Chapter IV: Land allotment and utilisation

Land appeared to be the most crucial and attractive component of the scheme. Out of 45635.63 ha of land notified in the country for SEZ purposes, operations commenced in only 28488.49 ha (62.42 %) of land. In addition, we noted a trend wherein developers approached the government for allotment/purchase of vast areas of land in the name of SEZ. However, only a fraction of the land so acquired was notified for SEZ and later de-notification was also resorted to within a few years to benefit from price appreciation. In terms of area of land, out of 39245.56 ha of land notified in the six States[10], 5402.22 ha (14%) of land was de-notified and diverted for commercial purposes in several cases. Many tracts of these lands were acquired invoking the 'public purpose' clause. Thus, land acquired was not serving the objectives of the SEZ Act.

Land and its development are State subjects, but acquisition of land is on the Concurrent List. As per SEZ Act 2005, land for establishment of SEZs needs to be contiguous and the developer is required to have irrevocable rights over the Land. Lands are being allotted by the State Government directly or through Land banks/Agencies on the basis of proposals made by the Developers. Land is acquired vide section 4 read with Section 6 of Land Acquisition Act 1894. It is a known fact that land acquisition for SEZs has given rise to widespread protest in various parts of the country. Large tracts of land were being acquired across the country for this purpose. The acquisition of land from the public by the government is proving to be a major transfer of wealth from the rural populace to the corporate world. Questions have already been raised on account of loss of revenue on tax holidays and the effect on agriculture production. An Expert Group Report[11] released by the Planning Commission had called into question the benefits of SEZs.

Monitoring of acquisition/de-notification of land needs to be done by MOC&I as acquisition is in the name of the SEZs which is a Central Scheme and involves invoking of Land Acquisition Act which is again a Central Act.

Under this section, we reviewed the land allotment and land utilisation related issues.

[10] *Andhra Pradesh, Gujarat, Karnataka, Maharashtra, Odisha and West Bengal*
[11] *"Development Challenges in Extremist Affected Areas".*
Online at http:// planningcommission.nic.in/reports/publications/rep_dce.pdf.

4.1 Ownership of land

In the present set up, a developer can acquire the land by direct purchase for establishing a SEZ. In cases where State Government acquires the land under *"public purpose"* or the land is in the ownership and possession of the State Government or a State Government Undertaking like APIIC in Andhra Pradesh, KIADB in Karnataka etc, the State Government may either transfer the Land on *ownership or lease* basis to the developer, depending on the terms and conditions under which the land is acquired, and on the policies and procedures adopted in the particular State. The developer, however, as per the extant rules (Rule 11(9) of SEZ Rule) cannot sell the land within a SEZ and the land in the processing and non-processing area can be allotted only on lease basis, as per the SEZ Act.

We noted that the transfers of the Government land to the developers were mostly taking place on transfer of ownership basis. Technically, for a developer/unit-holder, access to land for operating his business should be the key concern rather than having the ownership of the land transferred in his name. In the backdrop of developers not commencing their investments for years together, transfer of ownership of land is saddled with the risk of developers using it for furtherance of their economic interests based on the government land, and or diversion after getting it de-notified, which is not in the interest of the State. Instances pointed out in Paragraph 4.5 of this report, further substantiates the observation made in audit.

It appears that the ownership of land acquired by the State Government for a SEZ is transferred to the Developer. It could be considered by MOC&I to lease out the land to the developer/unit-holder on a long-term basis, with the provisions of extension duly built into the lease deed. This may help in controlling the misuse and diversion of SEZ land through de-notification**.**

DoC in their reply explaining the provision of Rule 7 of the SEZ rules stated (June 2014) that for notification of the SEZ, the developer should have legal possession and irrevocable rights to develop the said area as SEZ and that it is free from all encumbrances and for the developer having leasehold rights, the lease shall be for a period not less than 20 years. Therefore, the SEZ Rules does not insist that the developer should be the owner of the land. It is for the State Government to decide whether the land is to be provided on a freehold or leasehold basis.

Land being a State subject, BoA on SEZs only considers those proposals, which have been duly recommended by the State Government. Further, pursuant to the decision of Empowered Group of Ministers (EGoM) the State

Governments have been informed on 15th June 2007 that the Board of Approval will not approve any SEZs where the State Governments have carried out or propose to carry out compulsory acquisition of land for such SEZs after 5th April 2007.

Government of India has already issued Instruction No. 29 dated 18.08.2009 to all Chief Secretaries that State Governments should not undertake any compulsory acquisition of land for setting up of the SEZs, and BoA will not approve any SEZs where the State Governments have carried out or proposed to carry out compulsory acquisition of land for such SEZs after 5th April, 2007. Moreover, the notification of SEZs and its de-notification is done only after the "NOC" from the State Government.

