

INDUSTRIAL POLICY

Industrial Licensing

- 1.1 All industrial undertakings are exempt from obtaining an industrial licence to manufacture, except for
- i) Industries reserved for the Public Sector (Annexure I),
 - ii) Industries retained under compulsory licensing (Annexure II),
 - iii) Items of manufacture reserved for the Small-scale sector and
 - iv) If the proposal attracts location restriction.

IEM

- 1.2 Industrial undertakings exempt from obtaining an industrial license are required to file an Industrial Entrepreneur Memorandum (IEM) Part A with the Secretariat of Industrial Assistance (SIA), Department of Industrial Policy, and Promotion, Government of India, and obtain an acknowledgement. No further approval is required. Part B of the IEM has to be filled immediately after commencement of commercial production.

Locational Policy

- 1.3 Industrial undertakings are free to select the location of a project. However,
- i) In the case of cities with population of more than one million, the proposed location should be at least 25 KM away from the Standard Urban Area (SUA) limits of that city (List of cities with population of 1 million and above is given in Annexure-V).
 - ii) If it is to be located in an area designated as an "industrial area" before the 25th July 1991, the restriction in 1.3 (i) above does not apply.
 - iii) Electronics, Computer software, and Printing are exempt from such locational restriction.
 - iv) Relaxation in the aforesaid locational restriction is possible if an industrial license is obtained as per the notified procedure.
- 1.4 The location of industrial units is further regulated by the local zoning and land-use regulations and also the environmental regulations. Hence, even if the requirement of the locational policy stated in Paragraph 1.3 is fulfilled, if the local zoning and land use regulations of a State Government, or the regulations of the Ministry of Environment do not permit setting up of an industry at a location, the entrepreneur would be required to abide by that decision.

Policy Relating to Small-scale Undertakings

- 1.5 An industrial undertaking is defined as a small-scale unit if the investment in fixed assets in plant and machinery does not exceed Rs 10 million.
- i) The Small-scale units should get registered with the Directorate of Industries / District Industries Centre in the State Government concerned.
 - ii) Such units can manufacture any item including those notified as exclusively reserved for manufacture in the small-scale sector.
 - iii) Small-scale units are also free from locational restrictions cited in Paragraph 1.3 above.
 - iv) However, a Small-scale unit is not permitted more than 24 per cent equity in its paid up capital from any large industrial undertaking either foreign or domestic. If the

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equity holding from another company (including foreign equity) exceeds 24 per cent, even if the investment in plant and machinery in the unit is below Rs 10 million, the unit loses its Small-scale status.

- 1.6 Manufacture of items reserved for non- Small-scale units can also take up the Small-scale sector, if they apply for and obtain an industrial license.
 - i) In such cases, it is mandatory for the non-Small-scale unit to undertake an export obligation of 50 per cent.
 - ii) In addition, An IEM should be filed for de-licensed industries, or an industrial license should be obtained in the case of items of manufacture covered under compulsory licensing.
- 1.7 A Small-scale unit manufacturing Small-scale reserved item(s), on exceeding the Small-scale investment ceiling in plant and machinery by virtue of natural growth, needs to obtain a Carry-on-Business (COB) License. No export obligation is fixed on the capacity for which the COB license is granted. However, if the unit expands its capacity for the Small-scale reserved item(s) further, it needs obtain a separate industrial license.
- 1.8 It is possible that a chemical or a by-product recoverable through pollution control measures is reserved for the Small-scale sector. With a view to adopting pollution control measures, Government have decided that an application needs to be made for grant of an Industrial Licence for such reserved items, which would be considered for approval without necessarily imposing the mandatory export obligation.

Environmental Clearances

1.9 Entrepreneurs are required to obtain Statutory clearances relating to Pollution Control and Environment for setting up an industrial project.

- i) A Notification issued under The Environment Protection Act 1986 has listed 29 projects in respect of which environmental clearance needs to be obtained from the Ministry of Environment, Government of India.
 - This list includes industries like petrochemical complexes, petroleum refineries, cement, thermal power plants, bulk drugs, fertilisers, dyes, paper etc.
- ii) However if investment is less than Rs. 500 million, such clearance is not necessary,
 - Unless it is for pesticides, bulk drugs and pharmaceuticals, asbestos and asbestos products, integrated paint complexes, mining projects, tourism projects of certain Parameters, tarred roads in Himalayan areas, distilleries, dyes, foundries, and electroplating industries.
- iii) Further, any item reserved for the Small-scale sector manufactured by a small-scale unit is also exempt from obtaining environmental clearance from the Central Government.
- iv) Powers have been delegated to the State Governments for grant of environmental clearance for certain categories of thermal power plants.
- v) Setting up industries in certain locations considered ecologically fragile (e.g. Aravalli Range, coastal areas, Doon valley, Dahanu, etc.) are guided by separate guidelines issued by the Ministry of Environment of the Government of India.

