

SPECIAL ECONOMIC ZONES

LAWS & PRACTICE

DISCUSSION THREADS

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- ✦ The concept
 - ✦ Understanding some terms
 - ✦ Different Formats of SEZs
 - ✦ Regulatory Framework
 - ✦ Procedure for establishment of SEZ
 - ✦ Setting up the Zone – Road Map
 - ✦ SEZ Developer Approval Process
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 - ✦ SEZ Units – Approval Process
 - ✦ SEZ Units approval conditions
 - ✦ Obligations/ responsibilities of SEZ Unit
 - ✦ SEZ Units benefits
 - ✦ Infrastructure requirements – Setting up zone

SEZ - CONCEPT

- ✦ Special Economic Zone (SEZ) is a designated duty free enclave treated as foreign territory for trade operations, duties and tariffs.
- ✦ The basic idea to set up SEZ is to earn Foreign Exchange and attract Foreign Direct Investment.
- ✦ Supply from *Domestic Tariff areas (DTA) to SEZs is treated as physical export.
- ✦ Supply from SEZs to DTA treated as imports.
- ✦ Manufacturing, servicing, trading, reconditioning, repair etc. allowed in the SEZs.
- ✦ Established by Government, Private and PPP.
- ✦ SEZ policy introduced in year 2000 under Export Import policy.
- ✦ Central SEZ Act enacted in May 2005 and rules in 2006.

* DTA means the whole of India but does not include the area of Special Economic Zone.

UNDERSTANDING SOME TERMS

- ✦ **PROCESSING AREA:** It means an area where the units can be located for manufacture of goods and services. The Free Trade and Warehousing Zone can be set up only in the processing area.
- ✦ **NON- PROCESSING AREA:** Means an area which intends to provide support facilities to the processing area activities and may includes social and commercial activities.
- ✦ **DEVELOPERS:** means a person or body of persons, firm or such other private or government undertakings, who develops, builds , designs, organizes, promotes, operates or maintains or manage a part or whole of the infrastructure facilities and amenities of the zone and include a co-developers also.

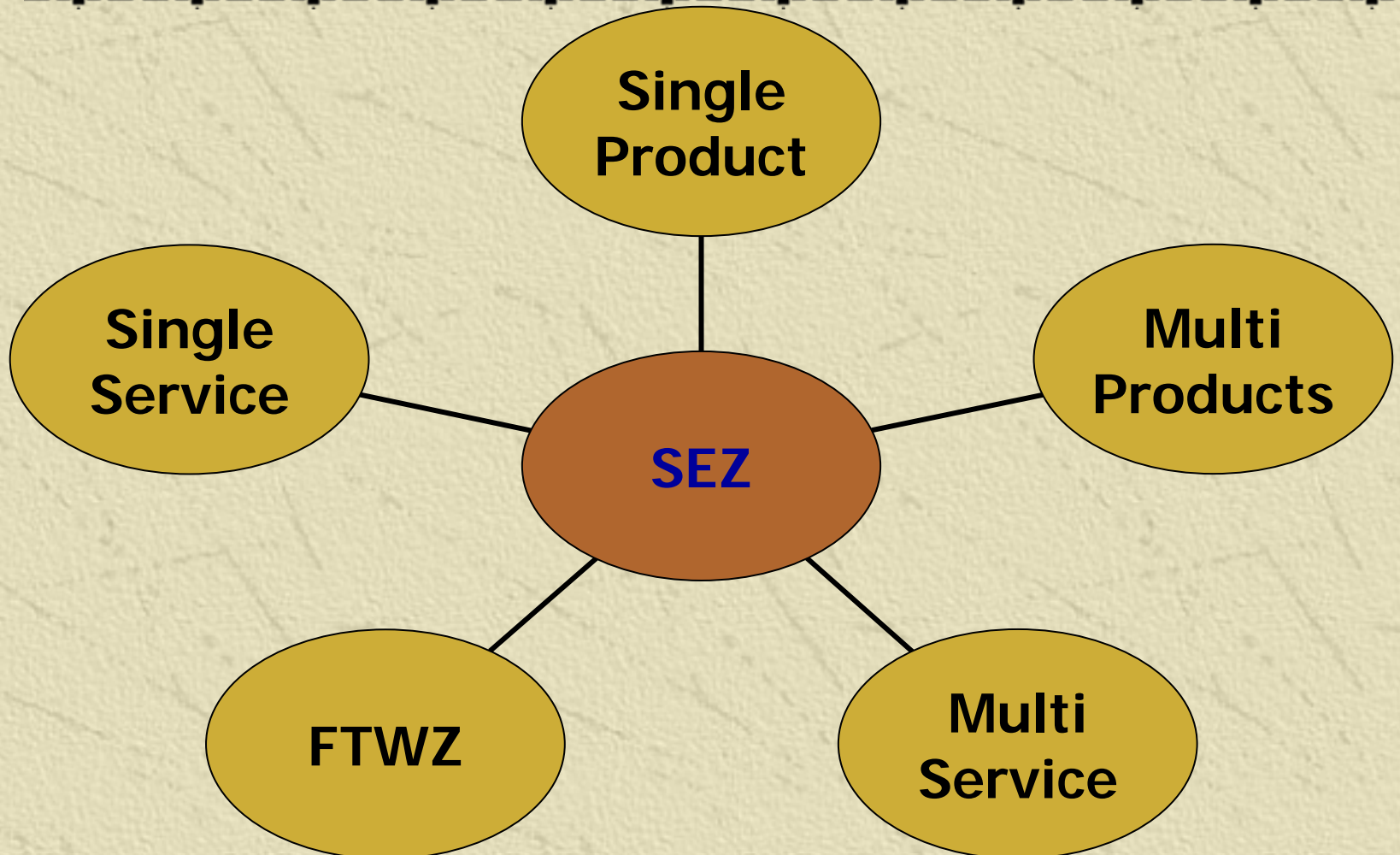
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- ✦ **CO-DEVELOPERS:** means a person who has entered into an agreement with the developer to develop. Design, build, organize, promote, operate and maintain or manage a part or whole of the infrastructure facilities and amenities in the Zone.

