and different date may be appointed for different areas.

The Ordinance contains eight chapters. All the chapters will not be included here.

#### **1. The chapter IV of this document mentions about the Land Acquisition.**

Acquisition and Transfer of Land by the State Government

- ❖ The State Government may, for the purpose of this Ordinance, acquire land in accordance with the provisions of Land Acquisition Act, 1894 (Central Act No. 1 of 1894).
- ❖ The State Government may, for the purpose of this Ordinance, transfer land owned, acquired or controlled by it to the Developer on such terms and conditions as the State Govt may prescribe.
- ❖ The Developer may acquire land independently from private parties by purchase, lease or otherwise.

#### **2. Chapter V talks about Power and Functions of the Developer.**

The Developer shall secure planned development of the Zone and provide infrastructure and amenities for the establishment, operation, maintenance and management of the Zone either by himself or through a Co-Developer, operator or any other person authorized by him on his behalf.

#### **3. Power of Developer in Respect of Land and Levy of Charges**

- ❖ Subject to the terms, conditions and restrictions contained in the notification appointing the Developer issued by the State Govt, the Developer may sell, lease or otherwise transfer whether by auction, allotment or otherwise any land or building in the Zone on such terms and conditions as he may think fit to impose.
- ❖ For the purpose of providing amenities and infrastructure in the Zone, the Developer may levy charges in respect of any site or building from the occupier thereof.
- ❖ The rate of charges referred to in sub-section (2) shall be fixed by the State Government so however, that it ensures and annual return not exceeding sixteen per cent post tax return on the capital investment made in providing the amenities and infrastructure.

#### **4. Chapter VI points to Special Economic Zone to be Industrial Township.**

- ❖ The Governor may specify the zone to be an Industrial Township in accordance with the provisions of Article 243 Q of the Constitution of

India.

- ❖ The Special Economic zone shall cease to be under the jurisdiction of a municipality constituted under the Rajasthan Municipalities Act, 1959 (Act No. 38 of 1959) or, as the case may be, a Panchayati Raj Institution constituted under the Rajasthan Panchayati raj Act, 1994 (Act No. 13 Of 1994) with effect from the date of the issuance of a notification under sub-section (1).
- 5. Chapter VII says about the Exemption from State taxes, Duties, Cess and Levies. The State Government may, by a notification in the Official Gazette, exempt any Developer or a Unit located in a SEZ from State taxes, duties, cess etc. to extent specified in the notification in respect of all transactions within the SEZ and in respect of supplying of goods and providing services from the Domestic Tariff Area to the Zone under the enactments specified in Schedule.

## **The Government of Karnataka's Policy Framework on Special Economic Zones**

Government of Karnataka  
Department of Revenue  
Ministry of Finance  
2000

### **Bird's Eye View**

With the background of GOI guidelines for SEZs, the Government of Karnataka has proposed to set up a SEZ at Hassan. The Government is also proposing to establish an exclusive SEZ for electronic hardware near the proposed International Airport at Devanahalli. It is also proposing to convert existing Export Promotion Industrial Park at White Field, Bangalore and the Proposed Export Promotion Industrial Park at Mangalore into SEZ.

In view of the above, the Government of Karnataka has decided to formulate a policy framework for the development of SEZs. the following are policy initiatives for the SEZs:-

1. Implementing Agency KIADB ( Karnataka Industrial Area Development Board) will be the State Agency for implementation of SEZs either independently or in association with the private sector partners.
2. Environment Clearance: MOC's consents and other clearances required from the Karnataka State Pollution Control Board for Units and activities within SEZs would be granted by the Empowered officer of the Board working under the administrative supervision and control of the designated Development Commissioner for the SEZs.
3. Water Supply: The SEZ authority shall ensure the provision of adequate water supply within the SEZ.
4. Power: The SEZ authority will ensure continuous and good quality power supply to the SEZ. Public Sector Enterprises or Joint Ventures promoted by them can establish Independent Power Plants (IIPs) for generation, transmission and distribution of power, besides fixing tariffs for the zone. The IIPs will also be permitted to establish grid connectivity so as to draw power from the grid as standby arrangement. Units in those SEZs for which no IPP has been established will be permitted to generate their own power for captive use. The Units will be free to source power from the Central Power Generating Stations. As per Energy Deptt. Notification, industries setting up Captive Power Generation (CPG) sets have been exempted from payment of electricity duty.
5. Sales tax, Duties, Local Taxes & Levies: Developers of SEZs and industrial units and other establishments within the SEZs will be exempted from all State and local taxes and levies. All the Units and their expansion located in the SEZs shall be fully exempted from the

payment of Stamp Duty and Registration Fees and also will enjoy all sorts of concessions and incentives as per general policies of the Government.

