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Tax and Regulatory

# SEZ POLICY UPDATE

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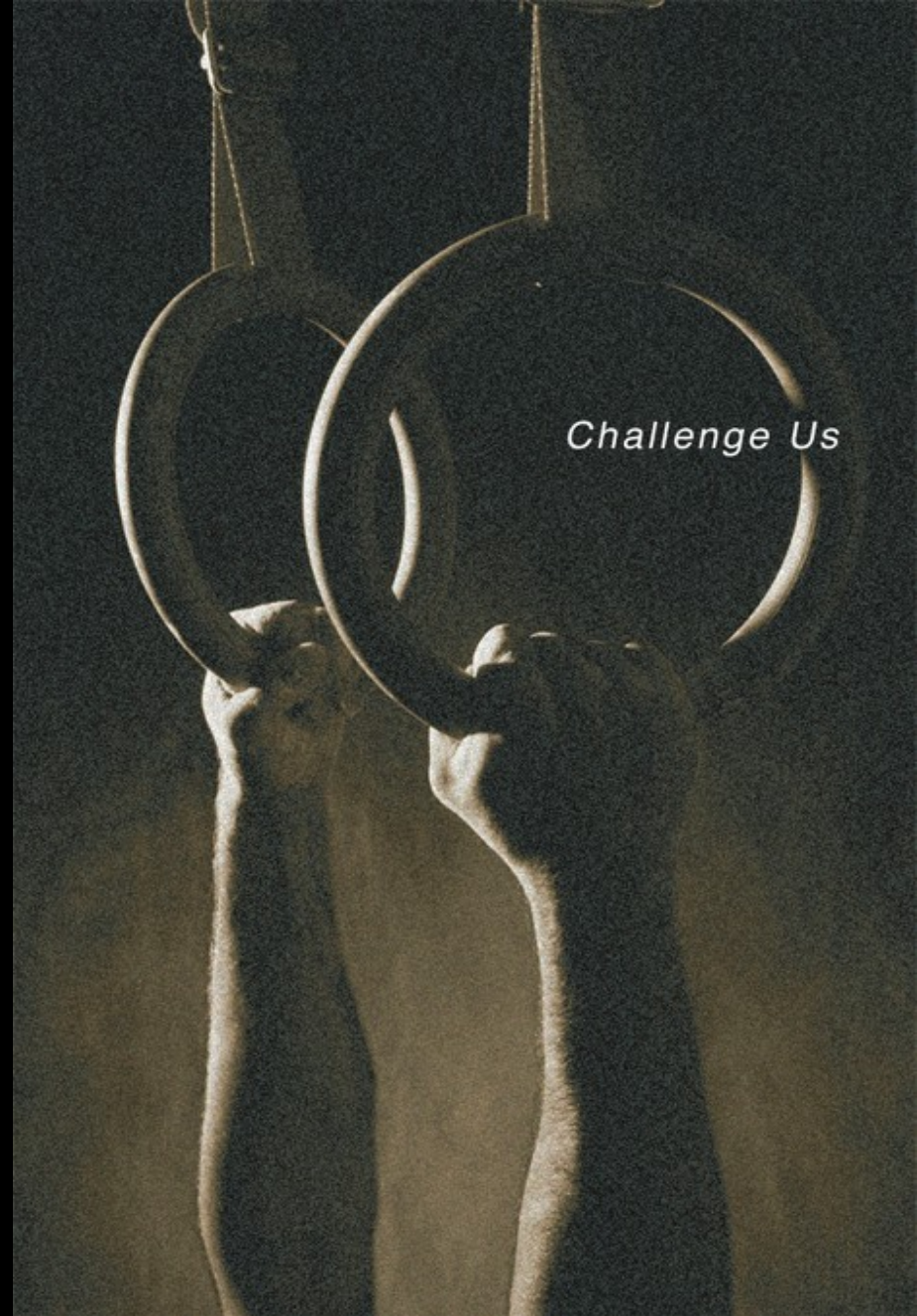
Real Estate Workshop  
July 12, 2007

BMR & Associates



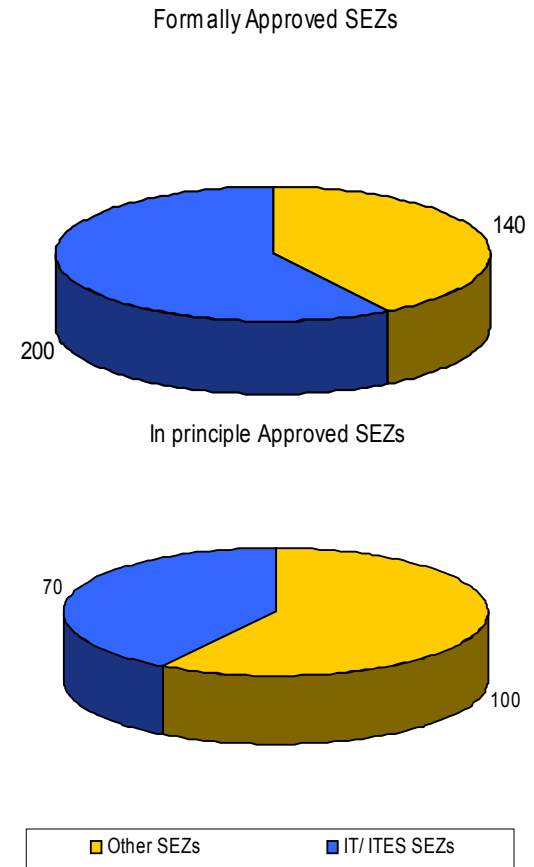
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# INDIAN SEZ EXPERIENCE – STORY THUS FAR...