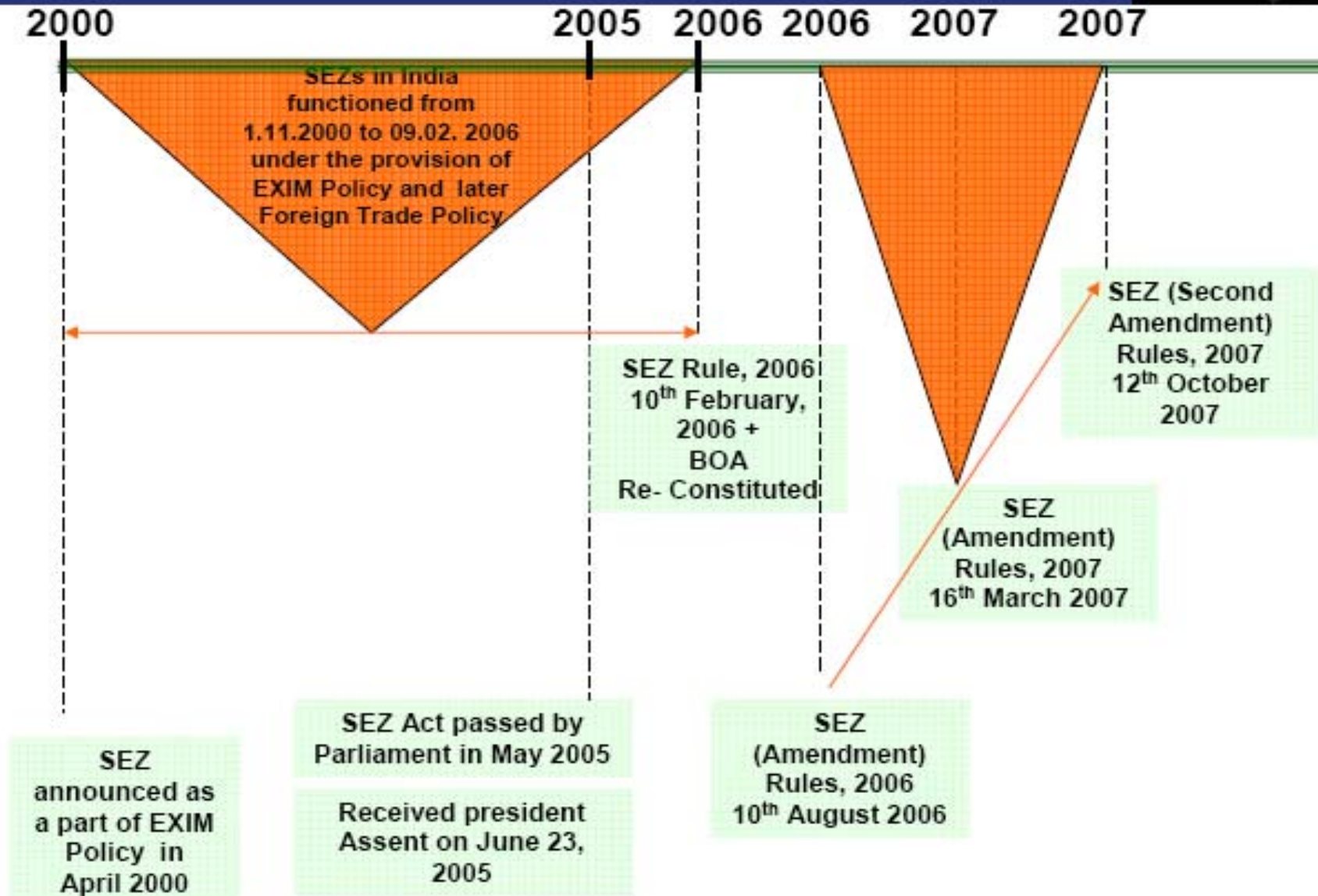
 - ✦ **SEZ UNIT:** means a unit or enterprise in whole or part which is carrying on its business in the Zone and approved as such by the Unit approval committee.