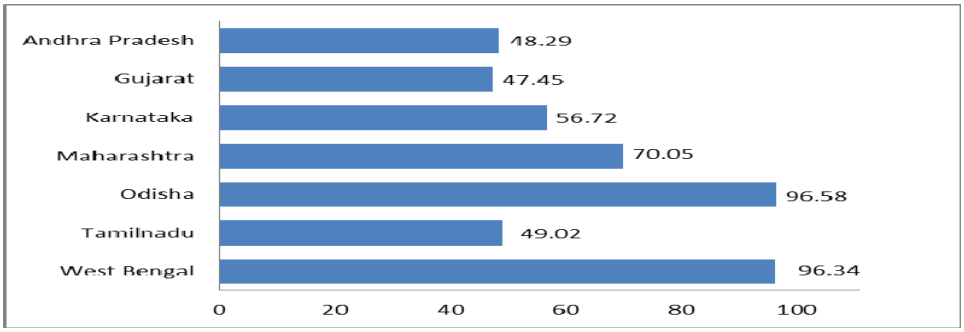
Reply of DoC does not address the issue of misuse and diversion of land after de-notification of SEZ. Department may elucidate the mechanism that they have to prevent such misuse or diversion of land by developers.

4.2 Land allotment to SEZs

Since the enactment of SEZ Act 2005, 576 formal approvals of SEZs covering 60374.76 hectares was granted in the country, out of which 392 SEZs covering 45635.63 hectares have been notified till date (March 2014).

We observed that out of 392 notified zones, only 152 have become operational (28488.49 hectares). The land allotted to the remaining 424 SEZs (31886.27 hectares) was not put to use (52.81 per cent of total approved SEZs) even though the approvals and notifications in 54 cases date back to 2006. We also observed that out of the total 392 notified SEZs, in 30 SEZs (1858.17 hectares) in Andhra Pradesh, Maharashtra, Odisha and Gujarat, the Developers had not commenced investments in the projects and the land had been lying idle in their custody for 2 to 7 years. Details of extent of area not put to use in the major States are indicated below:

Figure 7: SEZs Land lying idle (%) in various States



A case where second formal approval was given even though the applicant failed to put to use the first one is highlighted in the Box-7.

Box-7: Second approval given despite failure to put to use the first one

M/s Kakinada SEZ (KSEZ) Andhra Pradesh was granted 'formal approval' for setting up of another multi-product SEZ adjacent to the already approved SEZ in Kakinada on 1013.60 hectares of land in February 2012 even though the first SEZ admeasuring 1035.66 hectares (In-principle approval was given in 2002) was not put to use in 12

DoC, stated (April 2014) that Central Government does not allot any land for SEZs, only State Governments at times acquire land through their Industrial Infrastructure Corporations. In most of the occasions land is acquired by the private developers. On the recommendation of State Government, DoC, after verification of title and contiguity of the land, accorded approval for SEZ.

DoC in their reply stated (June 2014) that though SEZ Act is a Central Act, land is either acquired by the developer themselves or it is allotted/its acquisition is facilitated by the State Govt. Before de-notification of any SEZ, clearance from the State Govt. is always sought. Thus, in the matter of land, in our federal system, intervention of a Central Ministry may not be appropriate. This issue needs to be looked into by the respective State Governments.

Audit is of the opinion that even after a lapse of 2 to 7 years after notification, Developers could not implement the project on lands acquired by invoking Land Acquisition Act under Public interest clause. Further, considering that agricultural land was acquired in many cases and persistence of the trend of acquiring vast tracts of land without any economic activity would be a matter of social concern in future, necessitating a caution in allocating agricultural land.

4.3 Allotment of restricted land

The Supreme Court of India in Civil Appeal No. 4787/ 2001 (SLP No. 13695/2000) ordered (25th July 2001) that forests, tanks, ponds, etc., which are nature's bounty, maintain delicate ecological balance and hence need to be protected for a proper and healthy environment. Further, the Central Government issued instructions in April 2006 banning construction activity within 500 Yards from Defence Notified Land. SEZ Instruction of October 2010 prescribes restriction on use of irrigated and double crop land for setting up of SEZs.

We observed that 9 SEZs were allotted land which was restricted under various statutes (Defence, Forest, Irrigated land) in Andhra Pradesh,

Maharashtra and West Bengal involving 2949.61 hectares of restricted land as detailed below:

Nature of land	Name of the SEZ	State	Are of Land (ha)		% of restricted land notified as SEZ
			Notified as SEZ	under 'restricted' category	
Defence Land	M/s Hyderabad Gems	Andhra Pradesh	80.93	29.54	*36.5*
Forest Land	M/s Indutech		101.21	101.21	*100*
	M/s Stargaze		101.21	101.21	*100*
	M/s Brahmani		101.21	101.21	*100*
	M/s JT Holdings		28.34	28.34	*100*
	M/s Adityapur Industrial Area	West Bengal	36.42	21.93	*60.19*
Irrigated Land	M/s Sricity	Andhra Pradesh	1538.12	1538.12	*100*
	M/s Kakinada SEZ		2049.26	1018.02	*49.67*
Green Zone	M/s Geetanjali Gems Ltd	Maharashtra	10.03	10.03	*100*
Total			4046.73	2949.61	*72.88*

Land identified for SEZs in case of M/s Sricity and M/s Kakinada SEZ in the state of Andhra Pradesh comes under Telugu Ganga and Pithapuram Irrigation Projects respectively. In respect of Kakinada SEZ, Government of Andhra Pradesh in December 2009 accorded permission to delete the land coming within the SEZ, from the Ayacut of the Pithapuram branch canal.

