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The Department of Commerce amends the SEZ Rules

To revive interest in special economic zones (SEZs), the Department of Commerce (DoC) on 18 April 2013 announced a series of measures in the annual supplement (2013-14) to Foreign Trade Policy 2009-14. Key changes proposed include reduction in minimum land area requirements for multi-product and sector-specific SEZs, doing away with minimum area requirements for IT/ITeS SEZs, graded scale for minimum land area criteria, sector broad-banding, issues on vacancy of land and exit policy for SEZ units.

To bring into effect these changes, the DoC on 12 August 2013 amended the SEZ Rules, 2006.

The key amendments carried out in the SEZ Rules are as under:

1. Definition of 'Sector' under the SEZ Rules further expanded

The term 'sector' was defined in the earlier SEZ Rules "as 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".

To further explain what constitutes a 'single sector', a new proviso has been inserted in the SEZ Rules which states that "provided various categories comprising their **products or services that are similar or compatible with each other** and including **related ancillary services, R&D services of the sector and additional combination of products and services of similar or**

compatible nature approved by the board of approval (BoA) shall constitute a single sector”.

While the above addition to the definition of 'sector' in the SEZ Rules may broaden the definition of 'single sector', it may be noted that this is subject to further interpretation and any combination of products and services of a similar or compatible nature that constitute as 'single sector' shall only be those approved by the BoA.

2. Minimum contiguous land area requirement reduced

Under the revival package announced in April this year, the Government of India had decided to **reduce the minimum land area requirement by half i.e. 50%** of the existing requirement for specified SEZs. It was further proposed to do away with the minimum land area requirement for IT/ITeS SEZs **and instead have only a minimum built-up processing area.**

Under the amended SEZ Rules, the minimum contiguous land area requirement for multi-product and sector-specific SEZs has been reduced by half. For IT/ITeS SEZs, there is no minimum land area requirement and the developer will be required to meet only the minimum built-up processing area criteria. While the minimum land area requirement for IT/ITeS SEZs has been done away with, the minimum land area requirement for electronics hardware and software (including ITeS) remains unchanged at 10 hectares. In addition, such zones will be required to fulfill the minimum built-up processing area requirements as is applicable to IT/ITeS SEZs.

Under the amended SEZ Rules, a new sector i.e. agro-based food processing, has been brought under the 10 hectare category with a minimum built-up processing area of 40,000 square meters.

The table below summarizes the amendments in the minimum land area requirements for SEZs:

S.No.	Type of SEZ	Minimum land area requirements for SEZs		
		Revised* (in hectares)	Old (in hectares)	Built-up area
1	Multi-product SEZ ¹	500	1000	50%
2	Sector-specific SEZ or SEZ with one or more services or in a port or airport (excluding IT/ITeS sector)	50	100	50%
3	IT/ITeS sector SEZ	No minimum land area requirement	10	Required to meet the built-up processing area requirements as prescribed (Refer Note # a)
4	Electronics hardware and software (including ITeS)	10	10	Yes (Refer Note # a)
5	Agro-based food processing	10		

Notes

* In case of multi-product SEZs operating in specified states and UTs, the land parcel has been reduced from 200 hectares to 100 hectares. Similarly, with respect to sector-specific SEZs or SEZs with one or more services or in a port or airport (excluding the IT/ITeS sector) operating in specified states and UTs, the minimum land area parcel has been reduced from 50 hectares to 25 hectares.

¹ The upper ceiling of the land parcel remains unchanged at 5000 hectares.

a) The area requirement prescribed for IT/ITeS sector is as under:

Particulars	Minimum built-up area
Seven major cities (Delhi NCR, Mumbai, Chennai, Hyderabad, Bangalore, Pune, Kolkata)	One lakh square metres
Category 'B' cities	50,000 square metres
Category 'B' cities (other remaining cities)	25,000 square metres

3. Addition of a sector to a sector-specific SEZ or SEZ for one or more services, port or airports

Under the amended SEZ Rules, a developer of an SEZ for sector-specific or one or more services or in a port or airport, for every contiguous 50-hectare land parcel, a developer will be allowed to add an additional sector to an existing SEZ.

4. Incentives on additions made to pre-existing structure on a land parcel to be used for SEZs

Under the earlier SEZ Scheme, land parcels with pre-existing structures not in commercial use were being considered vacant land for the purposes of setting-up and notifying an SEZ. However, presently, developers carrying out any addition to such pre-existing structures were not eligible for duty benefits.

Under the amended SEZ Rules, Developers/ Co-developer proposing to use land parcels with existing structures, which are non operational and thereafter make **additions to such pre-existing structures like port, manufacturing unit or structure on which no commercial, industrial or economic activity is**

in progress would now be eligible for duty benefits akin to any other activity in the SEZ.

Also, the authorised operations carried out on such infrastructure shall be eligible for fiscal incentives just like they are applicable to a new infrastructure in an SEZ.

5. Transfer of assets by SEZ unit upon exit or sale

Under the earlier SEZ Scheme, Rule 19(2) of the SEZ Rules, 2006 provides that the unit approval committee (UAC) may approve proposals for change of entrepreneur of an approved unit, if the incoming entrepreneur undertakes to take over the assets and liabilities of an existing unit.

The new SEZ Rules have amended the above provisions and have introduced Rule 74A dealing with the transfer of SEZ unit assets upon exit or sale.

A unit in an SEZ may choose to opt out of the SEZ scheme by transferring its assets and liabilities to another person by way of transfer of ownership, including the sale of SEZ units, provided the following conditions are complied with:

- A unit has a valid Letter of Approval (LoA) and the lease of land is for not less than five years, as on the date of transfer.
- The unit has been operational for a minimum period of two years after the commencement of production, as on the date of transfer.
- The sale or transfer will be subject to approval of the UAC.
- The transferee fulfills all eligibility criteria as applicable to a unit.
- The applicable duties, liabilities, if any, as applicable under Rule 74 and the export obligations of the transferor unit shall stand transferred to the transferee unit.

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