 - ✦ **FTWZ:** is a special category SEZ with a focus on trading and warehousing. FTWZ may also be set up within a sector specific SEZ subject to the condition that maximum area under such FTWZ should not exceed more than 20% of the processing area of such sector specific SEZ.

DIFFERENT FORMATS OF SEZ



Regulatory Framework



MINIMUM REQUIREMENTS

(1) Area wise (Hectares)



Maximum 5000
hectares

1000	Multi Product (200 in specified areas*)
100	Multi Services; Sector Specific; Port / Airport based (50 in specified areas*)
40	Free Trade & Warehousing Zone (100,000 sq. mt. “built-up processing area”)
10	IT/ITES and Electronic Hardware (100,000 sq. mt. “built-up processing area”)
	Bio-Tech (40,000 sq. mt. “built-up processing area”)
	Non-Conventional Energy (40,000 sq. mt. “built-up processing area”) Gems & Jewellery (50,000 sq. mt. “built-up processing area”)

* Specified areas are Assam, Meghalaya, Nagaland, Arunachal Pradesh, Mizoram, Tripura, Himachal Pradesh, Uttranchal, Sikkim, J&K, Goa and UTs

(2) Investment or Net Worth

Minimum Investment or Net worth of the Promoter company & all Group companies & Flagship companies as follows:

✦ Sector specific SEZs:

- Minimum investment of Rs.250 crores or net worth of Rs.50 crores

✦ Multi product SEZs:

- Minimum investment of Rs.1000 crores or net worth of Rs.250 crores

Proposals not meeting the above minimum investment or net worth criteria with enough justification for the same, to be considered on merits by the Board of Approvals.

PROCEDURE FOR ESTABLISHMENT OF SEZ

- ✦ Make a proposal for setting up of SEZ in **FORM A** either to the State Government concerned or BOA directly after identifying the area.
- ✦ The State government on receipt of proposal forward the same along with its recommendation to Board of Approval **within 45 days from the receipt of proposal.**
- ✦ The Board after receipt of proposal as referred above approve the proposal as such or on such terms and conditions as it may deemed fit or may reject or modify the proposal.
- ✦ Where the Board :
 - ◆ Approves the proposal, it shall communicate the same to the Central Government.
 - ◆ Approves with modification, the modification should be intimated by it to the State Government or the person concerned and if the State government or the person concerned accept it, communicate the approval to the Central Government.

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- ✦ Reject the proposal, shall record the reasons in writing and intimate it to the Central Government who shall intimate the same to the State government or person concerned.
 - ✦ The Central Government shall intimate the same to the State Government or person concerned subject to such terms & condition & entitlements and obligation as may be impose by the Board **within** 30 days of the receipt.
 - ✦ The Central Government may on the basis of approval of the Board approve more than one developers in a SEZ in cases where one developers does not have in his possession minimum area of contiguous land. In such cases, each developers shall be treated as developers in respect of land in his possession.

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- ✦ The State Government or any person can also act as co-developers, for this the State Government or the person should enter into Development Agreement with the State government or the person as the case may be.
 - ✦ Subject to the provision of the approval letter or provisions of SEZ Rules, the developers may allocate space or built up area or provide infrastructure services to the approval units in accordance with the agreement entered into it by entrepreneur of SEZ Units.
 - ✦ The Developers shall after the grant of LOA, submit exact* particular of the identified area to the Central Government and Central Government after notifying SEZ, if it consider appropriate notify subsequently any additional area to be included as a part of that SEZ.

* the exact particular of land shall include the following operations proposed to be carried out

(A) Certificate from State Government or its authorised agency that the developers have legal possession and irrevocable rights to develop the said area as SEZ and the said area is free from all encumbrances.

(B) Where the developers has leasehold rights , it should not be less than 20 years.