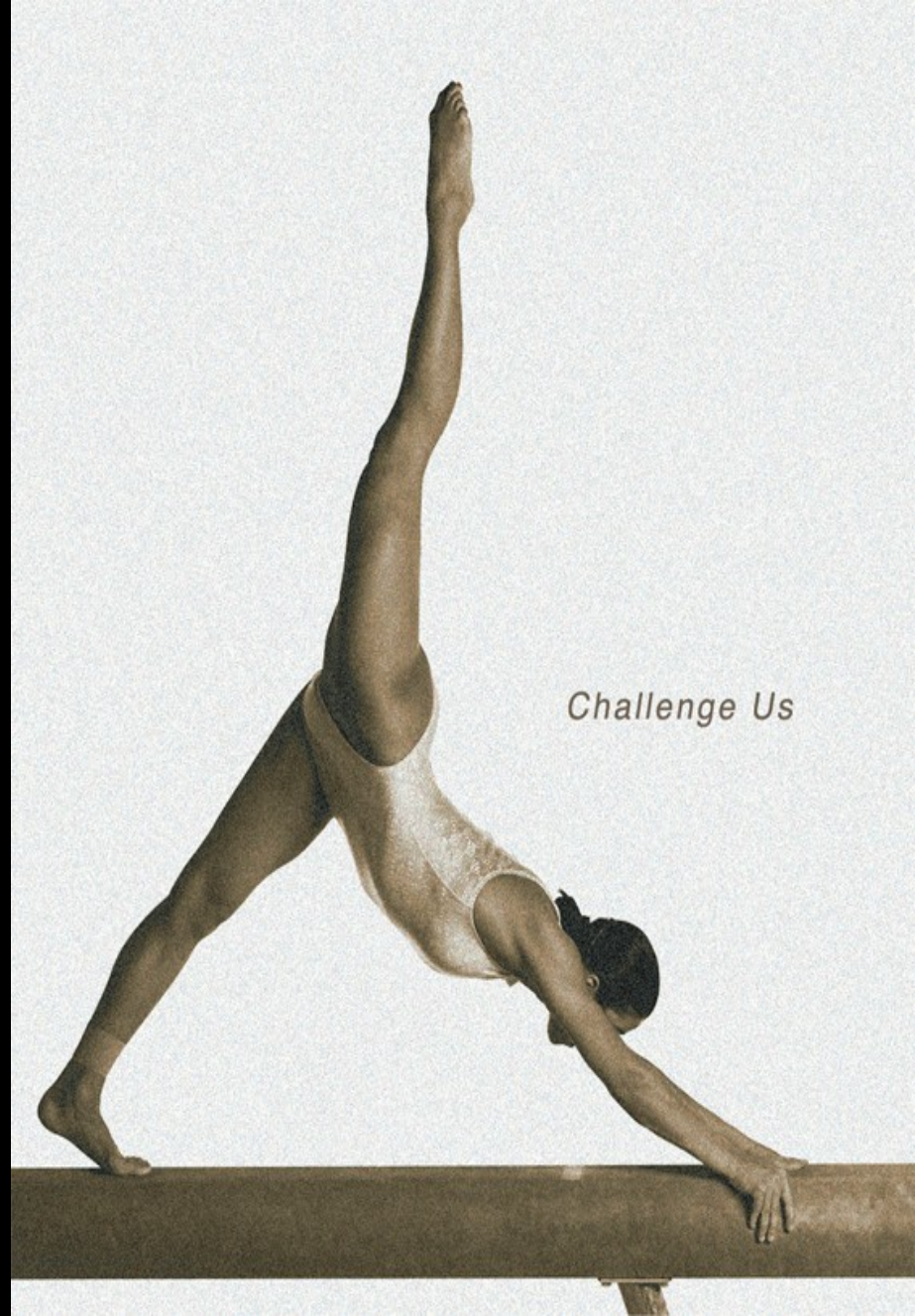
- 340 proposals granted formal approval since introduction of the Special Economic Zones Act, 2005 (“SEZ Act”)
- 170 proposals have been granted In-principle approval
- Formally approved SEZs cover an area approximately 41,400 hectares
- 127 SEZs including TCS, Biocon, Flextronics, Wipro, Infosys and Nokia have been notified
- Currently 23 SEZs are operational in the country
- INR 35,000 Crores has been already invested in the new generation SEZs till date
- New Gen SEZs have created over 32,500 jobs which is likely to rise to 100,000 by end of the year
- Major investment in sectors such as:



IT / ITES	Oil and Gas	Footwear & Leather
Electronic Hardware	Gems and Jewelry	Biotechnology


