# Setting up software operations in India©

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**Presentation made by:**

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# Setting up software operations in India©[1]

## Synopsis

- Software industry in India
- Establishing software development facilities
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- Private STP scheme
- 100% Export Oriented Units ("**100% EOUs**") in Export Processing Zones ("**EPZs**")
- Establishing research and development facilities
- Company law issues
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- Structuring investments into India

## Software industry in India

India has the world's second largest English speaking scientific manpower pool[2]. This gives India a definite competitive advantage. According to a study conducted by the World Bank; Indian software companies are placed in a stronger position as vendors for software development and also to outsource work from the U.S. market[3].

Currently the Indian software industry is worth Rs. 80 billion (US$ 2.2 billion), out of which software exports account for Rs. 63.1 billion (US$ 1.75 billion)[4]. Indian software exports are expected to reach a target of US$ 4 billion by the year 2000. At present more than 160,000 people are working in the software industry. There are over 1,740 educational institutions, which train more than 60,000 people annually. The quality of technical training given by these institutions is comparable to the best in the world.

Indian software personnel are skilled on the latest hardware platforms including IBM Mainframe, AS/400, DEC, HP, Unisys, DG, Tandem, UNIX Boxes, PC, MAC, PS/2, Novel LAN, SUN with four development platforms *i.e.* PC (DOS, Windows, Apple), Mainframe, UNIX and Midrange.

Realizing India's strength in the software industry, many technology majors have either established their software facilities in India or are in the process of establishing them. These facilities are usually established as wholly owned subsidiaries or as joint ventures with Indian software companies.

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1 The firm acknowledges the valuable contribution of Mr. Janak Pandya, Ms. Deanne D'Souza, Ms. Shefali Goradia and Mr. Vaibhav Parikh in the preparation of this paper.

2 Second only to the U.S.

3 In 1996-97 more than US$ 500 million worth of software development was outsourced to India.

4 "The Software Industry in India 1997-98" by NASSCOM and "Electronics Information and Planning June 1997" by the Department of Electronics.

The Year 2000 ("**Y2K**") date problem or "the millennium bug" is likely to generate business worth US$ 100 to US$ 300 billion for software companies worldwide and the Indian software industry has cornered a substantial amount of Y2K related business.

### Establishing software development facilities

Recognizing the importance of the software industry, the Government of India took numerous steps to make India's software industry globally competitive.

The Government of India and the Department of Electronics (the "**DoE**") announced the software policy as early as 1986. The New Industrial Policy, 1991 (the "**NIP**")[5] accorded the software industry a high priority status for attracting foreign investment. The Government has also made additional efforts to promote cities like Bangalore, Bhubaneshwar and Hyderabad as software cities and has started developing the required infrastructure in these cities. Recently the State of Andhra Pradesh announced a tie up with Microsoft to establish an infotech park for attracting the software industry to that state. During March 1998, Microsoft announced its plans to establish its first research and development facility outside its U.S. headquarters, in the State of Andhra Pradesh, India.

The new BJP Government has already announced its plan to make India a Super Power in information technology ("**IT**") industry in the coming decade. Recently, the government formed a task force headed by the Deputy Chairman of Planning Commission, Mr. Jaswant Singh. The other prominent members include the former Union Minister for Science and Technology Mr. M. G. K. Menon and Andhra Pradesh Chief Minister Mr. Chandrababu Naidu. This task force will prepare a National Policy on Information Technology and Software Development. The some of the important proposals to be consider by the task force include[6]:

- Use of IT in all areas of the national economy i.e. agriculture, Industry, trade and services *etc.;*
- To grant IT an infrastructure status; and
- To provide for better access to working capital.

### Foreign investment in the software industry

Under the NIP, foreign investment up to 100% is allowed in the software industry. In case of investment up to 51% in a software company, automatic approval of the Reserve Bank of India ("**RBI**") is available. The RBI also approves 100% equity investment in software sector by Non-Residents Indians and persons of Indian origin ("**NRIs**") and Overseas

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[5] Announced by the Government of India on July 24, 1991.
[6] The Observer of Business and Politics dated May 23, 1998

Corporate Bodies ("**OCBs**")[7]. However, foreign companies, intending to invest more than 51% are required to obtain the prior approval of the Foreign Investment Promotion Board (the "**FIPB**")[8] in addition to the approval of the RBI.

During January-February 1998, the RBI issued a notification to the effect that its prior approval would not be required for foreign investment up to 50%, 51% and 74% (being the levels specified in the Annexure III[9] list of industries) as the case may be. However, within 30 days of the investment being made, the issuer company would have to submit a declaration on form FC(RBI) to the RBI with complete details as to the foreign investment. This applies only to foreign direct investment and not to transfer of shares from residents to non-residents and *vice versa* in which case the prior approval of the FIPB (if required) and the RBI would be required. The RBI also regulates the price at which the transfer takes place in such cases.

As stated hereinabove, foreign investment is permitted up to 51% in the software development industry on an automatic basis. Accordingly, no prior approval of the RBI would be required for foreign direct investment up to 51% in a company engaged in the development of software, although within 30 days of the investment being made, the investee company would have to declare the investment to the RBI.

Also, transfer of shares from non-residents to residents is currently regulated by the RBI. However, transfer of shares in unlisted and thinly traded companies is automatic if the transaction is up to Rs. 20 million per company, per person, per annum.

Currently a software unit for export can be established in any of the following ways:

- Software Technology Park (the "**STP**") scheme
- Private STP scheme
- 100% Export Oriented Units ("**100% EOUs**") in Export Processing Zones ("**EPZs**")

**Software Technology Park ("STP") scheme**

***Background***

The DoE in consultation with other Government ministries including the Ministry of Finance and the Ministry of Commerce introduced the STP scheme for the development of the software industry in India. Units established under the STP scheme have been granted the status of 100% EOUs and are thus entitled to various incentives which are applicable to 100% EOUs.

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7 OCBs include overseas companies, partnership firms, societies and other corporate bodies which are owned, directly or indirectly, to the extent of at least 60% by NRIs or individuals of Indian nationality or origin resident outside India as also overseas trusts in which at least 60% of the beneficial interest is irrevocable held by such persons.

8 Application on form FC/IL(SIA).

9 The New Industrial Policy.

In 1994, the Ministry of Commerce, under the Foreign Trade (Development and Regulation) Act, 1992, issued a notification in connection with the STP scheme. Subsequently, the procedure for setting up units in a STP area was laid out in the Handbook of Procedures[10]. The administration of the scheme is done by the Software Technology Park of India ("**STPI**") a society registered under the Societies Registration Act, 1860 through its chief executive officer as its head. The salient features of the STP scheme are set forth below[11]:

- The Central Government or a State Government or a public or private sector undertaking or any combination thereof may set up a STP.
- A software unit can be established in a STP location promoted by the DoE (public STP) or it can be established as a private STP.
- A STP unit will be a duty free customs bonded area.
- A 100% EOU status is granted to a unit set up under the STP Scheme for software developed for export.
- The 100% EOU status will be available only if the entire software developed is to be exported. However, sale in the Domestic Tariff Area ("**DTA**") is permitted up to 25% of the production in value terms.
- The notification provides for export of software *via* satellite link or in physical form *i.e.,* tape and floppy.
- A unit located in a STP will not require an import license for importing equipment. The DoE issues an "Import Certificate" for this purpose.
- All imports, including those of capital goods required for the production of computer software, are free from customs duty.

At present there are nine STPs (see ***Attachment - I***) spread throughout India. Around 700 software development units have been approved under the STP scheme[12] and these STPs have achieved a total export turnover of Rs. 17.8 billion (approximately US$ 500 million) for the year 1996-97.