2.0 FOREIGN DIRECT INVESTMENT

2.1 Foreign direct investment is freely allowed in all sectors including the services sector, except where the existing and notified sectoral policy does not permit FDI beyond a ceiling.

- i) FDI for virtually all items / activities can be brought in through the automatic route under powers delegated to the Reserve Bank of India (RBI), and for the remaining items / activities through Government Approval.
- ii) Government approvals are accorded on the recommendation of the Foreign Investment Promotion Board (FIPB).

Automatic Route

(a) New Ventures

2.2 All items/activities except the following fall under the automatic route for FDI/NRI/OCB investment

- i. All proposals that require an Industrial Licence which include
 - a) The item requiring an Industrial Licence
 - b) Foreign investment being more than 24% in the equity capital of units manufacturing items reserved for Small-scale industries; and
 - c) All items which require an Industrial Licence in terms of the locational policy
- ii. All proposals in which the foreign collaborator has a previous venture / tie-up in India.
- iii. All proposals relating to acquisition of shares in an existing Indian company in favour of a foreign/NRI/OCB investor.
- iv. All proposals falling outside notified sectoral policy/caps or under sectors in which FDI is not permitted and/or whenever any investor chooses to make an application to the FIPB and not to avail of the automatic route.

Investment in Public Sector Units as also for EOU/EPZ/EHTP/STP units would also qualify for the Automatic Route.

(b) Existing Companies

- 2.3 In addition to Automatic Approval for new companies, such approval can be granted also for existing companies proposing to induct foreign equity. For existing companies with or without an expansion programme, the additional requirements are that
- i) The increase in equity level must result from the expansion of the equity base of the existing company,
 - ii) The money to be remitted should be in foreign currency and
 - iii) The proposed expansion programme or existing activities should be predominantly in the sector(s) under Automatic Route.

Otherwise, the proposal would need Government approval through the FIPB.

- 2.4 The automatic route for FDI and/or technology collaboration would not be available to those who have or had any previous joint venture or technology transfer/trade mark agreement in the same or allied field in India.

Government Approval

2.5 Government approval for FDI through the FIPB shall be necessary for the following categories: -

- i. All proposals that require an Industrial Licence which include
 - a) The item requiring an Industrial Licence under the Industries
 - b) Foreign investment being more than 24% in the equity capital of units manufacturing items reserved for Small-scale industries; and
 - c) All items which require an Industrial Licence in terms of the locational policy
- ii) All proposals in which the foreign collaborator has a previous venture/tie-up in India.
- iii) All proposals relating to acquisition of shares in an existing Indian company in favour of a foreign/NRI/OCB investor.
- iv) All proposals falling outside notified sectoral policy/caps or under sectors in which FDI is not permitted and/or whenever any investor chooses to make an application to the FIPB and not to avail of the automatic route.

Foreign Investment in the Small-scale Sector

2.6 Under the Small-scale policy, equity holding by other units including foreign equity in a Small-scale undertaking is permissible up to 24 per cent. However there is no bar on higher equity holding for foreign investment if the unit is willing to give up its Small-scale status. In case of foreign investment beyond 24 per cent in a Small-scale unit, which manufactures Small-scale reserved item(s), an industrial license carrying a mandatory export obligation of 50 per cent should be obtained.

Other Modes of Foreign Direct Investments

2.7 **Global Depository Receipts(GDR) /American Deposit Receipts (ADR) /Foreign Currency Convertible Bonds (FCCB):**

- i) Foreign Investment through GDRs /ADRs /FCCBs are treated as Foreign Direct Investment. Indian companies are allowed to raise equity capital in the international market through the issue of GDR /ADRs /FCCBs. These are not subject to any ceilings on investment.
- ii) There is no restriction on the number of GDRs /ADRs /FCCBs to be floated by a company or a group of companies in a financial year.
- iii) There are no end-use restrictions on GDR/ADR issue proceeds, except for an express ban on investment in real estate and stock markets

2.8 **Preference Shares:**

Foreign investment through preference shares is treated as foreign direct investment. Proposals are processed either through the automatic route or FIPB.