# SEZ LEGISLATIVE AMENDMENTS

- SEZ Amendment Rules, 2006
- SEZ Amendment Rules, 2007



# SEZ AMENDMENT RULES

## SEZ Amendment Rules, 2006 notified on August 10, 2006

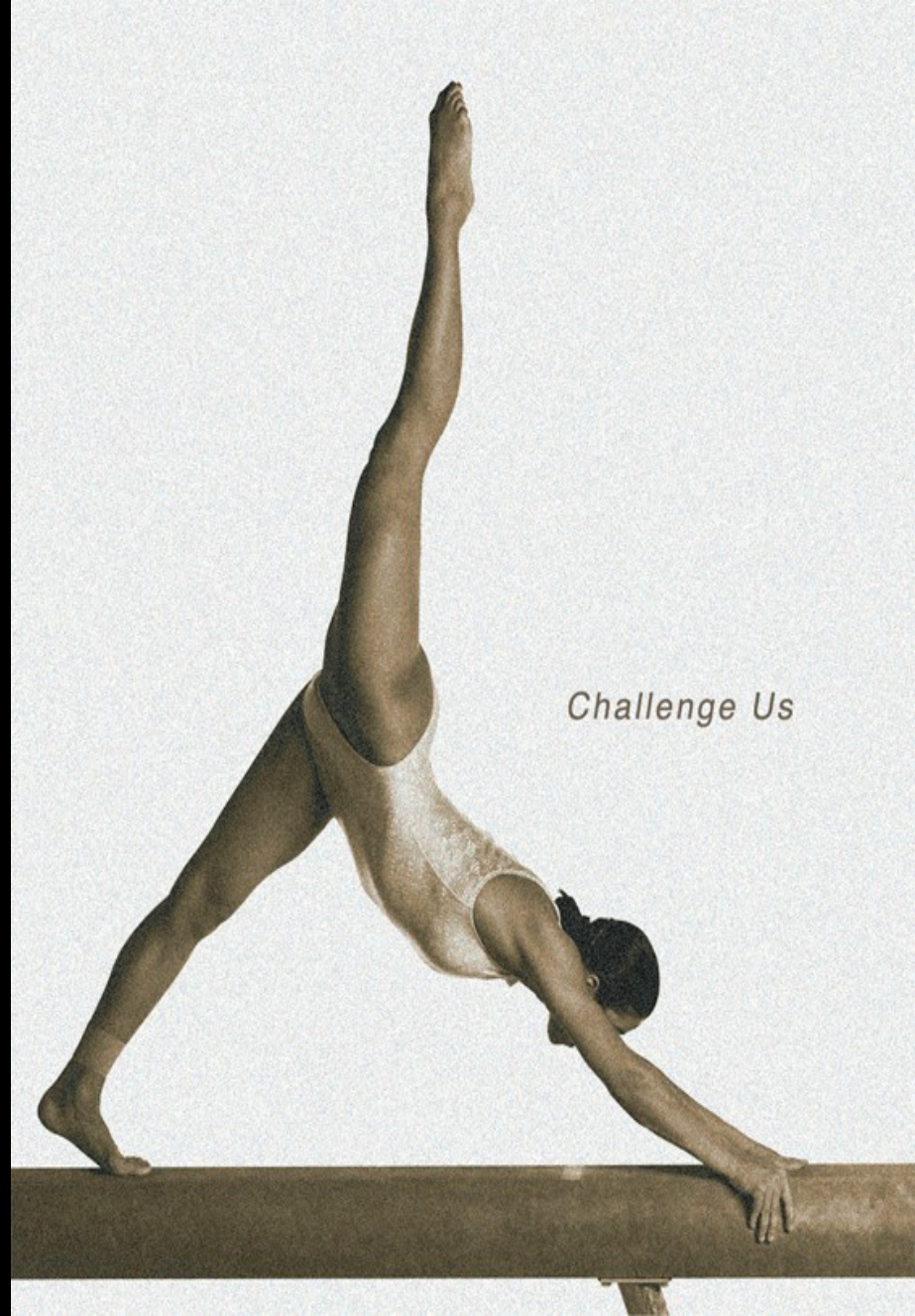
- Amendments in **minimum requirements** for development of various types of SEZs 
- **Infrastructure development** within the SEZ
  - IT /ITES SEZ developers to provide infrastructure like uninterrupted power, plug and play facilities etc
  - Vacant land in non processing area cannot be leased for business and social purposes to any person / entity except approved co-developer
- No SEZ unit approvals to be granted to any applicants envisaging use of any **plant or machinery used previously** for any purpose **within** the Domestic Tariff Area (“**DTA**”) – ie, area other than SEZs
- **Trading activity** (import of for the purpose of re-export) within the SEZ – Direct tax benefits

# SEZ AMENDMENT RULES (contd...)

## SEZ Amendment Rules, 2007 notified on March 16, 2007

- Change in categorization of SEZs – permissible
- Validity period of in principle approvals reduced
- Relaxation of contiguity criterion (Is it only for large SEZs)
- Benefits, exemptions, concessions from payment of duties, taxes, cess etc available to a SEZ unit for setting up and maintenance of the factory building within the SEZ extended to a contractor specifically appointed by such SEZ unit
- Sub-contracting by a SEZ developer / co-developer – permissible

# MINISTERIAL INSTRUCTIONS / GAZETTE NOTIFICATIONS



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# INSTRUCTIONS & NOTIFICATIONS

