

FREQUENTLY ASKED QUESTIONS BY APPLICANTS FOR GRANT OF INDUSTRIAL LICENSE

Q. For what items is Industrial License is required?

A. Licensing is done under Industries (Development & Regulation) Act 1951. Post 1991 de-licensing, presently only five industries are under compulsory licensing :

- ❖ Electronic aerospace and defence equipment
- ❖ Industrial explosives including detonating fuses, safety fuses, gun powder, nitrocellulose and matches
- ❖ Cigars and cigarettes of tobacco and manufactured tobacco substitutes
[Fresh Licenses are not being granted for manufacture of this item on health grounds since 1999]
- ❖ Specified hazardous chemicals i.e (i) hydrocyanic acid and its derivatives (ii) Phosgene and its derivatives and (iii) Isocyanates & disocyanates of hydrocarbon not elsewhere specified (example methyl Isocynate)
- ❖ Distillation and brewing of alcoholic drinks
[Licensing ceased by DIPP in compliance with Supreme Court Order dated 29/01/1997 in Bihar Distillery Case which ruled that industries engaged in manufacture of potable alcohol would be under the jurisdiction of the states]

- In addition to above, a non MSME unit manufacturing items reserved for MSME

Q. Whether an Industrial license is required by any non-MSME unit manufacturing items reserved for MSME sector?

A. Presently, there are 20 items which are exclusively reserved for manufacture for MSME sector. Any non-MSME unit desirous of manufacturing these items, need an IL which is issued with an obligation to export 50% of the new additional annual production to be achieved within a maximum period of three years.

Q What is the policy relating to the Small Scale Units who cross the investment limits prescribed for them?

A Small scale/ ancillary industrial under-takings engaged in the manufacture of any item(s) reserved for small scale/ ancillary sector, on crossing the investment limits prescribed for them will be required to obtain a Carry on Business (COB) license from the concerned Administrative Ministry.

Q. What is the Foreign Direct Investment(FDI) Policy in Defence Sector?

A. FDI Policy in Defence Sector is as follows:-

- 49% FDI is allowed in Defence Industry under Government route, subject to Industrial license under the Industries (Development & Regulation) Act, 1951
- Above 49% FDI is allowed with the approval of Cabinet Committee on Security (CCS) on case to case basis, wherever it is likely to result in access to modern and 'state-of-art' technology in the country.
- FDI limit of 49% is composite and includes all kinds of foreign investments i.e. Foreign Direct Investment (FDI), Foreign Institutional Investors (FIIs), Foreign Portfolio Investors (FPIs), Non Resident Indians (NRIs), Foreign Venture Capital Investors (FVCI) and Qualified Foreign Investors (QFIs) regardless of whether the said investments have been made under Schedule 1 (FDI), 2(FII), 2A(FPI), 3 (NRI), 6(FVCI) and 8 (QFI) of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations
- Portfolio investment by FPIs/FIIs/NRIs/QFIs and investments by FVCI is together will not exceed 24% of the total equity of the investee/ joint venture company. Portfolio investments will be under automatic route.

Q Is there any list of items, which categorizes the Defence items for which IL application can be filed?

A A List of Defence Products, prepared by Department of Defence Production, Ministry of Defence has been issued vide Press Note No. 3 (2014 series), which is available on DIPP's website for guidance to the entrepreneurs.

Q For manufacture of which items in the Defence sector, would an Industrial License be required?

A The Industrial License will be required for manufacture of those Defence items which have been mentioned in the 3rd Column of the Annexure to the Press Note No. 3 (2014 Series) dated 26/06/2014.

The following items would not require Industrial License:

- Dual use items, having military as well as civilian applications
- Items/ parts/ components/ castings/ forgings/ test equipments, which are not part of the defence products list issued vide Press Note 3 (2014 Series)

Q What is the Ministry of Defence's Policy relating to Dual Items?

A Department of Defence Production, Ministry of Defence has clarified that dual use items, having military as well as civilian applications, other than those specially mentioned in the Defence Product list issued vide Press Note No. 3 (2014 series), would not require Industrial License from Defence angle.

Q Whether Industrial License is required for manufacture of "Civil Aerospace" Items?

A Manufacture of items for "Civil Aerospace" is under compulsory licensing. Industrial license for manufacture of such items is issued on the recommendations of Department of Defence Production, Ministry of Defence.

Q Is there any clarification regarding Indian Offset Partner (IOP)?

A D/o Defence Production has clarified that "the Indian Offset Partner shall, besides any other regulations in force, also comply with the guidelines/ licensing requirements stipulated by the DIPP as applicable" Possession of defence industrial license, is not a pre-requisite for becoming an IOP and it is mandatory only if it is required under the licensing requirements/guidelines issued by DIPP.

Q. Is IL needed to fulfill offset obligations?

A There are some items for which IL was given by DIPP earlier but not any more. IL is needed only for the items covered under Defence List. The Defence List is available at the DIPP website for guidance to the entrepreneurs.

Q. How do we convince Offset Partners ?

A A List of Defence Products, prepared by Department of Defence Production, Ministry of Defence has been uploaded on the DIPP's website for guidance to the entrepreneurs. Industrial License is required only for the items covered under Defence List.

Q What is the policy relating to licensing for EoU Units or Units in SEZ Area?

A Department of Commerce will consider the Licensing applications for EoU Units or Units located in SEZ area.

