

**EXPORT ORIENTED UNITS (EOU)  
A DOMINANT SECTOR IN INDIA'S EXPORT PRODUCTION SCENARIO**

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⊗ **Introduction:**

The Export Import Policy 2002-2007 has emphasized on increasing the exports and thereby achieves a tremendous breakthrough in economic development of the country. The policy is aimed at creating an environment for achieving rapid increase in exports, raise India's share in world exports and make exports an engine for achieving higher economic growth. It is the truth that many large economies in the world have succeeded as they have stressed on opening the domestic economy into the global environment.

The present experience shows that the rapid economic growth and increase in employment depends on the increased exports and it is not surprising that all the fast growing economies of the developing world are modifying their export policies to boost their export activities. It is clear that if we have to achieve sustained high growth year by year, it is necessary to diversify our export activities. One more point we need to stress is to motivate the State Government in the Export promotion.

The current policy of ours has focused on export led growth, which is integral and important part of our development process. The success story of India's current position in the developing world market is the result of its continuing effort to grow in the world market. As truly said "Growth is not the luxury. It is essential for the survival".

The needs for higher level of technological and industrial progress made the Government devise a series of export promotional schemes. EOU & SEZ Scheme is one of them, which provides an internationally competitive duty free environment coupled with better infrastructural facilities for export production.

The scheme of Export Oriented Undertaking (EOU) has been one of our Government's efforts on export front. The Government enacted the Scheme for Export Oriented Undertaking providing various incentives and other procedural simplification provided the undertaking is exporting its entire production. EOU are set up out side the parks but enjoys almost entire benefits as available to STP or biotech units. Export Oriented Units (EOUs) and Special Economic Zone Units (SEZs) now constitute a very important sector in the country's Export Production scenario. They have become dominant players in our export strategy, and their share in the Country's export performance is 12.96%. Their export growth rate of 17.37% compares very favorably with the National export growth rate.

Setting up of EOU essentially requires the different skill sets. It is not merely incorporation of a Company. The days are gone where the Company Secretaries are just involved in incorporation of the Companies. It is now expected that Company Secretaries should provide value added services to client.

Setting up of EOU units is an upcoming area for the professionals. Other professionals are already in it and now its time for Company Secretaries to play their role. Company Secretaries are specialized in the legal aspects of any business and setting up of EOU mostly involves compliance of legal provisions. The rewards for the same are also handsome.

In this article we are dealing only with the setting up of EOU. Mentioned below is the brief outline describing the procedural and related aspects for setting up an Export Oriented unit in India.

⊗ **Applicable Laws:**

Setting up on an EOU involves formation of a business entity such as partnership firm or a Company registered under the Companies Act, 1956.

In case the entity is having the foreign Investment, then compliances under the FEMA, Foreign Direct Investment Scheme and other applicable regulations are required to be complied. The EOU units can have foreign investments upto 100% subject to applicable regulations.

EOU units are setup under the Exim Policy and procedure formed by the Government of India, Ministry of Finance. Presently Exim Policy 2002-07 is in force.

Chapter 6 of the Exim Policy and Appendix 14-I and 14-IA of Handbook of Procedure (Vol. – I) provides the set of regulations and procedures for setting up of EOU.

The scheme under with EOU's are formed is known as '**Export Oriented Units, Electronics Hardware Technology Parks (EHTPs) and Software Technology Parks (STPs) Scheme.**'

⊗ **Eligibility:**

1. Any entrepreneur for manufacturing of goods and rendering of services can set up an EOU. An EOU can be set up for repair, reconditioning, re-making and re-engineering also.
2. Trading activity is not allowed in the EOU Scheme.
3. EOU unit is required to achieve only positive Net Foreign Exchange (NFE) over a period of 5 years.
4. EOU can also be set up in the sectors like agriculture, animal husbandry, aquaculture, floriculture, horticulture, pisciculture, viticulture, poultry or sericulture.

An EOU unit may export goods and services including agro-products, partly processed jewellery, sub-assemblies and components. It may also export by-products, rejects, and waste scrap arising out of the production process. An EOU unit may import without payment of duty all types of goods, including capital goods, as defined in the Policy, required by it for its activities in connection therewith, provided they are not prohibited items of imports in the ITC (HS). The units shall also be permitted to import goods required for the approved activity, including capital goods, free of cost or on loan from clients.