DoC in their reply stated (June 2014) that 'land' is a State subject. State Governments have been advised that first priority should be for acquisition of waste and barren land, and only if necessary, then single crop agricultural land could be acquired for the SEZs. Cases quoted by the Audit are isolated cases and State Governments are to look into such matters before recommending cases to the Ministry for formal approval of SEZs.

Reply of the department is not acceptable. It appears that DoC absolved itself from the responsibility of monitoring and proper implementation of the scheme.

4.4 Under-utilisation of land in processing area

Analysis of extent of land put to use in the selected operational SEZs revealed that the processing area[12] earmarked for SEZs could not be optimally used for the intended purpose in 18 SEZs involving an area of 4185.19 Ha in eight states. They could use only 16.29 per cent of the land in the processing area as against the norm of 50 per cent. Though many of them were notified in 2006/2007 (except Adani Ports in Gujarat) the percentage of utilisation is abysmal as detailed overleaf**:**

[12] *Processing area is an area of SEZ which is meant for manufacturing, services and infrastructure for units. Minimum area to be set apart for this purpose is minimum of 50% of the total SEZ area.*

Name of the Developer	Processing area under-utilised (%) (Area in ha)	Sector /Industry
Andhra Pradesh		
FAB city	91.16 (296.26)	Semi Conductors
AP SEZ	83.89 (1573.78)	Multi Product
Sricity	93.56 (719.48)	Multi Product
Brandix	88.31(234.03)	Apparel
Chandigarh		
M/s Ranbaxy Laboratories Ltd	87.10 (27.00)	Pharmaceuticals
Gujarat[13]		
Adani Ports SEZ	87.11 (5639.09)	Multi Product
Maharastra		
Wokhardt Infrastructure	89.78 (58.52)	Pharmaceuticals
Odisha		
IDCO SEZ Chandaka Industrial Estate	30.70 (21.24)	Information Technology
Rajasthan		
Boranada SEZ	52.88 (23.38)	Handicrafts
Karnataka		
Infosys Ltd., SEZ (Mysore)	60 (13.22)	Information Technology
Quest SEZ	91.29 (97.07)	Engineering Products
KIADB Food processing SEZ	73.56 (52.99)	Food Processors
KIADB Pharmaceutical SEZ	78.22 (63.97)	Pharmaceuticals
KIADB SEZ, Hassan	55.47 (92.54)	Textiles
Tamilnadu		
J Matadee Free Trade Zone P Ltd.	90.48 (76.71)	FTWZ
Flextronics Technologies India P ltd	56.57 (46.95)	Electronic Hardware
New Chennai Township Private Limited	89.75 (54.48)	Multi Services
New Chennai Township Private Limited	82.12 (51.84)	Light Engineering
Average (%)/ (Area involved)	85.78 (9142.54)	
Total	83.71 (3503.45)	

Even though the above listed 17 SEZ were notified between April 2006 to August 2008, 3503.69 ha (83.71 per cent) of processing area was not utilised out of the 4185.19 ha of land earmarked for processing. In case of Adani Ports, out of the notified (May 2009) area of 6472.86 ha only 833.77 ha was utilised leaving 5639.09 ha (87.11 per cent) unutilised so far.

In two instances, unauthorised allotment of Units were observed in the sector specific SEZ (food) developed by KIADB in Karnataka where the units (M/s Hassan Bio Mass Power company Pvt Ltd and M/s Yakima Filers Private Ltd) were occupying the SEZ area without necessary approvals. Even the activity of the Units were not related to the sector specific SEZ.

[13] *Notified in 2009. Area of land unutilised arrived by subtracting from notified area as processing area was not furnished to Audit.*

Further, 74 LoAs were cancelled in Jaipur SEZ-II and Boranada SEZ in Rajasthan. However, the Land admeasuring 32.72 acres of land could not be returned to the Developer as the units have made lease agreement for 99 years and resultantly occupied the land. Thus, the Units were not willing to vacate the land even after their LoAs were cancelled. The lease period should be co-terminus with the validity period of LoA (five years).

DoC in their reply (June 2014) while accepting the audit observation stated that the provision already exists in the SEZ Rules regarding termination of lease agreement in case of expiry or cancellation of LoA. Further, in order to utilise the vacant land available in SEZs, an exercise was undertaken to identify vacant spaces in the processing area of the notified SEZs and detailed information relating to vacant spaces in SEZs has been provided to National Manufacturing Competitive Council, FICCI, CII, ASSOCHAM, Ministry of MSME, Department of Industrial Policy and Promotion etc. for wider circulation so as to help in populating the SEZs.

DoC further stated that it is a fact that sometimes land of SEZs may remain vacant due to non-setting up of Unit, but investment in SEZs depends on many factors like change of Government policies, market conditions etc. And the decision to set up units (which occupy the processing area) depends on a host of factors like global recession, industry specific reasons, local factors etc. DoC makes efforts to extend facilitation to the entrepreneurs for setting up of Units.

Reply was not acceptable to audit because respective DC, SEZ failed to get the land vacated from the unit, though their LoAs were cancelled.