***Procedure for obtaining approval for establishing a unit in a STP area***

An application in the prescribed format (see ***Attachment - II***) for establishing a STP unit is to be submitted to the Chief Executive of the STP complex along with the details of the software project. An Inter-Ministerial Standing Committee (the "**IMS Committee**")[13] consisting of the following will consider the application:

- Secretary, DoE, or his nominee (as the Chairman)
- Secretary, Department of Industrial Development, or his nominee
- Secretary, Department of Science and Technology, or his nominee.
- Secretary, Ministry of Commerce, or his nominee
- Chairman, Central Board of Excise and Customs, or his nominee.
- Secretary, Department of Economic Affairs, Ministry of Finance, or his nominee.
- Secretary, Planning Commission or his nominee.

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10 As per Appendix 44 of Handbook of Procedures, 1997-2002 with effect from April 1, 1997.
11 *Id.*
12 "Advertisements by STP", The Economic Times dated September 11, 1997.
13 *Vide* Press Note No. 2 of dated March 9, 1993.

- Economic adviser, DoE.
- Secretary, Department of small-scale industries and agro and rural industries or his nominee.

The IMS Committee is served by the Secretariat for Industrial Assistance (the "**SIA**") from the Department of Industrial Development, Ministry of Industry.

The IMS Committee would grant the following approvals:

1. Grant of industrial approval (known as letter of permission) for establishing the unit
2. Approval of the Foreign Technology Agreement (the "**FTA**").
3. Approval for the import of capital goods.

***Application to the FIPB for foreign investment above 51%***

If the unit envisages any foreign investment, then the same would be considered by the FIPB.

- An application in the specified form[14] should be addressed to the SIA, Department of Industrial Development, Ministry of Industry, Government of India along with the application for establishing software unit under the STP scheme.

- If application has to be made without a Letter of Intent, then along with the application a demand draft for Rs. 1,000 drawn in favor of the Pay and Accounts Officer, Department of Industrial Development, Ministry of Industry should be enclosed. The draft should be made payable at the State Bank of India, Nirman Bhavan Branch, New Delhi 110 011.

- If a Letter of Intent is required, then along with the application a demand draft of Rs. 2,500 payable as above should be enclosed.

Please also refer to the section titled "Foreign investment in the software industry" detailed hereinabove.

***Export obligation***

With a view to boost software exports, the Government has given various incentives to units established in a STP area. Software units located in the STP area are however required to fulfill a certain minimum Export Obligation (the "**EO**").

A formula has been prescribed for calculating the EO of a particular unit. This EO is linked to net foreign exchange earnings, and is calculated as follows:

EO = 1.5 x (CIF[15] value of the hardware imported)
+
1.5 x wage bill

[14] Form FC/IL(SIA).
[15] CIF includes purchase cost + insurance + freight charges of hardware imported.

The obligation on the hardware part has to be fulfilled over a period of four years whereas the obligation on the wage bill has to be fulfilled on an annual basis.

For example, if the cost of hardware imported is US$ 10 million and if the yearly wage bill is US$ 1 million then:

EO = (1.5 X US$ 2.5 million (*i.e.* 10 million / 4 years)) + (1.5 x US$ 1 million)
= US$ 5.25 million.

Thus, the unit would have an EO valued at US$ 5.25 million for the first year.

***Exemption from custom duty for STP*** [16]

Goods imported by a unit established as a 100% EOU in a STP complex as approved by the IMS Committee are exempt from customs duty and also any additional duty levied on such goods.

Before permission for import is granted the following conditions are to be fulfilled:

1. Necessary license for import of goods
2. The importer must carry out the development of software and export either all the software so developed or such other percentage as stipulated by the IMS Committee.
3. The importer must execute a bond, in the prescribed form. The bond should be for a sum to be prescribed by the customs authority.
4. The goods sought to be imported must be:
   i) Capital goods;
   ii) Raw materials;
   iii) Components;
   iv) Spares for production machinery;
   v) Consumables required for manufacture of goods;
   vi) Drawings, blue prints, technical maps and charts, relating to manufacturing activity;
   vii) Office equipment, spares and consumables thereof.

***Other approvals/registrations***

*Importer-exporter code number*

Every unit registered as a 100% EOU requires an Importer-Exporter Code (the "**IEC**") number. The IEC is granted by the Director General of Foreign Trade. This code is unique and must be mentioned in every document for import or export of goods and services. Without the IEC, import or export activities cannot be carried out from India[17].

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16 Various notifications issued by customs authorities, including notification no. 101/95-Cus. dated May 26, 1995, 117/95-Cus. dated June 12,1995 and 171/95-Cus. dated December 26, 1995 and 33/97-Cus. dated April 1, 1997.

17 Earlier for import and export separate codes were used. IEC was used for import. Whereas for export, a code known as Exporters Code (the "**EC**"), issued by the RBI was used. Recently, the Government

## Private STP scheme

A unit can be established as a private STP. This will require special permission from the DoE[18]. The unit must have its own infrastructure facilities which must not form part of an STP complex built by the DoE. It will also have to obtain permission from the Customs authorities for a private bonded area for storing imported duty free hardware and software items. All the STP procedures detailed above will also apply to a private STP. Private STPs are also eligible for the concessions and incentives under the income tax, customs[19], excise and other local laws, that are available to the other STPs.

## 100% EOUs in EPZs

### *Background*

EPZs have emerged as effective instruments to boost exports of manufactured products. These EPZs are intended to provide an internationally competitive duty free environment for export production.

As of today there are eight EPZs in India (See ***Attachment - III***).

All these EPZs have been set up and administered by the Ministry of Commerce with the support of the respective State Governments. Each EPZ is supervised by a senior administrator called the Development Commissioner (the "**DC**"). The DC of the EPZs provide a "single window" clearance for all approvals, including foreign investments.

These EPZs provide all types of infrastructure such as lease land plots, water, electricity, one point clearance of all customs and excise approvals, *etc.*

Approval for a project in an EPZ is granted to units which:

- are set up as 100% EOUs;
- achieve the minimum value addition;
- possess export marketing capability;
- provide improvement of industrial technology;
- employ skilled manpower; and
- ensure that the manufacturing process is pollution free.

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has amended the Foreign Exchange Regulation Rules, 1973 as a result of which an EC is no longer necessary and the IEC would be the single code to be quoted in both import and export documentation.

18 An application (see ***Attachment - II***) is required to be made to the DoE, Government of India.

19 Units located in private STPs are also exempt from customs duty (Notification No. 140/91–Cus. dated January 22, 1991 as amended up to 33/97 dated April 1, 1997).

***Facilities and incentives provided by EPZs***

- Units set up in EPZs are permitted to lease premises at concessional rates.
- They are allowed foreign equity participation up to 100%.
- There is no restriction on the repatriation of capital and dividends.
- They do not have to pay any duty on the import of capital goods, raw materials and other components.
- They are provided with a tax holiday from corporate income tax.
- They are exempt from payment of Central excise, State sales tax on purchase of goods from the domestic market.
- Loans at concessional rates are available to units set up in EPZs.

***Procedure for approvals***

The Ministry of Industrial Development, Government of India, has issued a revised Policy and Procedure guidelines for approval under the 100% EOU and EPZ scheme[20].

*Approvals*

All approvals conforming to the criteria (see ***Attachment - IV***) prescribed for units to be set up in EPZs shall receive automatic approval from the concerned DC, within two weeks. However, approval of the SIA, Department of Industrial Development would be required in respect of foreign wholly held 100% EOUs. All proposals not conforming to the parameters for automatic approval (set out in ***Attachment – IV***) would be considered by the Board of Approvals and disposed off within 45 days through the SIA.

*Procedure for application*

- An application for setting up units in EPZs are to be submitted to the DC of the concerned EPZ.
- An application for setting up a 100% EOU (outside an EPZ) pursuant to the automatic route or otherwise is required to be submitted to the SIA.
- The application, along with 9 copies, must be made on the prescribed form (See ***Attachment - V***). Even if foreign investment is contemplated, the same form has to be completed.
- A demand draft drawn in favor of the Pay and Accounts officer, Department of Industrial Development, Ministry of Industry, and payable at the State Bank of India, Nirman Bhavan, New Delhi for Rs. 1,000 or Rs. 2,500 as required should be enclosed. A project report is to be submitted along with the application.

