



Instructions issued by the Ministry of Commerce in relation to Special Economic Zone

The Ministry of Commerce ('the MoC'), has recently issued various instructions, ('the Instructions'), providing clarifications/ guidelines on various issues relating to special Economic Zones ('SEZ'). A summary of the Instructions has been given below.

Instruction No 20¹: Developers/ co-developers can use duty free material for specified authorized activities immediately from the notification date of the SEZ

Background

SEZ regulations provide to SEZ developers benefit of duty free procurement of goods used in relation to authorised operations. Approval of the authorized operations by the Board of Approval post the notification of an SEZ often takes time and therefore results in delays in project implementation. This instruction has been issued to reiterate the concept of default operations earlier introduced by the MoC².

Summary

The MoC has now provided a list of authorized operations for different categories of SEZs. These activities can be performed post notification of the SEZ without waiting for any further approval. However for authorized activities other than those mentioned in the list, the developer/ co-developer is required to make a separate application to the Board of Approval.

¹ Instruction No 20 dated 22 August 2008 issued under F.No.F.1/ 153/ 2007-SEZ by MoC

² The MoC had issued similar clarifications under F.2/ 1/ 2007 - SEZ dated 26 June 2007.

Instruction 21³: Transfer of in-principle/ formal approval issued to an SEZ developer/ co-developer

Background

A large number of cases were pending for change of name/ transfer of approvals. SEZ Act does not provide explicit provisions for considering such proposals.

Summary

Four categories of cases have been identified, wherein the transfer of an in-principle/ formal approval issued to an SEZ developer/ co-developer to its subsidiary/ SPV would be made possible.

Category	Particulars
I	Mere change in name and no change in share holding pattern of the original developer
II	Approval transferred to a 100 percent SPV or a wholly owned subsidiary of the developer company
III	De-merger in terms of a Court decision
IV	Equity is partly held by State Government or one of its organisations by virtue of the State Government's requirement

Cases which are not covered above would be separately examined by the Board of Approval.

Instruction 22⁴: Grant of extension of validity of in-principle approval

Background

A large number of developers holding in-principle approvals had applied for extension of their approval as they were not able to apply for formal approval within the time stipulated in the SEZ regulations.

³ Instruction No 21 dated 16 July 2009 issued under No.C.8/ 3/ 2009-SEZ by MoC

⁴ Instruction No 22 dated 16 July 2009 issued under No.C.8/ 3/ 2009-SEZ by MoC

Summary

The conditions for grant for first and second extension of validity of in-principle Letter of Approval ('LoA') have been summarized below:

Type of SEZ	Conditions for grant of first extension	Conditions for grant of second extension
IT/ ITES/ Biotechnology etc with minimum area requirement of 10 hectares and standalone FTWZ	<ul style="list-style-type: none"> the request for extension to be filed before the expiry of the LoA; steps for implementation of the proposal (like acquisition/ purchase of land etc.) have been taken 	<ul style="list-style-type: none"> second extension will not be given
Sector specific SEZ (other than mentioned above)	<ul style="list-style-type: none"> the request for extension to be filed before the expiry of the LoA; steps for implementation of the proposal (like acquisition/ purchase of land etc.) have been taken 	<ul style="list-style-type: none"> besides conditions for first extension the developer should have completed 60 percent land acquisition/ possession
Multi-product SEZ	<ul style="list-style-type: none"> the request for extension to be filed before the expiry of the LoA; steps for implementation of the proposal (like acquisition/ purchase of land etc.) have been taken 	<ul style="list-style-type: none"> besides conditions for first extension the developer should have completed 50 percent land acquisition/ possession

Further, while extending the validity of in-principle approvals, any approvals given for area of more than 5000 hectares would be capped at 5000 hectares to align all such approvals as per the Government's decision in this regard.

Instruction 23⁵: Foreign Direct Investments (FDI) in SEZs

Background

As per the present guidelines 100 percent FDI is permitted under the automatic route in an SEZ.

