

REPORT



EXPERT GROUP TO EXAMINE THE SCHEMES OF STATUTORY CLEARANCES FOR INDUSTRIAL AND INFRASTRUCTURE PROJECTS IN INDIA

NEW DELHI; NOVEMBER 10 ,2008



**Department of Economic Affairs
Ministry of Finance
Government of India**

An Expert Group To Examine The Schemes Of Statutory Clearances For Industrial And Infrastructure Projects was constituted in pursuance of Prime Minister's announcement in the 54th meeting of the National Development Council (NDC).

2. The Expert Group has carefully examined the existing Central and State level clearances required for industrial and infrastructure projects. Recognizing the critical importance of environment protection, community rights and sustainable development in the growth process of the economy, we have recommended rationalization of existing procedures and guidelines with a view to reduce the time taken in according the clearances and remove operational bottlenecks for the entrepreneurs and project proponents.

3. We would like to place on record the invaluable assistance rendered to the Group by Shri Govind Mohan, Director (Infrastructure) in the Department of Economic Affairs, Ministry of Finance in coordinating the Secretariat and the consultations with the stakeholders.

4. Our Report and Recommendations are enclosed for consideration of the Minister of Finance, Government of India.

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EXECUTIVE SUMMARY

1. In pursuance of the commitment made by the Prime Minister in the 54th Meeting of the National Development Council (NDC), an Expert Group was constituted in Department of Economic Affairs (DEA) to examine the schemes of statutory clearances for industrial and infrastructure projects and suggest specific steps for removal of bottlenecks and speeding up the approval process of these projects. The Group was chaired by Additional Secretary (Economic Affairs) [Ms Sindhushree Khullar] and comprised representatives of Central Ministries/Departments, Development Financial Institutions and Apex Chambers of Industry and Commerce.
2. The Group held wide ranging consultations with different stake holders, including State Governments spread across four meetings between April, 2008 and September, 2008.
3. The Group confined the scope of its recommendations to the following Central Government (totaling 10) and State Government (totaling 4) clearances: Environment Clearance, Forest Clearance, Wild Life Clearance, Security and Defence Clearances, Clearances under the Electricity Act, 2003 and Explosive Act, 1984, Groundwater Clearance, Stack Height Clearance under the Airport Authority of India Act, 1994, Clearances under the Factories Act, 1948 and Clearances under the Air Act, 1981 and Water Act 1974. Clearances associated with commencement of business, financial clearances, and sectoral clearances, that are specific to sectors such as power, ports, urban development etc., were not taken up for consideration. Finally, the Group decided unanimously that issues of land acquisition and Relief & Rehabilitation (R&R) will be kept outside the ambit of its recommendations.
4. The Group studied in detail 10 different case studies spanning the experience of individual developers, State Governments and Central Government Ministries/Departments. It was found that in actual practice, the time taken in according clearances, particularly those related to environment and forest sectors, was much in excess of the prescribed norms. This had caused inordinate delay in grounding of projects, as a result of which there were significant cost overruns that affected project viability and effectiveness.

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5. The recommendation of the Group are in two parts: (i) those that are common to all clearances; (ii) specific sector wise recommendations, spanning the entire gamut of Central and State Government clearances.
6. The important recommendations common across all sectors are as under:
- i. The information sought through application formats and proformae to be as objective and clearly defined as possible.
 - ii. The data requirements to be relevant to the location where the project is being planned; besides, data sources to be clearly identified in the application formats themselves so that scope for dispute on the authenticity of data at the appraisal stage is ruled out.
 - iii. The onus of proof of the correctness of information be placed on the applicant emphasizing 'self certification' as the norm to the extent possible along with a penalty entailing cancellation of the project if the information is incorrect. → ok
 - iv. The questionnaires to be designed for public hearings be clearly defined, with details of public functionaries and experts from whom information has to be collected. Discussion in the hearing to be limited to only those issues which are in dispute. → who decides
 - iv. The process of public hearings be liberalized by empowering a larger number of statutory authorities, e.g., State Industrial Development Boards, besides the District Magistrate, to conduct them. Finally, a panel of agencies to be notified by the Ministry/Department seeking a public hearing – in addition to the SPCBs – for co-ordinating the process of holding the hearings.
 - v. The entire process of according clearances – by all major Central and State authorities – to be web enabled and made accessible to project proponents in an electronic format. The status of the application to be available 'on line' at all times for monitoring by the project authorities. A maximum time period to be specified for receiving the application, 'complete in all respects', so that a major cause for delay is 'ring fenced' and not allowed to remain open ended. A receipt to be electronically generated after the application form has finally been accepted by the approving authority.

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- vi. The system of collecting applications in e-format, processing them and making available the data in a concise, structured format for consideration of appraising and approving authorities to be outsourced to the extent possible, in respect of all major clearances.
 - vii. The timelines to be defined in respect of all major clearances. One week prior to the deadline, all applications, that are nearing completion of their timelines, be taken up for appraisal in a high powered group comprising the Secretaries of the Ministry/Department granting the approval and the concerned sectoral Ministries/Departments. The group can unanimously recommend an extension of the timeline by a reasonable period, in case some major requirement for the purpose of according the clearance remains to be fulfilled, and the extension can be notified on the website of the concerned Ministry/Department along with reasons for extension; failing which, the remaining action (s) required to complete the processing in respect of the application to be expedited and concluded within the specified period.
 - viii. In case no extension of timeline is specified and the clearance is not given within the specified timeline, with reference to the date on which the application was received, complete in all respects, the clearance to be 'deemed' to have been made available on expiry of the timeline. This stipulation should be clearly specified both in the receipt issued at the time of accepting the application and on the website of the Ministry/Department.
 - ix. The delegation of powers for issuing approvals to be confined to appropriate levels in the hierarchy where responsibility can be assigned in case of a major lapse in not issuing the clearance within the specific timeline.
7. The Group studied in detail the legal context in which various rules under the Environment (Protection) Act, 1986, viz., Hazardous Wastes (Management and Handling) Rules, 1989; Manufacture, Storage and Import of Hazardous Chemical Rules, 1989; Bio-Medical Waste (Management and Handling) Rules, 1998; Municipal Solid Wastes (Management and Handling) Rules, 2000 et al have been issued. The Group also considered the circumstances and the periods during which the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act,

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1974, both of which are Central legislations (like the Environment (Protection) Act, 1986) were enacted.

8. The Group recommends that the environment clearance prescribed for industrial/infrastructure projects under the terms of the EIA Notification of 2006 should be made comprehensive enough to cover the requirements of multiple rules formulated under Sections 3,6 and 25 of the Environment (Protection) Act, 1986 as also the 'consent to establish' clearances required under the Air Act, 1981 and Water Act, 1974. The 'consent to operate' clearance under the Air and Water Acts can continue to be accorded by the State Pollution Control Boards after the requisite prescribed conditionalities under the EIA Notification have been given effect to by the project proponents.