4.5 Diversion of SEZ land

(a) Section 6 of the Land Acquisition Act 1894 bestows rights on State governments to acquire land under 'public purpose'.

The Government of Andhra Pradesh in June 1996, issued orders to keep the interest of small and marginal farmers in mind while acquiring the land. In Andhra Pradesh, Andhra Pradesh Industrial Infrastructure Corporation Ltd. (APIIC), a Government undertaking, provides industrial infrastructure and develops industrial townships. APIIC requested the revenue authorities to acquire land under Land Acquisition Act for the establishment of SEZs and the same was stated in the Draft notification and draft declaration issued in this regard.

We observed in respect of four SEZs tabulated below, out of the allotted land of 11328.12 hectares, only 6241.03 hectares of land was actually notified (55.09 per cent) for SEZs purpose. The allotted land was acquired by using the

government machinery under the "public purpose" clause of Land Acquisition Act for establishment of SEZs by private developers. The remaining 5087.12 hectares was allotted to other private DTA clients or kept with the developer. Thus, 44.91 per cent of the total land of 11328.15 hectares was not utilised for the intended SEZ purpose.

We also noted that out of the notified land, 1667.66 ha of land was subsequently de-notified by the developers reducing the overall non-utilisation for intended purpose to 59.62 per cent.

Name of the SEZs State	Area of land (ha)					Land acquired for SEZs but not used for SEZs (%)
	Requested by Developer	Acquired and handed over to Developer	Notified as SEZ	De-notified	Non-SEZ land with Developer	
Andhra Pradesh						
APIIC Atchyutapuram	3760.20	3760.20	2206.03	905.21	2459.38	65.40
Sricity, Chitoor	5442.50	3158.70	1538.12	449.54	2070.12	65.53
Kakinada SEZ (KSPL)	3995.54	3849.55	2049.26	-	1800.29	46.76
Gujarat						
Reliance SEZ, SURSEZ	559.70	559.70	447.62	312.91	424.99	75.93
Total	13757.94	11328.15	6241.03	1667.66	6754.78	59.62

A case of diversion of land for private industries is also highlighted in Box 8 below.

Box 8: Diversion of land for private industries

In M/s Sricity SEZ, Andhra Pradesh declared in its application that the land acquired and allotted by the Corporation shall be utilized for developing multi-product SEZ only. The Developer requested (February 2006) for 5442.5 ha of land for establishment of SEZ out of which 3158.70 ha was handed (May 2006 to December 2011) to Developer. The land was acquired @ ₹ 2.5 lakh per acre for dry land and ₹ 3.0 lakh per acre for wet land. The Developer notified only 1538.12 ha of land (September 2007 to April 2010) and further de-notified 449.54 ha of land (October 2010 and November 2011). Thus land involving 2070.12 ha of land of the total allotted land was not used for the intended purpose. It was also noted that the de-notified land was allotted to private DTA industries viz., Alstom, Pepsico, Cadbury, MMD, Unicharm, Colgate, ZTT, IFMR, Kellogg's, S&J Turney Contractors, Tecpro, Sripower, RMC/WMM, Danjeli, Ayurvet, TII, Godavari Udyog, Thaikikuwa. However, the price at which the land was allotted to DTA Units was not produced to audit.

Similarly in Essar Steel Hazira Ltd. and Reliance Industries Ltd, Jamnagar SEZs in Gujarat the de-notified area of 247.522 ha and 708.13 ha respectively were allotted to DTA units.

It was further observed that EGoM (Empowered Group of Ministers) in their meeting (April 2007) emphasized the need for restricting the use of land acquisition act for acquiring land for private SEZs and issued guidelines that the Land Acquisition Act would no longer be used for making land transfers to private SEZs. The guidelines were circulated to all the DCs by Commerce Secretary in June 2007. Further, MOC&I reiterated the same in its Instruction No.29 dated 18th August 2009. However, in respect of Sricity SEZ, land was acquired by APIIC in phases invoking the Land Acquisition Act and handed over from May 2007 to December 2011, in contravention of the instructions issued by EGoM and MOC&I.

A case of EOU allowed under SEZ is highlighted in Box-9 below:

Box-9: EOU allowed under SEZ

In West Bengal under FALTA SEZ M/s SenPet (India) Ltd was allotted plot No. 51 to 56 at Sector-II of FEPZ for setting-up of an EPZ Unit. In 2003, the Unit opted for exit from the SEZ scheme by way of conversion into a 100% Export Oriented Unit (EOU) and the same was allowed by the Ministry.

We noted that though the Unit was permitted to convert into an EOU, the developer was not asked to *physically move out of the SEZ* but was allowed to continue utilising the same premises. Further no orders for de-notification of the land being occupied by the Unit were produced to audit and the Unit continues to carry out their activities as a 100% EOU from the same premises.

(b) In the Development Plan Gurgaon-Manesar-2021, provision of SEZ was made wherein non-polluting industrial units associated with high technology and high precision were to be set up.