⁵ Instruction No 23 dated 16 July 2009 issued under No.C.8/ 3/ 2009-SEZ by MoC

Summary

In case promoter developer/ co-developer of an SEZ wants to transfer equity to a foreign investor then it should be ensured that his equity does not fall below 51 percent. In case the promoter decides to decrease the shareholding below 51 percent then prior approval of Board of Approval has to be taken.

Instruction 24⁶: Increase in area of an SEZ/ de-notification of part of area of an SEZ.

Background

This instruction has been issued in relation to various applications made for change in area of SEZs, for which no regulatory framework was available.

Summary

The application for change in area shall be routed through the concerned Development Commissioner. All developers of notified SEZs are required to make an application to the Department of Commerce with a copy to the concerned Development Commissioner. Form Q has been prescribed for increase in area of the SEZ while Form R is prescribed for de-notification of a portion of area. Guidelines have been issued to Development Commissioners in this regard which *inter alia* provide:

- Where units are already functional in the area sought to be de-notified, NOC from such units would be required.
- Proposals for reduction of land in case of SEZs notified under Rule 5(3) of the SEZ Rules, 2006 ('SEZ Rules') should be placed before EGoM for a decision.
- The minimum area requirements prescribed under Rule 5 of the SEZ Rules for various classes of SEZs have to be met.
- In case of non-notified SEZs, the requests for changing the area of SEZs may be approved on file, however, for the notified SEZs such requests will be decided by the Board of Approval.

Instruction 25⁷: Norms of boundary wall in an SEZ

Background

Rule 11 of the SEZ Rules requires that the processing area shall be fully secured by taking measures approved by the Board of Approval.

⁶ Instruction No 24 dated 16 July 2009 issued under No.C.8/ 3/ 2009-SEZ by MoC

⁷ Instruction No 25 dated 16 July 2009 issued under No.C.8/ 3/ 2009-SEZ by MoC

Summary

The following norms have been provided for the boundary walls for securing the processing area:

Type of SEZ	Boundary Norms
IT/ ITES SEZ	The height of the wall will be decided by the Development Commissioner
Other SEZ	The wall could either be 2.4 meters in height or 1.8 meters in height plus 0.6 meters of barbed wire fencing

For any deviations, the proposals have to be referred to the Board of Approval for a decision.

Instruction 26⁸: Administrative structure and process of clearing cargo in ports in SEZs

Background

In terms of sub-rule 11 of Rule 11 of the SEZ Rules DTA cargo can be cleared from ports in SEZs. There was no clarity so far on the administrative set up in the ports in SEZs.

Summary

The guidelines laid down have been given as under:

- Ports will be located in the non processing area of SEZs and a demarcation from the rest of the SEZ has to be done jointly by the Development Commissioners and the jurisdictional Commissioner of Customs, keeping in view the operational necessities.
- A separate entry/ exit route duly secured for movement of both export and import DTA cargo from and to the port area. A separate storage for SEZ cargo and DTA cargo has to be provided.
- The SEZ cargo shall be handled by the authorized officer of the SEZ, while the DTA export/ import cargo will be handled by the Customs formation authorized by the CBEC.
- Further, the assessment and clearance of SEZ cargo will be done by the authorized officer as per the provisions for SEZ. The functions like grant of entry inwards for vessels, rummaging of vessels, preventive control, accountal of cargo, port clearance, trans-

⁸ Instruction No 27 dated 16 July 2009 issued under No.C.8/ 3/ 2009-SEZ by MoC

shipment and assessment and clearance of DTA cargo will be handled by the relevant Customs formation.

- All the provisions of the Customs Act, 1962, rules and regulations issued thereunder would apply to the port as demarcated from rest of the SEZ.

Conclusion

SEZ is a relatively new concept in India and therefore, developers/ units are facing many practical difficulties for lack of precedents. Through these instructions, the MoC has tried to provide clarity where there had been no clear guideline in the SEZ legislation. This will definitely benefit SEZ developers.

Disclaimer

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