

An overview on Procedure for Setting up of SEZ :

A. Background :

SEZ Scheme was introduced by Government of India with objective to provide an internationally competitive and hassle-free environment for manufacturing activities, earning of foreign exchange, attracting Foreign Direct Investment (FDI), generation of employment and to facilitate transfer of technology.

SEZ are considered to be growth engines to boost manufacturing, augment exports, generate large scale employment and creation of world class infrastructure.

B. Introduction :

In order to understand the procedure for setting an SEZ, it is quite important to understand the following :

- a. Who are eligible for setting up an SEZ? ;
- b. Few important terms and;
- c. Administrative setup under SEZ.

(Wherever section and rule references are given, please refer to the respective sections and rules of SEZ Act, 2005 and SEZ Rules, 2006)

a. Who are eligible for setting up an SEZ?

As per section 3(1) of SEZ Act, 2005:

✚ A SEZ can be set up under the SEZ Act either jointly or severally by:

- (i) The [Central Government \(CG\)](#);
- (ii) The [State Government \(SG\)](#) [Section 2(zb)] or
- (iii) Any *Person [Section 2(v)]

Note : CG here means Ministry of Commerce and Industry (MCI), Department of Commerce (DOC)

For the purposes of

- (i) Manufacture of goods,
- (ii) Rendering of services [including Offshore Banking Unit (OBU)],
- (iii) both or
- (iv) As a Free Trade and warehousing Zone** (FTWZ).

✚ As per section 2(v) of SEZ Act, 2005,

***Person** includes :

- An Individual, whether resident in India or outside India;
- A Hindu Undivided Family (HUF);
- Co-operative society;
- A company, whether incorporated in India or outside India;
- A firm;
- Proprietary concern or
- An AOP/BOI, 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.

From above it's clear that a firm and Proprietary concern are eligible for setting up an SEZ whereas any agency, office and branch owned or controlled by such Firm and Proprietary concern are not eligible for setting an SEZ.

✚ ******As per section 2(n) of SEZ Act, 2005,

✚ ****FTWZ** :- FTWZ means a SEZ wherein mainly trading and warehousing and other activities related thereto are carried on.

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b. Important terms :

- (i) **Developer** : A person who, or a SG which, has been granted by CG a letter of approval (LOA) to establish the SEZ and undertake Authorized operations [Section 2(g)].
- (ii) **Identified area** : It is an area which is identified and proposed to be converted to SEZ.
- (iii) **Contiguous land** : A land that is continuous with no boundaries in between.
- (iv) **Vacant Land** : A land where there are no functional ports, manufacturing units, industrial activities or structures in which any commercial or economic activity is in progress.
- (v) **Public thoroughfare** : A road/path forming a route between two places. In simple, it means public interference.
- (vi) **Authorized operations** : Operations which may be authorized by
 - Board (in case of Developer) and
 - Development commissioner (in case of Unit)To be undertaken by the Developer/Unit respectively that shall be mentioned in the LOA granted for the proposal made [Section 2(c)].
- (vii) **Domestic Tariff Area (DTA)** : DTA means whole of India (including the territorial waters and continental shelf) but does not include the areas of SEZ [Section 2(i)].
// DTA = India(including territorial waters and continental shelf) – SEZ Zone //

c. Administrative set up for SEZs :

The functioning of the SEZs is governed by a three-tier administrative set up that are framed to look into the matters of SEZ.

(i) **Board of Approval/Board** : The Board is the apex body/authority in case of approval mechanisms and other related issues related to SEZ that is constituted by the central government to exercise the powers conferred under the SEZ Act. All major decisions related to SEZ will be taken by Board. The Board consists of 19 members representing various Ministries and Departments.

(Note: Board constituted by CG for SEZ is also the apex body for EOU to exercise powers conferred under EOU Scheme)

(ii) **Unit Approval Committee(UAC)** : Every request for setting up of units in the SEZ are approved at the ***Zone level** by the UAC consisting of DC, after a discussion with the Customs Authorities and representatives of SG. It is the authority which mainly investigates the matters related to Units in SEZ.

(iii) **Development Commissioner(DC)** : Each Zone is headed by a DC, who is also heading the UAC. DC is the nodal officer for SEZs and help in resolution of problem, if any, faced by the units or developer.

