

## CHAPTER III

### Constitution of Board of Approval

8. (1) 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.

(2) The Board shall consist of-

- (a) an officer not below the rank of an Additional Secretary to the Government of India in the Ministry or Department of the Central Government dealing with Commerce - Chairperson, ex officio;
- (b) two officers, not below the rank of a Joint Secretary to the Government of India, to be nominated by the Central Government to represent the Ministry or Department of the Central Govt. dealing with revenue - Members, ex officio;
- (c) one officer not below the rank of Joint Secretary to the Government of India to be nominated by the Central Government the Ministry or Department of the Central Government dealing with economic affairs (financial services) - Members, ex officio;
- (d) such number of officers, not exceeding ten, not below the rank of the Joint Secretary to the Government of India, to be nominated by the Central Government to represent the Ministries or Departments of the Central Government dealing with commerce, industrial policy and promotion, science and technology, small scale industries and agro and rural industries, home affairs, defence, environment and forests, law, overseas Indian affairs and urban development - Members, ex officio;
- (e) a nominee of the State Government concerned - Member, ex officio;
- (f) the Director General of Foreign Trade or his nominee - Member, ex officio;
- (g) the Development Commissioner concerned - Member, ex officio;
- (h) a Professor in the Indian Institute of Management, being a society registered under the Societies Registration Act, 1860 or the Indian Institute of Foreign Trade, being a society registered under the Societies Registration Act, 1860, as may be, nominated by the Central Government - Member, ex officio;
- (i) an officer not below the rank of Deputy Secretary to the Government of India dealing with the Special Economic Zones in the Ministry or Department of the Central Government, dealing with commerce to be nominated by the Central Government - Member-Secretary, ex officio;

Provided that the member, being the Joint Secretary nominated under clauses (b) to (d) of this sub-section, may, if he is unable to attend the meeting of the Board, authorise any other officer to attend the meeting of the Board on his behalf.

(3) The term of office of an ex officio Member shall come to an end as soon as he ceases to hold the office by virtue of which he was so nominated.

(4) For the purpose of performing its functions, the Board may co-opt as members such number of persons as it deems fit who have special knowledge of, and practical experience in, matters relating to, or relevant to activity connected with the Special Economic Zones and any such person shall have the right to take part in the discussions of the Board but shall not be counted for the quorum and shall not be a member for any other purpose and such person shall be entitled to receive such allowances or fees, as the case may be, fixed by the Board

(5) The Board shall meet at such times and places as may be appointed by it and shall have the power to regulate its own procedure.

(6) One third of the total Members of the Board shall form a quorum, and all the acts of the Board shall be decided by a general consensus of the Members present.

(7) No act or proceeding of the Board shall be called in question on the ground merely of existence of any vacancy in, or any defect in the constitution of, the Board.

(8) All orders and decisions of the Board and all other instruments issued by it shall be authenticated by the signature of the Member-Secretary, or any other Member as may be authorised by the Board in this behalf.

### **Duties, powers and functions of Board.**

**9.** (1) Subject to the provisions of this Act, the Board shall have the duty to promote and ensure orderly development of the Special Economic Zones.

(2) Without prejudice to the generality of the provisions contained in sub-section (1), the powers and functions of the Board shall include –

- (a) granting of approval or rejecting proposal or modifying such proposals for establishment of the Special Economic Zones;
- (b) granting approval of authorised operations to be carried out in the Special Economic Zones by the Developer;
- (c) granting of approval to the Developers or Units (other than the Developers or the Units which are exempt from obtaining approval under any law or by the Central Government) for foreign collaborations and foreign direct investments, (including investments by a person resident outside India), in the Special Economic Zone for its development, operation and maintenance;
- (d) granting of approval or rejecting of proposal for providing infrastructure facilities in a Special Economic Zone or modifying such proposals;
- (e) granting, notwithstanding anything contained in the Industries (Development and Regulation) Act, 1951, a licence to an industrial undertaking referred to in clause (d) of section 3 of that Act, if such undertaking is established, as a whole or part thereof, or proposed to be established, in a Special Economic Zone;
- (f) suspension of the letter of approval granted to a Developer and appointment of an Administrator under subsection (1) of section 10;

- (g) disposing of appeals preferred under sub-section (4) of section 15;
- (h) disposing of appeals preferred under sub-section (4) of section 16;
- (i) performing such other functions as may be assigned to it by the Central Government.