9. Some of the important sectoral recommendations of the Group are as under:

- i. State Environment Impact Assessment Authorities (SEIAAs) should be constituted without delay in the remaining States and UTs (17 out of 28 States and 3 out of 6 UTs have constituted the authorities so far).
- ii. Standardized Terms of Reference (ToR) should be evolved for repetitive projects in order to minimize time taken at the 'scoping' stage. —
- iii. Developers/Implementing Agencies should be actively encouraged to avail of public consultation through agencies other than State designated Pollution Control Boards.
- iv. Guidelines should be evolved to streamline the project development process at the State level in respect of Wildlife and Forestry clearances.
- v. Standard guidelines should be evolved by Ministry of Home Affairs for security clearance of bidders.
- vi. Standard guidelines should be evolved by Central Ground Water Authority (CGWA) for according groundwater clearance in respect of critical, semi-critical and exploited blocks.
- vii. Explosive Rules, 1973 should be amended to provide for a definite timeframe in which licenses are given in cases where district authorities have verified the *bonafide* of the developers.

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viii. A timeframe should be defined under which Central Electricity Authority (CEA) accords permission for development of hydro power projects.

10. The Group also recommends a "best practice" scenario at the level of State Governments, which consists of 2 stages: evolution of a legislative framework for ensuring single window clearances within a definite timeframe for all industrial/infrastructural projects; and extensive use of IT based systems to provide "real time" support to developers in having their proposals cleared at various levels. It is proposed, finally, that the 'e-Biz' project of Department of Industrial Policy and Promotion be dovetailed with the proposed framework in order to enhance its effectiveness.

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CHAPTER 1

Composition And Terms Of Reference Of The Expert Group To Examine The Schemes Of Statutory Clearances For Industrial And Infrastructure Projects

1. At the 54th meeting of the National Development Council (NDC), on December 19, 2007, the Prime Minister, in his closing remarks said:

“...I will request the Finance Minister to constitute an Expert Group to go into the system of statutory clearances, including forest/environment clearances for industrial and infrastructure projects and suggest concrete ways of speeding these up.....”

2. Consequently, vide Notification dated April 03, 2008, an Expert group was constituted under the Chair of Additional Secretary, Department of Economic Affairs (DEA) [Smt Sindhushree Khullar] comprising representatives from Planning Commission, Department of Industrial Policy and Promotion (DIPP), Infrastructure Development and Finance Corporation (IDFC), Infrastructure Leasing and Financial Services Limited (IL&FS), India Infrastructure Finance Company Limited (IIFCL), Confederation of Indian Industry (CII), Federation of Indian Chambers of Commerce and Industry (FICCI) and Associated Chambers of Commerce & Industries of India (ASSOCHAM) and Joint Secretary (Infrastructure), DEA [Sri Arvind Mayaram] as Member Convener. The group co-opted Sri Govind Mohan, Director (Infrastructure) for assistance in its deliberations. A copy of the Notification is at Annex 1.1. The terms of reference for the group were:

- i. To examine the existing system of statutory clearances including forests & environmental clearances, as mandated by Central Government, for approval of industrial & infrastructure projects.
- ii. To examine the time and cost impact of obtaining clearances for industry and infrastructure projects (based on case studies).
- iii. To suggest specific steps for removal of bottlenecks and speeding up the approval process of industrial & infrastructure projects.
- iv. Any other relevant issues as deemed fit by the Group.

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3. The group held four meetings on April 11, 2008, May 29, 2008, June 20, 2008 and September 1, 2008. In these four meetings, wide ranging consultations were held with several Central Government Ministries/Departments, namely Ministry of Defense, Ministry of Civil Aviation, Ministry of Power, Department of Road Transport and Highways (including National Highways Authority of India (NHAI), Department of Shipping, Ministry of Environment and Forests and Department of Industrial Policy and Promotion; State Governments of Kerala, Karnataka, Rajasthan, Haryana, Gujarat and Delhi, who have all initiated innovative measures for speeding up the system of industrial and infrastructure clearances; representatives of project developers and financing institutions; and, apex chambers of industry and commerce.

4. The findings and conclusions of the Report are based on the consultations carried out with various stakeholders as listed above.

5. The original time frame for submission of the Report of the Expert Group, which was end July, 2008 was extended by one month, i.e., till end August, 2008 vide Notification dated August 13, 2008.

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CHAPTER 2

Statutory Clearances

1. The broad categories of clearances required are as follows:
 - i. Commencement of business clearances
 - ii. Financial clearances
 - iii. Sector specific clearances
 - iv. Central Government clearances
 - v. State Government clearances
2. The system of clearances, at the State and Central level, for taking up any industrial or infrastructural project, is depicted through a diagram in Annex 2.1. The details of representative clearances required under each sub-head as above are depicted in the Table at Annex 2.2.
3. The Expert Group confined its deliberations and recommendations to Central Government clearances and major State Government clearances in view of the following:
 - i. The suggestions for rationalization of procedures and reduction in delays, received from private sector developers, public sector infrastructure providers and financial institutions were confined to these categories.
 - ii. With regard to the remaining categories of clearances, there was a unanimous view that with the increasing use of Information Technology (IT) based systems, a high level of streamlining had been achieved, and the process of securing the requisite approvals had become fairly straightforward.
 - iii. With regard to clearances that were sector specific, as for example securing coal and gas linkages, use of sea water for some applications etc, while there may be a need to rationalize the procedures further, the mandate of the group was of an omnibus nature and sector specific clearances were best addressed by the concerned Ministry/Department/Agency.
 - iv. Issues relating to registration of business, obtaining PAN number, securing sales tax registration certificate and so on are procedural in nature and may not qualify to be categorized as 'clearances' in a strict, definitional sense.

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3. Accordingly, the following broad categories of clearances are being taken up in this report for analysis and recommendations:

Major Central Government Clearances

- i. Environment Clearance under Environment Impact Assessment (EIA) Notification of 2006.
- ii. Diversion of Forest Land under Forest Conservation Act, 1980.
- iii. Coastal Zone Regulation (CRZ) clearance under CRZ Notification, 1991.
- iv. Wildlife clearance under Wildlife (Protection) Act, 1972.
- v. Stack height clearance under Aircraft Act, 1934.
- vi. Clearances required from Ministry of Defense under Defense of India Act, 1903 etc.
- vii. Clearances under Electricity Act, 2003.
- viii. Clearance from Chief Controller Of Explosives (CCE) to use explosives under Explosives' Act, 1884 and Explosives' Rules, 1973.
- ix. Clearance to use groundwater in exploited blocks from Central Ground Water Authority (CGWA).
- x. Security clearance.

Major State Government Clearances

- i. Approval of building plans by municipal authorities.
 - ii. Licenses required from Chief Inspector of Factories under the Factories Act, 1948.
 - iii. Permission to use water and power allocation.
 - iv. Consent to establish and operate from Pollution Control Board (PCB).
4. It was unanimously agreed that issues relating to acquisition of land, conversion of agricultural land for non agricultural uses and Relief and Rehabilitation (R&R) varied widely from State to State and may be left out of the ambit of the Group's coverage.