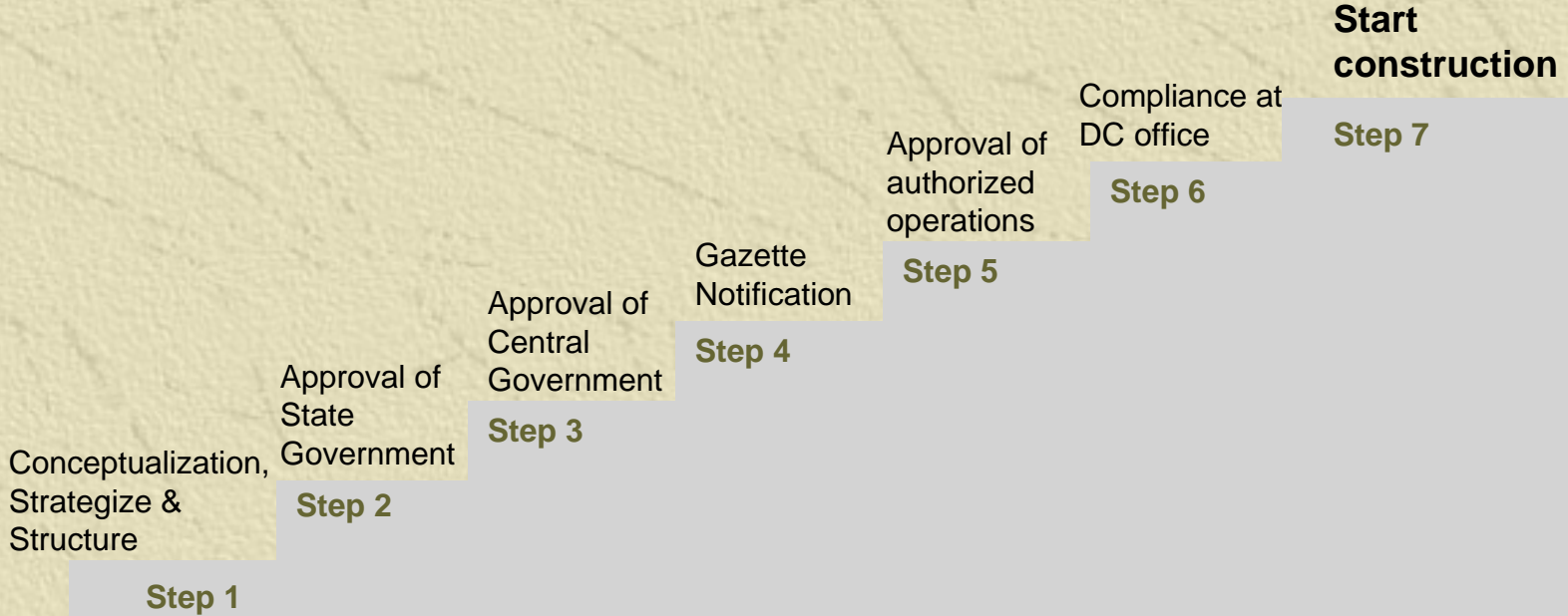
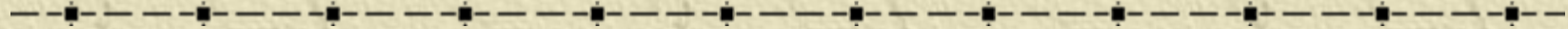
(C) The area should be contiguous and vacant and it shall have no public thoroughfare.

✦ After the appointed day, the Board may authorize the developers to undertake in a SEZ such operation which the Central Government may authorize.

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- ✦ The Formal approval will be in form B 1 where the land is in possession of the Developers) and in principal approval will be in form B-1
 - ✦ Formal approval is valid for a period of 3 years within which the effective steps should be taken by the developers. However, the Board may, on application by the developers for reason recorded in writing, extend the period for not exceeding 2 years.
 - ✦ In principal approval is valid for 1 year with in which the developers shall submit suitable proposal for formal approval in Form A. The same may be extended for further 2 years.