6. **Labour Regulation:** The power of the Labour Commissioner, Government of Karnataka, shall be delegated to the designated Development Commissioner. Single Window Services will be provided. All industrial units and other establishments in the SEZs will be declared as 'Public Utility Service' under the provisions of the Industrial Disputes Act. Subject to Legislation approval and Government of India's assent, the Industrial Disputes Act and the Central Labour (Regulation & Abolition) Act are proposed to be amended.
7. **SEZs as Industrial Townships:** The State Government will take appropriate steps to declare the SEZs as Industrial Townships to enable the SEZs to function as self-governing autonomous municipal bodies.
8. **Law & Order:** The State Government shall make appropriate and exclusive arrangement within the SEZs for the maintenance of law & order.
9. **Escort Services:** The Government will provide effective escort services to entrepreneurs/promoters who are desirous of making investments in SEZ.

## **The Government of Kerala's Policy on Special Economic Zone**

Government of Kerala  
Department of Industries  
2003

### **Bird's Eye View**

The Cochin Export Processing Zone has already been converted into an SEZ. Government of Kerala has already taken the lead to develop a Greater Cochin SEZ by adding on more phases of the SEZ at Cochin Airport, Cochin Port, and by forming customs- bonded industrial areas along the Airport-Seaport Highway connecting the two, to form an Industrial Corridor, to the existing SEZ at Cochin. The strategy would be to form an Freeport and a multi-modal logistics hub at Cochin to enhance its geo-strategic locational advantage.

The Government has already announced setting up three other Industrial Development Zones (IDZs) at Thivananthapuram, Kanjikode (Palakkad) and Kozhikode. These IDZs may also be converted to SEZs.

The Kerala Government has decided to formulate the following policy which will be applicable to proposed SEZs at Kochi, Thiruvananthapuram, Kanjikode, Kozhikode and at any other SEZ in Kerala subject to the framework of SEZs determined by Government of India from time to time.

1. **Implementing Agency:** KINFRA will be the Nodal State Agency for implementation of SEZs either independently or in association with the private sector partners. These public private partnerships will be structured as Special Purpose Vehicles (SPVs) for the development of SEZs as "SEZ Developer".
2. **Designated Authority:** An exclusive Development Commissioner for each SEZ will look after all matters pertaining to the SEZs in the State.
3. **Environment:** NOCs, consents and other clearances required from the Kerala State Pollution Control Board for Units and activities within SEZs would be granted by the empowered officer of the Board working under the administrative supervision and control of the Development Commissioner of the SEZs.
4. **Clearances:** SEZs will be notified as an industrial area under Kerala Industrial Single Window Clearance Board and Industrial Township Area Development Act, 1999 and exempted from obtaining permits



from Municipalities/Grama Panchayats/Town Planning Department/ Development Authorizes for construction of buildings for starting an industrial undertaking.