*Project report*

The applicant is required to submit a project report along with the application form. It is essential that the project report contains the techno-economic feasibility of the project.

[20] Government of India, Ministry of Industrial Development Press Note No. 3/(1995 Series) dated April 19, 1995 read with Import Export Policy 1997-2002 with effect from April 1, 1997.

There is no prescribed form in which a project report is to be presented. The contents of the report may vary depending on the type of project and industry. In general a project report for setting up software operations should contain the following:

- *Introduction.* The importance of the activity for which the unit is being set up, the technology to be used such as hardware and software platform, industry specialization *etc.,* onsite or offshore software development or re--engineering and conversion programming.
- *Promoters.* Brief history of the promoters, foreign collaborators including their specialization, technological background, directors, list of clients, *etc.*
- *Project cost.* The cost of the project with details of the land and building, plant and machinery, employment likely to be generated, financial forecasts for a period of five years, export figures, earnings in foreign exchange, foreign exchange outflow, *etc.*
- *Foreign investment.* Foreign investment and technology agreement, *etc.*

***Export obligation***

As described in the section titled "STP scheme" hereinabove, units set up in an EPZ are required to fulfill a certain export obligation. However in case of units in EPZs the export obligation is prescribed in value terms and not as a formula as in the case of the STP scheme. Generally, at the time of submitting project reports, the applications usually indicate the estimated export turnover which is to be accepted as its EO. The EIP has prescribed a minimum export obligation of US$ 1 million (FOB) during a period of five years for software units located in EPZs.

The Santacruz Electronics Export Processing Zone ("**SEEPZ**") which is a prominent EPZ among all other EPZs, has in the case of the electronics and software industry, prescribed the following export turnover criteria for the software units located in that zone[21]:

- For units in existence for a period of less than five years an export obligation of Rs. 75,000 per sq. meter.
- For units in existence for a period of five years or more than five years an export obligation of Rs. 100,000 per sq. meter.
- Export obligation of Rs. 600,000 per software personnel.
- Space requirement per software personnel is 75 sq. ft.
- On site export would be in addition to the above.

***Net foreign exchange earnings as a percentage of exports[22] (the "NFEP")***

The Export and Import Policy - April 1, 1997 - March 31, 2002 (the "**EIP**")[23] specifies the NFEP in respect of certain items. The EIP[24] prescribes a NFEP of at least 60% for computer software. The NFEP stipulated in the EIP[25] is only indicative of the minimum

[21] Circular no. POL.IB.244.96.6655 dated September 9, 1996 issued by the SEEPZ.
[22] As per para 9.29 Export and Import Policy, 1997-2002 with effect from April 01, 1997.
[23] Appendix I of EIP.
[24] Paragraph 9.5 of the EIP.
[25] Paragraph 9.29 of the EIP.

level to be achieved. It does not preclude the Board of Approvals from prescribing a higher percentage.

NFEP is expressed in terms of percentage by dividing net foreign exchange earnings with gross foreign exchange earnings on account of exports. NFEP is calculated for a period of five years. The formula for calculation of NFEP is set forth below:

$$NFEP = \frac{A - B}{A} \times 100$$

| | | |
|---|---|---|
| NFEP | = | is Net Foreign Exchange Earning as a percentage of exports. |
| A | = | FOB[26] value of exports by the EOU/EPZ (software unit). |
| B | = | Sum of the CIF value of all imported inputs, the CIF value of all imported capital goods, and value of all payments made in foreign exchange by way of commission, royalty, fees, dividends, interest on external borrowings during the first five year periods or any other charges. Inputs mean raw materials, intermediates, components, consumables, parts and packing materials. |

***Documents to be executed after obtaining approvals***

On obtaining an approval letter from the concerned DC of the EPZ for setting up a software unit, the following documents have to be executed by the unit and the EPZ:

1. Lease agreement for premises allotted by the EPZs to software units for carrying out their activities.
2. Legal undertaking by the unit for achieving the export obligation as stated in the approval letter given by the DC.
3. A bond executed by the unit in favor of the customs department for importing and warehousing goods without payment of customs duty.

***Communication facilities***

Software units located in EPZs or STPs can secure a satellite link of 64 kpb from the Videsh Sanchar Nigam Limited (the "**VSNL**"). In case of the Bangalore and Thiruvananthapuram STPs, they have their own dedicated earth station for providing link facilities. Communication facilities such as voice, data and also video conferencing facilities are provided by the VSNL.

There are two segments for availing of the link facilities. In the first segment, the VSNL carries the link line for half a circuit up to the satellite. In the second segment, users have to make their own arrangements for carrying the link line from the satellite to the overseas destination. The carriers in the second segment may be any one of the international telephone carriers such as AT&T, MCI or BT.

The lease rental charges are payable quarterly to the VSNL.

[26] Free on Board (excluding freight and insurance).

## Company law issues

### *Types of companies*

The Companies Act, 1956 (the "**Companies Act**") broadly classifies companies into private companies and public companies.

*Private companies*

A private company is defined to mean a company which, by its Articles of Association (AoA) i.e. bye-laws, restricts the transferability of shares, limits the number of members to fifty and prohibits any invitation to the public to invest in its share capital[27]. A private limited company enjoys various privileges under the Companies Act such as it can have a minimum of two directors[28] that can be appointed for life[29]. A private company can have a minimum of two members[30] who can call a shareholders' meeting. It can give loans and invest in other companies without any restrictions.

*Section 43A companies.* The Companies Act[31] provides that a private company would be deemed to be a public company for all practicable purposes if it satisfies any of the following criteria:

(a) if 25% or more of its equity share capital is held by a public company; or
(b) if the said private company holds 25% or more of the equity share capital of a public company; or
(c) if its annual turnover exceeds Rs. 100 million; or
(d) if it accepts deposits from the public.

A deemed public company is, however, permitted to retain certain basic characteristics of a private company, *i.e.* restrictions on transferability of shares, *etc.* However, it has to comply with various formalities under the Companies Act as applicable to public limited companies.

Since investors ordinarily wish to ensure restrictions on transferability of shares, a public company is not suitable.

*Public companies*

A public company is defined as any company, which is not a private company[32]. A public company cannot restrict the transferability of its shares in any manner. A public company can be a listed or unlisted company.

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27 Section 3(1)(iii) of the Companies Act.
28 A public company is required to have a minimum of 3 directors.
29 Two thirds of the directors of public companies are appointed subject to retirement by rotation every year.
30 A public company must have a minimum of 7 members.
31 Section 43A
32 Section 3(1)(iv) of the Companies Act

*Listed companies.* A public company may, upon fulfilling certain criteria, come out with a public issue of shares and get listed on a recognized stock exchange. The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 would be applicable in case of investments in listed companies.

*Unlisted companies.* A public company that is not listed on any of the recognized stock exchanges is an unlisted company.

## General taxation

The Indian Income-tax Act, 1961 ("**ITA**") is the central taxing statute in India. There are no state level income taxes. Net profits are calculated after allowing deductions for relevant expenses and incentives, which mitigates the overall impact of the high level of taxation.

*Taxation of Indian companies*

Indian companies currently are taxed at the rate of 35% on their net profits. Long-term capital gains[33] in the hands of Indian companies are taxed at the rate of 20%. Short-term capital gains[34] are treated as ordinary income and are therefore taxed at 35%.

The Finance Act, 1996 inserted a new Section 115JA in the ITA which provides for the minimum alternative tax (the "**MAT**"). The MAT does not apply to companies located in free trade zones, companies engaged in the distribution and generation of power, and 100% EOUs. According to the provisions of this section, in case of companies where the taxable income of the company computed in accordance with the ITA is less than 30% of the book profits, then the profits of such company for the purpose of taxation would be deemed to be 30% of its book profits and the company would be liable to tax on the same at the prevailing rates of tax. The effective MAT rate for the current assessment year 1998-99 is 10.5% on the book profits.