## Instruction 6/2006 issued on August 3, 2006

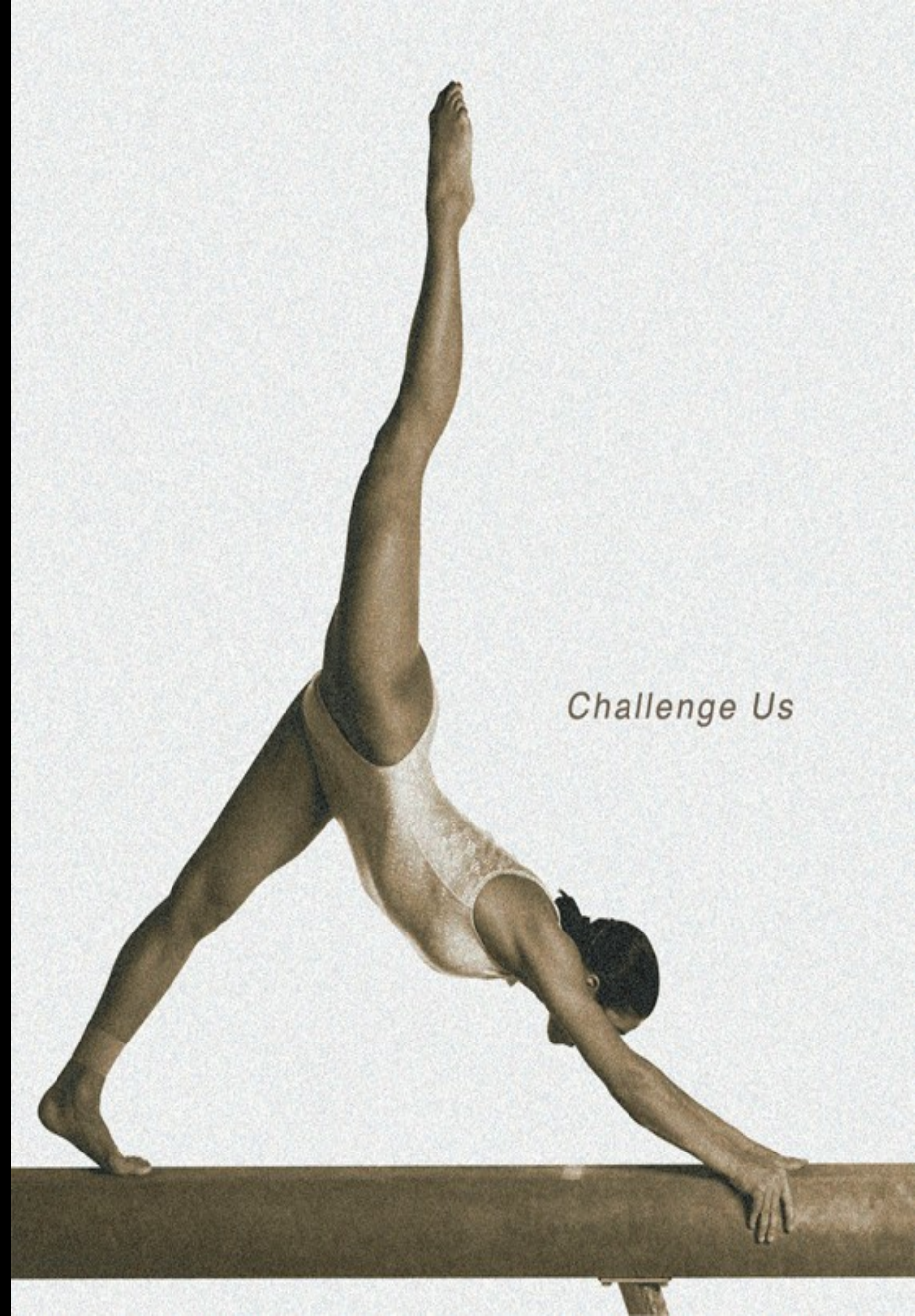
- Instruction issued to operationalize and implement provisions of the SEZ Act & SEZ Rules, 2006 (“Rules”)
  - SEZ units entitled to export benefits upon export of output services outside India
  - Upon re-import of any service into the DTA, applicable duties for normal import of similar services shall be levied

## Gazette Notification No SO 1846 (E) dated October 27, 2006

- Government of India vide the Gazette Notification notified a list of authorized operations, eligible for all exemptions, benefits etc as prescribed under the SEZ Act and Rules
- BoA to use this list of notified operations while approving list of authorized operations for specified types of SEZs

**Note-** Exhaustive list of the authorised operations notified for specified types of SEZs provided in [Annexure 2](#) 

# BOA POLICY DECISIONS



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# BOA POLICY DECISIONS

## BoA meeting held on September 21, 2006

- Another criterion of **Additional Criterion of minimum investment or net worth criterion** for approval of SEZ developers

Type of SEZ	Investment criterion		Net worth criterion
Sector specific SEZs	Rs 250 crores	OR	Rs 50 crores
Multi product SEZs	Rs 1,000 crores	OR	Rs 250 crores

### **Note:**

- Net worth of Promoter Company and all Group Companies will be taken into consideration by the BoA
- Proposals not specifically meeting the above mentioned minimum investment or net worth criteria will be considered on merits by the BoA, if sufficient justification for consideration of the proposals is provided

## BOA POLICY DECISIONS (contd...)

- Quantum of identified infrastructural facilities to be developed in non-processing area for various types of SEZs – decided (BoA – September 21, 2006 meeting)
- Hotel, educational facilities and medical centers / hospitals missing for IT / ITES, Biotech and Gems and Jewellery SEZs
- Approvals granted to develop only Shopping arcade / Retail Space not exceeding 1000 square meters and Housing / Service Apartments with a total area not exceeding 10,000 square meters in IT /ITES, Biotech and Gems and Jewellery SEZs
- Specific approval of BoA required to develop infrastructure in excess of the prescribed limits