### ⊗ **Preparation for becoming EOU:**

Once the entrepreneur decides to form an undertaking for carrying out any export activities he needs to take some important decisions and needs to taken actions on some important issues. Some of them are listed below;

1. Structure and ownership of the unit
2. Type of activity intended to be carried out
3. Technology intended to be used and its cost and conditions
4. Location of the unit.
5. Financing of the project, acquisition of assets etc.
6. Payment for royalties etc.
7. Market study and tie ups
8. Feasibility study and preparation of report
9. Checking of import export restrictions.
10. Environment clearance needed etc.
11. Requirements of inputs like raw materials
12. The production process.
13. The production capacity and spare capacity and sub contracting
14. By-products generation and its further sale
15. Processing of effluents or waste-material
16. Requirement and procurement of power
17. Formation and registration of an entity
18. Opening of account with the bank authorized to deal in foreign exchange.
19. Obtaining Sale tax registration.
20. Obtaining clearances from State Government like:
  - (a) Pollution clearances
  - (b) Approvals of building plan for construction of a building.
  - (c) Registration as a small scale industrial unit, if applicable
  - (d) Registration under Factories Act.
  - (e) Shop Act registration, if applicable
  - (f) Professional tax registration
21. Application to income tax department for getting the PAN Number.
22. Getting the Import Export Code number from the DGFT.

### ⊗ **Procedure:**

Once the entrepreneur is ready with the basis stuff in hand, he can initiate the process of making application for registration of an EOU. He can use the forms provided in the manual or can download the same from the website of DGFT. Project report of the unit is required to be prepared. Various documents are required to be attached. Entrepreneur needs to initiate the process of tying up the export market for his proposed products. Correspondence exchanged on this tie up front is a vital one for justifying the need for setting up an EOU. He should try to get some confirm tie up.

Another important item is investment in plant and machinery, building etc. If the investment requirement of business is less than Rs. 1.00 cores, then unfortunately as per present policy the unit is not eligible to become an EOU. Though service units are allowed to register as EOU under the present policy, it would be difficult for such units to invest Rs. 1.00 cores in the plant, building, machinery etc.

Normally the following steps are required to taken;

1. Application in a form prescribed is required to be made to concerned development commissioner of Special Economic Zone (See **Annexure 1**)
2. The unit/ promoter has to apply in the application form, to be given in triplicate given in Handbook of Procedures in Appendix 14-1A.
3. Project Report including a write up on the background of the promoters establishing their credentials, experience and standing is required to be attached.
4. DD of Rs. 5,000/- drawn in favour of 'The Pay & Accounts Officer, Ministry of Commerce and Industry, Department of Commerce', payable at the Central Bank of India, Udyog Bhavan, New Delhi.
5. If the unit does not have an Import Export code (IEC), it needs to apply in the prescribed form (Appendix 3) to the Zone Administration along with EOU application. The development commissioner has a power to issue the IEC number.
6. Each page of the application and documents enclosed is required to be signed by the applicant.
7. The necessary application for digital signature is also required to be filed with the EOU application with the concerned jurisdiction Development Commissioner of Special Economic Zone.
8. Every Zone has a statutory Single Window Clearance Board. The Development Commissioner is competent to clear/ approve all cases within period of 15 days, if the application is otherwise in order.
9. The approval of proposals for setting up of EOUs for the manufacture and export of cotton yarn, tea, rice, meat, granite and petroleum products would be subject to the conditions mentioned in Appendix-14-B.
10. Only project having a minimum investment of Rs.1.00 crore and above in building, plant and machinery shall be considered for establishment under EOU scheme. Minimum investment should take place on coming into production of the unit. The condition of minimum investment is not applicable to existing units and units in EHTP/ STP/ handicrafts/ agriculture/ floriculture/ aqua-culture/ animal husbandry/ information technology, services and such other sectors as may be decided by the BOA (Board of Approvals).
11. Foreign investment into EOU/ EPZ/ EHTP/ STP shall be governed by the guidelines of Department of Industrial Policy and Promotion (DIPP) on the subject. The Development Commissioner is competent to approve all cases involving FDI (Foreign Direct Investment) falling under the automatic route. For cases not falling under the automatic route, the Development Commissioner recommends the case to the FIPB (Foreign Investment Promotion Board) in DIPP.
12. With effect from 01.04.2003, all EOUs should have their own operational web site and permanent e-mail address. No LUT (Letter of undertaking) for new units after 01.04.2003 shall be executed unless the unit has its own web site and permanent e-mail address. In case of an existing EOU not having permanent e-mail address and own website, further imports and DTA sale may not be permitted by the Development Commissioner.

