

No. H-5/1/2013-SEZ
Government of India/Bharat Sarkar
Ministry of Commerce and Industry/ Vanijya Aur Udyog Mantralaya
Department of Commerce/ Vanijya Vibhag
(SEZ Section)

Udyog Bhawan, New Delhi

Dated the 17th May, 2018

To

1. All Chief Secretaries of State Governments.
2. All Development Commissioners

Subject: Guidelines regarding Change in Shareholding pattern, Name Change of SEZ Developers and SEZ Units.

Madam/Sir,

The Board of Approval in its 31st meeting held on 15.01.2009 had, taken a decision allowing for transfer of in-principle approval and formal approval issued to an SEZ developer to its subsidiary or SPV, change of name of developer without change in shareholding pattern, demergers in terms of court decisions, where part equity is held by State Govt. or its organisation by virtue of the State Government's requirements. The BOA had also decided that where at least 51% equity is held by the original developer, i.e., where the controlling interest of the original developer continue to be there.

2. The Department of Legal Affairs had then opined that there is no specific provision in the SEZ Act, 2005 and there is a need to show that facility granted/concession given will not be misused, a policy decision needs to be taken in consultation with all concerned department. Thereafter, if it felt, the necessary legislative changes can be suggested. Subsequently, the Department of Legal Affairs while reiterating the above position had stated that it is for the administrative department to take policy decision whether to facilitate such transfers subject to the safeguards that the same is not misused or an amendment to the Act may be made. The BOA in its meeting dated 15.1.2009 had then taken a policy decision to approve such proposals, Subsequently, Department of Commerce issued Instruction No. 21 dated 16.7.2009.

3. Further, the BOA in its 69th Meeting held on 23.2.2016 had decided as under:-

“With a view to promote the ease of doing business in India and that restructuring of entity/ business is a fairly common occurrence, BOA decided that provisions of Rule 74A shall not apply to SEZ Units that

do not exit or opt out of the SEZ Scheme by transferring its assets and liabilities to another person and the SEZ Unit continues to operate as a going concern in the situations mentioned above. The UACs concerned, may consider such requests under Rule 19(2) of the SEZ Rules, 2006.

In so far as Business Transfer Agreement is concerned, it was explained that certain acquisitions happen globally as a result of Business Transfer Agreement which result in transfer of the SEZ unit of the Indian company on a going concern basis to the acquirer. The BOA decided that such cases resulting in change of ownership would be decided on merits by the Board of Approvals on a case to case basis.”

4. The matter has been examined in consultation with the Department of Legal Affairs who have opined that Sub-section 10 of the Section 10 of the SEZ Act, 2005 empowers the Board to issue such directions or formulate such schemes as it may consider necessary for operation of the SEZ is in order to promote exports or to protect the interest of units or in the public interest.

5. Accordingly, the decisions of the BOA in its 31st and 69th are adopted as guidelines in the cases of Change of Shareholding pattern, name change of SEZ Developers and units etc. as under :-

(i) Re-organisation including change of name, change of shareholding pattern, business transfer arrangements, court approved mergers and demergers, change of constitution may be undertaken with the prior approval of Board of Approval in respect of Developer/Co-developer subject to the condition that the Developer / Co-developer shall not opt out or exit out of the Special Economic Zone and continues to operate as a going concern. All liabilities of the developer/ co-developer will remain unchanged on such reorganisation.

(ii) Re-organisation including change of name, change of shareholding pattern, business transfer arrangements, court approved mergers and demergers, change of constitution of Units located in SEZs may be undertaken with the prior approval of Approval Committee in respect of Units subject to the condition that the Unit shall not opt out or exit out of the Special Economic Zone and continues to operate as a going concern. All liabilities of the Unit will remain unchanged on such reorganisation.

6. Such reorganisation shall be subject to the following safeguards:

- i) Seamless continuity of the SEZ activities with unaltered responsibilities and obligations for the altered entity;

- ii) Fulfilment of all eligibility criteria applicable, including security clearances etc., by the altered entity and its constituents;
- iii) Applicability of and compliance with all Revenue / Company Affairs / SEBI etc. Acts/ Rules which regulate issues like capital gains, equity change, transfer, taxability etc.
- iv) Full financial details relating to change in equity/merger, demerger, amalgamation or transfer in ownership etc. shall be furnished immediately to Member (IT), CBDT, Department of Revenue and to the jurisdictional Authority.
- v) The Assessing Officer shall have the right to assess the taxability of the gain/loss arising out of the transfer of equity or merger, demerger, amalgamation, transfer and ownerships etc. as may be applicable and eligibility for deduction under relevant sections of the Income Tax Act, 1961.
- vi) The applicant shall comply with relevant State Government laws, including those relating to lease of land, as applicable.
- vii) The unit shall furnish details of PAN and jurisdictional assessing officer of the unit to CBDT.

7. Department of Commerce Instruction No. 21 dated 16.7.2009 issued bearing file No. C.8/3/2009-SEZ is hereby withdrawn.

Yours faithfully



(T.V. Ravi) 17/5/18
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Copy to :-

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