The Finance Act, 1997 abolished the system of double taxation of dividends. Dividend declared, distributed or paid by an Indian company on or after June 1, 1997 is exempt in the hands of shareholders (including foreign shareholders). Instead, an additional income tax[35] (referred to as tax on distributed profits) of 10% of the amount declared, distributed or paid as dividends, is payable by domestic companies. Within India, no tax credit is available to the shareholders in respect of this additional tax. But, depending upon the tax treaty provisions, foreign shareholders may be able to get a tax credit in their home country against the additional tax borne by the Indian company.

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[33] Long-term capital gains are gains arising on sale of long-term capital assets. Long-term capital assets are assets other than short-term capital assets. Short-term capital assets are defined as shares, units in registered mutual funds and other listed securities, which are held for a period of 12 months or less. In case of other securities, this period is extended to 36 months.

[34] Gains arising on the sale of short-term capital assets are treated as short-term capital gains.

[35] Section 115-O of the ITA.

### *Taxation of foreign companies*

Foreign companies are taxed at the rate of 20% in respect of their gross income by way of interest[36] and long-term capital gains from shares and securities. Interest income of foreign companies on rupee denominated debt incurred by the Indian entity could be taxed at the rate of 48%[37]. Capital gains earned by non-residents on the transfer of shares or debentures of an Indian company can be computed by converting the cost of acquisition, expenditure incurred wholly and exclusively in connection with such transfer and the full value of the consideration received as a result of the transfer into the same foreign currency as was initially utilized in the purchase of the shares or debentures. The capital gains so computed will then have to be reconverted into Indian currency before tax is charged[38].

The following chart sets out the tax rates applicable to residents and non-residents:

| **Type of income** | **Indian residents** | **Foreign residents** | **Indian corporations** | **Foreign corporations** |
|---|---|---|---|---|
| Business income | 30% | 30% | 35% | 48% |
| Dividend | - | - | - | - |
| Interest | 30% | 20%[39]/30% | 35% | 20%[40]/48%[41] |
| Long-term capital gains | 20% | 20% | 20% | 20% |
| Short-term capital gains | 30% | 30% | 35% | 48% |

### *Tax treaties*

India has over 55 agreements for the avoidance of double taxation ("**tax treaties**") with different countries. The provisions of the tax treaties override the domestic tax laws. However, Indian tax laws are unique as they offer the foreign resident a choice between the provisions of the treaty and the Indian tax laws. The foreign residents can adopt those provisions, which are more favorable[42].

### *Taxation of NRIs*

In general, NRIs are taxed at the same rates as non-residents. However, Chapter XII-A of the ITA provides for a special tax treatment for NRIs. NRIs can elect to be taxed at the rate of 20% in respect of interest, and long-term capital gains[43] arising from the transfer of a specified foreign exchange asset, which includes shares and certain bonds subscribed to in foreign currency. Rate of 10% will apply in respect of long-term capital gains arising to

36 On non-Indian currency denominated loans.

37 This rate is applied on net income and could be reduced further depending upon the tax treaty provisions.

38 Proviso 1 to section 48 of the ITA.

39 Applicable on gross income.

40 Applicable on gross income.

41 On rupee denominated loans.

42 Section 90(2) of the ITA provides for such an option.

43 As per the provisions of the revised section 115E of the ITA, with effect from April 1, 1998, income by way of long-term capital gains earned by NRIs from the transfer of certain specified assets, including, shares in an Indian company or debentures in an Indian company which is not a private company will be taxed at the rate of 10%.

NRIs from the transfer of specified assets. Roll-over provisions enable NRIs to claim tax exemptions in respect of long-term capital gains.

***Tax incentives for software industry***

In order to boost exports and earn valuable foreign exchange, the Government has provided various incentives by way of income and corporate tax concessions. Some of the incentives enjoyed by the software units under the ITA are detailed hereinbelow.

*Section 10A*

Section 10A of the ITA provides for special concessions in respect of newly established industrial undertakings in Free Trade Zones ("**FTZs**"). Under this section, profits and gains derived from an industrial undertaking set up in any of the FTZs, STP areas and electronic hardware technology park ("**EHTP**") areas are fully exempt for a period of five consecutive assessment years falling within a period of eight years from the commencement of production. This tax exemption is available to all taxpayers including foreign companies and non-resident tax-payers.

*Section 10B*

Section 10B of the ITA provides for special incentives in respect of newly established 100% EOUs. Under this section profits and gains derived from a 100% EOU shall not be included in the total income of the tax payer. This benefit is available for income earned during a period of five consecutive assessment years falling within a period of eight years from the commencement of production. This exemption is available to all taxpayers including foreign companies and non-resident tax-payers[44].

*Section 35*

Section 35 of the ITA provides for tax deduction of any expenditure incurred on scientific research. Any expenditure laid out on scientific research related to the business of a tax payer is allowed as a deduction while computing taxable income. Any sum paid to a scientific research association or to a university, college or other institution to be used for scientific research is also deductible[45]. Section 35(iv) provides for a tax deduction in respect of any expenditure of a capital nature on scientific research related to the business carried on by a taxpayer. However, no deduction is allowed in respect of any expenditure incurred on the acquisition of any land. Sub-section (2AB) of section 35 of the ITA provides for a deduction of 125% of any expenditure incurred by a company engaged in the business of manufacture or production of any drugs, pharmaceuticals, electronic equipments, computers, telecom equipments, chemicals or any other notified article, on scientific research (not towards cost of land or building) on in-house research and development facility as approved by the prescribed authority. However, such facility should

[44] The proposed new income tax bill, which is in draft form and under debate, has proposed to eliminate the incentive given under sections 10(A) and 10(B) to the computer software exporters.

[45] Such association, university, college or institution needs to be approved by the prescribed authority for this purpose by notification in the Official Gazette.

not relate purely to market research, sales promotion, quality control, testing, commercial production, style changes, routine data collection or activities of similar nature. Section 35AB provides for a weighted deduction over a period of six years of any lump sum consideration paid for acquiring any know-how for the use for the purposes of the business of the tax payer.

*Section 80 HHE*

Section 80 HHE of the ITA deals with the deduction in respect of profits from export of computer software, *etc.* Under this section if a taxpayer is engaged in the business of:

- export out of India of computer software or its transmission from India to a place outside India by any means; or
- providing technical services outside India in connection with the development or production of computer software;

then the profits derived from his business would be deductible from its taxable income. This deduction will be available provided the consideration in respect of the export of computer software is received in, or brought into India in convertible foreign exchange within a period of six months from the end of that financial year. This benefit is available only to Indian companies or Indian residents.

**Structuring investments into India**

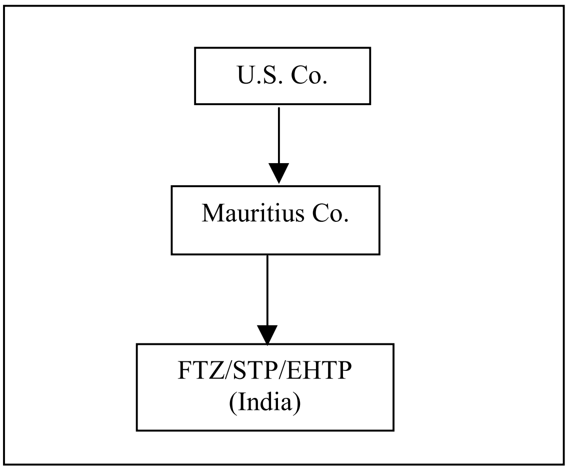
Foreign investors need to decide whether an investment into India should be made directly from the home country or through an intermediate company located in a tax-efficient treaty partner country. India's tax treaty with the U.S. does not provide for any specific tax concession in respect of capital gains. The U.S. resident companies (individuals are not entitled) can claim a tax credit in the U.S., for the underlying taxes paid by the Indian companies in which they hold at least 10% shares. Foreign investors generally consider offshore jurisdictions, which provide them with significant tax benefits for routing their investments into India. Mauritius and a few other countries like Cyprus and the United Arab Emirates have favorable tax treaties with India. Mauritius has, however, become a popular jurisdiction, and most of the foreign investment in India is routed through Mauritius mainly because:

(i) Mauritius companies investing in the stock of Indian corporates would be exempt from the payment of capital gains (long-term or short-term) tax arising on disposal of such stock, provided that the same does not form part of the assets of a permanent establishment in India;

(ii) A reduction in Indian withholding tax on royalty payments by an Indian company to a Mauritius company from 20% (under the ITA) to 15%; and

(iii) Complete exemption from Indian withholding tax on interest payments by an Indian company to a Mauritius resident bank or an offshore company creditor where the loan has been specifically approved by the Government of India. If the loan is not so approved, the withholding tax rate on interest payments will be 20% (as under the ITA).

