

CHAPTER III

Procedure for Establishment of a Unit

17. Proposal for approval of Unit. - (1) A consolidated application seeking permission for setting up of a Unit and other clearances, including those indicated below, shall be made to the Development Commissioner, in Form F, ⁵²[*****], with a copy to the Developer: -

- (a) Setting up of unit in a Special Economic Zone;
- (b) Annual permission for sub-contracting;
- (c) Allotment of Importer-Exporter Code number;
- (d) Allotment of land/industrial sheds in the Special Economic Zone;
- (e) Water connection;
- (f) Registration-cum-Membership Certificate;
- (g) Small Scale Industries Registration;
- (h) Registration with Central Pollution Control Board;
- (i) Power connection;
- (j) Building approval plan;
- ⁵³[(k) Goods and Services Tax registration certificate;]
- (l) Approval from inspectorate of factories;
- (m) Pollution control clearance, wherever required;
- (n) Any other approval as may be required from the State Government.

^a[Provided that, an application seeking permission for setting up a Unit requiring recognition, registration, license or authorisation by the International Financial Services Centres Authority shall be made to the Administrator (IFSCA) in Form FA, and Form F shall not be applicable to such Unit.]

(2) The Development Commissioner shall get the proposal scrutinised and get it placed before the Approval Committee for its consideration.

⁵⁴(2A) The Approval Committee shall meet once in every fortnight on a fixed predetermined day]

⁵² Omitted vide Notification No. G.S.R. 909(E) dated 19-09-2018 before it was read as "in five copies"

⁵³ Substituted vide Notification No. G.S.R. 909(E) dated 19-09-2018 before it was read as "Sales tax registration;"

⁵⁴ Inserted vide G.S.R. 562(E) - Dated 3-8-2009

^a Inserted vide Ministry of Finance S.O 940(E) dated 28.2.2024



- (3) The proposals received under clauses (c) and (e) of sub-section (2) of section 9 shall be placed before the Board by the Development Commissioner for its consideration.

18. Consideration of proposals for setting up of Unit in a Special Economic Zone. -

- (1) The Approval Committee may approve or approve with modification or reject a proposal placed before it under sub-rule (2) of rule 17, within fifteen days of its receipt:

Provided that where the approval is to be granted by the Board in terms of sub-rule (3) of rule 17, the Board shall approve or approve with modification or reject such proposal within forty-five days of its receipt:

Provided further that the Approval Committee or the Board, as the case may be, shall record the reasons, in writing, where it approves a proposal with modifications or where it rejects a proposal and Development Commissioner by order shall communicate such reasons to the person making the proposal.

- (2) The Approval Committee shall approve the proposal if it fulfills the following requirements, namely: -

⁵⁵[(i) the proposal meets with the positive net foreign exchange earning requirement. In addition, prescribed value addition earning requirement, as the case may be, shall apply.]

- (ii) availability of space and other infrastructure support applied for, is confirmed by the Developer in writing, by way of a provisional offer of space;

Provided that the Developer shall enter into a lease agreement and give possession of the space in the Special Economic Zone to the entrepreneur only after the issuance of Letter of Approval by the Development Commissioner:

⁵⁶[Provided further that a copy of the registered Lease Deed shall be furnished to the Development Commissioner concerned within six months from the issuance of the Letter of Approval and failure to do so, the Approval Committee may take action to withdraw the Letter of Approval after giving an opportunity of being heard;]

- (iii) the applicant undertakes to fulfill the environmental and pollution control norms, as may be applicable;

⁵⁵ Substituted vide NOTIFICATION No. G.S.R. 200(E) dated 07-03-2019

⁵⁶ substituted vide notification no. G.S.R.72(E).- dated 3-2-2009



- (iv) the applicant submits proof of residence, namely, passport or ration card or driving licence or voter identity card or any other proof of the proprietor or the partners of partnership firms or Directors of the Company, as the case may be, to the satisfaction of Development Commissioner;
 - (v) the applicant submits the Income tax returns, along with annexures, of the Proprietor or Partners, or in the case of a company, audited balance sheet for the last three years.
- (3) the proposal shall also fulfill the following sector specific requirements, namely: -

⁵⁷[(a) export of the goods from Special Economic Zones shall be subject to export policy in force, as provided in Schedule 2 to the Indian Trade Classification (Harmonised System) of Export and Import Items, 2017;]

⁵⁸[(b) for Gems and Jewellery, the minimum Value Addition earning requirement shall be as specified in the prevailing Foreign Trade Policy or Handbook of Procedures, as amended from time to time.]