⊗ **Documentation:**

**Documents required to be submitted with the application**

1. Residential proof in respect of individual and in case of partnership Firm/ Company of all its Partners/ Directors. (Passport/ ration card/ driving licence/ voter identity card or any other proof to the satisfaction of Development Commissioner);

2. Income Tax return of all the promoters for the last three years. In case of existing firm or company, income tax returns of the firm or company are required to be submitted additionally.
3. Note on Experience of the promoters.
4. Documents relating to propose marketing tie-ups for export of products of the Company.
5. Copy of Lease deed, if the land/ property is leasehold.
6. If the promoters/ applicant owns the land/ property, Agreement copy and NOC of the promoter for use of the property by the applicant.
7. Inspection of the project site by an Officer
8. Pollution clearance certificate/ NOC/ permission.
9. List of Plant & Machinery
10. Detailed Process flow chart.
11. Certified copy of Board resolution in case of Companies authorising the registration of a company as an EOU.
12. Certified copy of the latest Memorandum & Articles of Association in case of Companies
13. Certified copy of Partnership deed, in case of Partnership firm.
14. Detailed project report certified by the applicant.
15. Foreign Exchange Balance Sheet in the prescribed format certified by the applicant.

⊗ **Requirement of Net Foreign Exchange earning:**

EOU unit shall be a positive net foreign exchange earner. Net Foreign Exchange Earnings (NFE) shall be calculated cumulatively for a period of five years from the commencement of production according to the prescribed formula given in the policy. Items of manufacture for export specified in the Letter of Permission (LOP)/ Letter of Intent (LOI) alone shall be taken into account for calculation of NFE.

⊗ **Issue of Letter of Permission (LOP):**

After submitting the application and satisfaction of queries raised, the development commissioner process the application and then Letter of Permission (LOP) is issued by the Zone Administration normally within 2 weeks after interview of the promoter by the Units Approval Committee. For format of LOP please see Appendix 14-IE

⊗ **Submission of Legal undertaking (LUT):**

A legal undertaking in the prescribed form, to abide by the terms and conditions of the LOP has to be executed by the unit in format given at Appendix 14-1F.

⊗ **Green Card:**

EOU unit is the most favoured unit in India. It gets a red carpet treatment in government departments. To recognize the EOU unit, a green card is issued to the unit. The same can be obtain from the concerned Development Commissioner on executing the Legal Undertaking. The holder of Green Card enables priority treatment for Government clearances/ other services during export.

⊗ **Requirements after getting the approval of DC:**

After getting the approval from the DC for setting up of EOU, following further steps are required to be initiated.

### **A. Custom bonding:**

The entire operations of an EOU shall be in a Custom bonded premises, unless otherwise specifically exempted from physical bonding.

An application is to be made to the Assistant Commissioner/ Deputy Commissioner of the Customs/ Central Excise having a jurisdiction where the unit is located for issuance of a Private Custom Bonded Warehouse License under section 58 and 65 of the Customs Act, 1962. The application shall be accompanied by the following documents/information: -

1. Copy of notification under which the place (proposed location of unit) has been declared as warehousing station under section 9 of the Customs Act. In case the place is not a notified warehousing station, a separate application for issuance of such notification is to be submitted to the Commissioner of Customs through the Assistant Commissioner/ Deputy Commissioner of the jurisdiction.
2. Copy of Letter of Permission issued by Development Commissioner concerned and LUT accepted by the Development Commissioner.
3. Details of the premises including ground plan, purchase/ rent/ lease deed, allotment letter from Industrial Development Corporation/ Authority (if any)
4. Details about the constitution of the firm/ company including its Proprietor/ Partners/ Directors etc.
5. Project Report indicating stage wise manufacturing process.
6. List of raw material, consumables and capital goods etc. required.
7. Undertaking that cost recovery and other charges shall be paid to custom authorities.