A typical structure wherein a U.S. company invests in an FTZ, STP or EHTP in India through Mauritius, will look like this:




Till now, the offshore companies set up in Mauritius had an option to pay tax at a rate ranging between 0% to 35%. Mauritius is however imposing a tax of 15% on all companies incorporated in Mauritius on or after July 1, 1998. Substantial tax credits will be available as a set off against this tax liability which will result in very insignificant effective taxation in Mauritius.

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**The contents of this paper should not be construed as legal opinion or professional advice.**

***Attachment - I***

**List of Software Technology Parks ("STPs") in India**

Head Quarters:
STP of India
Department of Electronics
Electronics Niketan
6, CGO Complex, Lodhi Road
New Delhi 110 003

1. Director - STP - Noida
Sector 29, Block-IV
2nd Floor, Ganga Shopping Complex
Noida
Uttar Pradesh

2. Director - STP - Hyderabad
407,Maitri Vanam Complex
Sanjeeva Reddy Nagar Post
Hyderabad 500 018
Andhra Pradesh

3. Director-in-charge - STP - Pune
Electronics Sadan, No. II
MIDC, Bhosari Block
Pune 411 026
Maharashtra

4. Director - STP - Bangalore
Block III, Multi storeyed complex
Keonics Electronics City
Hosur Road
Bangalore 561 229
Karnataka

5. Director-in-charge - STP - Bhubaneshwar
Priyadarshini Market (2nd Floor)
C.R.P. Square, Nayapalli
Bhubaneshwar 751012
Orissa

6. Chief Executive Officer - STP - Gandhinagar
3, L. K. Society
Opp. Gurukul, Drive-in Road
Ahmedabad 380 052
Gujarat

7. Director - STP - Thiruvananthapuram
P. B. No. 5517
J. V. Centre, Bakery Jn.
Thiruvananthapuram 695 034
Kerala

8. Executive-in-charge - STP - Calcutta
Salt Lake, Electronics Complex
Block-GP, Sector IV, Bidhannagar
Calcutta 700 091
West Bengal

9. Director - STP - Jaipur
2, Kanakpura Industrial Area
Sirsi Road
Jaipur 302 012
Rajashthan

***Attachment - II***

APPLICATION FOR SETTING UP UNITS
UNDER THE
SOFTWARE TECHNOLOGY PARK (STP)
SCHEME FOR 100% EXPORT
OF COMPUTER SOFTWARE

Instructions:

1. Application should be submitted to the Director, Software Technology Park at designated locations (as per Annexures) along with Project Report.

2. The application should be duly signed by the Competent Authority with initials on each page of the application along with office seal of the company.

3. The undertaking should be furnished by applicant along with the application.

# APPLICATION FORM

I.

| | |
|---|---|
| Location of the STP: | |
| Name of the undertaking/applicant: | |
| Name and address of the promoter (in case of new undertaking) (block letters): | |
| Full address: | |
| Pin code: | |
| Telephone No.: | |
| E-Mail address: | |
| Telex No.: | |

II. STATUS OF THE PROMOTER/INDUSTRIAL UNDERTAKING
(Please tick (✔) the appropriate box)

| | |
|---|---|
| 1. Central government undertaking: | |
| 2. State government undertaking: | |
| 3. State Industrial Development Investment Corporation: | |
| 4. Cooperative undertaking: | |
| 5. Joint sector undertaking: | |
| 6. Assisted sector undertaking: | |
| 7. Private sector undertaking: | |
| 8. Individual promoter/partnership: | |

III. BRIEF BACKGROUND OF THE APPLICANT(S)

IV.

| | |
|---|---|
| A. Indicate whether this proposal is for (Please tick (✔) the appropriate box) | |
| 1. Establishment of a new undertaking | |
| 2. Expansion of existing STP unit | |
| 3. Conversion of an existing software export unit to STP unit | |
| | |
| B. If the investments are proposed to be undertaken by a new undertaking, indicate proprietors, partners or board of directors with full details of their addresses and occupation. | |
| | |

| | |
|---|---|
| C. Details of capital structure *viz.* capital to be realised by members; share participation by the State or Central Government and by others | |

V. CAPITAL STRUCTURE FOR PROPOSED COMPANY (Rs. in lakhs)
(in the case of companies registered under the Indian Companies Act, 1956)

| Equity | Existing | Proposed |
|---|---|---|
| Authorized capital | | |
| Subscribed capital | | |
| Paid-up capital | | |

| Pattern of share holding in the paid up capital | Existing | | Proposed | |
|---|---|---|---|---|
| | Amount | % age | Amount | % age |
| (a) Foreign Holding: | | | | |
| (i) Direct participation | | | | |
| (ii) Indirect participation | | | | |
| (iii) Total (i) + (ii) | | | | |
| | | | | |
| (b) Non resident Indian company/individual holding:<br>(i) Repatriable<br>(ii) Non-repatriable | | | | |
| | | | | |
| (c) Resident holding: | | | | |
| | | | | |
| (d) Total equity (a) + (b) + (c) | | | | |
| | | | | |
| (e) Commercial borrowings<br>(i) External<br>(ii) Internal | | | | |
| | | | | |
| (f) Any other source | | | | |
| | | | | |
| Total investment | | | | |

VI. PROPOSED ANNUAL CAPACITY OF SOFTWARE DEVELOPMENT EXPORT (RS. LAKHS)

| | Year | | | | | |
|---|---|---|---|---|---|---|
| Particulars | 1st | 2nd | 3rd | 4th | 5th | Total |
| | | | | | | |

VII. REQUIREMENT OF CAPITAL GOODS

| | Year | | | | | |
|---|---|---|---|---|---|---|
| | 1st | 2nd | 3rd | 4th | 5th | Total |
| IMPORTED | | | | | | |
| (a) items of capital goods to be imported including software | | | | | | |
| (b) Capacity | | | | | | |
| (c) Quantity | | | | | | |
| (d) CIF value (Rs. lakhs) | | | | | | |
| | | | | | | |
| INDIGENOUS | | | | | | |
| (a) items of capital goods to be procured | | | | | | |
| (b) Capacity | | | | | | |
| (c) Quantity | | | | | | |
| (d) Total value (Rs. lakhs) | | | | | | |
| | | | | | | |

Note: In case of import of second hand capital goods, the year of manufacture and its residual life supported by the Chartered Engineer's Certificate may be furnished.