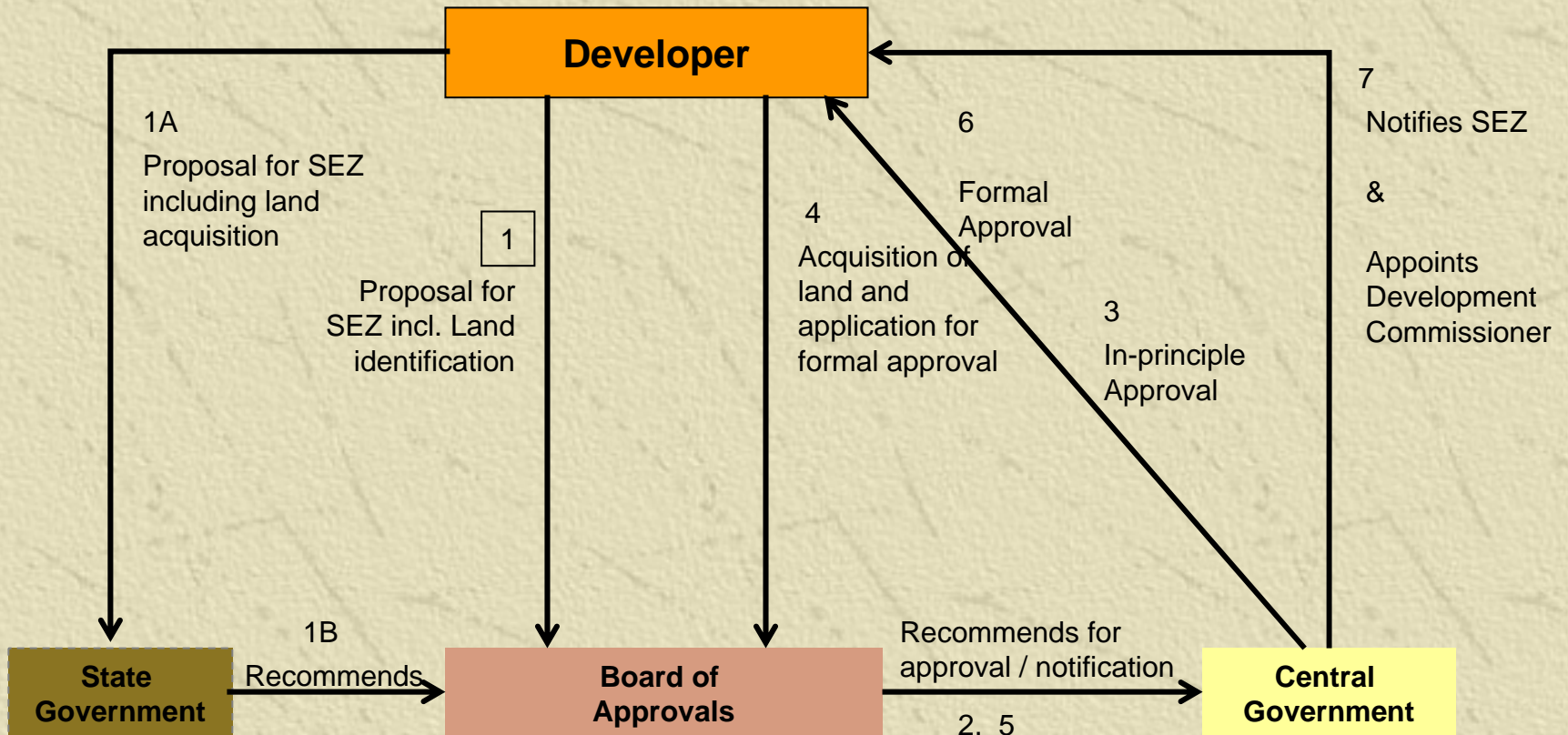
SETTING UP THE ZONE

ROAD MAP



SETTING UP THE ZONE

SEZ Developer approval process

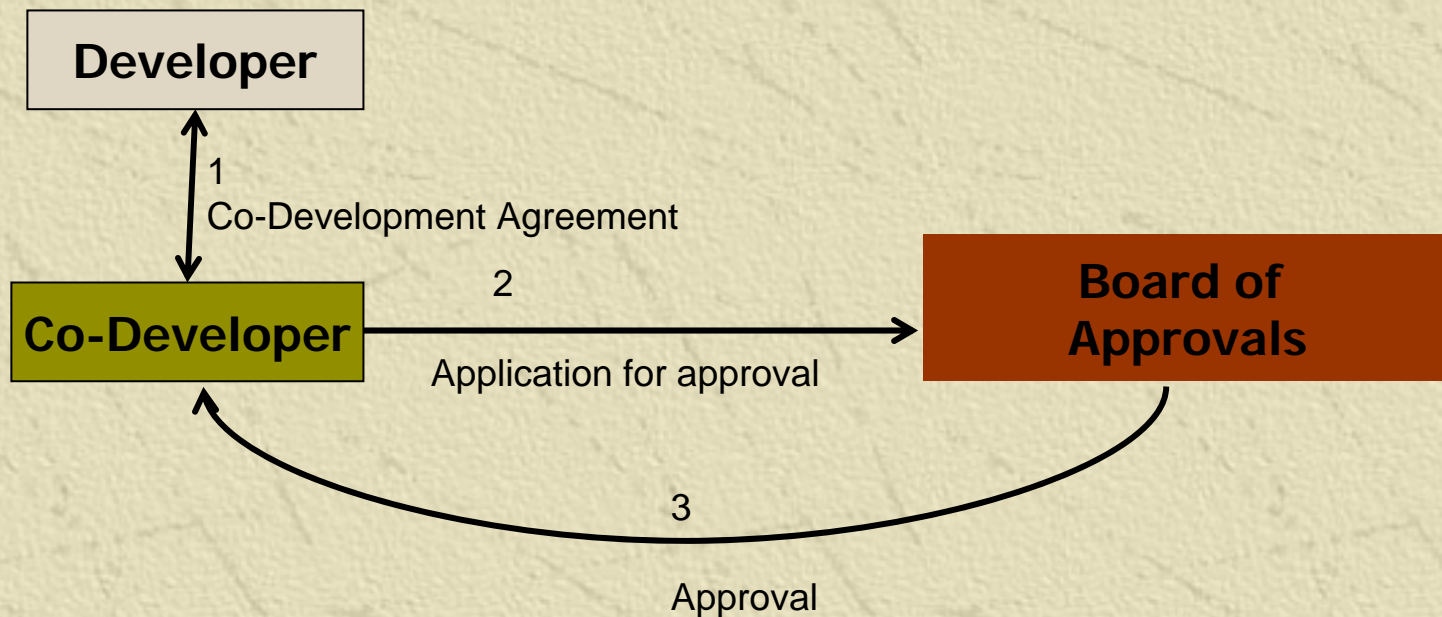


** Validity of In-principle Approval (Rule 6.(2).a)

- In-principle approval shall be valid for a period of 1 year within which time the developer has to submit suitable proposal for formal approval.
- Further extension for a period not exceeding 2 yrs upon application by the developer