Though the Final Development Plan-2021 was operative, Development Plan-2025 was notified on 24 May 2011, in which an area of 4570 hectares was earmarked for SEZ. Apart from earmarking land for SEZ in development plan, SEZs like DLF SEZ, Unitech SEZ, Orient Craft SEZ, Metro Valley SEZ etc. were also notified by Government of India. Instead of establishing industrial units in SEZ, the Development Plan 2025 was superseded by Development Plan 2031 notified on 15 November 2012. In the Development Plan 2031, 4570 hectares of land earmarked for SEZ land which included 1458.03 acres of land acquired from farmers for development of SEZ was converted into residential/commercial use on the plea that there were no more takers for SEZs.

It was observed in the audit that, SEZ sectors were converted into residential as well as Industrial sectors. With the conversion of the Zoning Plan, the implementation of SEZ was adversely affected. In fact, Reliance Haryana SEZ

Limited (RHSL) requested (January 2012) the State Government that the suggestion of the State Government to de-freeze the area presently earmarked for development of SEZ had come at a time when the RHSL had made substantial investment in the project. The RHSL further stated that in case the State Government decides to de-freeze the area, RHSL would not be able to complete even the development of first phase of 2500 acres of SEZ, let alone expansion to 12500 acres of SEZ. With the de-notifying of this area, the SEZ conceived by RHSL in which State Government was also a major stake holder was abandoned by RHSL as discussed in paragraph above.

In addition, following policies incentivized the developers to utilize the land for other purposes:

- The State Government removed the limit of the maximum height of the buildings in case of Group Housing Colonies and Commercial Colonies for which the licences were issued by Town and Country Planning Department (TCPD). After this notification, developers were allowed to construct any number of storeys. Resultantly, developers engaged in Real Estate were benefitted.
- Section 5 of Haryana Ceiling on Land Holding Act, 1972 was amended by promulgating 'The Haryana Ceiling on Land Holdings (Amendment) Ordinance 2011' (Haryana Ordinance No.4 of 2011). With this amendment individuals and private companies were allowed to buy unlimited chunks of land for non-agriculture purposes. Subsequently, a notification was issued and the Act was deemed to have been modified retrospectively with effect from 30th January, 1975. Notification with retrospective effect was apparently to benefit the persons who owned land in excess of the permissible limit prescribed in the land ceiling Act. With this amendment, developers who had got SEZs de-notified were able to hold this land for purposes other than SEZ also.
- In July 2013, a policy for conversion of de-notified SEZs into cyber park/cyber city was formulated. Up to 10, 4 and 2 per cent of the area was allowed for the purposes of group housing, commercial and recreational component respectively on payment of applicable charges. Since with the promulgation of this policy, the developers were permitted to use de-notified SEZ land for Group Housing and recreational purposes also, the objective of SEZ policy was defeated.

DoC in their reply (June 2014) stated that based on the decision of the EGoM, DoC had issued instructions (15.6.2006) to all State Governments stating that

"BoA will not approve any SEZs where the State Governments have carried out or propose to carry out compulsory acquisition of land for such SEZs after 5th April, 2007."

Since land is a State subject, State Governments are free to frame any law/rule on the subject. MOC&I may not have right to give directions or guidelines to frame any such rules.

Nevertheless, necessary steps have already been taken by the Ministry by issuing Instruction on 18.08.2009 and clarification on 13.09.2013.

The land is de-notified on payment of concessions/benefits availed as per the relevant provisions of SEZ law, and the same is put to industrial use for setting up new projects in DTA, as per the land use policy of Government of Gujarat.

Specific replies to the observations highlighted by audit have not been responded by the DoC.

Recommendation: *MOC&I may review the SEZ policy and procedures regarding developers seeking vast tracts of land from the government in the name of SEZs and putting only a fraction of it for notification as SEZ.*

4.6 Development of SEZs without approval of NCRPB

In order to ensure balanced and harmonized development of the region, 'National Capital Region Planning Board' (NCRPB) was set up by GOI in March 1985 under 'the National Capital Region Planning Board Act -1985'. All the five SEZs operationalised in Haryana fall in NCR.

As per Section 17 of NCRPB Act, each participating State has to prepare a Sub-Regional Plan for the area falling within that State. In terms of Section 19 of the Act, each participating State has to refer such Plan to the Board and finalize the Sub-Regional Plan after ensuring that it is in conformity with the Regional Plan of NCRPB.

Regional Plan 2021 for National Capital region was notified by NCRPB on 17 September 2005. It was mandatory for the State to prepare a Sub Regional Plan in conformity with the Regional Plan. The Sub Regional Plan has not been got approved by Haryana even after nine years of preparation of Regional Plan by NCRPB.

In the CWP 19050 of 2012, the Punjab and Haryana High Court observed (23 January 2014) that development works of areas falling in NCR were being executed without approval of Sub Regional Plan by NCRPB.

The State Government had stated in Hon'ble Punjab and Haryana High Court that it would put on hold the grant of fresh licenses, change of land use and further acquisition till the Sub Regional Plan is approved by NCRPB.

As a result of non-preparation of Sub Regional Plan, further licensing of de-notified SEZs has been put on hold.