VIII. WAGE BILL (Rs. lakhs)

| | Year | | | | | |
|---|---|---|---|---|---|---|
| Particulars | 1st | 2nd | 3rd | 4th | 5th | Total |
| | | | | | | |

IX. INDICATE REQUIREMENT OF FIXED ASSETS IN THE FOLLOWING FORM:

| Fixed assets | Existing | Proposed |
|---|---|---|
| (a) Land | | |
| (b) Building | | |
| (c) Equipment | | |
| - Indigenous | | |
| - Imported | | |

X. IS ANY FOREIGN COLLABORATION (WHETHER FINANCIAL, TECHNICAL MARKETING OR CONSULTANCY) ENVISAGED? IF SO, PLEASE FILL UP A SEPARATE FC APPLICATION IN THE PRESCRIBED FORM AND GIVE THE FOLLOWING DETAILS:

| | |
|---|---|
| (a) Name of the foreign collaborator: | |
| (b) (i) Address(s): | |
| (ii) Phone: | |
| (iii) Fax: | |
| (iv) E-mail: | |
| (v) Telex: | |
| (c) Country: | |
| (d) Amount of foreign collaboration: | |
| (e) Brief background of the foreign collaboration: | |
| (f) Nature of foreign collaboration: | |
| (g) Terms & Conditions of the foreign collaboration: | |
| (h) Proposed duration of agreement for which royalty payment will be restricted: | |

XI. FOREIGN EXCHANGE EARNINGS (IN THE FIRST FIVE YEARS)

| Foreign exchange inflow | Value in Rs. Lakhs | | | | | | Total (US$) |
|---|---|---|---|---|---|---|---|
| | Year | | | | | Total | |
| | 1st | 2nd | 3rd | 4th | 5th | | |
| (i) Foreign equity | | | | | | | |
| (ii) Borrowing from parent/collaborator company | | | | | | | |
| (iii) Commercial borrowing (external) | | | | | | | |
| (iv) Any other funds (give details) | | | | | | | |
| (v) Export earnings (A) | | | | | | | |

| Foreign Exchange outgo (in first years) | Value in Rs. Lakhs | | | | | | Total (US$) |
|---|---|---|---|---|---|---|---|
| | Year | | | | | Total | |
| | 1st | 2nd | 3rd | 4th | 5th | | |
| (i) Import of capital goods | | | | | | | |
| (ii) Import of raw material and components | | | | | | | |
| (iii) Import of spares and consumables | | | | | | | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| (iv) Repatriation of dividends and profits to foreign collaborators | | | | | | | |
| (v) Royalty | | | | | | | |
| (vi) Lump sum know-how fee | | | | | | | |
| (vii) Design and drawing fee | | | | | | | |
| (viii) Payment on training of Indian technicians abroad | | | | | | | |
| (ix) Payment to foreign technicians | | | | | | | |
| (x) Commission on export *etc.* | | | | | | | |
| (xi) Foreign travel | | | | | | | |
| (xii) Amount of interest to be paid on external commercial borrowing/deferred payment credit (specify details) | | | | | | | |
| (xiii) Any other payments (specify details) | | | | | | | |
| | | | | | | | |
| Total (i) to (xiii) = (B) | | | | | | | |

Net foreign exchange earnings in the first five years = (A) - (B) = _____________

XII. EXPORT OBLIGATION

The export obligation on the STP units on net foreign exchange terms on U.S. dollar value will be as follows:

Export obligation = (1.5 X CIF value of the hardware imported including software) + (1.5 X wage bill)

Notes: The obligation on the hardware part should be fulfilled over a period of four years. The obligation is also applicable on the software imported.

The obligation on the wage bill is to be fulfilled on an annual basis.

Net foreign exchange for this purpose is governed by the definition in the Software Policy announced in 1986 which states as follows:

> "Net foreign exchange earned for this purpose is defined as foreign exchange inflow as a result of software exports less foreign exchange outflow on account of expenditure other than initial hardware and/or software imports."

XIII. STAFF AND LABOR PROPOSED TO BE EMPLOYED IN THE IMPLEMENTATION OF THE PROJECT:

| | Existing | Proposed | | | | | Total |
|---|---|---|---|---|---|---|---|
| | | Year | | | | | |
| | | 1st | 2nd | 3rd | 4th | 5th | |
| (a) Managerial | | | | | | | |
| (b) Supervisory | | | | | | | |
| (i) Technical | | | | | | | |
| (ii) Non Technical | | | | | | | |
| (c) Clerical | | | | | | | |
| (d) Labour | | | | | | | |
| (i) Skilled | | | | | | | |
| (ii) Semi-skilled | | | | | | | |
| (iii) Unskilled | | | | | | | |
| (e) Other categories, if any | | | | | | | |
| | | | | | | | |
| Total | | | | | | | |

XIV. AREA OF EXPERTISE

| | |
|---|---|
| (a) System Software Development | |
| (b) System Software Conversion | |
| (c) Design and implementation of management information system and decision support system | |
| (d) Financial control and accounting system | |
| (e) Production management and inventory control | |
| (f) Project feasibility studies and project monitoring systems | |
| (g) Microprocessor based software | |
| (h) Communication software | |
| (i) CAD/CAM/CIM/FEA | |
| (j) Expert System | |
| (k) Back office /Remote Data Entry | |
| (l) Application Re-Engineering | |
| (m) Any others, specify | |

XV. COMMUNICATION REQUIREMENTS

| | |
|---|---|
| (a) Point to point leased lines (Kbps): | |
| (b) Packet Switched Service (X.25): | |
| (c) Dial-up (TCP/IP service): | |
| (d) Specify, if any: | |

XVI. SPACE REQUIREMENT/BUILT-UP LAND

XVII. REQUIREMENT OF ANY OTHER FACILITY

XVIII. Establishment time required for commencement of development/export from the date of issue of permission

XIX. Whether the applicant/party has submitted any other application(s) for Letters(s) of Intent or Permission Letter which is/are pending. If so, the details thereof including the items of manufacture, proposed capacity, location and investment.

XX. Whether the applicant has been issued any industrial license or Letter of Intent so far under the 100% Export Oriented Unit (EOU)/Export Processing Zone (EPZ) Scheme or under the Normal Industrial Licensing Scheme for domestic tariff area. If so, full particulars of each Letter of Intent/Industrial License/Permission Letter issued to him with reference number, date of issue, items of manufacture and the progress on the implementation of each such project for which the Letter of Intent or Industrial License or Permission Letter was granted.

| | |
|---|---|
| XXI.<br>(a) Indicate whether the applicant or the undertaking, or any of its partners/directors who are also partners/directors of other companies/associate concerns related to the applicant or the undertaking, have been penalized/warned for violation of the ITC regulations or custom regulations. | |
| | |
| (b) If answer to part (a) is in affirmative, then give details. | |

| | |
|---|---|
| XXII. Other information:<br>(a) Indicate whether the applicant or the undertaking or any of the partners/directors who are also partners/directors of another company or its associate concerns have been debarred or placed in abeyance from getting any license/letter. | |
| | |
| (b) Indicate whether the applicant or undertaking or any of its partners/directors who are also partners/directors of another company or its associate concerns have been issued a notice by the Government of India, or Letter of Intent/Permission Letter. | |
| | |
| (c) If reply to part (a) and/or (b) is in affirmative, then give details. | |
| | |

**UNDERTAKING**

I/We hereby undertake that:

(i) The capital equipment (hardware/software) required for software development, imported by us would be used for production of computer software for 100% export in STP Scheme.

(ii) The Unit is amenable to bonding by Customs;

(iii) I/we will abide by other conditions which may be stipulated by the Department of Electronics, Government of India.

(iv) I/We hereby declare that above statements are true and correct to the best of my/our knowledge and belief. I/We fully understand that any Letter of Intent/Permission Letter granted to me/us on the basis of the statement furnished is liable to cancellation or being made ineffective, in addition to any other penalty that the Government may impose or any other action that may be taken having regard to the circumstances of the case, if it is found that any of the statements or facts therein are incorrect or false.