**After verification of the premises** and relevant documents, the Assistant Commissioner/ Deputy Commissioner Customs/ Central Excise will issue the requisite licence under section 58 and 65 of the Customs Act.

### **B. B-17 Bond:**

B-17 bond is a multi – purpose surety bond that the unit has to execute with the Jurisdictional Assistant/ Deputy Commissioner Customs/ Central Excise on a non-judicial stamp paper of Rs. 300/-. Format of the Bond is prescribed under Notification No. 6/98 CE (N.T) dated 2-3-98 of Central Board of Excise & Customs

B-17 Bond is a surety bond and in case valid surety cannot be arranged security @5% of the bond amount has to be furnished. The bond amount shall be equal to 25% of the duty foregone on the capital goods required in the next 5 years plus duty foregone on the value of raw material for a period of 3 months.

#### **B-17- Bond covers the following activities: -**

1. Duty free import/ procurement of goods from the indigenous sources as per relevant notification and warehousing/ storage in the unit and their utilization.
2. Transshipment of import/ export of goods duty free between port of import/ export and unit premises.
3. Movement of duty free goods for job work and return.
4. Temporary clearance for repair and display in exhibitions, testing/ approval etc.
5. However it does not cover differential duty amount against advance DTA sale for which a separate bond is to be executed.

6. The unit has also to take a Central Excise Manufacture Code Number from the Superintendent, Central Excise to enable them to sell in the domestic market (DTA).

**C. Approval from State Government Agencies:**

1. The unit has to secure approval for its wiring and electrical plan from the Electrical Inspector of State Electricity Board.
2. It has also to secure power allocation and wiring approval from the State Electricity Board.
3. The unit has to take a registration under the State Government Sales Tax Act and Central Sales Tax Act.
4. In case the unit already has a registration with the State Sale Tax Department the address of the additional premises should also be endorsed in the registration certificate.
5. The unit has also to take Small Scale Industry (SSI) Registration from the District Industries Center to apply for State Government's Investment Subsidy.
6. In case there are effluents or emissions the unit has to secure approval from the State Pollution Control Board.

⊗ **Debonding:**

Conditions governing debonding of EOU units are indicated at Appendix 14-J of the Handbook (Vol.1).

1. On completion of bonding period as provided in paragraph 8.9 of the policy, it shall be open to the unit to continue under the scheme or opt out of the scheme. If no intimation in this regard is received from the unit within a period of six months of expiry of the bonding period, the Development Commissioner will take action, suo moto, to debond the unit. Where the unit opts to continue, the Development Commissioner concerned will extend the bonding period.
2. To facilitate resource building in educational and medical institutions, electronics units under the EOU scheme would be allowed by Customs/ Central Excise authorities concerned to donate imported/ indigenously procured (bought or taken on loan) computer and computer peripherals, including printer, plotter, scanner, monitor, key-board and storage units without payment of duty, two years after their import/ procurement and use by the units, to recognized non-commercial educational institutions, registered charitable hospitals, public libraries, public funded research and development establishments, organizations of the Government of India or Government of a State or Union Territory as per Custom/ Central Excise notification issued in this regard.
3. Debonding of capital goods imported, as second hand shall not be allowed under EPCG scheme. In case of second hand capital goods which are less than 10 years old on the date of import, debonding may be allowed on payment of duty after 2 years from date of import. In addition where the second hand capital goods are more than 10 years old, debonding may be allowed only against an import license and payment of applicable duties.

⊗ **Conversion of existing DTA unit into EOU:**

1. Conversion of an existing Domestic Tariff Area (DTA) unit into an EOU may be permitted. For this purpose, the DTA unit may apply to the concerned DC, EPZ in the same manner as applicable to new units. In case there is an outstanding export commitment under the EPCG scheme, it will be subsumed in the export performance (EP) of the unit. If the unit is having outstanding export

commitment under the Advance Licensing Scheme, it will apply to the Advance Licensing Committee for reducing its export commitment in proportion to the quantum of duty free material actually utilized for production and permitted to carry forward the unutilized material imported against the Advance License, if any, under the EOU scheme.