# BOA POLICY DECISIONS (contd...)

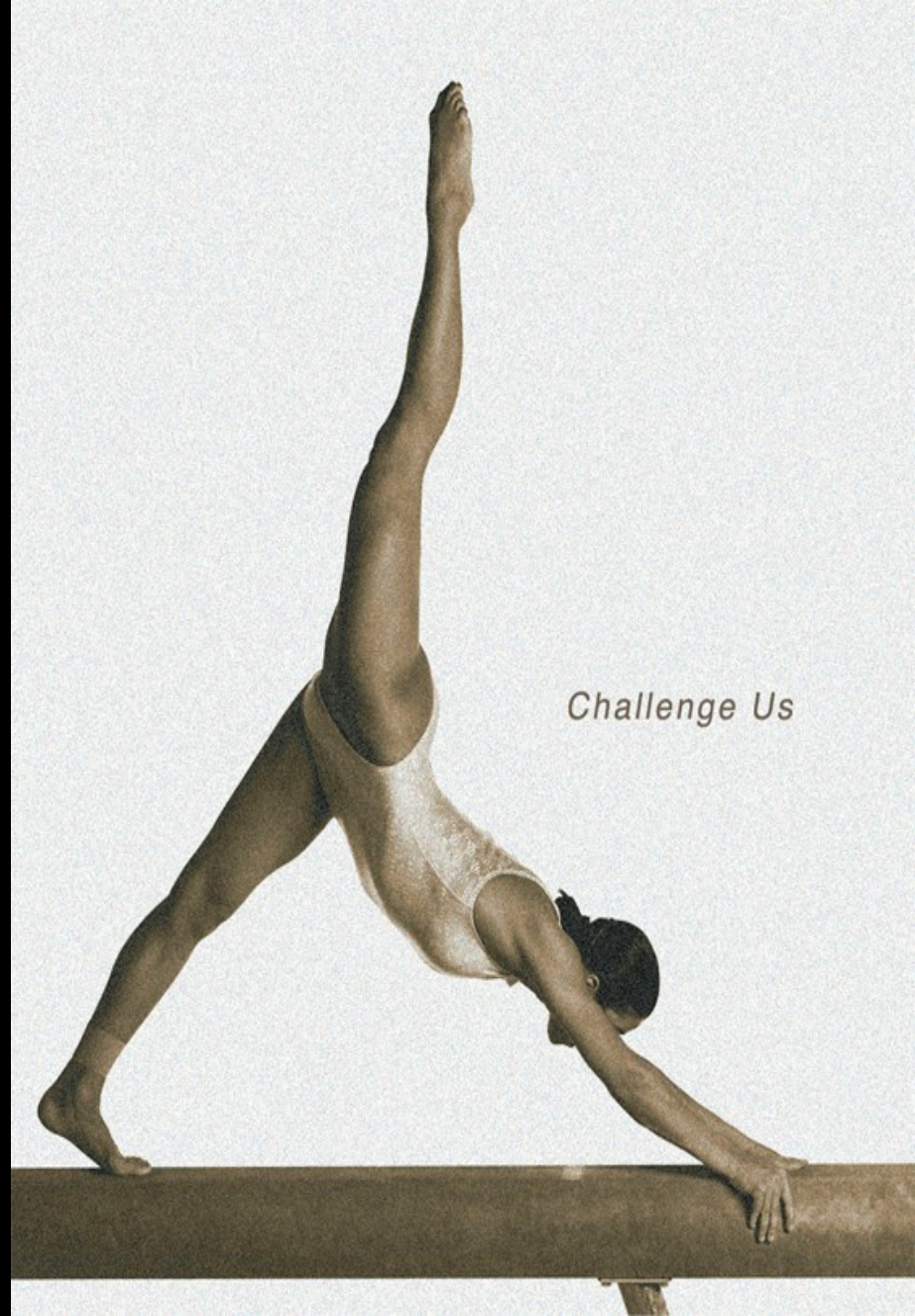
## BoA meeting held on May 9, 2007

- Developers of non IT /ITES SEZs to specify the size of social infrastructure (like housing, hospital, hotel, service apartments etc) along with reasons for development of the same before the BoA
- BoA granting approvals for only those operations which are to be carried out in the processing area of the SEZ
- **Till approval is granted by BoA no benefits (both Direct and Indirect)** can be availed by the Developer on infrastructure developed irrespective of the size/ quantum of the infrastructure

## BoA meeting held on June 5, 2007

- **Entry / exit points** – more than one entry / exit point can be developed within the SEZ with the approval of Development Commissioner or Approval Committee