**(Signature with full name)**

Designation __________________________

Place __________________________

Relationship __________________________

Full Address __________________________

__________________________

__________________________

Date: _________________________ Seal/Stamp of the Company:

**Note: Wherever the information desirous is to be attached in annexures.**

***Attachment - III***

## List of Export Processing Zones ("EPZs")

1. Cochin Export Processing Zone ("**CEPZ**")
   Kakkandad, Kochi 682 030
   Kerala

2. Falta Export Processing Zone ("**FEPZ**")
   2nd MSO Building, Room No. 4
   Nizam Place, 234/4, AJC Bose Road
   Calcutta
   West Bengal

3. Kandla Free Trade Zone ("**KFTZ**")
   Kandla, Gandhidham
   Gujarat

4. Madras Export Processing Zone ("**MEPZ**")
   G.S.T.Road, N.H.45, Tambaram
   Chennai 600 045
   Tamil Nadu

5. Noida Export Processing Zone ("**NEPZ**")
   Noida Dadri Road, Phase – II
   Noida District
   Ghaziabad 201 305
   Uttar Pradesh

6. Santacruz Electronics Export Processing Zone ("**SEEPZ**")
   Andheri (East)
   Mumbai 400 096
   Maharashtra

7. Visakhapatnam Export Processing Zone ("**VEPZ**")
   Udyog Bhavan Complex
   Siripuram Junction
   Visakhapatnam
   Andhra Pradesh

8. Surat Export Porcessing Zone (licensing authority KFTZ (see above))
   Private sector export processing zone.

***Attachment - IV***

**Criteria for automatic approval**

The following will be the criteria for securing automatic approval from the SIA in respect of 100% EOUs and from the Development Commissioners concerned in respect of units in EPZs:

(i) the project is not included in Schedule I[46] or Schedule II[47] of notification no. 477(E) dated July 25, 1991 (as amended) issued under the Industries (Development and Regulation) Act, 1951;

(ii) the project is located either within an EPZ, for which availability of space and conformity with the environmental and other standards of the EPZ has been confirmed from the DC, or in an area other than an EPZ for which the locational conditions stipulated by the Department of Industrial Development have been complied with;

(iii) the project undertakes to achieve value addition[48], as per the norms specifically fixed for the items concerned in the EXIM (Export Import) policy or at least 15% for electronic hardware manufacturing units or 20% in case of other industries;

(iv) the CIF value of imported capital goods is financed through foreign equity or foreign exchange required for import of plant/equipment (net of taxes) is within the ceiling of Rs. 100 million, import of second hand capital goods may be allowed provided an import license is not required;

(v) the foreign technology agreement, if any entered into by the unit, is restricted to a lump sum payment of US$ 2 million or 8% royalty (net of taxes), over a period of 5 years from the commencement of production;

(vi) the exports by the unit are to be physically made to the general currency area (*i.e.* in US$, DM, Pound, *etc.*);

(vii) the unit meets the requirements of the customs authorities insofar as:
  (a) it involves manufacturing activities within the ambit of Section 3 of the Central Excises and Salt Act, 1944;
  (b) it is amenable to bonding by the customs authority;
  (c) 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 materials or intermediate products for any other manufacturing or processing activity;

(viii) The unit has projected minimum export turnover, as specified in the Handbook of Procedures.

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46 Lists out the industries reserved for the public sector.
47 Lists out the industries in respect of which industrial licensing is compulsory.
48 Value addition for computer software is 60%.

***Attachment - V***

| Application for Setting Up Units/Private Bonded Ware houses in Export Processing Zones/under EOU Scheme |
|---|

Note: 1. Please see para 9.7 of the Policy and Para 9.2 of this Handbook.

2. Please read the general instructions given at Appendix 1 before filing this application and also some important guidelines given at the end of this application.

3. In addition to 10 copies of this application form, please also submit Appendix - 1A (in duplicate) along with this application.

INDICATE WHETHER FOR

AUTOMATIC APPROVAL OR BOARD OF APPROVAL

The Application should be submitted to the Secretariat for Industrial Approvals (SIA), Department of Industrial Development, Udyog Bhawan, New Delhi 110 01 (for setting up units under EOU Scheme)/Development Commissioner of the concerned Export Processing Zone (for setting up units in EPZs) in 10 copies along with a crossed Demand Draft of Rupees 1,000 (Rupees 2,500 in case of items falling under Schedules I & II of the New Industrial Policy) drawn in favour of the Pay & Accounts officer, Department of Industrial Development, Ministry of Industry, payable at the State Bank of India, Nirman Bhawan Branch, New Delhi in respect of proposals covered under Press Note No. 3 (1995 Series) dated April 19, 1995.

---

**For Official Use Only**

| | |
|---|---|
| Application No: | |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Date: | | | | | | | | |

Day Month Year

| | |
|---|---|
| Details of Bank Draft | |
| Amount Rs. | |
| Draft No. | |
| Draft Date | |
| Drawn on | Name of the Bank:<br>Payable at : |

I. NAME AND ADDRESS OF THE PROMOTER/INDUSTRIAL UNDERTAKING IN FULL (block letters)

| | |
|---|---|
| Name of the Undertaking/Applicant | |
| Full Address | |
| Pin Code | |
| Tel. No. | |
| Fax No. | |

II. Status of the promoter/industrial undertaking
[please tick **( ✔)** the appropriate box]

| | | |
|---|---|---|
| 1. | Central Government Undertaking: | |
| 2. | State Government Undertaking: | |
| 3. | Co-operative Undertaking: | |
| 4. | Joint-Sector Undertaking: | |
| 5. | Private Sector Undertaking: | |
| 6. | Individual Promoter: | |

III. Indicate whether this proposal is for [Please tick **( ✔)** the appropriate box]

| | | |
|---|---|---|
| 1. | Establishment of a New Undertaking: | |
| 2. | Effecting Substantial Expansion: | |
| 3. | Manufacture of New Article: | |
| 4. | Conversion of existing DTA unit into EOU (In case of conversion, attach fact sheet): | |

IV. Location

(1) Location of the proposed Undertaking

| | |
|---|---|
| Full Address | |
| Pin Code | |

ONLY FOR PROJECTS UNDER EOU SCHEME

(2) Please indicate if the proposed location is in a Centrally Notified Backward Area [please tick **( ✔)** the appropriate box]

No ________ Yes________ if yes, indicate Category

(a) Indicate whether it is within 25 Kms from the periphery of the standard urban area limit of a city having population above one million according to 1991 census.

Yes________ No_________

(b) Is it located in an Industrial Area/Estate designated/ set up prior to issuance of Notification No. 477(E) dated July 25, 1991.

Yes________ No_________

(c) If not, does it come under the category of non-polluting industries as notified by the Government.

Yes________ No________

V. Item(s) of manufacture: (including By-products/Co-products) (if necessary, additional sheets may be attached

| Item(s) Description | Capacity (Unit = ) | Item Code (ITC Code No.} |
|---|---|---|
| | | |
| | | |
| | | |
| | | |

VI. Whether the item is covered in Schedule I, Schedule II, or Schedule III of the notification no. 477(E) dated July 25, 1991

| **Schedule I** | | **Schedule II** | | **Schedule III** | |
|---|---|---|---|---|---|
| Yes | | Yes | | Yes | |
| No | | No | | No | |

VII. Production

(In case of more than one item, supplementary sheets may be used.)

| | Quantity (Unit = ___________________) |
|---|---|
| 1st Year | |
| 2nd Year | |
| 3rd Year | |
| 4th Year | |
| 5th Year | |

(1) FOB value of exports (1$ = Rs. )

| | (Rupees Lakhs) | | (US$ (Thousand)) | |
|---|---|---|---|---|
| 1st Year | | | | |
| 2nd Year | | | | |
| 3rd Year | | | | |
| 4th Year | | | | |
| 5th Year | | | | |
| Total | | | | |

VIII. Import Requirements (Please attach details & values). Details of second - hand goods to be given separately.

CIF Value of Import

| (a) Capital Goods | (Rupees Lakhs) | | (US$ (Thousand)) | |
|---|---|---|---|---|
| 1st Year | | | | |
| 2nd Year | | | | |
| 3rd Year | | | | |
| 4th Year | | | | |
| 4th Year | | | | |
| 5th Year | | | | |
| Total | | | | |

(b) Raw Materials including components, intermediates and packing materials

| | | | | |
|---|---|---|---|---|
| 1st Year | | | | |
| 2nd Year | | | | |
| 3rd Year | | | | |
| 4th Year | | | | |
| 4th Year | | | | |
| 5th Year | | | | |
| Total | | | | |