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CHAPTER 3

Clearances required for industrial and infrastructural projects

1. A brief description of the clearances is presented in the following paragraphs. In respect of each clearance, the focus shall be on the statutory/legal/administrative basis of the requirement, procedure for according approvals, timelines - either formal or informal and perspective of the concerned Ministry or Department.

Central Government clearances

Environment clearance

2. Environmental Impact Assessment (EIA) is a tool to identify the environmental impact associated with the development activities and provide necessary mitigation measures for ensuring that the envisaged development is sustainable and addresses the needs of the public at large. EIA was mandated through a Notification on January 27, 1994 under the Environment (Protection) Act, 1986, for the activities listed therein. Based on a comprehensive review taken up in 2001, a new EIA Notification was put in place on September 14, 2006 superseding the earlier Notification of 1994.

3. According to the Notification of 2006, development projects/activities requiring prior environmental clearance have been identified based on their impact potential and grouped into two categories, i.e., Category 'A' and Category 'B'. Category 'A' projects are those whose impact potential is large and such projects require environmental clearance from the Central Government in the Ministry of Environment & Forests (MoEF) after appraisal by the Expert Appraisal Committees (EACs). Category 'B' projects have comparatively less impact potential and require clearance by the State level Environmental Impact Assessment Authority (SEIAA) to be notified under Environment (Protection) Act, 1986 in consultation with the respective State Governments. At present, SEIAAs have been constituted in 18 States/UTs.

4. The procedure for according environmental clearance involves two stages. In the first stage, an application has to be forwarded by the project proponent along with pre-feasibility report to MoEF. Based on this, the Terms of Reference (ToR) of the project for preparation of EIA are awarded. In the second stage, the EIA report, along with

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details of the public consultation are submitted to the EACs/SEIAAs as the case may be for final approval. The time limits prescribed in the Notification of 2006 are as under:

Table 1: Timelines prescribed for environmental clearance

S No	Stage	Time Limit
1	Approval of ToR	60 days
2	Environment Clearance:	150 days
	a. Public hearing	45 days
	b. Consideration by expert committees	60 days
	c. Communication of decision on recommendation of expert committee	45 days

5. MoEF has stated that more than 4,500 projects have been cleared under the Notification of 2006. Various steps have been taken to streamline the procedure for according clearances including regular meetings of the EACs and constant review of pending cases. The status of environmental clearance of projects during the last three years has been stated to be as under:

Table 2: Status of environmental clearance of the projects received during last three years

Year	Projects received	Projects cleared	Projects closed / rejected	Projects pending
2005-06	1,042	901	115	519
2006-07	1,812	765	260	1,306
2007-08	4,333	3,005	734	1,900

6. The constraints identified by MoEF in the process of according clearances are as under:

- i. Excessive workload resulting from a two stage process of clearance, with the number of proposals requiring examination having increased from 240 in year 2001 to 4,590 in year 2007.
- ii. Limited technical manpower in the Ministry, with no fresh recruitment having taken place in the last 15 years.
- iii. Non constitution of SEIAAs in many of the States has increased the pressure on the Central EACs: out of the total cases pending with the MoEF, nearly 50% are on account of non availability of the appraisal Committees at the State level.

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Forest clearance

7. Every State Government, before diverting/de-reserving forest land for non forest purpose requires prior approval of Central Government in accordance with the Forest (Conservation) Act, 1980. The statute has prescribed a two stage diversion process. In the first stage, i.e., the "in principle" approval stage, the proposal is either agreed to or rejected. If agreed to, certain conditions relating to depositing the opportunity cost of forest land, such as Net Present Value (NPV), Compensatory Afforestation (CA) and other expenses towards mitigating the environmental damages (catchment area treatment, wildlife preservation, bio-diversity conservation and rehabilitation of displaced persons, if any) have to be fulfilled by the project authorities. Once this is done satisfactorily, the second stage clearance is accorded by Government and the forest land handed over to project authorities for their use.

8. Proposals for diversion of forest land upto 5 Ha are disposed off at the level of Regional Chief Conservator of Forests (RCCF) who heads the Regional Offices¹; proposals involving forest land beyond 5 Ha and upto 40 Ha are examined by the State Advisory Group of the concerned State/Union Territory, in the Office of the RCCF, on whose recommendation, a final decision is taken in MoEF. Proposals beyond 40 ha of land are examined by the Forest Advisory Committee (FAC) and decision taken by the Competent Authority in the Ministry. All proposals for regularization of encroachments are dealt with by MoEF, irrespective of the area involved. The Supreme Court, vide its order dated April 27, 2007 has introduced another stage of clearance, after a project had been approved by the FAC, by the Central Empowered Committee (CEC). However, vide order dated May 02, 2008, this stipulation has been removed and there is no requirement for any approval of Forest clearances by the CEC/Supreme Court.

9. The timelines prescribed in the Forest (Conservation) Rules, 2003 are as under:

¹ Situated at Bengaluru, Bhopal, Bhubaneswar, Chandigarh, Lucknow and Shillong.

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Coastal Management Zone (CMZ) Notification has been issued on 1st May, 2008 with a subsequent amendment of 9th May, 2008. This notification proposes an integrated coastal management approach rather than a regulatory frame work presently under implementation.

Wildlife clearance

13. Clearances from wildlife angle are required for projects involving diversion/use of lands in protected areas, i.e., National Parks & Sanctuaries. This clearance is required under the provisions of the Wildlife (Protection) Act, 1972 and also as per the directives of the Supreme Court in Writ Petition (Civil) No.202/95 and 337/95. The wildlife related proposals need to be submitted through the concerned State Government along with the recommendations of the State Board for Wildlife and the Chief Wildlife Warden of the concerned State. The proposals, complete in all respects, are placed before the Standing Committee of National Board for Wildlife, a statutory body under the Wildlife (Protection) Act, 1972, chaired by the Minister-in-Charge of Environment and Forests. The Standing Committee ordinarily meets once in three months. All proposals received during the intervening period are placed for consideration of the Committee. However, in cases which involve sensitive wildlife habitats and/or involve large areas of the Protected Areas, site inspection is carried out by the Committee members before arriving at a final decision. In normal cases, decision on the proposals involving Protected Areas are taken in 90 days and communicated to the concerned State Governments. Thereafter the State Government is also required to obtain permission of the Supreme Court based on the recommendation of the Standing Committee.

Stack height clearance

14. Section 9A of the Aircraft Act, 1934 empowers Central Government to direct that no building or structure shall be constructed or erected, or no tree shall be planted on any land within a radius, not exceeding twenty kilometers from the aerodrome reference point. In exercise of these powers, Ministry of Civil Aviation (MoCA) have issued a notification on January 5, 1988, laying down detailed guidelines in respect of building or structures to be constructed or erected or trees to be planted with specified limits. Airports Authority of India issues height clearances under this statutory framework.

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Revised guidelines have thereafter been notified on June 30, 2008, in supersession of the earlier notification.