(3) The Board may if so required for purposes of this Act or any other law for the time being in force relating to Special Economic Zones, by notification, decide as to whether a particular activity constitutes manufacture as defined in clause (r) of clause 2 and such decision of the Board shall be binding on all Ministries and Departments of the Central Government.

(4) The Board may delegate such powers and functions as it may deem fit to one or more Development Commissioners for effective and proper discharge of the functions of the Board.

(5) Without prejudice to the foregoing 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.

(6) The decision of the Central Government whether a question is one of policy or not shall be final.

### **Suspension of letter of approval and transfer of Special Economic Zone in certain cases**

**10** (1) 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 so to do, the Board may, on application, or with the consent of the Developer, or otherwise, for reasons to be recorded in writing, suspend the letter of approval, granted to the Developer for a whole or part of his area established as Special Economic Zone, 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 Special Economic Zone accordingly.

(2) Consequent upon appointment of an Administrator, the management of the Special Economic Zone of the Developer referred to in sub-section (1) shall vest in the Administrator.

(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) The Board may, instead of suspending the letter of approval under sub-section (1), permit it to remain in force subject to such further terms and conditions as it thinks fit to impose, and any further terms or conditions so imposed shall be binding upon and be complied with by the Developer and shall be of like force and effect as if they were contained in the letter of approval.

(5) In case the Board suspends a letter of approval under this section, it shall serve a notice of suspension upon the Developer and fix a date on which the suspension shall take effect.

(6) Upon suspension of the letter of approval under subsection (1), the Special Economic Zone of the Developer referred to in sub-section (5) shall vest in the Administrator under sub-section (2) for a period not exceeding one year or up to the date on which his letter of approval for such Special Economic Zone is transferred, whichever is earlier, in accordance with the provisions contained in sub-sections (7) and (9), as the case may be.

(7) Where the Board has given notice for suspension of letter of approval under sub-section (5), 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.

(8) If at any time, it appears to the Board that the purpose of the order appointing the Administrator has been fulfilled or that for any reason it is undesirable that the order of appointment should remain in force, the Board may cancel the order and thereupon the Administrator shall be divested of the management of the Special Economic Zone which shall, unless otherwise directed by the Board, again vest in the person, being the Developer, in whom it was vested immediately prior to the date of appointment of the Administrator.

(9) Where the Board suspends the letter of approval, under this section, in respect of any Developer, the following provisions shall apply, namely: -

- (a) the Board shall invite applications for transferring the letter of approval of the Developer, whose approval has been suspended and select the person or persons, in accordance with the procedure as may be prescribed, to whom the letter of approval of the Developer in the Special Economic Zone may be transferred;

- (b) upon selection of person or persons under subsection (a), the Board may, by notice in writing, require the Developer to transfer his letter of approval in a Special Economic Zone to the person or the persons so selected and thereupon the Developer shall transfer his interests, rights and liabilities in the Special Economic Zone (hereafter in this section referred to as the “transferee”) who has been selected by the Board on such terms and conditions and consideration as may be agreed upon between the Developer and the transferee;
  - (c) 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 Special Economic Zone of the Developer has been transferred to the transferee, shall cease absolutely except for any liabilities which have accrued prior to that date;
  - (d) the Board may make such interim arrangements in regard to the operation of the Special Economic Zone as may be considered appropriate;
  - (e) the Administrator shall exercise such powers and discharge such functions as the Board may direct.
- (10) The Board may, in order to promote exports or to protect the interest of Units or in the public interest, issue such directions or formulate such scheme as it may consider necessary for operation of the Special Economic Zone.