# EGOM POLICY DECISIONS



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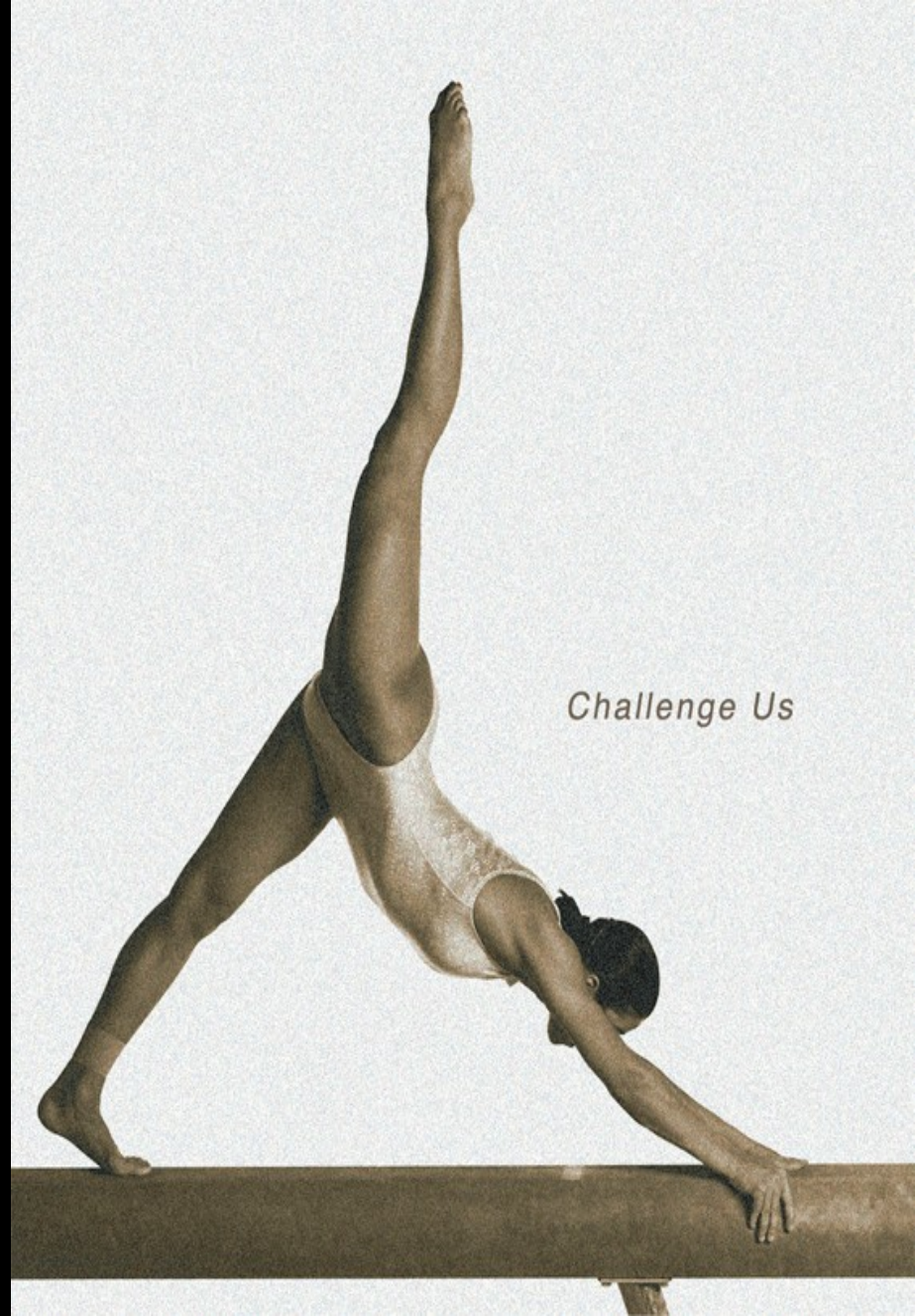
# EGOM POLICY DECISIONS

## Meeting of Empowered Group of Ministers (“EGoM”) – April 5, 2007

- **Multi-product SEZs**
  - Maximum area for development of multi-product SEZs has been capped at 5,000 hectares (*Corresponding amendment in Rules is awaited*)
  - State governments competent to further reduce the maximum area for development of multi-product SEZs within the State to below 5,000 hectares
- **Land acquisition and resettlement policy**
  - States barred from making compulsory land acquisitions for SEZ projects
  - Developers to acquire land directly from the land owners

*It may be noted that there is no formal communication from the Government on the decisions taken at the meeting of the EGoM held on April 5, 2007 and the above is based on press and other media reports.*

# WHERE IS THE POLICY HEADED?



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# SEZ DIRECTION – WHERE FROM HERE?