Q. What is the policy relating to the Extension of Validity of Industrial License ?

- ✓ Initial validity of an Industrial License, will be for a period of three years.
- ✓ The Licensee has to submit progress report (form 'G') on six monthly basis, until commencement of commercial production. (Form 'G' is provided with the Industrial License)
- ✓ If the licensee commences the commercial production within validity period, there is no need for applying for extension of validity.
- ✓ In case, the licensee fails to commence commercial production within initial validity period, they may directly apply to the concerned Administrative Ministry for extension of validity of their Industrial License, as the extension of validity of IL is processed by the concerned Administrative Ministry.
- ✓ The licensee can apply twice, for extension of validity for a period of two years each.
- ✓ The total period of validity of the Industrial license will be seven years, within which the commercial production has to commence.
- ✓ In case the commercial production is not commenced within this period the license would be rendered invalid.

Q Will the guidelines mentioned in Press Note No.5(2014 series) regarding 'Extension of Validity' be applicable from prospective effect i.e. 2nd July 2014 or are also applicable to the licenses issued prior to the issue of Press Note No.5(2014 series).

A The validity of all Industrial Licenses has been increased to three years, whether issued before or after 2nd July 2014. The licensee has to apply for extension of validity after three years, as applicable.

Q. Whether partial commencement of production, i.e. if the licensee commences the production of one of the many items covered under Industrial License, will be treated as commencement of commercial production?

A. The partial commencement of commercial production is accepted as the commencement of commercial production in respect of the entire Industrial License.

Q Is there any procedure relating to change of owner of the Registered Industrial Undertaking who has been granted an Industrial License?

A Rule 19(A) (2) of the Registration and Licensing of Industrial Undertakings 1952 Rules (RLIU) may be referred to.

Q What is the procedure relating to Change of Name in the License?

A Rule 19(A) of the Registration and Licensing of Industrial Undertakings 1952 Rules (RLIU) may be referred to. The company would be required to file their request for change of name of the company with a copy of the fresh ROC Certificate. The proposal for change of name would be processed in consultation with the concerned agencies/ Ministries/Departments.

Q What is the procedure relating to endorsement of Change or addition of location in the License?

A The applicant has to apply to DIPP with the Copy of the Industrial License; information relating to Investment in Plant and Machinery duly certified by a Chartered Accountant in r/o each IL held by the Company and documents relating to the details of the new location as per the Col. No. IV(1) and (2) of the IL application form.

Q. Whether Department of Industrial Policy & Promotion grant industrial License for manufacture of small arms?

A. The work related to issuance of license for manufacture of small arms was transferred to Ministry of Home Affairs since 2011 as MHA is the appropriate authority for grant of licenses for manufacture of Small Arms and Ammunitions under Arms Act 1959 and Arms Rules, 1962.

Q. Where an Industrial License application can be filed?

A. Online filing of Industrial License (IL) and Industrial Entrepreneur Memorandum (IEM) has been introduced w.e.f. 20/01/2014 to provide single-window, transparent and integrated electronic services to investors, industries and business. The eBiz portal will provide entrepreneurs 24X7 Services in respect of online filing of applications, tracking of the status and obtaining online approvals of IL/ Acknowledgement of IEM. **Online filing has been made mandatory w.e.f. 15/05/2014. Application for IL is no more accepted in hard copy.**

Q. Is an Industrial License required for Maintenance, Repair and Overhaul (MRO) activities?

A. The MRO activities in Defence sector will be treated as Services and would not be subjected to the Industrial License under IDR Act unless it actually involves manufacturing of any components/sub-assemblies which are licensable and that product would remain the property of the same customer after MRO operation.

Q. Who is the licensing authority for manufacture of alcohol?

A. For setting up of distillery and fermentation unit for manufacturing denatured spirit, rectified spirit and other alcohol, containing more than 80% alcohol, Industrial License is not required. Entrepreneur needs to file an Industrial Entrepreneur Memorandum (IEM) with the Secretariat for Industrial Assistance, Department of Industrial Policy and Promotion.

Manufacture of Potable Alcohol containing less than 80% alcohol, is covered under compulsory licensing. However, grant of license for this comes under the exclusive domain of the State Government. In this regard Hon'ble Supreme Court had delivered a judgement in the matter of Bihar Distilleries Vs UOI dated 29/01/1997, which inter-alia stated that Potable Alcohol comes under the exclusive domain of the State Government with regard to manufacture, possession etc. This decision was reiterated by the Apex Court on 23/02/2008 in C.A. No.2185/2802, as under the Constitutional Scheme regulatory of manufacture and sale of potable alcohol was vested with the State Government. The DIPP had stopped processing of applications/request for amendments etc. The license for Potable Alcohol is presently being granted by the concerned State Governments.

Q. Is there any list of items, which categorizes the Defence items under Defence Security Manual for Licensed Industry?

A. A list of Defence Products categorized in A & B category from security angle prepared by Department of Defence Production, Ministry of Defence, is available at DIPP's website under the head Investors Guidance, sub-head Defence items requiring Industrial License category wise.

Q. Which NIC Code is presently being followed?

A. Presently, the Industrial Classification NIC Code -2008 is being followed.

Q. Which items fall under category “Body Armours or protective garments” requiring compulsory licensing?

A. The items meeting the protective requirements of level III (NIJ 0101.06, July 2008 or national equivalent and above as per the Defence Products List (Press Note 3 of 2014) would be covered under the category of “Body Armours or protective garments” requiring compulsory licensing.

Q. Are there any new procedures stipulated in the Industrial License?

- ✓ The annual capacity for defence items in the Industrial License has been deregulated. This would however entail submission of half yearly production return to Department of Industrial Policy and Promotion and Department of Defence Production, Ministry of Defence in the prescribed format.
- ✓ The licensee shall be allowed to sell Defence items to Government entities under the control of Ministry of Home Affairs, State Governments, Public Sector Undertakings and other valid Defence Licensed Companies without prior approval of the Department of defence Production. However, for sale of the items to any other entity, the Licensee shall take prior permission from the Department of Defence Production, Ministry of Defence.
