

WORK FROM HOME GUIDELINES FOR SEZs

1. INTRODUCTION

Special Economic Zones (“SEZ”) units are entitled to significant benefits under various Indian legislations. However, these benefits are also accompanied by certain restrictions. For instance, specific permissions were required to move assets tagged to a particular SEZ unit out of the SEZ. As a result, employees working in these SEZs were essentially not allowed to work from home without obtaining specific permissions. With the onset of the pandemic, the development commissioners of various SEZs had also issued separate guidelines to allow employees to work from home. In an endeavour to introduce uniform guidance on the permissibility of work-from-home arrangements, on July 14, 2022, the Ministry of Commerce and Industry issued the Special Economic Zones (Third Amendment) Rules, 2022 (“**Amendment Rules**”), introducing a new rule with respect to work from home arrangements for employees working in SEZ units.

2. HIGHLIGHTS

- 2.1. The Amendment Rules state that any SEZ unit can permit its employees (including contractual employees) to work from home or from any place outside the SEZ under certain circumstances. The following ‘employees’ are covered under the Amendment Rules:
 - (a) employees of Information Technology and Information Technology enabled units of an SEZ;
 - (b) employees who are temporarily incapacitated;
 - (c) employees who are travelling; and
 - (d) employees who are working offsite.
- 2.2. The SEZ unit is required to submit a proposal for work from home to the concerned development commissioner, either through email or through a physical application. This proposal must contain the terms and conditions of work from home, including the date from which the permission for work from home shall be utilized and the details of the employees who would be covered.
- 2.3. The development commissioner may grant permission to the proposal submitted by the SEZ unit in case such proposal is in accordance with the Special Economic Zones Rules, 2006 as well as the Amendment Rules. This permission would be valid for a period of 1 (one) year from the date of permission and can be extended for a period of 1 (one) year at a time.
- 2.4. The Amendment Rules state that every proposal to work from home, or an application for extension, must be submitted at least 15 (fifteen) days in advance to the development commissioner, except in case of employees who are temporarily incapacitated or travelling.
- 2.5. The Amendment Rules further stipulate that the proposal for work from home that is submitted by an SEZ unit can cover a maximum of 50 (fifty) percent of the total employees (including contractual employees) of an SEZ unit. However, the Amendment Rules also permit an SEZ unit to have work

from home arrangement for more than 50 (fifty) percent of its total employees for any bona fide reasons, which are to be recorded in writing and approved by the development commissioner.

- 2.6. In case an SEZ unit's employees are already working from home at the time of commencement of the Amendment Rules (i.e., as on July 14, 2022), the unit is required to submit its proposal for permission to the development commissioner within 90 (ninety) days from the commencement.
- 2.7. The Amendment Rules further state that the work to be performed by an SEZ unit that has allowed its employees to work from home shall be as per the service rules that are approved for the said SEZ unit. Further, this work must be related to a project of the SEZ unit.
- 2.8. In case an employee ceases to be a part of the project of a particular SEZ unit, the employee is required to be un-tagged from the said SEZ unit.
- 2.9. The SEZ unit is also permitted to provide its employees with various goods including laptops, computers, video projection systems, other electronic systems and secured connectivity. These goods can be provided to an employee working on the project of an SEZ unit with permission of the Specified Officer (i.e., Joint/ Deputy/ Assistant Commissioner of Customs).

3. **INDUSLAW VIEW**

The Amendment Rules not only permits employees of an SEZ unit to work from home, but also introduces sufficient checks and balances to prevent abuse of the system. It would be interesting to observe how the Amendment Rules pan out in practice. That said, the Amendment Rules do not specify certain details, such as the format in which an application for work from home should be made, the specific details of the concerned employees which should be included in the application, format for grant of approval and under what conditions a higher number of employees can be allowed to work from home. It is likely that State-specific SEZs will issue specific guidance on these processes. For instance, on July 19, 2022, the office of the Development Commissioner, Noida SEZ released a separate circular highlighting the procedure for obtaining approval for work-from-home in detail and setting out the relevant formats to be followed / information to be provided in this regard. Given that, it is likely that other relevant authorities will follow suit, and issue appropriate clarifications regarding the procedure and formats to be followed.

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