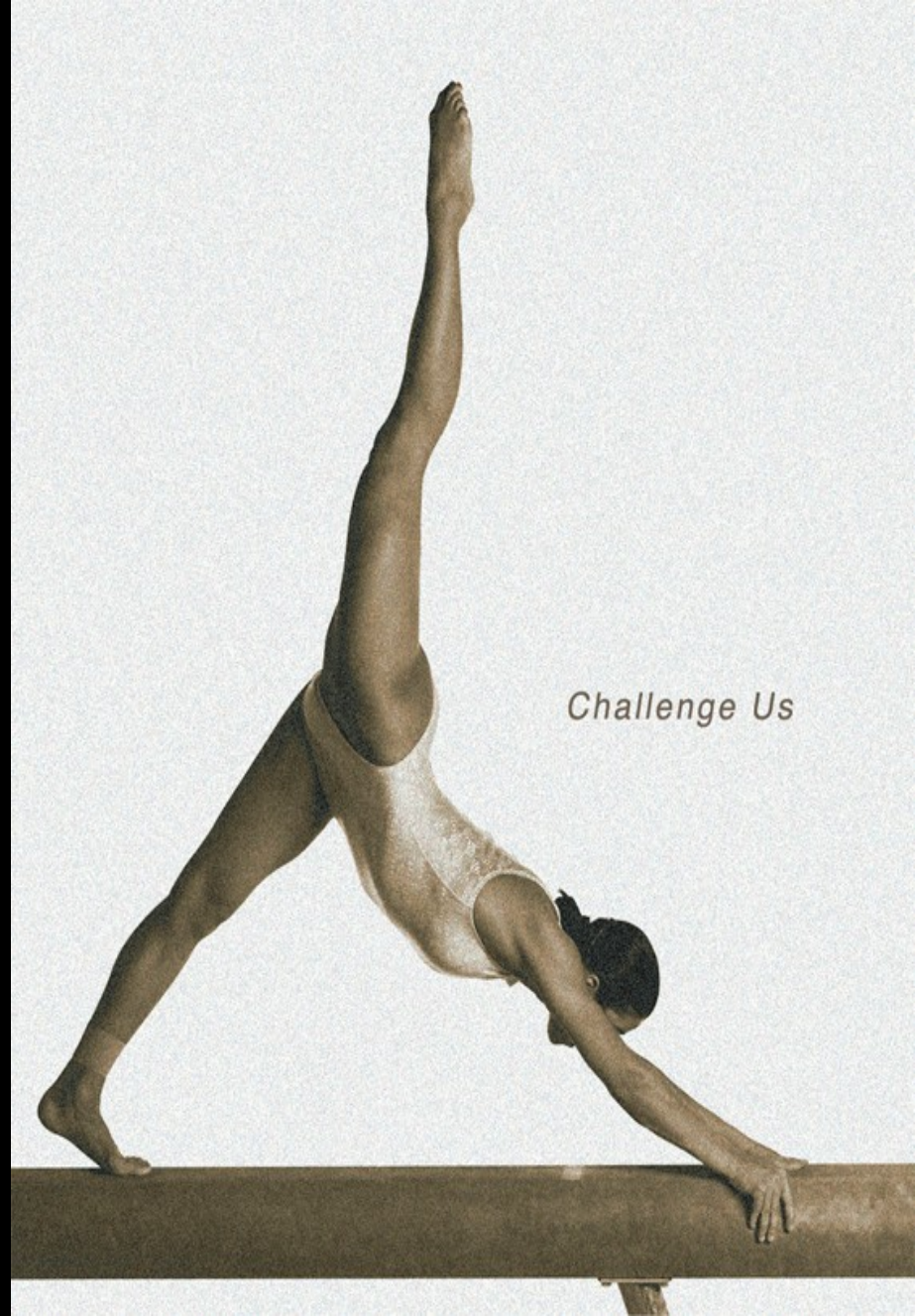
- Another Amendment in Rules is imminent to capture the decisions of EGoM and BoA
- RBI to clarify its stand on the treatment of loans to SEZs – impacts the ability to acquire ECBs by SEZ developers at lower interest rates
- EGoM to clarify date from when ban on compulsory land acquisitions will come into force – Potentially raise legal issues for outstanding agreements entered into by various State Governments
- Formalization of guidelines for development of infrastructure within processing and non-processing areas of the SEZ
- Possibility of insertion of an export obligation criterion along with NFE for SEZ Units
- R&R Policy / Bill, 2007 to be linked to SEZ development
  - All states should set up rehabilitation councils enjoying statutory backing
  - Those whose lands are acquired should get either jobs or equity shares
  - A free house site, proportional to loss, should be allotted to affected family

# SEZ POLICY DIRECTION – WHERE FROM HERE (contd)...

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- R&R Policy / Bill, 2007 to be linked to SEZ development (contd...)
  - Entire compensation should be disbursed before work on the project begins
  - Councils to conduct environmental and social impact assessment
  - Redressal cell must be set up under rehab & resettlement commissioner
  - R&R Bill requires companies to earmark a percentage of profits or turnover for developing the affected areas
  - Companies should coordinate with the Centre and States in supporting their ongoing rural development plans – Forced CSR

# ANNEXURES



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# ANNEXURE 1 – MINIMUM AREA REQUIREMENT

Type of SEZ	Minimum area requirement *	Processing area requirement
Multi product	1000 hectares (200 hectares in specified states)  Area Ceiling capped at maximum 5,000 hectares – states can reduce the maximum limit to below 5,000 hectares	35% or more of total area Central Government can relax requirement to 25% upon receipt of a recommendation from BoA and for reasons for relaxation being recorded in writing <b>Note</b> that the EGoM has prescribed a uniform processing area if 50% or more of total area.
Multi product exclusively for services	100 hectares	50% or more of total area
Sector specific or in a port or airport	100 hectares	50% or more of total area
Electronic Hardware and software, including ITES	10 hectares	50% or more of the total area and minimum built up area of 100,000 square meters
Bio technology and non-conventional energy (including solar energy equipments / cells)	10 hectares	50% or more of total area and minimum built up area of 40,000 square meters
Non-conventional energy (for non conventional energy production and manufacturing)	10 hectares	50% or more of total area
Gems and Jewellery	10 hectares	50% or more of total area and minimum built up area of 50,000 square meters
Sector Specific (other than IT / ITES, biotechnology etc) in specified states	50 hectares	50% or more of total area

\* Note that land parcels proposed to be developed as SEZ have to be contiguous, vacant and without any public thoroughfares