Provided that this restriction shall not apply to the Units which intend to send the fabric, made by them out of polyester or texturised yarn, for subcontracting but the third party exports shall not be permitted;

- (4) No proposal shall be considered for: -

- (a) recycling of plastic scrap or waste:

Provided that extension of Letter of Approval for an existing Unit shall be decided by the Board;

- (b) enhancement of the approved import quantum of plastic waste and scrap beyond the average annual import quantum of the unit since its commencement of operation to the existing Units;

- (c) reprocessing of garments or used clothing or secondary textiles materials and other recyclable textile materials into clipping or rags or industrial wipers or shoddy wool or yarn or blankets or shawls:

Provided that extension of Letter of Approval for an existing Unit shall be decided by the Board;

⁵³ Substituted vide Notification No. G.S.R. 909(E) dated 19-09-2018

⁵⁴ Substituted vide Notification No. G.S.R. 909(E) dated 19-09-2018



- (d) import of other used goods for recycling: Provided that extension of Letter of Approval for an existing Unit shall be decided by the Board; Provided further that reconditioning, repair and reengineering may be permitted subject to the condition that exports shall have one to one correlation with imports and all the reconditioned or repaired or re-engineered products and scrap or remnants or waste shall be exported

^{58A}[Provided also that only non-hazardous metal and metal-alloy wastes in metallic, non-dispersible form having no contaminants enlisted against Basel No. B1010 in Part D of Schedule III of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 generated from the reconditioning, repair or reengineering, may be allowed to be sold in the Domestic Tariff Area on payment of applicable customs duty and this shall be treated as import and will be permitted only to the actual user or to the trader for use of the actual users authorized by the State Pollution Control Board on one-time basis and subject to verification of documents specified in Schedule VIII of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 by the *Custom Authority*”.]

- (e) Export of Special Chemicals, Organisms, Materials, Equipment and Technologies unless it fulfils the conditions indicated in the Import Trade Control (Harmonized System) Classifications of export and import items;
- (f) if there is any instance of violation of law or public policy by the promoters, having a bearing on the merits of the proposal.

⁵⁹[(g) Omitted]

⁶⁰[(4A) for existing plastic or used clothing Units in Special Economic Zones: -

- (a) Broad banding and splitting of license for setting up of sub-Units shall not be allowed and all transactions of a Unit shall be regulated through a single bank account;
- (b) no third-party exports shall be allowed by any such Unit;
- (c) all such Units shall set up facilities to make products out of used clothing or plastic waste;
- (d) 100 per cent. inspection of the consignment of used clothing sale to Domestic Tariff Area shall be under taken.

^{58A} substituted *vide* notification number G.S.R. 314 (E), dated the 6th June, 2024 and lastly amended *vide* notification number G.S.R. 314 (E), dated the 6th June, 2024.



(4B) Procedure to be followed for verification of documents prior to clearing the consignment in Special Economic Zone :-

- a) Each consignment of used clothing imported by the Unit shall be accompanied with certificate from exporter or agency in which it was generated regarding dis-infection and fumigation of the containers from an agency licensed in the country of origin of worn clothing along with import documents;
- b) in case of mis-declaration by any importer in regard to any toxic or hazardous substances, action as per the relevant provisions of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992) shall be taken against such importer;
- c) to ensure that used clothing re-processing Units in Special Economic Zones fulfil their export obligations in addition to meeting their Net Foreign Exchange obligation and all such Units shall be required to ensure that certain minimum percentage of the Units annual turnover is physically exported out of the country;
- d) before the clearance of used clothes to Domestic Tariff Area, all imported consignments of such used clothes shall be subject to 100 per cent. scrutiny at the premises of the Unit by Special Economic Zone authorities.]