15. The procedure for issue of height clearance has been reviewed and a simplified procedure put in place. The significant features of the revised procedure are that the powers in respect of height clearance have been fully delegated to regional/aerodrome levels in the Airports Authority of India; and a time line of maximum 5 weeks has been specified for disposal of applications received. To address any grievances arising from the decisions so taken, an appellate mechanism has also been put in place at the Headquarters level. The appeal is required to be decided within six weeks' time.

16. Instructions have also been issued to AAI to place on its website the digitized zoning maps of each of its operational airports, to enable sufficient guidance for any person intending to construct a building in the vicinity. Further, AAI is also devising a procedure for online submission of application. This procedure, which is likely to be implemented in the next 2 months, would also enable applicants to ascertain status of their applications on line.

Defense clearance

17. The total defense land in the country is around 18 lakh acres, of which, 16 lakh acres is outside the Cantonments. As per the Ministry of Defense (MoD) policy instructions dated July 11, 1986, defense land cannot be declared surplus; if at all any land is to be given, it should only be on the basis of exchange. Prime Minister's Office (PMO) Office Order of August 22, 1997 has further laid down that no alienation of defense land will be permitted without Cabinet approval. An amendment issued in the year 2000 has permitted diversion of defense land for use by Public Sector Enterprises/State Governments/Public Utilities on short term lease basis, which does not lead to alienation. The Defense of Works Act, 1903 (Section 3 of Chapter 7) prohibits all construction within a certain radius of a defense installation and provides for mandatory consultation with defense authorities whenever an infrastructure project is proposed on defense land. No timelines are presently prescribed for any clearance required from MoD.

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Clearances under Electricity Act, 2003

18. Under the Electricity Act of 2003, no clearance is needed for setting up “thermal” power plants; clearance is needed from the Central Electricity Authority (CEA) for setting up “hydro” power plants above a certain capital cost (s 8 of the Act), which has been notified separately²; transmission and distribution are licensed activities, where the licensee has to apply to the appropriate Regulatory Commission³. There are no time limits prescribed for “hydro” clearances presently.

Clearance to use groundwater

19. Central Ground Water Board (CGWB) has been constituted as an authority under Section 3(3) of the Environment (Protection) Act, 1986 for ‘regulation and control of ground water management and development’. The Authority was constituted into a permanent body in November, 2000. Central Pollution Control Board (CPCB) has asked all State Pollution Control Boards (SPCBs) to refer cases where ground water extraction is involved to the Central Ground Water Authority (CGWA) for clearance. CGWA – under the administrative control of Ministry of Water Resources (MoWR) – regulates the withdrawal of groundwater in 1,615 over exploited, critical and semi-critical blocks. The requirement of groundwater withdrawal by new as well as industries/projects under expansion is examined on a case to case basis before grant of No Objection Certificate (NoC). The applications have to be submitted with a referral letter from statutory organizations such as the State Pollution Control Board (SPCB), Ministry of Environment and Forests (MoEF), Bureau of Indian Standards (BIS) and so on for further processing of the cases. All projects are required to submit detail designs for rain water harvesting, the implementation of which is mandatory in areas falling in critical blocks. Whenever permission/NoC for ground water withdrawal is accorded by CGWA, a mandatory clause for rain water harvesting and artificial recharge of ground water by the industry/infrastructure project is included therein.

² Rs 2,500 crore if the scheme is included in the National Electricity Plan (NEP) and the site has been allotted on the basis of a transparent process of bidding; Rs 500 crore otherwise.

³ Technically, grant of license does not fall within the ambit of clearances.

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20. While the policy guidelines for according NoCs to industries/infrastructure projects are decided in the meeting of the CGWA, the following points are being taken into consideration presently:

- Permission to use groundwater is declined in cases of severely over-exploited areas, which are devoid of any deeper potential aquifers.
- Permission to use groundwater is granted to industries/projects in critical blocks, subject to mandatory implementation of rain water harvesting/ground water recharge matching the proposed draft.
- Permission to use groundwater is granted to industries/projects in semi-critical blocks, subject to implementation of rain water harvesting/ground water recharge systems.

21. No timelines have been prescribed in the guidelines for grant of clearance to use groundwater. It has been ascertained from CGWA that an internal guideline of 45 days exists within the organization for clearing cases referred to them, after inspection and report by the State level agencies.

Clearance to use explosives

22. The Explosives Act of 1884 regulates the manufacture, possession, use, sale, transport, import and export of explosives. For the purpose of the Act, explosives subsume explosives defined in the Act, Gas cylinders and pressure vessels. The licensing procedure for the three categories is defined in the Explosives Rules, 1983; Gas Cylinder Rules, 2004 and Static & Mobile Pressure Vessels (Unfired) Rules, 1981 respectively.

23. The Explosives Rules, 1983 divide explosives into eight different categories. For each category, an issuing/renewing/approving authority has been identified. For lighter categories of explosives, the specified authority is usually the District Authority (District Magistrate/Commissioner of Police) and for higher categories of explosives, permissions have to be obtained from the Controller/Chief Controller of Explosives, who are functionaries of the Petroleum and Explosives Safety Organization (PESO), which, in turn, is headquartered at Nagpur and has regional offices all over the country.

24. The procedure of obtaining a license for explosives consists of the following steps: application to be made to the licensing authority in the prescribed form; licensing

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authority to specify the distance to be kept clear in and around the factory and magazine premises; resubmission of the application by the applicant after complying with the imposed conditions; referral of the application by the licensing authority to the district authorities for arranging public hearings for certifying the *bonafide* of the applicant and ensuring that there are no objections from public for manufacture/storage of the explosive; grant of license in normal course on receipt of a no objection certificate from the district authority and referral to Central Government for appropriate decision in case district authority objects to the grant of license. It has been specified in the Rules (Rule 156 of Explosives Rules, 1983) that the district authority will forward his report to the licensing authority as expeditiously as possible and within six months of the date of application. However, no time limit has been specified for grant of license by the licensing authority on receipt of the NoC.

Security Clearance

25. Some Ministries/Departments such as Department of Shipping, Ministry of Civil Aviation have internal rules of procedure/guidelines which require prior approval of Ministry of Home Affairs for projects which have foreign participation in the consortium selected for undertaking project implementation. In some cases, e.g., hydro power projects, Ministry of External Affairs (MEA) have highlighted the need to have security approval of companies of certain foreign origin even at the pre-qualification stage. However, there are no standard guidelines/instructions uniformly applicable to similar situations in all sectors and no timelines have been specified by either Ministry of Home Affairs (MHA) or MEA for disposal of such cases.

Major State Government clearances

Licenses required under Factories Act, 1948

26. A "factory" has been defined in Clause 2(m) of the Factories Act, 1948 as a manufacturing establishment having 10 or more workers with the aid of power and having 20 or more workers without the aid of power. The definition of "manufacturing" in Clause 2(k) of the Act is inclusive and virtually all industries/infrastructure projects would be subsumed within the ambit of the Act.