5. Water Supply: Government by themselves or through the SEZ shall ensure the provision of adequate water supply within the SEZ.
6. Power: The SEZ Developer will ensure supply of uninterrupted, good quality power to the SEZs at competitive rates. The SEZ Developer may establish a Captive Power Plant (CPP) to meet the requirements of all consumers within the SEZ. The SEZ Developer may procure power from NTPC at a charge to be mutually agreed upon. It will also be entitled to establish a grid connectivity for distribution of power within the Zone, subject to his entering into a separate agreement with Kerala State Electricity Board (KSEB) on mutually acceptable terms. Power generated within the SEZs shall be exempted from payment of electricity duty for a period of ten years from the date of commissioning.
7. State taxes, Duties, Local Taxes and Levies: Developers of SEZs and industrial units and other establishments within the SEZs will be exempted from all State and local taxes and levies. SEZ Developer and Units in SEZs shall also be exempted from payment of Stamp Duty and Registration Fees for transactions involving land or built-up area in the SEZs.
8. Labour Regulation: The powers of the Labour Commissioner, Government of Kerala, shall be delegated to the designated Development Commissioner or other authority in respect of the area within the SEZ. Government also proposes to permit self-certification to the extent possible for SEZ Units and establishments in respect of various labour laws. The SEZ will be exempted from the operation of the Contract Labour (Regulation and Abolition) Act 1970 to provide units flexibility to take advantage of variations in demand in global markets. Subject to the Legislature approval and Government of India's assent, amendments are proposed in the Industrial Disputes Act. Government also proposes to institute a consolidated annual return format under labour law.
9. Escort Services: All the entrepreneurs/promoters who are desirous of making investments in SEZ will be provided with effective escort services.

## **Bird's Eye View**

After studying the Central SEZ Act - 2005 and SEZ Rules - 2006 determined by the Government of India, the UP Government has notified a new SEZ Policy in order to foster the industrial and economic development and creating conducive environment for the development of SEZ.

To encourage development of SEZs in the State and make available all necessary facilities, this policy is hereby, being notified, as follows:

### **1. Policy for Exemptions of State level Taxes, Levies, Cess, Fee, and Duties etc.**

- ❖ SEZ Developer and SEZ Units shall be exempted from all kinds of taxes, cess or levies of the Government of Uttar Pradesh or taxes of any other local authority/agency for any transactions within the SEZ or any procurement of goods, supplies or services from Domestic Tariff Area. Units in Domestic Tariff Area would also be exempted from these sales made by them to SEZs Unit or SEZ Developer, including UP Trade Tax, Turnover Tax, Mandi Tax, Entry Tax, Development Tax, Local Bodies Tax.
- ❖ The Developers, Co-Developers of SEZs and Units established/ to be established will get total exemption from the Stamp-Duty & Registration-Fee on first transaction.
- ❖ Passenger/Goods Carriers, which will operate within the SEZ only and in no case, will move out of SEZ, will be exempted from Tax & Additional Tax.
- ❖ There is no provisions of exemption on the Royalty on Minerals.

### **2. Policy Related to Electricity**

- ❖ Electricity Duty and Taxes shall be exempted on generated or purchased electricity for use in the area if SEZs for a period of 10 years from date of production or start of service.
- ❖ SEZ will have freedom of generation, transmission and distribution of electricity within SEZs subject to provision of Electricity Act 2003.

### **3. Rationalising Labour Law**

- ❖ Powers of Labour Commissioner related to implementation of labour laws will be delegated to the Development Commissioner of SEZ and nominated Officers of Labour Department will be posted in the concerned SEZ.
- ❖ Under the Factories Act 1948 and Environment Conservation Act 1985, efforts will be made by the Labour Department, Government of UP to allow inspections relating to workers' health and safety by outside accredited agencies as may be notified by the Government.
- ❖ Units located in the SEZ will be endowed with public utility status under the Industrial Disputes Act.

### **4. Rationalization of Environmental Procedures**

- ❖ A list of non-polluting industries will be notified for which separate environmental NOC will not be required in SEZ. For remaining industries and matters, where delegation of powers is possible, these powers will be delegated to Regional Office of UP Pollution Control Board/ Officers of UPPCB posted in SEZ. Procedure prescribed in the relevant Acts/Rules will be followed.

### **5. Policy related to the development structure and other commitments of the State Government for SEZs.**

- ❖ SEZs shall be established in the public sector, private sector and through PPP route.
- ❖ Government of UP will declare SEZs as Industrial Townships, as

provided under article 243 (Q), of the Constitution.