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SEZ Co-Developer approval process



- Application only post notification of SEZ
- No separate notification required
- State Government recommendations not required
- Net worth criteria to be fulfilled
- 30 day prior filing – may apply

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Co-Developer

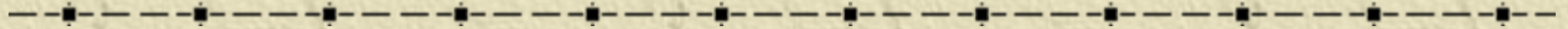
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- ✦ To provide infrastructure facilities or to undertake authorised operations
 - ✦ Needs approval from BOA – Post notification of SEZ
 - ✦ Co-Development Agreement – integral part of the approval
 - ✦ No separate notification required
 - ✦ Minimum net worth criteria to be fulfilled
 - ✦ Multiple Co-Developers allowed
 - ✦ SEZ Developer bound by the approval conditions. Co-Developer bound by Co-Development Agreement.
 - ✦ Equal to SEZ Developer for all purposes and entitled to all benefits
 - ✦ Can effectively own and control infrastructure in the SEZ

SEZ DEVELOPER APPROVAL CONDITIONS

Approval, subject to the conditions

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- ✦ The land or built up space in the Processing Area or FTWZ shall be given on lease only to the entrepreneurs holding LOA of SEZ units
 - ✦ The lease period shall not be less than 5 years
 - ✦ The lease rights shall cease to exist on the expiry or cancellation of LOA.
 - ✦ The developers may with the previous approval of the AC grant on lease land or built up space for creating facilities such as
 - Canteen
 - First aid centers
 - Crèche and such other facilities as may be required for the exclusive use of the units.

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- ✦ The Sub lease should always be made to the person holding LOA issued by the DC.
- ✦ The Developer may allot land in the Processing Area on lease basis to a person desiring to create infrastructure facilities for use by the prospective units.
- ✦ The Developers shall not sell the land in SEZ.
- ✦ No vacant land in the Non-processing area shall be leased for business and social purpose such as hospitals, hotels, recreation & entertainment facilities, residence and business complexes to any person except a co-developer approved by the Board.

UTILIZATION OF GOODS

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- ✦ Any duty free goods brought into an SEZ area shall be used by the Unit or the Developers only for carrying out the AUTHORIZED OPERATIONS.
 - ✦ If the SEZ Unit or Developer is unable to utilize the goods for the authorized operations duty shall be chargeable on such goods brought from DTA as duty free.

SEZ BENEFITS TO THE DEVELOPERS

Particulars	Unit	Developer/ Co-Developer
<u>Development Stage</u> (Capital goods, Consumables, Components & Spares)	No Custom Duty No Excise Duty No Sales Tax No Purchase Tax No Stamp duty & registration fees No stamp duty on mortgages No Electricity duty	No Custom Duty No Excise Duty No Sales Tax No Purchase Tax No Stamp duty & registration fees No Electricity duty
<u>Operation Stage</u> (Raw materials, consumables, Components & spares)	As above	As above
<u>Profit Stage</u>	Exemption from Income Tax for 15 years 100% for 1 st five years 50% for next 5 years 50% of profits ploughed back for the next 5 years No MAT	No Income Tax for 10 years (80IAB) No MAT (115JB) No Dividend distribution tax (115O)

OBLIGATION/ RESPONSIBILITIES OF SEZ DEVELOPERS

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- ✦ There is no export obligation for SEZ developers, the developers are required to execute a Bond cum Legal Undertaking in Form –D jointly with the Development Commissioner and specified officer undertaking to utilize the goods for the authorized operation with in a period of one year or extended period.
 - ✦ To maintain proper accounts financial year wise in respect of goods imported/ procured from DTA, consumption and utilization of goods, Production of goods including by product, waste or scrap or remnants.
 - ✦ To submit quarterly and half yearly returns with in a period of 30 days following the close of a quarter or half year to the DC and Specified Officer in Form E.

