

ADVISORY NOTE

FEB 2023 | VOLUME 15



UNAUTHORISED SALE OF SEZ LANDS AND THE IMPLICATION(S)



SEZ Developer

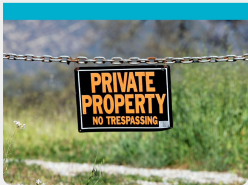
Whether a Developer can transfer land without notifying the Authority?

As per Regulation 31 (1)(c) “A developer shall be entitled to the following legal rights to—transfer legal occupancy rights with respect to SEZ lands and other assets located on such lands to other business entities within the SEZ in accordance with the Act, these Regulations, the governing SEZ Developer Agreement and operating certificate, or the applicable site-lease agreement, as the case may be”; In addition Regulation 32 (1)(s) states that “all developers (regardless of whether the SEZ is subject to a master concession or licence agreement) as well as their subcontractors, shall comply with the following general obligations -to obtain the prior written approval of the Authority when transferring any occupancy rights with respect to SEZ lands and other assets pursuant to the relevant provisions of these Regulations.”

Effect of Sale for Developer

Based on Regulation 31 (1)(c) a Developer has a legal right to transfer legal occupancy rights however Regulation 32(1)(s) states that if a Developer wishes to transfer any occupancy rights (e.g. sell the designated sez land) they should acquire the written approval of the Authority. Therefore, if a Developer did not receive written approval from the Authority to sell the SEZ land it is essentially a breach of the SEZ Regulations.

The unauthorised sale of SEZ land is voidable if the Developer did not disclose a material fact which is before any sale of SEZ land can take effect the Authority should have given the Developer its written approval.



SEZ Occupant

Whether an Occupant can transfer land without notifying the Authority?

As per Regulation 39 (1)(c) “an occupant has a legal right -during the period of a subconcession, to transfer any assets...” Additionally Regulation 40 (1)(a) (b) states “that the following conditions shall be satisfied before an occupant transfers the whole or a part of any lands or assets located in the SEZ: (a) the person to whom the land or asset is to be transferred, shall agree to accept the legal rights and assume the same obligations set out in the subconcession by which the occupant was bound; and (b) the Authority and the developer shall approve of the transaction in writing.” Also Regulation 42 (1)(c) states that “a developer may, after consultation with the Authority, revoke a subconcession for the following reasons- transferred, in whole or in part, any SEZ lands or any other assets situated on such lands to any third party without imposing on the third party the same obligations, or granting the same rights as are applicable in the governing subconcession, and without obtaining the prior written permission of the Authority and the developer, as required under these Regulations”.

Effect of Sale for Occupant

Therefore, based on Regulation 39 (1)(c) an Occupant has a legal right to transfer any assets (e.g. Agreement for sale of land). The occupant should however follow the procedure for such transfer as stated in Regulation 40 (1)(a) (b). In addition, the Developer has an obligation to inform the Authority as per Regulation 42(2)(c) if the procedure set out in Regulation 40(1)(a) (b) is not followed for the transfer of SEZ lands or assets in whole or in part. If the occupant transferred in whole or

in part, any SEZ lands or any other assets situated on such lands to any third party without imposing on the third party the same obligations, or granting the same rights as are applicable in the governing subconcession, and without obtaining the prior written permission of the Authority and the developer, as required under the Regulation the Authority after consultation with the Developer is empowered to recommend that the subconcession be revoked as per Regulation 42(3).

Member Insights: Mr. Ainsley Brown



“When lands become a SEZ they literally become special, as they become, among other things, eligible for fiscal incentives. Fiscal incentives are the people’s money which the JSEZA has a responsibility, under the law, to guard jealously. The authorized by the JSEZA before the sale of SEZ lands represents part of our SEZ governance mandate.”

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