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SEZ DEVELOPERS ALLOWED TO DILUTE PROJECT EQUITY

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The article speaks on the SEZ Developers who are to sell their stake to other parties or even to foreign players along with a quote by Mr. Tapan Sangal, Director, BDO.

BDO

SEZ developers allowed to dilute project equity

Cabinet nod not required after commerce ministry approval

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Five years after the Special Economic Zone (SEZ) policy came into existence, the department of commerce and industry has allowed developers to sell their stake partly or fully to other promoters and firms, including foreign ones. In other words, foreign real estate players will now be able to own SEZs in India, even though there are restrictions on FDI in real estate.

The decision was taken by the board of approval (BoA) on SEZs under the ministry of commerce and industry at a meeting on September 19. The BoA, headed by commerce secretary Rahul Khullar, took the decision with regard to three firms, DLF Ackruti Info Parks (Pune) Ltd, Noida-based Aachvis Softech Pvt Ltd and Sterling Addlife Mundra Hospitals Pvt Ltd in Ahmedabad.

The specific change in rules would not go through the usual process of being considered by an empowered group of ministers (EGoM) or Parliament. "This will not go through the EGoM or Parliament because there is no change in the SEZ policy. The SEZ stays intact, only the ownership changes. It does not change the core business at all. It is an interpretation of the law that already exists," Khullar told *Business Standard*.

Other officials in the ministry said it was done mainly to help developers in debt unable to develop projects in the wake of a slowdown in SEZ activity and uncertainty over tax incentives.

However, the move is seen by many as a way for developers to monetise their ventures. "This is definitely a change of rules and entails a change of SEZ guidelines. It should have gone through the EGoM or Parliament," said a senior official from a Delhi-based real estate firm, who did not wish to be identified.

The move was initially opposed by the department of revenue, which said such a provision would amount to a sale of land. However, the department of legal affairs disagreed. It said it would entail only a transfer of business and not one of land. But, the question remains as to who would be regarded as the owner of the land.

The public accounts committee of Parliament, in its 13th report, had recommended "serious reconsideration" of the SEZ policy due to complaints of its degenerating into a policy for easy land-grabbing, with tax incentives benefiting only a few.

"This new rule would help developers exit the SEZ business and no one can take away their right to not exit a specific business. Developers are not there for philanthropy. Today, a developer is not able to exit an SEZ project that has functional units. So, what should they do? Moreover, they are paying capital gains tax upon selling their shares," said Tapan Sangal, partner (Tax Advisory Services Regulatory), BDO Consulting. According to SEZ norms, if a particular SEZ has functional units inside it, then the developer cannot also apply for de-notification. Thus, they have no option but to sell their business if they want to exit the project.

In the minutes of the September 19 BoA meeting, a request for transfer or dilution of equity by the developers would be approved subject to the seamless continuation of SEZ activities, the fulfilment of security clearance criteria by the new entity and compliance with Sebi rules.

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DLF eyes big asset sales in early 2012

India's largest developer by market capitalisation, DLF Ltd, is banking on, at least, two to three big-ticket sales in early 2012, to keep to its debt reduction target for the current financial year. The developer needs to realise ₹3,000 crore to ₹3,500 crore from non-core asset sales to reach its 2011-12 goal. Although the company is still far from the divestment figure it has set, executive director Rajeev Talwar is confident of making it on time.

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On DLF's talks with companies, especially the US-based BlackStone, to sell a stake in its Pune SEZ, its group executive director Rajeev Talwar said, "We will talk to any company, both Indian and foreign. It is about asset divestment, and we are looking for the best partner."

When asked as to why the change in rules should not be seen as an aberration in the SEZ philosophy, Talwar said, "The economic zone concept is about improving the turnover and exports... The real estate companies should be appreciated for asset creation and increasing the turnover in SEZs. One should stop looking at everything with suspicion."

SEZs are increasingly becoming less attractive for developers, investors and companies and the number of fresh proposals being considered by the BoA has also seen a visible decline. According to officials, this is more because the number of SEZ projects already approved would take time to come up. On the other hand, those who had aggressive plans to build SEZs around the country have put their projects on hold indefinitely as funds have dried up.

There are 381 notified SEZs at present and 148 are operational, from which exports take place. Exports from these SEZs topped ₹1,76,479.69 crore as of September 2011, up 26.20 per cent from the corresponding period of the previous year.