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Industry Licensing Policy

- Industries licensing policy are regulated under the Industries Development Regulation Act 1951
- At present Industrial Licensing for manufacturing is required in case of :-
 - Industries under compulsory licensing
 - Manufacture of item reserved for SSI sector by non SSI units
 - Project location attracts locational restrictions

Compulsory Licensing

Following industries require compulsory industrial licence under the provisions of I(D&R) Act, 1951.

- Distillation and brewing of alcoholic drinks.
- Cigars and cigarettes of tobacco and manufactured tobacco substitutes;
- Electronic Aerospace and defence equipment: all types;
- Industrial explosives, including detonating fuses, safety fuses, gun powder, nitrocellulose and matches;
- Hazardous chemicals;
 - Hydrocyanic acid and its derivatives
 - Phosgene and its derivatives
 - Isocyanates and di-isocyanates of hydrocarbon, not elsewhere specified (example: Methyl Isocyanate).

Large or medium industries undertaking manufacture of items reserved for SSI units The Government has reserved certain items for exclusive manufacture in the small scale sector. Non-small scale units can undertake the manufacture of items reserved for small scale sector, only after obtaining an industrial licence. In such cases, the non-small scale unit is required to undertake an obligation to export 50% of the production of SSI reserved items.

Locational Restrictions Industrial undertakings are free to select the location of their projects. Industrial licence is however required if the proposed location is within 25 km of standard urban area limits of 23 cities having a population of one million as per 1991 Census. The Locational restriction however does not apply:

- If the unit were to be located in an area designated as an “industrial area” before the 25th July, 1991.
- In the case of Electronics, Computer software and Printing and any other industry, which may be notified in future as “non polluting industry”.

The location of industrial units is subject to applicable local zoning and land use regulations and environmental regulations.

Procedure for obtaining Industrial Licence Industrial licence is granted by the Secretarial of Industrial Assistance (SIA) on the recommendation of the Licensing Committee. For the purpose, application in the prescribed form (Form FC-IL) accompanied by a crossed demand draft of Rs.2,500/- may be submitted to PR&C Section in SIA.

Delicensed Industries exempted from the provisions of Industrial Licence are required to file Industrial Entrepreneur’s Memorandum (IEM) Procedure for filing IEM

- Industrial undertakings exempted from industrial license are only required to file an Industrial Entrepreneur's Memoranda (IEM) in Part 'A', in the prescribed format (Form IEM) with Secretariat for Industrial Assistance (SIA), Department of Industrial Policy & Promotion (DIPP), Ministry of Commerce & Industry, Government of India, New Delhi.
- The IEM should be submitted along with a crossed DD of Rs.1000/- for upto 10 items proposed to be manufactured. For more than 10 items an additional fee of Rs.250/- for up to 10 additional items needs to be paid.
- On filing the IEM, an acknowledgement containing the SIA registration No. for future reference is issued. This acknowledgement is sent by post and no further approval is required.

Upon commencement of commercial production, industrial undertakings need to file information in Part-B of the IEM to SIA. No fee is to be paid for filing Part-B. All the fees payable to SIA are paid through a crossed demand draft drawn in favor of Pay & Accounts Officer, Dept of Industrial Policy and Promotion, Ministry of Commerce & Industry, payable at New Delhi. Environment Clearance

- Entrepreneurs are required to obtain statutory clearances relating to Pollution Control and Environment as may be necessary, for setting up an industrial project for 31 categories of industries in terms of Notification S.O. 60(E) dated 27.1.94 as amended from time to time, issued by the Ministry of Environment & Forests, Government of India under The Environment (Protection) Act, 1986. This list includes petrochemical complexes, petroleum refineries, cement, thermal power plants, bulk drugs, fertilizers, dyes, paper, etc.
- However, if investment in the project is less than Rs. 100 crore, such Environmental Clearance is not necessary, except in cases of 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.
- 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 and Forests.

Details can be obtained at the website of Ministry of Environment and Forests (<http://envfor.nic.in>)

Foreign Technology Agreement

- Foreign technology collaboration agreement for acquisition of foreign technology requires approval of Government of India. It normally includes technical know-how, design and training, engineering services and lump sum or royalty payments.
- Payment for foreign technology collaboration under automatic route is allowed subject to:

The lump sum payment not exceeding US \$ 2.0 million. Royalty payable limited to 5% for domestic sales and 8% for exports, without any restriction on the duration of the royalty payments. The royalty limits are net of taxes. The royalty will be calculated on the basis of the net ex-factory sale price of the product, exclusive of excise duties, minus the cost of the standard bought out components and the landed cost of imported components, irrespective of the source of procurement, including ocean freight, insurance, custom duties etc. Use of Trademarks and Brand Name

- Payment of royalty up to 2% for exports and 1% for domestic sales is allowed under automatic route for use of trademarks and brand name of the foreign collaborator without technology transfer. Royalty on brand name/trade mark shall be paid as a percentage of net sales, viz., gross sales less agents'/dealers' commission, transport cost, including ocean freight, insurance, duties, taxes and other charges, and cost of raw materials, parts and components imported from the foreign licensor or its subsidiary/affiliated company.
- In case of technology transfer, payment of royalty includes the payment of royalty for use of trade mark and brand name of the foreign collaborator.