# ANNEXURE 2 – NOTIFIED LIST OF OPERATIONS

IT / ITES, bio-technology and gems & jewellery SEZs	Sector-specific SEZs	Multi-product SEZs
(i) Roads with street lighting, signals and signage	(i) Roads with street lighting, signals and signage	(i) Roads with street lighting, signals and signage
(ii) Water treatment plants, water supply lines (dedicated lines up to source), sewage lines, storm water drains and water channels of appropriate capacity	(ii) Water treatment plants, water supply lines, sewage lines, storm water drains and water channels of appropriate capacity	(ii) Water treatment plants, water supply lines, sewage lines, storm water drains and water channels of appropriate capacity
(iii) Sewage and garbage disposal plant, pipelines and other necessary infrastructure for sewage and garbage disposal, sewage treatment plants	(iii) Sewage and garbage disposal plant, pipelines and other necessary infrastructure for sewage and garbage disposal, sewage treatment plants	(iii) Sewage and garbage disposal plant, pipelines and other necessary infrastructure for sewage and garbage disposal, sewage treatment plants
(iv) Electrical, gas and petroleum natural gas distribution network including necessary sub-stations of appropriate capacity, pipeline network etc	(iv) Electrical, gas and petroleum natural gas distribution network including necessary sub-stations of appropriate capacity, pipeline network etc	(iv) Electrical, gas and petroleum natural gas distribution network including necessary sub-stations of appropriate capacity, pipeline network etc
(v) Security offices, police posts etc at entry, exit and other points within and along the periphery of the site	(v) Security offices, police posts etc at entry, exit and other points within and along the periphery of the site	(v) Security offices, police posts etc at entry, exit and other points within and along the periphery of the site
(vi) Effluent treatment plant and pipelines and other infrastructure for effluent treatment	(vi) Effluent treatment plant and pipelines and other infrastructure for effluent treatment	(vi) Effluent treatment plant and pipelines and other infrastructure for effluent treatment
(vii) Office space	(vii) Office space and / or shopping arcade and / or retail space and / or multiplexes	(vii) Office space and / or shopping arcade and / or retail space and / or multiplexes
(viii) Parking including multi-level car parking (automated or manual)	(viii) Housing	(viii) Housing
(ix) Telecom and other communication facilities including internet connectivity	(ix) Hotel and / or service apartments	(ix) Hotel
(x) Rain water harvesting plant	(x) Clinic and / or medical centres and / or hospital	(x) Clinic and / or medical centres and / or hospital
(xi) Power (including power back up facilities)	(xi) School and / or technical institution and / or educational Institution	(xi) School and / or technical institution and / or educational Institution
(xii) Air conditioning	(xii) Parking including multi-level car parking (automated or manual)	(xii) Parking including multi-level car parking (automated or manual)

# ANNEXURE 2 –

## NOTIFIED LIST OF OPERATIONS (contd)...

IT / ITES, bio-technology and gems & jewellery SEZs	Sector-specific SEZs	Multi-product SEZs
(xiii) Swimming pool	(xiii) Telecom and other communication facilities including internet connectivity	(xiii) Telecom and other communication facilities including internet connectivity
(xiv) Fire protection with sprinklers, fire and smoke detectors	(xiv) Business and / or convention center	(xiv) Access control and monitoring system
(xv) Recreational facilities including club house, indoor and / or outdoor games, gymnasium	(xv) Common data center and inter-connectivity	(xv) Rain water harvesting plant
(xvi) Employee welfare facilities like automated teller machines, crèche, medical center and other such facilities	(xvi) Rain water harvesting plant	(xvi) Power (including power back up facilities)
(xvii) Shopping arcade and / or retail space	(xvii) Power (including power back up facilities)	(xvii) Air conditioning
(xviii) Business and / or convention center	(xviii) Rail head	(xviii) Fire protection with sprinklers, fire and smoke detectors
(xix) Common data center and inter-connectivity	(xix) Access control and monitoring system	(xix) Rail head within the special economic zone
(xx) Housing and / or service apartments	(xx) Swimming pool	(xx) Port
(xxi) Play ground	(xxi) Fire protection with sprinklers, fire and smoke detectors	(xxi) Airport and / or air cargo complex
(xxii) Bus bay	(xxii) Recreational facilities including club house, indoor and / or outdoor games, gymnasium	(xxii) Inland container depot
(xxiii) Food services including cafeteria, food court(s), restaurants, coffee shops, canteens and catering facilities	(xxiii) Food services including cafeteria, food court(s), restaurants, coffee shops, canteens and catering facilities	(xxiii) Banks
(xxiv) Clinic and medical centers	(xxiv) Play grounds	(xxiv) Recreational facilities including club house, indoor and / or outdoor games, gymnasium
(xxv) Landscaping and water bodies	(xxv) Bus bays	(xxv) Employee welfare facilities like automated teller machines, crèche, medical center and other such facilities

# ANNEXURE 2 –

## NOTIFIED LIST OF OPERATIONS (contd)...

IT / ITES, bio-technology and gems & jewellery SEZs	Sector-specific SEZs	Multi-product SEZs
(xxvi) Wi Fi and / or Wi Max services	(xxvi) Food services including cafeteria, food court (s), restaurants, coffee shops, canteens and catering facilities	(xxvi) Play grounds
(xxvii) Drip and micro irrigation systems	(xxvii) Landscaping and water bodies	(xxvii) Bus bays
(xxviii) Such other operation (s) specified above from (i) to (xxvii) which the Board of Approval may authorize from time to time	(xxviii) Wi Fi and / or Wi Max services	(xxviii) Food Services including cafeteria, food court (s), restaurants, coffee shops, canteens and catering facilities
	(xxix) Drip and micro irrigation systems	(xxix) Drip and micro irrigation systems
	(xxx) Such other operation (s) specified above from (i) to (xxix) which the Board of Approval may authorize from time to time	(xxx) Landscaping and water bodies
		(xxxi) Wi Fi and / or Wi Max services
		(xxxii) Such other operation (s) specified above from (i) to (xxxi) which the Board of Approval may authorize from time to time





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