DoC in their reply (June 2014) stated that in a Single Window mechanism, Industry Department of the State Government is the nodal Department which is required to obtain all the necessary clearances/ approvals from all the concerned agencies including NCRPB before sending its no objection certificate to the DoC. Once NOC from the Industry Department is received, it is presumed that all the necessary approvals are in place. All SEZs are approved on the recommendation of the State Govt.

Reply of the department and cases highlighted by audit indicates that there was no mechanism with BoA to cross verify the NOC issued by Industry Department.

4.7 SEZ approved on a plot of land meant primarily for hospital and training institution.

BoA, MOC&I approves the establishment of SEZ vide procedure established under Section 3 of SEZ Rules, 2006. Rule 5 specifies the area requirement for establishment of different SEZs. Rule 7 further mentions the details to be furnished by Developers for issue of notification for declaration of area as a SEZ.

Proposal for setting up of a SEZ is to be made in Form A of the SEZ Rules, 2006, which requires the applicant to certify possession and contiguity of the land which needs to be free from all encumbrances.

Test check of records of operational SEZs revealed that M/s DLF Limited got approval (October 2006) under Section 3 of SEZ Rules, 2006 for setting up of IT/ITES SEZ on a 37 acre land against a minimum requirement of 25 acre. This land was purchased from M/s East India Hotels Limited (EIHL) through two conveyance deeds for 29.82 acre and 7.19 acre comprising 81.1% and 18.9% of the land parcel respectively. There was a clause in the conveyance deed of the larger land parcel (29.82 acre) that the purchaser should utilise the land for the permitted public purpose, i.e. construction of 300 bedded hospital and an institute of hotel management.

BoA, MOC&I approved setting up of IT/ITES SEZ on a land primarily earmarked for hospital and a hotel management institute without scrutiny of the land use in the conveyance deed, in violation of the Rule 3 and 7 of the

SEZ Rules. BoA also did not observe any short comings during its periodical review through the respective DC SEZ.

This 29.82 acre land parcel also suffered from a disputed land release order by the State Government of Haryana. The High Court of Punjab and Haryana in a related civil writ petition held (3 February 2011) that the whole transactions of land release was a result of fraudulent exercise of power and permission granted to the Company to sell the land and execution of sale deed was illegal. The State Government was directed to initiate the proceedings for acquisition of land and to put to use for the permitted public purpose.

M/s DLF however, filed a Special Leave Petition (SLP) challenging the High Court order in the Hon'ble Supreme Court of India and the Apex Court had stayed the operation of the impugned judgment till further orders.

MOC&I in their reply (June 2014) to the audit observation stated that since the matter was sub judice, there were no comments to offer.

Audit maintains that BoA, MOC&I approved a SEZ without carrying out the due diligence of verifying the title and usage of the land proposed by the developer nor did it point out the lacunae while monitoring the progress of the SEZ.

4.8 De-notification of lands

For SEZ purposes substantial tracts of land are required by the developer and such land is generally acquired through government machinery under the "public purpose" clause of Land Acquisition Act for establishment of SEZs. After being notified as SEZs, few developers subsequently opt for de-notification from the SEZ scheme. Though Rule 11(9) of SEZ Rules 2006 restricts the developer from selling any land within the SEZs, there is no restriction/condition on usage of such de-notified land. This encourages the developers to de-notify SEZ land and either keep it in their possession or sell it in the absence of any restrictive policy. In fact Haryana had incentivised this process (as indicated in box 10 below).

Box No.10- One time relaxation for changing land use pattern by Haryana Government

Haryana Government vide their policy decision dated 9th July 2013 accorded one time relaxation for changing Land Use pattern for already de-notified SEZs or SEZs which would be de-notified within subsequent six months. There were 49 Approvals (46 formal and 3 In-principle), 35 Notified and 5 Operational SEZs in the State. In 2013, BoA had accorded approval for five de-notifications and withdrawal of one Formal Approval.

According to the system in place, a developer who is not interested in continuing with the scheme has an option to apply for identification of part or full area of land by applying for the same to the DC with an undertaking that he would pay back the concessions availed till then which mostly would be in the form of reimbursement of concessions availed on account of various exemption/concessions given by Central and State Governments. Based on the recommendation of the State, the extent of land is de-notified 'in principle' which is formally declared through another (formal) notification. Besides this, there are no other conditions attached to it.

It is a common understanding that consequent on notification of a project, the land rates in and around the project site appreciates either immediately or in due course, as the project progresses, depending on the nature of the project. As already stated, most of the SEZs in the country are IT based and they are concentrated in the urban agglomeration, and therefore appreciation of these lands is inevitable. In this milieu, owing to lack of a deterrent provision in the Act to discourage de-notifications, developers resort to de-notification of the entire SEZ or a part of the of land allotted to them for SEZs, and in many cases they are diverted for commercial purposes. We noted that out of 230 notified SEZs in Andhra Pradesh, Maharashtra, Karnataka, West Bengal, Gujarat and Odisha, 52 were de-notified involving 5402.22 ha of land out of 39245.56 ha of land notified during the period of audit. Out of 52, 100 per cent of the notified land was de-notified in respect of 35 developers, putting a question mark over the logic that had gone into deciding the area of land acquired and subsequent application for de-notification. The following table illustrates state-wise de-notification details which indicate that out of 230 notified SEZs, 52 SEZs were de-notified (23 per cent) either partially or in full involving 5402 ha of land.