6. An empowered Committee shall be constituted under the Chairmanship of Chief Secretary, GoUP, for taking the actions required by the State Govt under the SEZ Act 2005 and Rules 2006 of Govt of India.
7. Powers and Functions of Above mentioned Empowered Committee shall be as follows:
  - ❖ To examine and recommend to Govt of India under section 3 of SEZ Act 2005, the proposals received for all SEZs ( including private sector proposals received till now) as per SEZ Act & Rules and UPSEZ Policy.
  - ❖ All works to be allocated by the State Govt for the establishment and implementation of the SEZs.

## **West Bengal Special Economic Zone Bill, 2003**

### **Bird's Eye View**

1. This Act may be called the West Bengal Special Economic Zone Act, 2003 and extend to the whole of West Bengal. It shall come into force on such date and in such area or areas as the State Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act for different areas.
2. **Powers and Functions of the Development Commissioner**

Notwithstanding anything to the contrary contained in any other law for time being in force, the Development Officer shall be empowered-

  - ❖ to act as single agency to grant or issue, in such manner as may be prescribed, approval, clearance, consent, permission, licence and other authorization, required for establishment and operation of any unit in a SEZ;
  - ❖ to administer labour laws, for the time being in force, in such manner as may be prescribed, under supervision of the State Govt in the department of Labour.
3. **Developer**

Subject to the provisions to the Act, the Developer shall have the power-

  - ❖ to allocate and transfer, subject to his own title, either by way of lease or sale or otherwise, plots of land, buildings or installations for industrial, commercial, residential or other purposes;
  - ❖ to purchase land or to acquire legal right and title independently;
  - ❖ to levy service charges for providing the infrastructure or amenities to the units in a SEZ ;
  - ❖ to authorize any person for the purpose of providing services or to collection of charges within a SEZ.
4. **Development Authority**

Notwithstanding anything to the contrary contained in any other law for the time being in force, the Authority shall have the power-

  - ❖ to levy tax or charge fees or service charges for the amenities of infrastructure provided by it;
  - ❖ to authorize the Developer to collect service charges, for the amenities and infrastructure provided by the Developer;
  - ❖ to purchase by agreement, or to take on lease or under any form of tenancy, any land and to erect thereon such buildings as may be necessary for the purpose of carrying on its undertakings.
5. **Generation and Supply of Electricity**
  - ❖ The distribution licensee as defined under clause (17) of section 2 of

the Electricity Act, 2003, shall ensure supply of good quality of electricity for consumers in the respective SEZ.

- ❖ The fixation of tariffs for distribution of power within a SEZ will be governed by the Electricity Act, 2003.
- ❖ The industrial unit and other establishments in a SEZ may install their own power plants for captive use as provided under the Electricity Act, 2003.
- ❖ The electricity duty will be waived in full, without any restriction of period in respect of all the industries and other establishments to be set up in a SEZ.

#### **6. Environment Related Issues**

The Units carrying on or intending to carry on any of the projects mentioned in the Schedule shall obtain environmental clearance from the Ministry of Environment and Forest, Govt. of India .In case the Central Government delegates the power to issue such environmental clearance to the State Government or to the Development Commissioner, the Development Commissioner may grant such clearance.

#### **7. Exemption from State Taxes, Duties, Cesses and Levies**

The Developer of, or units located in a SEZ shall be exempted from payment of any tax, fee, duty, cess or any other levy payable under the provisions of any State law for -

- ❖ any goods exported out of, or imported into, a SEZ; or
  - ❖ inter-unit transactions of goods within a SEZ; or
  - ❖ inter-SEZ transaction of goods; or
  - ❖ any goods sent from a SEZ for value addition to the Domestic Tariff Area and returned to such SEZ thereafter; or services that provide for value addition to a product within a SEZ.
  - ❖ All transactions and transfers of immovable property or documents relating thereto within a SEZ shall be exempt from payment of stamp duty and registration fee.
- 8.** The Governor having regard to the area of a SEZ and municipal services to be provided, may by notification, declare such SEZ to be an Industrial Township, in accordance with the provisions of the Bengal Municipal Act, 1993, and upon such declaration, the provisions of the West Bengal Municipal Act, 1993, shall apply with such incidental and consequential modifications as the State Government may specify in such notification.
- 9.** The Units in a SEZ shall be declared as Public Utility service under the Industrial Disputes Act, 1947.

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