3.0 **INVESTMENT BY NON RESIDENT INDIANS / OVERSEAS CORPORATE BODIES**

3.1 Investment by the NRIs and OCBs in which the NRIs hold at least 60 per cent equity is treated as foreign direct investment. For all sectors excluding those falling under Government Approval, NRIs and OCBs are eligible to bring investment through the Automatic Route of RBI. All other proposals, which do not fulfil any or all of the criteria for automatic approval, are considered by the Government through the FIPB.

Author: CA Guy

3.2 The NRIs and OCBs are allowed to invest in housing and real estate development sector, in which foreign direct investment is not permitted. They are allowed to hold even 100 per cent equity in civil aviation sector in which otherwise foreign equity only up to 40 per cent is permitted. Similarly for the banking sector, NRIs/ OCBs can hold 40 per cent equity inclusive of foreign direct investment. Equity participation by foreign banking companies, foreign financial companies, and multilateral institutions as co-promoter and/or technical collaborator is also permitted up to 20 per cent. Investment made by the NRIs and OCBs are fully repatriable except in the case of real estate, which has a 3-year lock-in period on original investment and 16 per cent cap on dividend repatriation.

4.0 **FOREIGN TECHNOLOGY AGREEMENTS**

4.1 Foreign technology collaborations are permitted either through the automatic route under delegated powers exercised by the RBI, or by the Government.

- i) However, cases involving industrial licenses / Small-scale reserved items do not qualify for automatic approval and would require consideration and approval by the Government.
- ii) Automatic route would also not be available to those who have, or had any previous technology transfer / trademark agreement in the same or allied field in India.
- iii) Further, automatic approval for EOU /EHTP /STP units are governed by separate provisions.

5.0 **Automatic Approval**

5.1 The RBI accords automatic approval to all industries for foreign technology collaboration agreements subject to

- i) The lump sum payments not exceeding US \$ 2 Million;
- ii) Royalty payable being limited to 5 per cent for domestic sales and 8 per cent for exports, subject to a total payment of 8 per cent on sales over a 10 year period; and
- iii) The period for payment of royalty not exceeding 7 years from the date of commencement of commercial production, or 10 years from the date of agreement, whichever is earlier

Government Approval

- 5.2 For the following categories, Government approval would be necessary:
- (a) Proposals attracting compulsory licensing
 - (b) Items of manufacture reserved for the small scale sector
 - (c) Proposals involving any previous joint venture, or technology transfer/trademark agreement in the same or allied field in India.
 - (d) Extension of foreign technology collaboration agreements (including those cases, which may have received automatic approval in the first instance)
 - (e) Proposals not meeting any or all of the Parameters for automatic approval as in Para 4.2.
- 5.3 The items of foreign technology collaboration which are eligible for approval through the automatic route, and by the Government are technical know how fees, payment for design and drawing, payment for engineering service and royalty. Exclusive payment for use of brand names and trademarks are not allowed, although such payments may be subsumed in the other fee payable.
- 5.4 Payments for hiring of foreign technicians, deputation of Indian technicians abroad, and testing of indigenous raw material, products, indigenously developed technology in foreign countries are governed by separate RBI procedures and rules and are not covered by the foreign technology collaboration approval. Similarly, payments for imports of plant and machinery and raw material are also not covered by the foreign technology collaboration approval.

6.0 100% EXPORT ORIENTED UNITS/ EXPORT PROCESSING ZONES

- 6.1 100 per cent Export Oriented Units (EOUs) and units in the Export Processing Zones (EPZs), enjoy a package of incentives and facilities, which include duty free imports of all types of capital goods, raw material, and consumables in addition to tax holidays against export.

Automatic Approval

- 6.2 The Development Commissioners (DCs) of Export Processing Zones (EPZs) /Free Trade Zones (FTZS) accord automatic approval to projects where
- (a) Items do not attract compulsory licensing;
 - (b) Where the location is in conformity with the prescribed Parameters;
 - (c) The units undertake to achieve exports and value addition norms as prescribed in the Export and Import Policy in force;
 - (d) The CIF value of imported capital goods is financed through foreign equity, or foreign exchange required for import of plant and equipment (net of taxes) is within Rs. 100 Million, and in the case of import of second-hand capital goods if an Import Licence is not required;
 - (e) Where the foreign technology agreement if any, envisages a lump sum payment not exceeding US \$ 2.00 Million and royalty payment up to 8% on exports and 5% on DTA sales (net of taxes) over a period of 5 years from the date of commencement of commercial production.
 - (f) Where the exports are to general currency/hard currency areas;
 - (g) Where the unit is amenable to bonding by customs authorities; and
 - (h) The unit has projected the minimum export turnover, as specified in the Handbook of Procedures. All proposals for FDI/NRI/OCB investments in EOU/EPZ units qualify for approval through Automatic.