2. Existing EHTP/ STP units desiring conversion as an EOU may apply to the DC of the EPZ concerned through the Officer designated by the Department of Information Technology in the same manner as applicable to new units. Likewise EOU desiring conversion into EHTP/ STP may apply to the officer designated by the Department of Information Technology through the DC of the EPZ concerned.

⊗ **Monitoring of NFE:**

1. The Units Approval Committee as per the guidelines given in Appendix -14-IG, shall monitor the performance of EOU/ EHTP/ STP units.
2. Failure to ensure positive NFE or to abide by any of the terms and conditions of the LOP /LOI/ IL/ LUT shall render the unit liable to penal action under the provisions of the Foreign Trade (Development & Regulation) Act, 1992 and the Rules and Orders made there under without prejudice to action under any other law/ rules and cancellation or revocation of LOP/ LOI /IL

⊗ **Maintenance of Accounts:**

1. EOU unit shall maintain proper account, and shall submit quarterly and annual report as prescribed in annexure to Appendix-14-IF to the Development Commissioner and Customs and Central Excise authorities.
2. The unit shall be able to account for the entire quantity of each category of homogenous goods imported/ procured duty free, by way of exports, sales/ supplies in DTA or transfer to other SEZ/ EOU/ EHTP/ STP units and balance in stock. However, at no point of time the units shall be required to co-relate every import consignment with its exports, transfer to other SEZ/ EOU/ EHTP/ STP units, sales in the DTA and balance in stock. Any matter for clarification as to whether goods are homogenous or not shall be decided by unit approval Committee.

⊗ **Entitlements/ benefits of EOU:**

1. No license required for import.
2. Exemption from Central Excise Duty in procurement of capital goods, raw - materials, consumables spares etc. from the domestic market.
3. Exemption from customs duty on import of capital goods, raw materials, consumables spares etc.
4. Reimbursement of Central Sales Tax (CST) paid on domestic purchase.
5. Supplies from DTA to EOUs treated as deemed exports.
6. Reimbursement of duty paid on furnace oil, procured from domestic oil companies to EOUs as per the rate of drawback notified by the Directorate General of Foreign Trade.
7. 100% Foreign Direct Investment is permissible.
8. Exchange earners foreign currency (EEFC) Account - Facility to retain 100% foreign exchange proceeds in EEFC Account.
9. Facility to realize and repatriate export proceeds within six months - Further extension in time period can be granted by RBI and their authorized dealers:



10. Re-export of imported goods found defective, goods imported from foreign suppliers on loan basis etc. without G.R. waiver with the permission of Development Commissioner.
11. Exemption from industrial licensing requirement for items reserved for SSI sector.
12. Profits allowed to be repatriated freely.
13. Access to Domestic Market upto 50% of FOB value of export on concessional rate of duty.
14. Duty free goods to be utilized in two years. Further extension granted on liberal basis.
15. Job work on behalf of domestic exporters for direct export allowed.
16. Conversion of existing Domestic Tariff Area (DTA) unit into an EOU permitted.
17. Can procure duty-free inputs for supply of manufactured goods to advance license holders.
18. EOUs in agriculture and horticulture engaged in contract farming may be permitted to take out duty free goods to the fields of contact farmers for production.
19. EOU Units are entitled for Income Tax Exemption under section 10B of Income Tax Act.

⊗ **Conclusion:**

This was the brief outline of formation of Export Oriented Units in India. With proper planning on the export front, proper implementation of the policy in its true spirit, the time is not far away when India would emerge as the country with largest export trading activities in today's competitive global environment. It is always said that a good beginning makes a good end. Targets are to be laid down (in fact they are). But we must not forget that target are not the ends by themselves but are the means to achieve the end.

Government, starting realizing the importance of exports, has brought out a considerable change in its strategy through Exim Policy. Through Exim policy it has stressed on export for creation of employment and to achieve high economic product. India has put itself in a very important place in the global business world. It exports both knowledge-oriented products depicting its modern stature and on the other hand showing its traditional nature, it continues to export handicrafts items. We can thus maximize our comparative advantage over the wide range of goods and services. What is needed is change in our thinking and mind-set and action to pave way for a quantum jump. India's moment has come. Let us not blow it now.