⁵⁹ omitted vide Notification No G.S.R. 1744(E), DATED 12-10-2007

⁶⁰ Inserted vide Notification No. G.S.R. 909(E) dated 19-09-2018 and policy guidelines issued vide Instruction dated 27-05-2021 vide file No. K-43014(16)/9/2020 and further vide note no K-43014(16)/9/2020-SEZ dated 05-05-2022



- (5) The Units in Free Trade and Warehousing Zones or units in Free Trade and Warehousing Zone set up in other Special Economic Zone, shall be allowed to hold the goods on account of the foreign supplier for dispatches as per the owner's instructions and shall be allowed for trading with or without labeling, packing or repacking without any processing:

Provided that refrigeration for the purpose of storage and assembly of Completely Knocked Down or Semi Knocked Down kits shall also be allowed by the Free Trade and Warehousing units undertaking the said activities:

Provided further that these Units may also re-sell or re-invoice or re-export the goods imported by them:

Provided also that all transactions by a Unit in Free Trade and Warehousing Zone shall only be in convertible foreign currency;

- (6) Units may also be setup for providing services or manufacturing services to Overseas Entities subject to following conditions, namely:-
- (a) Capital goods, raw materials including consumables sub-assemblies, components, semi-finished goods shall be supplied by the Overseas Entity free of cost;
 - (b) Capital goods for setting up such facilities may also be supplied on loan or lease basis, provided the notional value of such capital goods shall be taken into account for calculation of Net Foreign Exchange Earnings under rule 53.
 - (c) finished goods shall be exported out of the country or transferred to the Customs Bonded Warehouse to be maintained by the Overseas entity;

Provided that any supplies of finished goods shall be as per the instructions of the Overseas entity.

- (d) the Unit shall receive the consideration for its manufacturing services in convertible foreign exchange directly from the said overseas entity;
- (e) in case the said manufacturing facility is used by the Unit for carrying out production on its own account, separate accounts shall be maintained for the manufacturing and service activity.

Explanation: - "Overseas Entity" means a non-resident or a person of foreign origin and includes a company not incorporated in India.



⁶¹19. Letter of Approval to a Unit. -

(1) On approval of a proposal under rule 18 and 19, Development Commissioner shall issue a Letter of Approval in Form G, for setting up of the Unit:

(2) The Letter of Approval shall specify the items of manufacture ⁶²[along with the corresponding Indian Trade Classification (Harmonised System) of Export and Import Items, 2017] or particulars of service activity, including trading or warehousing, projected annual export and Net Foreign Exchange Earning for the first five years of operations, limitations, if any on Domestic Tariff Area sale of finished goods, by-products and rejects and other terms and conditions, if any, stipulated by the Board or Approval Committee:

⁶³[Provided that the Approval Committee may also approve proposals for broad-banding, diversification, enhancement of capacity of production, change in the items of manufacture or service activity, if it meets the requirements of rule 18:

Provided further that no such approval shall be granted by the Approval Committee in those cases which fall within the competence of the Board of Approval:

⁶⁴[Provided also that, subject to the provisions of rule 74A] the Approval Committee may also approve change of the entrepreneur of an approved unit, if the incoming entrepreneur

⁶¹ Instruction dated 07-06-2021 vide file No. K-43014(16)/8/2020 issued for set up of Non Conventional Power Plant.

⁶² Inserted vide Notification No. G.S.R. 909(E) dated 19-09-2018

⁶³ Substituted vide notification no. S.O. 1293(E) dated 20-5-2009

⁶⁴ Substituted vide Notification GSR 540(E) dated 12-8-2013



undertakes to take over the assets and liabilities of the existing Unit]

⁶⁵[Provided also that the Approval Committee may also approve proposals for merger of Letters of Approval of two or more Units of the same company or firm subject to the condition that these Units fall within the same Special Economic Zone and after merger, block period for calculation of Net Foreign Exchange shall be from the date of commencement of production of the Unit which commenced operation first and the Income tax exemption period shall be considered from the date of start of operation of the first Unit.]