Author: CA Guy

6.3 Conversion of existing Domestic Tariff Area (DTA) units into EOU is also permitted under automatic route, if the DTA unit satisfies the Parameters mentioned above and there is no outstanding export obligation under any other Export Oriented scheme of the Government of India.

Government Approval

6.4 All proposals which do not meet any or all of the Parameters for automatic approval need to be considered and approved by the Government.

7.0 ELECTRONIC HARDWARE TECHNOLOGY PARK (EHTP) AND SOFTWARE TECHNOLOGY PARK (STP) SCHEMES

- 7.1 In order to provide impetus to the electronics industry, to enhance its export potential and to develop an efficient electronic component industry, Electronic Hardware Technology Park (EHTP) and Software Technology Park (STP) schemes offer a package of incentives and facilities like duty free imports on the lines of the EOU Scheme, deemed exports benefits and tax holidays.

Automatic Approval

- 7.2 The Directors of STPs in respect of STP proposals; and the Designated Officers in respect of EHTP proposals accord automatic approval if –
- 7.3 The items do not attract compulsory licensing;
- 7.4 The location is in conformity with the prescribed Parameters;
- 7.5 The export obligation laid down in the respective EHTP scheme or STP scheme is fulfilled;
- 7.6 The CIF value of the imported capital goods required for the project does not exceed Rs. 100 million;
- 7.7 Foreign technology proposals envisaged, if any, do not involve lump sum know how fee exceeding US\$ 2 million, 8 per cent royalty on export and 5 per cent royalty on domestic sales (all net of taxes) over a period of 5 years from the date of commencement of commercial production;
- 7.8 The exports are to general currency/hard currency area;
- 7.9 The unit is amenable to bonding by the Customs, and all the manufacturing operations are carried out in the same premises and the proposal does not envisage sending out of the bonded area any raw material or intermediate products for any other manufacturing or processing activity. All proposals for FDI/NRI/OCB investments in EHTP/STP units are eligible for approval through Automatic Route.

Government Approval

- 7.10 All proposals which do not meet any or all of the Parameters for automatic approval need to be considered and approved by the Government.

ANNEXURE - I

LIST OF INDUSTRIES RESERVED FOR THE PUBLIC SECTOR

1. Arms and ammunition and allied items of defence equipment, defence aircraft, and warships.
2. Atomic Energy
3. Railway transport.

ANNEXURE - II

LIST OF INDUSTRIES FOR WHICH INDUSTRIAL LICENSING IS COMPULSORY

4. 1. Distillation and brewing of alcoholic drinks.
5. 2. Cigars and cigarettes of tobacco and manufactured tobacco substitutes.
6. 3. Electronic Aerospace and defence equipment: all types.
7. 4. Industrial explosives including detonating fuses, safety fuses, gunpowder, nitrocellulose, and matches.
8. 5. Hazardous chemicals.
9. 6. Drugs and Pharmaceuticals (according to modified Drug Policy issued in September, 1994).
- 10.
11. Note: The compulsory licensing provisions would not apply in respect of the Small-scale units taking up the manufacture of any of the above items reserved for exclusive manufacture in small-scale sector.

ANNEXURE - III

LIST OF CITIES WITH POPULATION OF 10 LAKHS (1 MILLION) AND ABOVE ACCORDING TO THE PROVISIONAL RESULTS OF 1991 CENSUS

- 12.1. Greater Bombay U.A.
- 13.2. Calcutta U.A.
- 14.3. Delhi U.A.
- 15.4. Madras U.A.
- 16.5. Hyderabad U.A.
- 17.6. Bangalore U.A.
- 18.7. Ahmedabad U.A.
- 19.8. Pune U.A.
- 20.9. Kanpur U.A.
- 21.10. Nagpur U.A.
- 22.11. Lucknow U.A.
- 23.12. Surat U.A.
- 24.13. Jaipur U.A.
- 25.14. Kochi U.A.
- 26.15. Coimbatore U.A.
- 27.16. Vadodara U.A.
- 28.17. Indore U.A.
- 29.18. Patna U.A.
- 30.19. Madurai U.A.
- 31.20. Bhopal M.C.
- 32.21. Visakhapatnam U.A.
- 33.22. Varanasi U.A.
34. 23. Ludhiana M.C. M.C.= Municipal Corporation

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