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27. A two stage clearance procedure has been prescribed in the Act and the Rules framed under it. The approving authority is the Chief Inspector of Factories of the State Government (or, equivalent/analogous /delegated authority). In the first stage, under Clause 6 of the Act, which provides for “approval, licensing and registration of factories” from the safety, health and welfare points of view, the site and building plans of the proposed establishment have to be submitted along with a registration fee (this requirement is to be complied with before starting any construction activities). There is a “deeming” provision in Clause 6(2) of the Act, whereby if no order is communicated to the applicant within three months from the date on which it is to be sent, the permission applied for in the application shall be deemed to have been granted. In the second stage, after the “occupier” has submitted a notice at least fifteen days before he begins to occupy or use any premises as a factory (after the construction has been completed) a license to run the factory has to be sought; the “occupier” is not permitted to use any premises as a factory unless the license has been issued and is in force. The time period for issuance of the license is specified in the Rules framed under the Act and differs from State to State. However, it is learnt that most States have a “deeming” provision in this regard on similar lines as has been provided in the Act for purposes of initial registration of the factory.

Consent to establish/operate

28. Consent to establish and operate industries/infrastructure projects have to be taken in two stages from the concerned State Pollution Control Board (SPCB) as per Section 21 of Air (Prevention and Control of Pollution) Act, 1981 and Section 25 of Water (Prevention and Control of Pollution) Act, 1974⁴. The Air Act is applicable to any industrial plant in an air pollution control area; while the Water Act is applicable to any industry which is likely to discharge sewage or trade effluent from its premises in a water pollution control area. The State Government has power to declare an area as an air pollution control area or water pollution control area under Sections 19(2) and 19(3) of the Air Act and Water Act respectively. On receipt of applications, the SPCB may cause an inspection to be made and prescribe conditions as regards treatment of air and water

⁴ Both the Acts are Central Acts.

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pollutants, which are normally in the nature of installation of effluent treatment plants (ETPs) of specified capacities.

29. The permissions are supposed to be granted within a period of four months. However, while there is a “deeming” provision in the Water Act, there is no such analogous provision in the Air Act.

Other clearances required at the State Government level

30. The other clearances required at the State Government level include the Building permission (permission to construct and occupy the buildings associated with the enterprise) from the State Government Department charged with urban planning functions (DDA in case of Delhi; Town and Country planning Department in case of Haryana) and permission to draw water and electricity (from the State Irrigation Department and the relevant Power Distribution Company [DISCOM]). These permissions are regulated by local level Acts, guidelines and procedures of business.

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CHAPTER 4

Selected case studies: industrial and infrastructural project clearances

1. The following case studies are being taken up to illustrate the actual timelines involved in implementing industrial and infrastructural projects in India:

- i. Foundry Park in West Bengal.
- ii. Thermal Power Project in Tripura.
- iii. Ropeway project in Uttarakhand.
- iv. Thermal Power Project in Andhra Pradesh.
- v. Municipal waste processing complex in Delhi.

(In all the above cases, the details of the exact locations and particulars of the project have been concealed at the request of the developers)

- vi. Case of CPL Infrastructure (Private) Ltd as cited by Government of Gujarat.
- vii. Difficulties being faced by Government of Haryana in securing environment and forest clearances.
- viii. Experience of Government of Rajasthan in securing clearances from the Central Ground Water Board (CGWB).
- ix. Case of security clearance of some ports cited by Department of Shipping.
- x. Experience of National Highways Authority of India (NHAI) in securing various clearances.

Foundry Park in West Bengal

2. The Foundry Park is planned to be developed on around 1,000 acres of land in West Bengal. The plant has an estimated capacity of 5 lakh tons of castings per annum and is expected to employ around 1,30,000 people (on direct and indirect employment basis). The park is scheduled to be commissioned by end 2009 and will have state of the art common infrastructure and facilities. The park is expected to get SEZ status in due course. The total investment in the project is estimated at Rs 125 crore to be partly funded through a Central Sector scheme of the Ministry of Industries and Commerce. The project falls within the definition of Category "A" projects as per the EIA Notification of September, 2006.

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3. The time taken for the environmental clearance of the project may be seen at Annex 4.1. It may be seen that as against the stipulated 60 days, the time actually taken in approving the ToR was 150 days; and, as against the stipulated time of 60 days, the time taken in concluding the consideration by the expert appraisal committee was 200 days. The total time taken for according environmental clearance to the project, which is prescribed as 210 days as per the notification (excluding submission time by project proponents), was 350 days, i.e., a time overrun of nearly 70%.

Thermal Power Project in Tripura

4. The thermal power project of nearly 800 MW capacity is being developed using natural gas from gas wells in Tripura. The project falls within the definition of Category "A" projects as per the EIA Notification of September, 2006.

5. It may be seen from Annex 4.2 that the first stage clearance for diversion of forest land took 173 days as against the stipulated time period of 150 days (for processing at the office of RCCF and in MoEF). The second stage clearance, for which 60 days have been prescribed for processing in MoEF took 187 days. In the aggregate, assuming a total stipulated time period of 210 days (for processing at the offices of RCCF and in MoEF for both stages of the clearance), the time taken for according clearance for diversion of forest land was 360 days (12 months) excluding the time taken in submitting the required information by the project proponents, i.e., a time overrun of 71%.

6. The proposal was processed for 'stack height clearance' by Airports Authority of India (AAI) as per the old guidelines and the total time taken was 15 months. It may be recalled that the time period stipulated under the new guidelines for according clearance is 5 weeks (6 weeks for deciding appeals, if any). The 'consent to establish' from Tripura Pollution Control Board (TPCB) was also obtained well within the prescribed time period of 4 months.

Ropeway project in Uttarakhand

7. The ropeway project represents a comprehensive approach in developing a tourist destination under public private partnership (PPP). The ropeway length is 10.93 km with three intermediate terminals. The project falls within the definition of Category "A" projects as per the EIA Notification of September, 2006.

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8. It may be seen from Annex 4.3 that while the approval for the terms of reference (ToR) was accorded in 51 days (i.e., within the stipulated time of 60 days), the public hearing, which ought to be completed in 45 days took an unreasonably long period of 180 days. The total time taken by the Expert Appraisal Committee to consider the proposal is about 65 days of receipt of EIA report which is slightly more than stipulated time period of 60 days. The time overrun so far (final approval not yet received) is around 80% of the stipulated time.

9. The proposal for forest clearance had not been able to be submitted to the office of the RCCF at the time of writing the report. By this time, the proposal had already taken 14 months in being finalized at the level of the concerned DFO.

Thermal Power Project in Andhra Pradesh

10. The coal based thermal power project of 1,600 MW capacity is being developed in a coastal location in Andhra Pradesh. The project falls within the definition of Category "A" projects as per the EIA Notification of September, 2006.

11. It may be seen from Annex 4.4 that the public hearing, which ought to be completed in 45 days took 72 days. Hence, the total time taken in public hearing and processing of the final EIA report in MoEF, which should be 120 days as per the guidelines, took 180 days in actual fact, i.e., a time overrun of 50%.