State	Number of Notified SEZs	Area (ha) notified	Number of SEZs de-notified (partial/full)		Area (ha) de-notified	*% of Area (SEZs) de-notified*
			Partial	Full		
Andhra Pradesh	78	13291.40	12	7	2102.08	15.81 (24.35)
Maharashtra	66	9280.76	0	19	1856.21	20 (28.78)
Karnataka	40	2416.81	3	1	61.95	2.56 (10)
Gujarat	32	13432.19	2	4	1209.51	9.00 (18.75)
Odisha	5	635.70	0	2	152.35	23.97 (40)
West Bengal	9	188.70	0	2	20.12	10.66 (22.22)
Total	230	39245.56	17	35	5402.22	13.76 (22.61)

The above position indicates that though Andhra Pradesh has the distinction of having the highest number of Notified SEZs (78) in the country, the state also has a record number of 19 de-notifications i.e., partial and full.

Even though SEZ land cannot be sold by the Developers, after de-notification and in the absence of restrictive provision in the Act, the land which was acquired by using government machinery for establishment of SEZ, can be used/ sold by the developers for other commercial purposes. To illustrate, in Sri City SEZ in Andhra Pradesh, 228.61 hectares out of the total de-notified land of 449.54 ha was allotted to 18 customers and the details regarding the allotment were not on record.

Considering the huge extent of land that had been de-notified with no economic activity for several years, the big question that remains to be answered is whether this land would be returned to the original owners from whom it was purchased invoking 'public purpose' clause.

DoC in their reply (June 2014) stated that it is for the State Government to prescribe conditions on use of land to allow exit from the SEZ Scheme while de-notifying the SEZ. However, in order to prevent any possible misuse of de-notified parcels of land by the developers, DoC has issued guidelines on 13th September 2013 with regard to de-notification of land, that:

I. All such proposals must have an unambiguous 'NOC' from State Government concerned.

II. State governments may also ensure that such de-notified parcels would be utilized towards creation of infrastructure which would sub-serve the objective of the SEZ as originally envisaged.

Such land parcels after de-notification will conform to Land Use guidelines/master plans of the respective State Governments.

Audit is of the opinion that, according extensions to developers routinely without appropriate measures and consequent de-notification and diversion of land is defeating the objective of the SEZ scheme.

4.9 Approval of SEZ without required land use permission

Section 3 (2) of SEZ Act, 2005 inter alia lays down that any person intending to set up a SEZ would make a proposal to the State Government concerned for the purpose of setting up of SEZ. Sub Section 3 (3) further enjoins that in case such a proposal is submitted to the Board (GOI) directly by the person, the Board may grant approval subject to the condition that the person concerned shall obtain concurrence of the State Government within the period of six months prescribed in the Rule 4 of SEZ Rules 2006 from the date of such approval.

On the basis of proposal submitted by M/s. DLF Cyber City, MOC&I granted In-principal approval (January, 2006) to M/s DLF for setting up of SEZ for

IT/ITES sector in Sector 24 and 25 A, Gurgaon. As per Rule 5 (2) (b), minimum area requirement for setting up SEZ exclusively for IT/ITES was 10 hectares with a minimum built up processing area of one lakh square meters. The DLF Cyber City SEZ for IT/ITES was notified by GOI (April 2007) on an area of 10.73 hectares and subsequently with slight modifications (March 2010) for an area of 10.30 hectares. The SEZ had become operational with effect from 05 November 2007.

Audit observed that the area identified by the developer included 1.21 hectares of land falling under Residential Zone on which the developer had been granted license by the Town and Country Planning Department (TCPD) for development of a residential colony. This fact was known to the State Government as well as MOC&I, therefore could not be considered for fulfilment of minimum area requirement (10 acre) for setting up of IT/ITES SEZ. This area was neither got de-licensed from the TCPD nor the TCPD converted the Residential Zone to Industrial Zone till May 2014.

In the absence of clearance by TCPD on change of land use of 1.21 hectare, the inclusion of the land for IT/ITES SEZ was not in order.

MOC&I in their reply (June 2014) stated that as per Rule 3 of the SEZ Rules, every proposal for setting up of SEZ shall be submitted to the concerned DC, who shall forward it to the Board with its inspection report, State Government's recommendation and other details specified under Rule 7. So far as the case of M/s. DLF Cyber City is concerned, it is submitted that the notified area is 10.30 Ha. As far as change of land use for Residential Zone is concerned, the matter pertains to the State Government. SEZ was approved based on recommendation of State Government.

MOC&I may review their reply in the context of the fact that land use of 1.21 hectares has not been changed by Department of Town and Country Planning, Haryana till May 2014. Thus the approval was granted by MOC&I on a piece of land for setting up of IT/ITES SEZ in violation of Rule 5 of the SEZ Rules requiring a minimum area of 10 hectares land.