***Zones** : All states and Union territories are divided into 7 Zones based on various criteria's and requirements. Each Zone consists of a UAC to approve the proposal for

setting up of units in the SEZ falling under the respective Zones and to exercise various powers conferred under the SEZ Act.

C. Procedure for making a proposal to establish SEZ :

- (1) Any person who intends to set up a SEZ in any state other than Union territories may, after identifying the area, make a proposal in **Form A** (*Application for Setting up of SEZ*) :
- a. To the concerned SG (or)
 - b. Directly to the Board; (And)
 - c. To the concerned DC.
- If any person intends to set up a SEZ in Union territories or if SG intends to set up a SEZ may, after identifying the area, make a proposal in **Form A** :
- a. Directly to the Board for setting up the SEZ and;
 - b. To the concerned DC.
- *SG cannot set up SEZ in Union territory*
- If CG intends to setup an SEZ in any state other than Union territories may, after identifying the area, make a proposal in **Form A** :
- a. Directly to the Board for setting up the SEZ;
 - b. To the concerned DC and;
 - c. Obtain the consent of respective SG.
- If CG intends to set up a SEZ in Union territories may, after identifying the area, make a proposal in **Form A** :
- a. Directly to the Board for setting up the SEZ and;
 - b. To the concerned DC.

Summary :

Particulars	Make an application in Form A to			
	Concerned SG	Board/BOA	DC	
If Any person intends to setup a SEZ	In any state other than Union territory	Choose between SG and Board		Yes
	In Union Territories	NA	Yes	Yes
If SG intends to set up a SEZ	In any state other than Union territory	NA	Yes	Yes
	In Union Territories	SG cannot setup SEZ in Union territories		
If CG intends to set up a SEZ	In any state other than Union territory	Consent of SG	Yes	Yes
	In Union Territories	NA	Yes	Yes

(2) **IF Form A received by DC :**

- DC shall forward **Form A** to the Board within 15 days of receipt, along with his inspection report, other details specified under Rule 7 of SEZ Rules, 2006.
- *Rule 7 of SEZ Rules, 2006 :*
 - a. The Developer shall furnish to the CG, exact particulars of that identified area such as built up area, legal possession, type of soil etc., with a certificate from the concerned

SG or its authorized agency stating that Developer(s) have legal possession and irrevocable rights to develop the identified area as SEZ and that identified area is free from all encumbrances.

Provided that where the Developer has leasehold rights over the identified area, the lease shall be for a period of not less than 20 years.

b. The identified area shall be contiguous and vacant, and it shall have no public thoroughfare.

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

(3) If Form A received by SG :

SG shall forward **Form A** to the Board within 45 days of receipt, along with its recommendations

Before recommending any proposal for setting up of a SEZ, the SG shall endeavour that the following are made available in the state to the proposed SEZ Units and Developer, namely:

- a. 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 DTA except the goods procured from DTA and sold as it is;
- b. Exemption from electricity duty or taxes on sale, of self-generated or purchased electric power for use in the processing area of a SEZ;
- c. Allow generation, transmission and distribution of power within a SEZ;
- d. Providing water, electricity and such other services, as may be required by the developer to be provided or caused to be provided;
- e. Delegation of power to the DC under the Industrial Disputes Act, 1947 and other related Acts in relation to the Unit and in relation to the workmen employed by the Developer;
- f. Declaration of SEZ as a Public Utility Service under the Industrial Disputes Act, 1947;
- g. Providing single point clearance system to the Developer and Unit under the State Acts and rules.

While recommending the proposal to the Board, SG shall indicate whether the proposed area falls under reserved or ecologically fragile area and ensure that the requirements under the rule 5(2) related to the minimum area of land required for a class or classes of SEZ have been complied with.

(4) If Form A is directly received by Board :

Where the proposal (Form A) has been directly received by the Board from a person, the Board may grant approval and after receipt of such approval, the person concerned shall obtain the concurrence of the SG within 6 months from the date of such approval.