- (3) An entrepreneur holding Letter of Approval issued under sub-rule (1) shall only be entitled to set up a Unit in processing area of the Special Economic Zone or Free Trade and Warehousing Zone, as the case may be:

Provided that a proposal for setting up of a Unit in a Special Economic Zone or Free Trade Warehousing Zone shall be entertained only after the processing area of the Special Economic Zone or Free Trade Warehousing Zone has been demarcated under rule 11.

- (4) The Letter of Approval shall be valid for one year within which period the Unit shall commence production or service or trading or Free Trade and Warehousing activity and the Unit shall intimate date of commencement of production or activity to Development Commissioner:

Provided that upon a request by the entrepreneur, further extension may be granted by the Development Commissioner for valid reasons to be recorded in writing for a further period not exceeding two years:

Provided further that the Development Commissioner may grant further extension of one year subject to the condition that two-thirds of activities including construction, relating to the setting up of the Unit is complete and a chartered engineer's certificate to this effect is submitted by the entrepreneur.

⁶⁶[**Provided** also that the Board of approval may, upon a request in writing by the entrepreneur, and after being satisfied that it is necessary and expedient so to do grant further extension for a further period not exceeding one year, at a time.]

⁶⁵ Inserted vide Notification No. G.S.R. 909(E) dated 19-09-2018

⁶⁶ Inserted vide G.S.R. 903(E) - Dated 10-11-2010



- (5) If the Unit has not commenced production or service activity within the validity period or the extended validity period under sub-rule (4), the Letter of Approval shall be deemed to have been lapsed with effect from the date on which its validity expired.
- (6) The Letter of Approval shall be valid for five years from the date of commencement of production or service activity and it shall be construed as a licence for all purposes related to authorized operations, and, after the completion of five years from the date of commencement of production, the Development Commissioner may, at the request of the Unit, extend validity of the Letter of Approval for a further period of five years, at a time.

⁶⁷[(6A)

- (1) The Units which intend to renew the validity of Letter of Approval shall submit, before two months from the date of expiry of the Letter of Approval, the completed application in form F1 along with requisite document, to the Development Commissioner, duly signed by the proprietor or managing partner or if it is a company, by the Managing Director or the Director(s) or any person who has or have been duly authorised for this purpose by a resolution of the ⁶⁸[Board] of Directors of the Company:

⁶⁹[Provided that in case an application is submitted after the said period of two months, reasonableness of the delay shall be examined on the merits and circumstances of the case and the request for renewal of Letter of Approval shall be decided by the Development Commissioner.]

- (2) in case of non-compliance of the procedures specified in clause (1), the Letter of Approval shall not be considered for renewal.
- (3) the Development Commissioner may renew the Letter of Approval for a period of five years or for a shorter period, in form F 2, based on the evaluation of the Unit as per sub-rule (6B):

⁷⁰(6B) The process of renewal of Letter of Approval shall take into account the efforts made and the results achieved or status of the following criteria, namely: -

⁶⁷ Inserted vide Notification No. G.S.R. 909(E) dated 19-09-2018

⁶⁸ Substituted vide NOTIFICATION No. G.S.R. 200(E) dated 07-03-2019 before it was read as "Board of Approval"

⁶⁹ Substituted vide Notification No. G.S.R. 200(E) dated 07-03-2019

⁷⁰ Substituted vide Notification No. G.S.R. 200(E) dated 07-03-2019



- (i) Export performance of the Unit in the last block.
 - (ii) Employment generated.
 - (iii) Instance of violation of applicable statutes related to the functioning of the Unit.
 - (iv) Cases of default, if any, of statutory payments.
 - (v) Undertaking of any activity not sanctioned or approved by the Development Commissioner.
 - (vi) The decision of the Development Commissioner or Approval Committee in this regard shall be final and binding on the Unit except in cases where the Unit prefers an appeal before the Board of Approval, in accordance with rule 55.]
- (7) If an enterprise is operating both as a Domestic Tariff Area unit as well as a Special Economic Zone Unit, it shall have two distinct identities with separate books of accounts, but it shall not be necessary for the Special Economic Zone unit to be a separate legal entity:

⁷¹[Provided that foreign companies can also set up manufacturing Units as their branch operations in the Special Economic Zones in accordance with the provisions of Foreign-Exchange Management (Establishment in India of branch or office or other place of business) Regulations, 2000 as amended from time to time.]

⁷²**[19A. Unit deemed to be in International Financial Services Centre.** - Any Unit authorised under rule 19 to store bullion as the underlying asset for the purpose of issuance of a bullion spot delivery contract or bullion depository receipt with underlying bullion that is traded in a bullion exchange shall be deemed to be in an International Financial Services Centre.

Explanation. - For the purpose of this rule, - (a) “bullion”, “bullion spot delivery contract”, and “bullion depository receipt with underlying bullion” shall have the same meaning as respectively assigned to them in the notification of the Government of India in the Ministry of Finance, Department of Economic Affairs, No. S.O. 2957 (E) dated the 31st August, 2020 issued under the International Financial Services Centres Authority Act, 2019 (50 of 2019);

(b) “bullion exchange” means a stock exchange in an International Financial Services Centre, recognised under section 4 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) in respect

⁷¹ substituted vide notification no. G.S.R.72(E).- dated 3-2-2009

⁷² substituted vide notification no. G.S.R.519(E).- dated 06-07-2022



of bullion spot delivering contract and bullion depository receipt with underlying bullion.]

20. Administrative Control of Special Economic Zones. -

Every Special Economic Zone shall be under the administrative control of a Development Commissioner appointed under sub-section (1) of section 11.

21. Offshore Banking Unit. -

- (1) The application for setting up and operation of Offshore Banking Unit in Special Economic Zone shall be made to the Reserve Bank of India in the Form VI prescribed under Banking Regulation (Companies) Rules, 1949 under section 23 of the Banking Regulation Act, 1949.
- (2) The terms and conditions subject to which an Offshore Banking Unit may be set up and operated in a Special Economic Zone shall be as specified in the Notification number FEMA 71/2002-RB dated 7th September, 2002 by the Reserve Bank of India, as amended from time to time.

⁷³[21A. Setting up of Unit by Multilateral or Unilateral or International agencies in International Financial Services Centre. -

- (1) A Multilateral agency or Unilateral agency or international agency notified under the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947) shall be allowed to set up their local or regional office in the International Financial Services Centre as an Unit.
- (2) The application for setting up and operation of such Unit in the International Financial Services Centre shall be made before the Board of Approval through the concerned Development Commissioner.
- (3) The terms and conditions for setting up and operations by such Units shall be laid down by the Board of Approval based on the recommendation of the Development Commissioner.
- (4) Notwithstanding anything contained under these Rules, the Board of Approval may exempt such Units from any provisions of these Rules including provisions relating to positive Net Foreign Exchange earnings or filing of Annual Performance Report or such other exemption, based on the recommendation of the Development Commissioner.

⁷³ Inserted vide Notification No. G.S.R. 909(E) dated 19-09-2018



- (5) The proposal for extension of the Letter of Approval of such Units shall be considered by the Board of Approval.”]

⁷⁴**[21B. Units dealing with aircraft leasing activities. -**

A Unit in an International Financial Services Centre, authorised to undertake aircraft leasing activity, if allowed by the International Financial Services Centre Authority not to maintain separate office, may utilise office space or manpower or both, of another unit set up in International Financial Services Centre authorised to undertake aircraft leasing activity, as may be approved by the Authority.]

⁷⁴ Inserted vide Notification No. G.S.R. 125(E) dated 23-02-2023