(c) Consumables, Components & Spares for capital goods only

| | | | | |
|---|---|---|---|---|
| 1st Year | | | | |
| 2nd Year | | | | |
| 3rd Year | | | | |
| 4th Year | | | | |
| 4th Year | | | | |
| 5th Year | | | | |
| Total | | | | |

IX. Indigenous requirements

| (a) Capital Goods | (Rupees Lakhs) | | (US$ (Thousand)) | |
|---|---|---|---|---|
| 1st Year | | | | |
| 2nd Year | | | | |
| 3rd Year | | | | |
| 4th Year | | | | |
| 4th Year | | | | |
| 5th Year | | | | |
| Total | | | | |

(b) Raw Materials (including components, intermediates and packing materials)

| | | | | |
|---|---|---|---|---|
| 1st Year | | | | |
| 2nd Year | | | | |
| 3rd Year | | | | |
| 4th Year | | | | |
| 4th Year | | | | |
| 5th Year | | | | |
| Total | | | | |

(c) Consumables, Components & Spares for capital goods only

| | | | | |
|---|---|---|---|---|
| 1st Year | | | | |
| 2nd Year | | | | |
| 3rd Year | | | | |
| 4th Year | | | | |
| 4th Year | | | | |
| 5th Year | | | | |
| Total | | | | |

X. Investments

(Rupees Lakhs)

| | | | | |
|---|---|---|---|---|
| (a) Land | | | | |
| (b) Building | | | | |
| (c) Plant & Machinery | | | | |
| (i) Indigenous | | | | |
| (ii) Imported (C.I.F.Value) | | | (US$ (Thousand)) | |
| (iii) Total (I) + (ii) | | | | |
| (d) Total Project Cost | | | | |

XI. Whether foreign technology agreement is envisaged
(Please tick **( ✔)** the appropriate box).

Yes No.

If yes, please indicate ________ __________

| | | |
|---|---|---|
| (i) Name and address of Foreign Collaborator | | |
| (ii) Terms of Collaboration | Rupees (Lakhs)<br>Gross of Taxes | |
| (a) Lumpsum Payment | | |
| (b) Design & Drawing Fee | | |
| (c) Payment to Foreign Technicians | | |
| (d) Royalty (in exports) | | |
| (e) Royalty ( on DTA Sales if envisaged) | | |
| (f) Duration of Agreement ( No. of Years) | | |

XI. Equity including foreign investment

| (i) | (Rs. Lakhs) | | (US$ Thousand) | |
|---|---|---|---|---|
| (a) Authorised | | | | |
| (b) Subscribed | | | | |
| (c) Paid up Capital | | | | |

Note: If it is existing company, please give the break -up of the existing and proposed capital structure separately.

(ii) Pattern of shareholding in the paid-up capital (Amount in Rupees)

| | (Rs. Lakhs) | | (US$ Thousand) | |
|---|---|---|---|---|
| (a) Foreign holding | | | | |

______%

(b) Non-resident Indian company/individual holding

| | | | | |
|---|---|---|---|---|
| (i) Repatriable | | | | |

______%

| | | | | |
|---|---|---|---|---|
| (ii) Non-Repatriable | | | | |

______%

| | | | | |
|---|---|---|---|---|
| (c) Resident holding | | | | |

______%

| | | | | |
|---|---|---|---|---|
| (d) Total {a+b(I+ii)+c} | | | | |

Equity ______%

| | | |
|---|---|---|
| (iii) External Commercial Borrowings | | |

| XII. Foreign exchange earnings in first five years (based on f.o.b. value of exports of entire production | 1st Year | 2nd Year | 3rd Year | 4th Year | 5th Year | Total | Total (in U.S. $) |
|---|---|---|---|---|---|---|---|
| | | | | | | | |
| | | | | | | | |

| XIV. Foreign exchange outgo on: | 1st | 2nd | 3rd | 4th | 5th | Total | Total (U.S. $) |
|---|---|---|---|---|---|---|---|
| (i) Import of machinery | | | | | | | |
| (ii) Import of raw materials and components | | | | | | | |
| (iii) Import of spares and consumables | | | | | | | |
| (iv) Repatriation of dividends and profits to foreign collaborators | | | | | | | |
| (v) Royalty | | | | | | | |
| (vi) Lump-sum know-how fee | | | | | | | |
| (vii) Design and drawing fee | | | | | | | |
| (viii) Payment to foreign technicians | | | | | | | |
| (ix) Payment on training of Indian technicians abroad | | | | | | | |
| (x) Commission on Export *etc.* | | | | | | | |
| (xi) Foreign Travel | | | | | | | |
| (xii) Amount of interest to be paid on external commercial borrowing/deferred payment credit (specify details) | | | | | | | |
| (xiii) Any other payments (specify details) | | | | | | | |
| Total (i) to (xiii) | | | | | | | |
| Net Foreign Exchange earnings in five years: | | | | | | | |

XV. REJECTS

Generation of Rejects/Sub-Standard Goods of the Finished Goods. (In case rejects are more than 5% estimated percentage with justification may be given).

___________________________

Percentage of 5 years production

___________________________

Quantity (Unit = __________)

___________________________

Value (Rs. lakhs)

XVI SUB-CONTRACTING

| | Yes | No |
|---|---|---|
| (a) Whether any of the required components are proposed to be sub-contracted to small scale and ancillary units. | | |

(b) Name of the Component

____________________

(c) Percentage of this component in relation to the total expected value of production

____________________

| | Yes | No |
|---|---|---|
| (d) Whether item of sub-contracting envisages any change in form/nature/character of the goods | | |

XVII. EMPLOYMENT

(All figures in numbers)

| | Existing | Proposed |
|---|---|---|
| (a) Supervisory | | |
| (b) Non-supervisory | | |
| | | |

XVIII. NET FOREIGN EXCHANGE EARNING

Average NEFE on FOB value of exports in 5 years in terms of paragraph 9.29 of the Policy

________________%

XIX. MARKETING

| | Yes | No |
|---|---|---|
| (a) Whether marketing tie-up/buy-back envisaged/finalized (attach documents, if any) | | |

| | G.C.A. | R.P.A. |
|---|---|---|
| (b) Destination of exports (in Percentage) | % | % |

XX OTHER INFORMATION

| | |
|---|---|
| | |
| (i) Any special feature of the project proposal which you want to highlight: (Please attach the Project Report, for new units.) | |
| | |
| (ii) (a) Whether the applicant has been issued any industrial licence or Letter of Intent/Letter of Permission under EOU/EPZ Scheme? If so, please give full particulars especially reference number, date of issue, items of manufacture and progress of implementation of each project. | |
| | |
| (b) Whether the applicant has submitted any other application for Letter of Intent/Letter of Permission which is pending with the Board of Approval(s)? If so, please give particulars like reference number, name under which application made, items of manufacture, *etc.* | |
| | |
| (iii) Whether the applicant or any of the Partners/Directors who are also Partners/Directors of another company or its associate concerns have been debarred from getting any license, Letter of Intent, Letter of Permission under the Export & Import Control Act, 1947/Foreign Trade (Development and Regulation) Act, 1992 or otherwise penalized. | |

Place ____________ Signature of the applicant ____________________________

Date ____________ Name in Block Letters ____________________________

Designation ____________________________

Official Seal/Stamp

Full Official Address ____________________________

Full Residential Address ____________________________

**UNDERTAKING**

I/We hereby declare that the above statements are true and correct to the best of my/our knowledge and belief. I/We will abide by any other condition which may be stipulated by the Development Commissioner of EPZ/Secretariat of Industrial Approvals (Department of Industrial Development). I/We fully understand that any Permission Letter granted to me/us on the basis of the statement furnished is liable to cancellation or any other action that may be taken having regard to the circumstances of the case if it is found that any of the statements of facts therein are incorrect or false.

Place ____________ Signature of the applicant ________________________________

Date ____________ Name in Block Letters ________________________________

Designation ________________________________

Official Seal/Stamp

Full Official Address ________________________________
________________________________

Full Residential Address ________________________________