(5) The CG may prescribe the following requirements for establishment of a SEZ, namely :

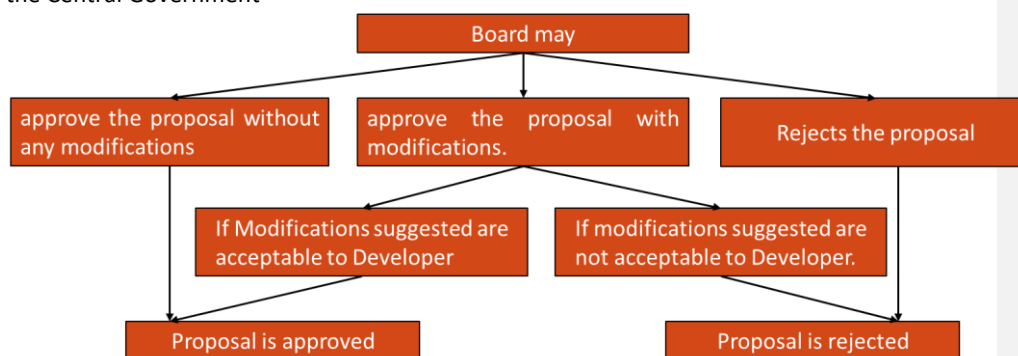
- a. The minimum area of land and other terms and conditions subject to which the Board shall approve, modify or reject any proposal received by it and

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) above, may be prescribed by the CG for a class or classes of SEZs.

(6) Without prejudice to the provisions contained in paragraph 5, the Board may after receipt of proposal, approve the proposal subject to such terms and conditions as it may deem fit to impose, or modify or reject the proposal.

(7) **Form A received by Board :**

Board decides on every application received by it, subject to the requirements specified by the Central Government



a. **If Proposal is approved :**

- Board shall communicate the approval to the CG;
- CG shall within 30 days of receipt of communication, grant , a LOA in **Form B** (Format for letter of Approval for SEZ developers) on such terms and conditions as may be approved by Board;
- LOA (Form B) granted shall be valid for a period of 3 years within which time at least one unit has to commence its production and the SEZ should become operational;
 Provided that such period of 3 years can be extended by the Developer by making an application in **Form C1** (Application for Extension of Validity of LOA granted in Form B).

b. **If Proposal is rejected :**

- Board shall communicate the rejection of proposal to the CG specifying the reasons to be recorded in writing;
- CG shall communicate the rejection to the Concerned person.

(8) The CG shall, on receipt of communication from Board, grant, within 30 days of communication received by it, a LOA in **Form B** (Format for letter of Approval for SEZ Developer) on such terms and conditions and obligations and entitlements as may be approved by Board, to the Developer, being the person or SG concerned:

Provided that the CG may, based on approval of Board, approve more than one Developer in a SEZ in cases where one Developer does not have in his possession the

minimum area of contiguous land, as may be prescribed, for setting up a SEZ and in such cases, each Developer shall be considered as a Developer in respect of the land in his possession.

(9) The LOA (*Form B*) of Developer granted under paragraph 8, shall be valid for a period of 3 years within which time at least one unit has commenced production and the SEZ become operational from the date of commencement of such production:

Provided that the Board may, on an application by the Developer in **Form C1** (*Application for Extension of Validity of Approval granted in Form B*) to the concerned DC, who within a period of 15 days, shall forward it to the Board with his recommendations, extend the validity period of LOA for reasons to be recorded in writing.

(10) After submission of details as required under rule 7 and other details, if any, required by the CG and on acceptance of conditions specified in the LOA (*Form B*), the CG shall notify the identified area as an SEZ, if the proposed area is not less than the minimum area prescribed under rule 5. The date on which SEZ is notified by CG is said to be the 'Appointed Day'.

D. Conclusion :

Government of India has come up with some comprehensive guidelines on how to apply for setting up of SEZ through the SEZ Act and Rules. FAQ's regarding the same has been issued from time to time to clear any doubts in the minds of stakeholders.

E. Abbreviations :

1. SEZ : Special Economic Zone;
2. CG : Central Government;
3. SG : State Government;
4. FDI : Foreign Direct Investment;
5. OBU : Offshore Banking Unit;
6. FTWZ : Free Trade and Warehousing Zone;
7. AOP : Association of Persons;
8. BOI : Body of Individuals;
9. Board/BOA : Board of Approval;
10. UAC : Unit Approval Committee;
11. DC : Development Commissioner;
12. EOU : Export Oriented Units.