4.10 Loans raised on SEZ Land used for non-SEZ purposes

As per sub rule (9) to Rule 11 of the SEZ Rules, 2006, a developer shall not sell the land in a Special Economic Zone. As per sub rule (6), a developer holding land on lease basis shall assign lease hold rights to the entrepreneur holding valid letter of approval. However, there is no restriction under the SEZ Act, 2005 on mortgage of leasehold land with banks or other financial institutions for raising loans. There are also no clear provisions or instructions as to how banks would realise the loan amount in the case of default by the borrowing

developer as the leased land belongs to government and further SEZ land cannot be sold.

In response to our requests made to various banks for furnishing the details of SEZ land mortgaged by Developers/Units in various States, we had received 10 responses, according to which 11 Developers/Units in Andhra Pradesh, Karnataka, Maharashtra and West Bengal had raised loans of ₹ 6,309.53 crore against mortgage of lease hold government land.

Further, we also noted that 3 out of 11 developers/units had raised loans amounting to ₹ 2,211.48 crore (35 per cent of ₹ 6,309.53 crore) against the notified SEZ lands which are not put to use as detailed below.

Developer/Unit	Extent of land mortgaged (ha.)	Amount of loan ₹in crore)	Details of Collateral/SEZ land mortgaged
M/s Quest SEZ Development Pvt Ltd., Karnataka	40.47	21.48	Cosmos Bank-₹ 9.18 cr mortgaged/registered mortgaged land and building measuring 66000 Sq.ft. Axis Bank – ₹ 12.30 cr mortgaged/registered mortgaged land and building measuring 47,902 Sq.ft. and 25,156 sq.ft. respectively
RMZ Eco World Infrastructure, Karnataka	5.651	1135.00	Entire SEZ Land Mortgaged
M/s New Found Properties Ltd, Maharashtra	21.26	1055.00	Entire SEZ land mortgaged
Total		2211.48	

Therefore, in the absence of specific provisions with regard to mortgage of SEZ lands this has encouraged the developers/units to raise loans against the SEZ lands for the purposes other than the development of SEZ.

DoC stated (April 2014) stated that raising of loans from financial institutions by mortgaging leased SEZ lands is the concern of the financial institution and DoC has no jurisdiction over it. However, DoC in their reply (June 2014), while not accepting audit suggestion to have specific provision in SEZ Act/Rules to restrict utilization of loans raised by mortgaging SEZ land only for purposes of development of SEZ, stated that SEZ Act/Rules does not restrict the Developer from mortgaging the lease hold rights in favour of the banks/financial institution and the bank has the right to proceed under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, subject to grant of LoA/LoP to the successful bidder by the BoA.

Further, in all Central Govt. SEZs, while issuing NOC for mortgage, it is categorically mentioned that land is not a subject matter of mortgage.

Reply of the department does not address the issue raised by audit as to how banks would realise the loan amount in the case of default by the borrowing developer as the leased land belongs to government and that the SEZ land could not be sold.

4.11 Non fulfilment of leasing conditions by developer

In Andhra Pradesh, M/s Brandix Apparel was granted LOP in August 2006 for development, operation and maintenance of Textiles SEZ at Atchutapuram mandal, Visakhapatnam District over an area of 404.70 hectares. Land was allotted by M/s APIIC at the rate of 1 Rupee/Acre per annum wherein the lease rental was fixed up to 5 years from the date of GoAP 'Commitment Fulfilment Date'[14], subject to the condition that the SPV/users generate employment for 60,000 persons within 5 years from GoAP commitment fulfilment date. Further, in the event of failure of SPV/users to generate the agreed employment within the stipulated period, it shall pay lease rentals equivalent to the then prevailing lease rentals in the vicinity of the land as determined by an independent Chartered Accountant, which shall be in proportion to the extent of employment not created by the SPV viz., if employment for only 30,000 persons is achieved, the enhanced lease rentals will be charged only to the extent of 50 per cent of the land leased i.e., on 500 acres or else the lessee/SPV at its option, shall surrender this portion of the land.

We noted that as of March 2013, only eight units had started their operations providing employment to 11737 people (19.6 per cent). Further, GoAP had not fixed and communicated the 'Commitment Fulfilment Date' for the developer, in the absence of which action could not be initiated to surrender the land or to quantify the obligation on part of the developer in discharging the Lease rental obligation arising from the breach of agreement.

As the employment generated was much below the commitment, the enhanced lease rentals as per the clause 4 (a) ibid should have been charged to the extent of 80.44 per cent of the land leased i.e., on 804.40 acres at the rate of approximately ₹ 35 lakh per acre (comparable rate at which APIIC has allotted land to SEZ Units in the same mandal viz., APSEZ, Atchyutapuram) which works out to ₹ 281.54 crore, or else the developer should have surrendered this 80 per cent portion of the land after June 2011 i.e on the lapse of the five year period.

[14] Date on which complete state support as envisaged is fulfilled and communicated in writing by GoAP.

DoC in their reply (June 2014) stated that due to economic slowdown and imposition of MAT, DDT, uncertainty over implementation of DTC has adversely affected investments in the SEZ which has resulted in under utilisation of processing area.

As far as Brandix SEZ is concerned, the matter is between the Developer, APIIC and Government of Andhra Pradesh.

DoC may intimate the final outcome to audit.