12. The proposal was processed for 'stack height clearance' by Airports Authority of India (AAI) as per the old guidelines and the total time taken was 3 months. The CRZ clearance took one month as per the stipulated time of similar magnitude. While this report is not focused on sectoral clearances, it may be worthwhile to mention that to obtain the in-principal 'Mega Power Project' status to the Project it has taken about 15 months owing to the stipulation of getting project specific commitment letters from power purchasing states. (though the state might have given such commitment letter in connection with another power project)

Municipal solid waste processing in Delhi

13. The integrated municipal solid waste processing complex is designed to process 2,050 tonnes per day of municipal solid waste generated in Delhi (about one third of

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Delhi's total waste) and produce 16 MW of power. The cost of the project is about Rs 175 crore and it has a construction period of 2 years. The project is distributed in two locations. The project falls within the definition of Category "A" projects as per the EIA Notification of September, 2006.

14. It may be seen from Annex 4.5 that the terms of reference were approved in 33 days as against the prescribed time period of 60 days. The public hearing, which ought to be completed in 45 days took 44 days. The time taken for approving the final EIA Report was 46 days as against the stipulated time of 75 days. The total time taken for according environmental clearance to the project, which is prescribed as 180 days as per the notification (excluding submission time by project proponents), was 123 days, i.e., the environmental clearance was accorded 57 days ahead of schedule.

15. The proposal was processed for 'stack height clearance' by Airports Authority of India (AAI) as per the old guidelines and the total time taken was 14 months. 'Consent to establish' was obtained from Delhi Pollution Control Committee (DPCC) in three months as against the stipulated time period of 4 months in the Air and Water Acts. However, the clearance from DPCC, under the Municipal Solid Waste (MSW) Rules, 2000⁵ for which no time period has been prescribed, took 18 months.

Government of Gujarat: CPL Infrastructure (Private) Limited

16. Government of Gujarat (GoG) have cited a communication from the aforesaid developer and stated that the actual time taken in finalization of terms of reference is 4-6 months (as against the mandated 60 days); concluding public hearing is 60 days (as against the mandated 45 days); and, in approving the EIA is 60 days (as against the stipulated 75 days). Hence, according to GoG, there is inordinate delay in finalization of the ToRs. Since preparation of draft EIA Report also takes upto 4 months, the entire process of securing environmental clearance takes nearly 12-14 months.

Government of Haryana: Experience in obtaining forest and environment clearances

17. It has been stated that Government of Haryana (GoH) had created a vast network of roads during early seventies by providing black top metalled road connectivity to

⁵ These are sectoral rules under the Environment (Protection) Act, 1986 valid for municipal solid waste clearances taken by municipal authorities.

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villages. These roads are categorized as district roads/other district roads and village roads. Some portion of the right of way had been used for tree plantation. This forest lane has subsequently been declared as protected forest and clearance under the Forest (Conservation) Act, 1980 is now required whenever widening/strengthening of the road becomes imminent on account of increase in traffic. It has been proposed that in respect of these cases, the power to widen the roads by encroaching on the adjoining forest cover is delegated to the level of the Divisional Forest Officer (DFO).

18. It has further been stated that Haryana State Industrial and Infrastructural Development Corporation (HSIIDC) has submitted 10 projects to the MoEF for environmental clearance. In these projects, the meeting to approve the Terms of Reference (ToR) took place nearly 5 months after the submission of applications. Further, after submission of documents in pursuance of this meeting, there has been no response from MoEF for a considerable length of time.

Government of Rajasthan: Experience in obtaining clearances from CGWB

19. It has been stated that approvals from Central Ground Water Board (CGWB) have been taking a long time adversely affecting the implementation of investment proposals. More than 80 industrial investment proposals in Rajasthan are awaiting CGWB approval and the total time that has elapsed since filing the application is upto two years in certain cases. It has been suggested by the State Government that conditions regarding usage of groundwater be specified while granting approvals so that the time taken at the 'clearance' stage is minimized.

Department of Shipping: Security clearance of ports

20. It has been stated that the security clearance of the bidders in two projects, i.e., redevelopment of bulk terminal project and capital dredging project at Jawaharlal Nehru Port as well as in other cases in Mumbai and Chennai ports took over a year each from Ministry of Home Affairs. In respect of a PPP project in Kandla port, political clearance of 11 shortlisted bidders is awaited for more than a year. This is because there are no clear cut guidelines available in this regard.

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Experience of NHAI in securing various clearances

21. NHAI has stated that the present system of environment clearances – required for new national highways and expansion of national highways greater than 30 km in length, involving additional right of way (RoW) greater than 20 m involving land acquisition – takes not less than 12 to 16 months, as compared to 3-4 months earlier. It has been further stated that forestry clearances take upto 1-2 years and clearance for wildlife areas upto 3 years. The CRZ clearance and ‘consent to establish and operate’ clearance from the State Pollution Control Board take upto 6 months each.

22. The delay in according ‘wildlife clearance’ can be adjudged from the example of the Kota Bypass Project. The timelines for this project are depicted in Annex 4.6. It took almost three and a half years for the clearance to be accorded from the wildlife angle. However, the delay was largely on the part of the State Government, which took almost 21 months in forwarding the proposal to MoEF for approval of the National Board of Wildlife (NBW), and, again took a long time in forwarding the recommendations of the NBW to the CEC for securing approval of Supreme Court. It may be noted that against the prescribed time limit of 90 days, the clearance from the NBW was obtained in less than 21 days (3 weeks).

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CHAPTER 5

Suggestions for rationalizing the system of clearances

1. During the course of the deliberations of the Expert Group, suggestions for rationalizing the system of clearances were received from various quarters, e.g., other members of the Group, Ministries/Departments of Government of India, State Governments and developers. These have been outlined in the following paragraphs.

Department of Shipping

2. Department of Shipping (DoS) have stated that there are 12 major ports, under the administrative control of the Department, besides about 200 non major ports which are under the control of respective State Governments. As per the current regulatory practice for environmental clearance, two classifications have been made for port projects: category 'A' of more than 5 MTPA capacity; and, category 'B' of less than 5 MTPA capacity. Hence, the earlier practice, where exemption from environmental clearance was given to all new port projects entailing investment of less than Rs 100 crore and for expansion/modernization of existing ports entailing investment of upto Rs 50 crore has been done away with. The specific suggestions of Department of Shipping are as under:
- i. In respect of environmental clearances, the earlier provision for exemption, based on capital limits, may be retained with appropriate upscaling due to increased costs.
 - ii. The clearances under the CRZ Notification of 1991 and the EIA Notification of 2006 should be combined for Port projects and the EIA process should be comprehensive enough to include CRZ clearances too.
 - iii. The scope of the entry 'Ports, Harbours' in Item no 7e of the Schedule to the Notification should be explicitly spelt out. It should be clarified whether activities such as construction of offices, residential quarters, warehouses, stacking yards and roads etc. are also covered besides jetties and berths.
 - iv. Activities such as construction of berths and jetties; capital dredging, reclamation and dumping and construction of breakwaters etc should have standardized ToRs and be excluded from the 'scoping' stage.

