

Overview on Procedure for Setting up a Unit in Special Economic Zone (SEZ)

I. Background:

India was one among the foremost Asian countries who have considered the idea of setting up an Export Processing Zone (EPZ) model to promote country's exports in early 1970's. In order to attract more foreign investment and provide an internationally competitive and hassle-free environment for export promotion in India, the concept of Special Economic Zone (SEZ) was introduced to replace EPZ.

In the year 2000, the SEZ policy was initially introduced under Foreign Trade Policy 2000. The policy was implemented through piecemeal and ad hoc amendments to different laws, besides executive orders from time to time. In order to overcome these drawbacks and to give a stable long-term policy framework with minimum regulation, the Special Economic Zone Act, 2005 (hereby referred to be "Act") was introduced. The Act provided broad legal framework, covering all important legal and regulatory aspects of SEZ development as well as for Units operating in SEZs.

SEZ is a specific duty-free enclave and shall be deemed to be foreign territory for the purposes of trade operations, duties and tariffs. In other words, SEZ is a geographical region that has economic laws different from the country's economic laws.

II. Comparison between SEZ and SEZ Unit:

In general, the terms SEZ and SEZ Unit (herewith referred as "Unit") are considered to be similar, but these are actually two different terms which altogether has two different parameters to be dealt with.

SEZ is a specifically delineated duty-free area / zone and as mentioned, shall be deemed to be foreign territory for the purposes of trade operations and duties and tariffs which can set up either jointly or severally by Central Government, State Government or by any Person; whereas **Unit** is an area that can be set up in the processing area / zone of SEZ by any Person.

III. Scope of the Article:

This Article will help you to understand the procedure for setting up a **Unit** in SEZ.

In case of any information related to the overview of procedure for setting up the **SEZ**, please refer page 13 of the Interns' Digest published for October 2018. For reference, visit: <https://www.sbsandco.com/wiki/document/sbs-digest-e-journal-oct-2018>

IV. General Terms:

(a) Person: Person includes

- An Individual, whether resident in India or outside India;
- A Hindu Undivided Family;
- Co-operative society;
- A company, whether incorporated in India or outside India;
- A firm;

- Proprietary concern;
 - An Association of Persons/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 Society, Association, Body, Authority or Company but doesn't include Firm and Proprietary Concern.
- (b) **Developer**: Developer means a person who or a State Government which, has been granted by the Central Government, a letter of Approval (LOA) for setting up an SEZ and carrying on the authorized operations, against the proposal made by applicant (i.e., person or State Government).
- (c) **Entrepreneur**: Entrepreneur means a person who, has been granted by the Development Commissioner of concerned SEZ, a letter of Approval (LOA) for setting up a Unit in SEZ and carrying on the authorized operations, against the proposal made by person.

V. Procedure for setting up of Unit in SEZ:

An applicant planning to setup Unit in a specific SEZ needs to make a physical application (refer point 4 below) to the respective Development Commissioner's Office of SEZ. Before filing an application, the applicant needs to obtain a valid consent letter providing provisional offer of space to the applicant, from the concerned SEZ developer where it intends to set up the SEZ unit. For the purpose of setting up of Unit in SEZ, an applicant needs to follow the following procedure :

- (1) **Creating user ID** : This is the initial stage for setting up a SEZ unit. Applicant need to visit <https://www.sezonline-ndml.com> (henceforth referred as **SEZ Online**) and is required to create User ID and password under New Unit Registration (NUR) category. While creating the User ID, the applicant should provide basic details such as Name, Phone no, Email ID, User category (Unit/Developer).
- (2) **Raising a Demand Draft**: A Demand Draft of ₹10,000/- needs to be drawn in favour of "Pay & Accounts Officer, Ministry of Commerce & Industry, Department of Commerce, payable at New Delhi" and a Banker certificate is to be obtained in respect of designated account that is being maintained for SEZ unit.
- (3) **Filing Application in SEZ Online**: Applicant needs to fill and submit the Application in Form-F through online mode (real time only) in the SEZ Online. Relevant details that the application requires, is mentioned below, of which applicant is required to fill the details as applicable to it:
 - (i) Basic details such as Applicant name, Demand draft details, Director details etc;
 - (ii) Activity to be carried out in SEZ unit as to manufacture of goods / provision of service;
 - (iii) Details of source of finance as to Internal finance or Equity issue etc;
 - (iv) Pattern of shareholding in the paid-up capital by foreign equity and resident holding;
 - (v) Details of Foreign exchange outflow and inflow;
 - (vi) Details of Letter of Approvals/Letter of Intents issued to applicant under SEZ/EOU/STP/EHTP scheme.
 - (vii) Requirement of infrastructure in respect of Land, built-up area, water, power etc;

- (viii) Value of investments in plant and machinery by way of indigenous or import mode;
- (ix) Value of procurement of capital goods and materials in respect of import or indigenous mode;
- (x) Details as to involvement of foreign collaborator in respect of foreign technology agreement;

(4) **Physical Application:** Once the application is filed SEZ Online, the applicant needs to submit the print out of application filled online along with annexures (in hard copy) to the concerned Development Commissioner of concerned SEZ. Among all annexures, relevant and pertinent annexures are as follows:

- (i) Copy of incorporation certificate, Articles and Memorandum of Association of the company
- (ii) Copy of Registered Partnership deed in case of partnership firm/LLP
- (iii) Copy of Board Resolution of authorised director/person in case of company
- (iv) Copy of power of attorney/authority in case of partnership firms
- (v) In case of companies - Copies of residential address proof (Passport/Ration Card/Voter ID/Driving Licence) of Directors, PAN Card and IT returns (for last three years - along with annexures/computation sheet) of Company.
- (vi) In case of partnership firm/LLP/sole proprietary - Copies of residential address proof (Passport/Ration Card/Voter ID/Driving Licence), PAN Card and IT returns (for last three years - along with annexures/computation sheet) in respect of partners/Proprietor.
- (vii) Detailed project report that includes detailed description of the business which is intended to carry on, projections relating to foreign exchange earnings, manpower and financials for the first five years;
- (viii) Consent letter from the SEZ developer that it intends to lease the premises;
- (ix) Copy of affidavit stating that the details submitted are true and correct;
- (x) No Objection Certificate from pollution board (if applicable);
- (xi) Copy of draft export contract or Master Service agreement;
- (xii) Banker certificate for the purpose of opening separate account;
- (xiii) Copy of audited financials (for past years);
- (xiv) Copy of IEC, if already obtained;

The list of the documents mentioned above is an indicative list and the applicant needs to submit only those documents that are applicable to him which may differ depending on the type and nature of Unit that the applicant intends to set up.

(5) **Verification of Application:** Applications received will be verified by Development Commissioner (DC) and makes a note of the details before forwarding it to Unit Approval Committee (UAC)** for consideration. If the DC is not satisfied with the submitted documents, he may raise a demand for additional documents and applicant shall submit those documents within the stipulated time period as prescribed in the demand.

(6) **Attending for Personal Hearing:** Applicant needs to attend the UAC meeting as notified in the SEZ Online.

**The UAC comprises of panel of authorities of various statutory department such as Income Tax, Goods and Services Tax, Customs, State authorities etc. before whom the applicant shall explain as to why they shall be issued a letter of Approval.

- (7) **Scrutiny of Application and issue of LOA:** The UAC shall scrutinize the application in terms of validity of the application, viability of the project, status of the applicant in terms of achievement of positive Foreign Exchange earnings, compliance of provisions of SEZ Act and Rules etc.

If the UAC is satisfied that the applicant will comply with the above terms, they may issue **Letter of Approval (LOA)** for carrying out the authorized operations by SEZ unit and an e-mail will be sent to applicant on the registered e-mail.

In case the UAC disapproves the application, the applicant can challenge the rejection before the Board of Approval (BOA) within 30 days from the date of receipt of order of UAC, which may be extended to 45 days depending upon the facts of the case (BOA consists of various authorities of Central Government including nominee from State Government and other members)

- (8) **Payment of registration fee:** After approval by DC office, a link for payment of registration fee will be enabled in the SEZ Online. On payment of fee, NSDL Database Management Ltd (NDML) representative will verify receipt of payment after enquiring the details of the payment and will authorize the payment upon verification of valid payment entry in SEZ online system. Upon authorization of payment, applicant can create administrator and operational user IDs in SEZ Online which shall be used as a source of submission of various required documents in future time period.
- (9) **Post approval procedures:** Upon obtaining the LOA, the applicant needs to follow further approval procedures such as: -
- (i) Execution of Bond-cum-Legal Undertaking (BLUT) in Form-H : For implementation of the LOA, the Unit has to execute Bond cum legal undertaking in form-H of SEZ Rules on a non-judicial stamp paper of Rs. 100/- of the respective state where the Unit is located and get the same notarized by a Notary Public registered from the same state.
 - (ii) Acceptance of LOA : On receipt of the LOA, the unit has to accept and comply the terms and conditions of the LOA within the stipulated time and take further action as per terms & conditions mentioned in the said LOA for implementation of the project.
 - (iii) Lease deed (for space): On receipt of the LOA, Unit must execute a lease deed with the SEZ Developer and submit copy of registered lease deed to the concerned DC within 6 months from issuance of LOA.
 - (iv) Intimation of Commencement: Unit shall commence the production / provision of service within one year from the date of LOA and is required to intimate the date of such commencement to DC in SEZ online.
 - (v) Periodical reports : Unit has to submit periodical performance reports as to Foreign exchange earnings, manpower etc from the financial year of commencement of production / provision of service in SEZ Online.

VI. Validity / Extension of Letter of Approval :

(1) Validity for commencement of authorized operations :

The Letter of Approval shall be valid for 1 year within which period the Unit shall commence production, service, trading or Free Trade and Warehousing activity.

The validity of the Letter of Approval may be extended for further 2 years by the Development Commissioner for valid reasons to be recorded in writing.

A further extension of 1 year may be granted by the Development Commissioner, provided that two-thirds of activities including construction, is complete, for which the entrepreneur must submit a chartered engineer's certificate.

(2) Validity after commencement of authorized operations :

The Letter of Approval shall be valid for 5 years from the date of commencement of production or service activity which will also serve as a license for authorized operations. However, after the completion of 5 years, the Development Commissioner may, at the request of the Unit, extend the validity for a further period of 5 years, at a time.

VII. Cancellation of letter of Approval :

The UAC may cancel the Letter of Approval if the entrepreneur persistently contravenes any of the terms and conditions or its obligations subject to which he had been granted the Letter of Approval. However, the entrepreneur shall be given a reasonable opportunity of being heard, prior to such cancellation.

VIII. Conclusion :

Government of India has come up with certain comprehensive guidelines on how to apply for setting up of SEZ/SEZ Unit through the SEZ Act and Rules. Though the procedure appears to be complex, but it is a very interesting arena to explore. The procedure outlined above gives you an overview in understanding the process to be followed for setting up of SEZ Unit. Needless to say, this write up is intended to provide an insight on procedural aspects to set up an SEZ unit and not intended to be a professional advice and should not be relied upon unless based on expert advice.