Procedure for Automatic Route

- . ◦ Authorized Dealers (ADs) appointed by the RBI allow remittances for royalty, payment of lump-sum fee and remittance for use of Trade mark/Franchise in India within the limits prescribed under the automatic route.
- RBI's prior approval is required for remittance towards purchase of trade mark/franchise.

Government Approval - Project Approval Board Royalty payment in the following cases requires prior Government approval (through Project Approval Board - PAB when only technical collaboration is proposed and Foreign Investment Promotion Board - FIPB where both financial & technical collaboration are proposed):

- . ◦ Sectors/activities which are not on the automatic route for FDI, or
- Proposals not meeting any of the parameters for automatic approval

Procedure for Government Approval

- . ◦ Proposals for foreign technology collaboration not covered under the automatic route are considered by the Project Approval Board (PAB) in the Department of Industrial Policy and Promotion. Application in such cases should be submitted in Form FC-IL to the Secretariat for Industrial Assistance.
- Proposals where both financial & technical collaboration are proposed, application is to be submitted to FIPB. No fee is payable.

Foreign Direct Investment

- . ◦ Foreign direct investment is allowed up to 100% in all activities/sectors except the following which require prior approval of the Government.
 - Manufacture of Cigars & Cigarettes of tobacco and manufactured tobacco substitutes ;
 - Manufacture of Electronic aerospace and de fence equipments : all types
 - Manufacture of items exclusively reserved for Small Scale Sector with more than 24% FDI;
 - Proposals in which the foreign collaborator has an existing financial / technical collaboration in India in the 'same' field [Refer Press Note No.1 (2005 series)];
 - All proposals falling outside notified sect oral policy/caps (Refer Annexure II).

FDI policy is reviewed on continued basis and changes in sect oral policy/sect oral equity cap are notified through Press Notes by the Secretariat for Industrial Assistance (SIA), Department of Industrial Policy & Promotion (DIPP). All Press Notes are available at DIPP web site (www.dipp.gov.in). FDI Policy is also notified by Reserve Bank of India (RBI) under Foreign Exchange Management Act (FEMA) 1999. Procedure under Automatic Route FDI in sectors/activities to the extent permitted under automatic route does not require any prior approval either by the Government or RBI. The investors are only required to notify the Regional office concerned of RBI within 30 days of receipt of inward remittances and file the required documents with that office within 30 days of issue of shares to foreign investors.

Procedure under Government Approval

- FDI in activities not covered under the automatic route, requires prior Government approval. Such proposals are considered by the Foreign Investment Promotion Board (FIPB).
- Application for all FDI cases, except Non-Resident Indian (NRI) investments, Export Oriented Units (EOU's) and for FDI in retail trading (single branded product) should be submitted to the FIPB Unit, Department of Economic Affairs (DEA), Ministry of Finance.
- Application for NRI investment, EOU and for FDI in retail trading (single branded product) cases should be submitted to SIA in DIPP.
- Applications can also be submitted with Indian Missions abroad who forward them to the DEA for further processing.

Application can be made in Form FC-IL, which can be downloaded from <http://www.dipp.gov.in>. Plain paper applications carrying all relevant details are also accepted. No fee is payable. 100% Export Oriented Units/Units set up in SEZ

- The Development Commissioner of Special Economic Zones accord automatic approval if certain conditions are met.
- The application for setting up an EOU in Haryana may be made to Development Commissioner, Noida Special Economic Zone, Ministry of Commerce & Industry, Government of India, in 3 copies along with a crossed Demand Draft of R's. 5,000/- drawn in favor of the Pay & Accounts Officer, Ministry of Commerce & Industry, Department of Commerce, payable at the Central Bank of India, Udyog Bhavan, New Delhi
- The application for setting up an EPZ unit in Haryana has to be made in the prescribed format and submitted to Development Commissioner, Noida Special Economic Zone, Ministry of Commerce & Industry, Government of India, in 5 copies along with a crossed Demand Draft of Rs. 5,000/- drawn in favor of The Pay & Accounts Officer, Noida Special Economic Zone together with a project report giving details of activities proposed.
- Proposals for setting up units in SEZ other than those requiring industrial licence may be granted approval by the Development Commissioner within 15 days.
- Proposals for setting up units in SEZ requiring Industrial Licence may be granted approval by the Development Commissioner after clearance of the proposal by the SEZ Board of Approval and Department of Industrial Policy and Promotion, within 45 days.
- Letter of permission (LOP)/Letter of Intent(LOI) issued to SEZ units by the Development Commissioner would be construed as a licence for all purposes, including for procurement of raw materials and consumables either directly or through canalizing agency.
- The LOP/LOI shall specify the items of manufacture/service activity, annual capacity, projected annual export for the first years in dollar terms, Net Foreign Exchange Earnings (NFE), limitations, if any, regarding sale of finished goods, by products and rejects in the DTA and such other matter as may be necessary and also impose such conditions as may be required.