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- v. Expansion projects of major ports, which do not require additional acquisition of land be exempted from public consultation, on similar lines as expansion of roads and highways which do not involve further acquisition of land.

National Highways Authority of India (NHAI)

3. As per the existing Regulations, projects pertaining to expansion of NHs of more than 30 km length and involving more than 20m land acquisition require environmental clearance. It will be desirable that instead of this arbitrary condition of 20 m land acquisition, exemption may be granted from environmental clearance for those projects where construction activities are confined to a total right of way (RoW) of 60 m, which is the standard norm for National Highways as stipulated by NHAI. This would not adversely affect the environment as the traffic is in any case plying on the existing road prior to its upgradation/widening. The upgradation/widening programmes on NHs are taken up mainly to cater to the present day as well as projected design year traffic volume. Such upgradation/widening eventually results in overall reduction in vehicular pollutions and consequently reduces environmental degradation.

4. The other suggestions made by NHAI in the context of environmental clearances are as under:

- i. Since most of the NH projects pertaining to widening are of similar nature and the environment impact of highways' widening is likely to be similar in nature, it is suggested that a standard TOR may be formulated. This will facilitate faster decision making without amounting to any deviation from the established procedure.
- ii. Public hearing may be exempted for highways' widening projects, as provided under the EIA Notification, 1994.
- iii. A mechanism needs to be worked out wherein environmental clearance for a highway project is to be treated as automatically given, within a certain period, with certain stipulations. For majority of its length, the highway project usually follows the existing alignment, except in a few stretches of realignment for improvement of geometrics etc. It may, therefore, not be a

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prudent idea to subject a highway project to the kind of intense scrutiny being done at present.

1. In the context of forestry clearances, NHAI has highlighted the need to stipulate standard conditions for compensatory afforestation for each sector to bring about uniformity in the entire country. This is stated in the context of State Governments imposing additional conditions, which affect the viability of the project by delaying its execution. The other points highlighted in the context of forestry clearances are as under:

- i. A timeline may be drawn beyond which the forestry clearances can be 'deemed' to have been granted.
- ii. As far as the felling of trees is concerned, standard stipulations may be prescribed by MoEF which are uniform and binding on State Governments. These guidelines should also prescribe the felling agency so that delays are avoided.

6. In the context of wildlife clearances, it has been stated that even when the highways are passing through National Parks/Wild Life Sanctuaries, the clearance can be expeditiously given subject to stipulations/obligations on the part of the developing department to construct adequate number of under passes for passage of animals and creation of water bodies to be used by animals. On the positive side, upgradation of an existing 2-lane alignment passing through any wild life sanctuary only improves the environment by facilitating smooth, unhindered and faster passage of traffic compared to congestion and jams on an undivided 2-lane carriageway.

Ministry of Power

7. Ministry of Power (MoP) have suggested that there is need to standardize the Terms of Reference (ToRs) for environmental clearances of thermal projects as they are basically of uniform nature. The issues, it is reported, has been taken up with the Ministry of Environment and Forests.

Government of Gujarat

8. Government of Gujarat (GoG) have suggested a model for simplification of procedures in according clearances required for industrial/infrastructural projects, based

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on their own experience. It has been stated that investors typically require two forms of assistance: information and facilitation. In order to fulfill the first requirement, an Investor Support System (ISS) has been installed which has the following features: a software to assist in identifying suitable location based on critical parameters such as land, connectivity and availability of raw material such as Natural Gas; detailed information on infrastructure available upto the 'taluka' level; and, facility for data authentication and updation at regular intervals. For facilitating project implementation and commissioning, an Investment Monitoring System (IMS) was introduced in 1983 and revised in 1992 to include all approvals, such as letter of intent, industrial entrepreneurs memorandum, letter of permission and foreign direct investment. In the IMS, as it stands today, information is collected from the entrepreneur in a prescribed format against 15 milestones, progress reports generated and data analysed for follow up and review. (The diagrammatic representation of the system – extracted from a presentation made to the Expert Committee by GoG – is at Annex 5.1). The other reforms which have been initiated in GoG in this regard include the following:

- i. Regular reviews by Chief Secretary for large projects and MoUs.
- ii. Gujarat Industrial Development Board (GIDB) as the single point contact for monitoring of infrastructure projects under the PPP mode.
- iii. Self certification introduced in the Labor and Employment Department for replacing the 'inspector raj'.
- iv. Computerized factory licensing introduced by Labor and Employment Department for de-centralization of renewal system.
- v. Computerized building permission system introduced in Ahmedabad Municipal Corporation (AMC) area.
- vi. E-registration introduced for business registration.
- vii. Committees formed in each district under the Chairmanship of the District Collectors to identify land for industrial purposes and create 'land banks' for planning industrial estates, promoting industrial zones/SEZs and obviate delays associated with conversion of agricultural land for non agricultural uses.

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Government of Haryana

9. Government of Haryana (GoH) have made available information on how the system of State level clearances has been rationalized in the State. The Haryana Industrial Promotion Act, 2005 read with the Haryana Industrial Promotion Rules, 2007 provide for constitution of 'High Powered Clearance Committee' headed by Principal Secretary to Chief Minister; 'State level Clearance Committee' headed by Principal Secretary, Industries' Department; and, the 'District level Clearance Committee' headed by District Collector for receiving, monitoring, reviewing and clearing composite applications for industrial approvals of Rs 30 crore and beyond, between Rs 5 and 30 crore and less than Rs 5 crore respectively. The three committees shall meet once a month. Composite forms for application have been prescribed for two stages of clearance: at the time of establishment of the industrial/infrastructural undertaking; and, at the time of operation of the industrial/infrastructural undertaking. The Composite form for the first stage consists of a common sheet along with additional information proformas for obtaining NoCs from Haryana Pollution Control Board (in respect of consent to establish under the Air and Water Acts), Town and Country Planning Department (in respect of land use conversion and building permission), Chief Inspector of Factories (in respect of licensing under the Factories Act) and Uttar/Dakshin Haryana Bijli Vitran Nigam (for release of electricity connection). The Composite form for the second stage consists of a common sheet along with additional information proformas for obtaining NoCs from Haryana Pollution Control Board (for consent to operate under the Air and Water Acts) and Chief Inspector of Factories (for registration under the Factories Act).

10. The Main Act prescribes that "...the authority shall issue clearances within the stipulated time period, failing which the clearances shall be deemed to have been issued...". The Rules prescribe both the time limit for asking for additional information on submission of the application forms as well as the time limit for issuing clearances in respect of release of electricity connections, issuance of NoCs for consent to establish and operate, change of land use, approval of building plans, approvals under the Factories Act, registration of boilers, drug license and sales tax registration. Deemed approvals

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shall be applicable in respect of NoC for consent to establish, change of land use, approval of building plans and approvals under the Factories Act.