INCENTIVES TO SEZ DEVELOPERS

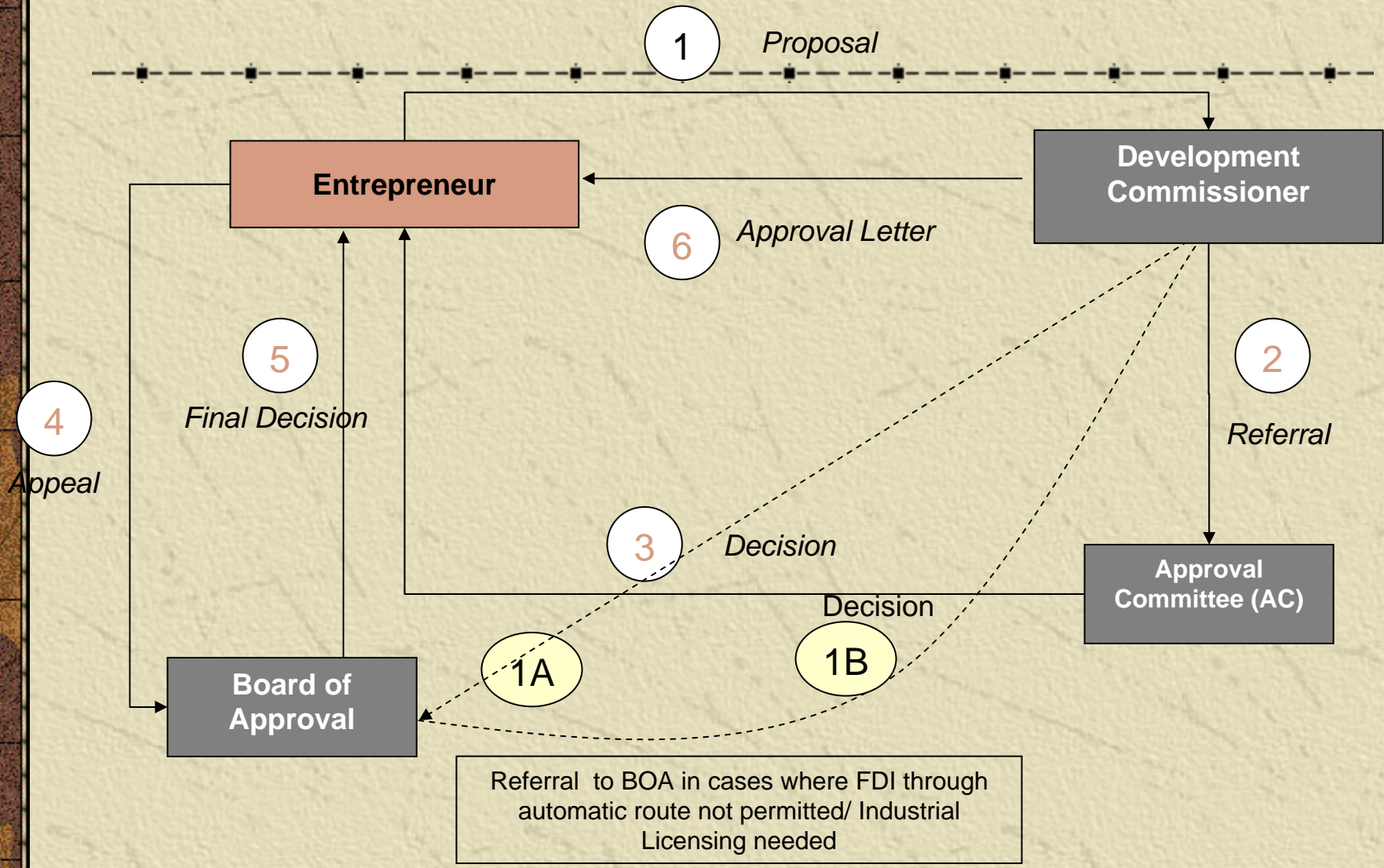
Direct-tax incentives to Developer / Co-Developer

- ✦ Corporate-tax exemption – U/s. 80-IAB of Income-tax Act, 1961
 - 100% exemption for 10 consecutive years out of first 15 years (w.e.f year of notification) on profits derived from SEZ development
 - If operations and maintenance of SEZ is transferred to another developer, the transferee developer to get deduction for the balance period
 - No exemption on adjustment made to profit on account of Transfer
- ✦ DDT exemption – U/s. 115-O(6) of Income-tax Act, 1961
 - Complete exemption. Perpetual, as of now.
- ✦ MAT exemption – U/s. 115JB(6) of Income-tax Act, 1961
 - Complete exemption. Perpetual, as of now.

Indirect-tax incentives to Developer/ Co-Developer

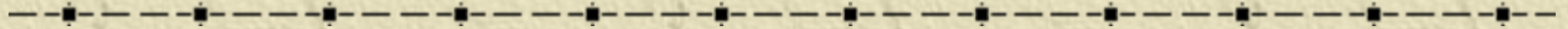
- ✦ Complete exemption. Perpetual, as of now.
 - On import of Capital Goods, Consumables, Spares etc
- ✦ No excise duty
 - On local procurement of Capital Goods, Consumables, Spares etc.
- ✦ No service tax
 - On services “consumed” within SEZ
- ✦ No CST
 - On input goods, consumables, spares etc.
- ✦ No local taxes
 - Exemption from VAT/Sales-tax, Octroi, Entry-tax, Electricity Duty etc. as per SG Policy
- ✦ Stamp duty exemption

SEZ UNITS – APPROVAL PROCESS



SEZ UNITS APPROVAL CONDITIONS

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- ✦ Positive Net Foreign Exchange (NFE) earning.
 - ✦ Availability of space and other infrastructure support to be confirmed by the Developer in writing, by way of a provisional offer of space.
 - ✦ The Developer to enter into a lease agreement and give possession of the space in the SEZ to the “entrepreneur” only after issuance of LOA.
 - ✦ Copy of the registered lease deed to be furnished to the DC within 6 month from the issuance of LOA.