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## ANNEXURE 1

### ⊗ JURISDICTION OF DEVELOPMENT COMMISSIONERS:

The EOUs basically functioning under the administrative control of the Development Commissioner of Export Processing Zones/ Special Economic Zones, whose Special Economic Zones has been notified by the Ministry Of Commerce. In all there are seven Development Commissioner situated at Mumbai, Ghandhidham, Chennai, Cochin, Vizag, Noida and Calcutta, who supervise the functioning of EOUs. Application for setting up units under EOU scheme may be filled with the concerned Development Commissioner under whose jurisdiction the unit is proposed to be located

### LIST OF DC's:

Development Commissioner of the Zone	Jurisdiction
<b>Shri V. Madhavan Nair</b> <b>Development Commissioner</b> SEEPZ Special Economic Zone SEEPZ, Andheri (East) Mumbai 400 096 Tel : 022 - 28290143, 28290856 022 - 22850281 (Res) Fax : 022-28291385 Email : <a href="mailto:dc@seepz.com">dc@seepz.com</a> Website: <a href="http://www.seepz.com">www.seepz.com</a>	Maharashtra, Goa, Daman & Diu, Dadra & Nagar Haveli
<b>Smt Nutan Guha Biswas</b> <b>Development Commissioner</b> Noida Special Economic Zone Noida Dadri Road, Noida Phase II Noida - 201 305 Noida - 201 305 (UP) Tel : 95120-2562315 (Dir) Hauz Khaz office: 26855081 Fax :0120-2562314 Email : <a href="mailto:dcnepz@nda.vsnl.net.in">dcnepz@nda.vsnl.net.in</a> Website: <a href="http://www.nsez.org">www.nsez.org</a>	Delhi, Uttar Pradesh, Punjab, Haryana, Himachal Pradesh, Jammu & Kashmir, Rajasthan and Madhya Pradesh, Uttaranchal
<b>Shri Paul Antony</b> <b>Development Commissioner</b> Cochin Special Economic Zone Kakkanad, Cochin 682 030 Tel : 0484-2413222 (Dir) Fax : 0484-2413074 Email : <a href="mailto:dc@seepz.com">dc@seepz.com</a> Website: <a href="http://www.csez.com">www.csez.com</a>	Kerala, Karnataka, Lakshadweep and Mahe
<b>Smt. Malini V. Shankar</b> <b>Development Commissioner</b> MEPZ Special Economic Zone Administrative Office Building National Highway, 45, Tambaram, Chennai 600 045 Tel : 044-22628232, 22628220 Fax : 044-22628218 Email : <a href="mailto:dc@mepz.gov.in">dc@mepz.gov.in</a> Website: <a href="http://www.mepz.gov.in">www.mepz.gov.in</a>	Tamil Nadu, Pondicherry (excluding Mahe and Yanam) Andaman and Nicobar Islands

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<p><b>Shri P. Ramesh Kumar</b>  <b>Development Commissioner</b>  Visakhapatnam Special Economic Zone  Administrative Office Building  Duvvada, Visakhapatnam 530 046  Tel : 0891-2753030, 2753029  Fax : 0891-2687352  Email : <a href="mailto:dc@vsez.com">dc@vsez.com</a>, <a href="mailto:info@vsez.com">info@vsez.com</a>  Website: <a href="http://www.vsez.com">www.vsez.com</a></p>	<p>Andra Pradesh, Yanam  and Chattisgarh.</p>
<p><b>Shri Yogendra Garg</b>  <b>Development Commissioner</b>  Kandla Special Economic Zone  Administrative Building  Gandhidham, Kutch 370 230  Tel : 02836-252475, 252281  Fax : 02836 -252250  Email: <a href="mailto:dc@kandlasez.com">dc@kandlasez.com</a>,  <a href="mailto:info@kandlasez.com">info@kandlasez.com</a>  Website: <a href="http://www.kandlasez.com">www.kandlasez.com</a></p>	<p>Gujarat</p>