- ✦ The applicant undertakes to fulfill the environmental and pollution control norms, as applicable.
- ✦ The applicant submit the proof of residence of the proprietor / partners / directors, as the case may be, to the satisfaction of DC.
- ✦ The applicant submits the income tax return of the proprietor/partners or in case of a company, audited balance sheet for the last three years.

OBLIGATIONS/ RESPONSIBILITIES OF SEZ UNIT

- ✦ SEZ Units are required to maintain a positive Net Foreign Exchange earning cumulatively for a period of 5 years from the commencement of production .

$$\text{Positive NFE} = A - B > 0$$

- ✦ To maintain proper accounts financial year wise in respect of Goods imported / procured from DTA, consumption and utilization of goods, production of goods including by product, waste or scrap or remnants.
- ✦ To intimate date of commencement of commercial production to the DC within one month from such commencement of commercial production.
- ✦ To submit annual performance return duly certified by a CA within a period of 90 from the close of financial year in the prescribed form to the DC.

SEZ UNITS BENEFITS

Direct-tax benefits

- ✦ Corporate-tax deduction – U/s. 10AA of Income-tax Act, 1961
 - ◆ Deduction available for up to 15 years :
 - 100% First 5 years;
 - 50% Next 5 years; and
 - Up to 50% Further 5 years (on creation of specified reserve)
 - ◆ Deduction only on “export profits”
 - ◆ Eligible from the year in which manufacturing / rendering of services starts
 - ◆ Challenge in claiming deduction
 - Addressing applicability of recently introduced “anti-abuse” provisions re: splitting up / reconstruction of business and use of old plant and machinery
- ✦ MAT exemption – U/s. 115JB(6) of Income-tax Act, 1961
 - ◆ Complete and perpetual exemption
 - ◆ Can be restricted to “Export Profits”

Indirect-tax benefits

- ✦ No customs duty
 - On import of Capital Goods, Raw Materials, Consumables, Spares etc.
- ✦ No excise duty
 - On local procurement of Capital Goods, Raw Materials, Consumables, Spares etc.
- ✦ No service tax
 - On input services
- ✦ No CST
 - On input goods, consumables, spares etc.
- ✦ No local taxes
 - Exemption from VAT/Sales-tax, Octroi, Entry-tax, Electricity Duty etc. as per State Government (SG) Policy
- ✦ No stamp duty
 - Exemption as per SG Policy

✦ EXCHANGE CONTROLS:

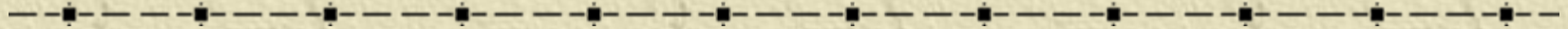
- 100% export earnings maintainable in foreign exchange in Special Foreign Currency Account- minimal restriction on business payment outside India.
- Unlimited credit period for export realization.

✦ PROCEDURAL :

- Single window clearance for setting up units in SEZ.
- Movement of goods into or from the Zone by the Unit/ Developer based on self declaration.

INFRASTRUCTURE – SETTING UP ZONE

QUANTUM OF SOCIAL INFRASTRUCTURE IN NON - PROCESSING AREA



Multi Product SEZs

- ◆ Office space/Shopping arcade/Retail space/multiplexes etc <. 200000 sqm
- ◆ Up to 25000 houses : Maximum space <25,00,000 sqm
- ◆ Hotel: 250 rooms/service apartments < 25000sqm
- ◆ Hospital, Clinic & Medical Centers < 250 bed
- ◆ School/Educational institute < 2,50,000 sqm

Sector Specific SEZs (IT/ITES, Bio-tech & Gems & Jewellery > 100 ht)

- ◆ Office space/Shopping arcade/Retail space/multiplexes etc. < 50,000 sqm
- ◆ Up to 7500 houses : Maximum space <7,50,000 sqm
- ◆ Hotel: 100 rooms/service apartments < 10000sqm
- ◆ Clinic & Medical Centers < 100 bed
- ◆ School/Educational institute < 2,5000 sqm

IT/ITES, Bio-technology & Gems & Jewellery SEZ < 100 ht

- ◆ Shopping arcade/Retail space < 1,000 sqm
- ◆ Housing/Services apartments < 10,000 sqm



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