11. GoH have prescribed self certification under various laws and rules framed thereunder (10 in number⁶) for industries operating in IT/IT enabled services, Bio-technology applications, export oriented units and units in export processing zones. In addition, self certification on the basis of a report by an architect registered under the Architect Act, 1972 has been prescribed for building plans of factories/establishments coming up in areas developed by the State agency, i.e., HSIIDC.

Government of Karnataka

12. Government of Karnataka (GoKa) have made available the initiatives taken by it to encourage rapid industrial development. The Karnataka Industries (Facilitation) Act, 2002 provides for single window clearances through constitution of three committees: State High Level Clearance Committee (SHLCC) chaired by Chief Minister meets once in two months to approve projects with investments above Rs 50 crore; State level Single Window Clearance Committee (SLSWCC) chaired by the Principal Secretary, Commerce & Industries Department meets every month to approve projects with investments between Rs 3 and 50 crore; District level Single Window Clearance Committee (DLSWCC) meets once a month to approve projects with investments upto Rs 3 crore. Karnataka Udyog Mandal (KUM) has been nominated as the Nodal agency at the State level to act as the Secretariat for the SHLCC and SLSWCC. A Combined application form (CAF) has been devised for providing for unified registration under VAT and professional taxes. The Act provides for rationalization of inspections by providing for joint inspections by various Departments instead of individual inspections.

13. The 'New Infrastructure Policy, 2007' provides for speeding up clearances during the identification, development and implementation stages of infrastructure projects being considered on PPP mode. A 'Single Window Agency' under the Chairmanship of Chief Secretary, GoKa is to facilitate, co-ordinate and promote infrastructure projects on PPP

⁶ Factories Act, 1948, Maternity Benefit Act, 1961, Contract Labor (Regulation and Abolition) Act, 1970, Payment of Wages Act, 1936, Minimum Wages Act, 1948, Punjab (Shops and Commercial Establishments) Act, 1958, Payment of Gratuity Act, 1972, Payment of Bonus Act, 1965, Child Labor (Prohibition and Regulation) Act, 1986 and the Punjab Labor Welfare Fund Act, 1965

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basis, in addition to approving the PPP projects upto Rs 50 crore; the SHLCC under Chief Minister, mentioned earlier, will approve PPP projects beyond Rs 50 crore. For expeditious development of PPP projects, the Policy provides for formation of SPVs for critical projects, to acquire resources and clearances before award to developers for implementation, thus eliminating the risks to the developers during the implementation stage.

Government of NCT of Delhi

14. Government of NCT of Delhi proposed to set up a 'Single Window Clearance System (SWCS)' in the Department of Industries for grant of clearances for setting up of industrial units in the NCT of Delhi. The principle objective of SWCS is to ensure grant of all approvals, sanctions, no objections, licenses etc, required from various departments for setting up industries, in a centralized, time bound and efficient manner. A 'Concept Paper' has been prepared by the Department of Industries, which, *inter alia*, provides for the following: constitution of a High Level Committee (HLC) under the Chairmanship of Secretary & Commissioner of Industries and comprising senior representatives of Labor, Power (including DISCOMS), Fire, Pollution Control Board, DDA, MCD, Forest, Fire and related departments; common application form for statutory and non-statutory clearances; listing of clearances required at the establishment and operating stages; time limits for various clearances; and, provision of 'deemed approval' in case the clearance is not accorded within the stipulated time frame. The 'Concept Note' is under consideration of Government for purposes of notification and implementation.

Government of Rajasthan

15. Government of Rajasthan have initiated the following reform measures in rationalization of the system of clearances: re-engineering the process involved in registration of documents, including self-drafting of deeds, computerized calculation of stamp duty, and, 'anywhere' registration of documents in selected cities and 'tehsils'; e-enabling of commercial taxes providing for e-payments of VAT/CST and e-filing of returns among other facilities.

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Planning Commission

16. Planning Commission has argued for streamlining the proformas/formats for forest and environmental clearances to make them more objective and quantitative wherever possible. Like in the case of evaluation of technical qualifications of bidders in PPP projects, these proformas should have an objective evaluation criterion so that an applicant can assess the likely outcome. Besides the yes and no responses, the range within which a particular pollutant/emission/degradant can be tolerated should also be mentioned. In case an applicant falsifies the application just to get the passing marks, a responsibility should be cast on him that if at any stage any information furnished in the application is found to be wrong, Government can withdraw the clearance and the project will have to bear the consequences. The onus of proof that the information was right should also fall on the applicant.

Department of Industrial Policy and Promotion (DIPP)

17. The specific suggestions of DIPP are as under:
- i. Applicants should be issued statutory receipts indicating the date of filing applications wherever the laws provide for 'deemed approvals'.
 - ii. Government Departments should evolve transparent guidelines for grant of permissions. In this context, it would be helpful if Departments were to place their instructions on the Internet.
 - iii. Public authorities conducting enquiries should have well defined questionnaires which need to be filled up in as objective a manner as possible.
 - iv. The details of public functionaries and experts from whom information has to be collected should be clearly indicated to the public authorities conducting enquires.
 - v. Responsibilities for studying the findings and issuing clearances within stipulated timelines should be defined at appropriate levels.

India Infrastructure Finance Company Limited (IIFCL)

18. IIFCL has suggested that State Level Environmental Impact Assessment Authorities (SEIAAs) should be constituted at the earliest, so that the Category 'B' projects can be appraised at their level and the work load of the Central Committees

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comes down. If any State Government does not send the proposal for formation of these Authorities, the Central Government may form 'ad hoc' Authorities, with full powers of the regular Authority, till the regular Authorities are formed on the basis of proposals received from the States. This is expected to bring down the time taken for environmental clearances. The other suggestions of IIFCL are as under:

- i. Terms of Reference (ToRs) for the purpose of environmental clearances may be standardized for various industries/infrastructure project categories, so that EIA reports can be prepared expeditiously.
- ii. Departments/agencies responsible for issuing approvals and clearances are inadequately manned – action may be taken for adequate recruitment and placement of personnel in these Departments along with automation of functions.
- iii. The officers responsible for processing applications for clearances should collect the information required in one go, to avoid delay and harassment to project developers.
- iv. Attempt should be made to standardize the information requirement for different industrial/infrastructure sectors.

Federation of Indian Chambers of Commerce & Industry (FICCI)

19. The views of FICCI on the subject matter under consideration are as follows: there is a multiplicity of approvals; disproportionate level of details are sought on the applications; many approvals do not seem to serve any public interest; as many regulations as possible should be placed on self-regulation; environmental clearance proposals take the longest time, due to cumbersome procedures, public hearing requirements, disproportionate level of details required in meetings and site visits and so on; Ministry of Environment and Forests (MoEF) should consider setting up of a data centre; and, projects above Rs 100 crore along should require environmental clearance, as per the recommendations of the Govindrajan Committee Report. It has also been suggested that EAC meetings in the context of environmental clearances should be scheduled/re-scheduled more frequently with adequate time allowed for each presentation, so that timelines are adhered to and more expert committees are constituted for industrial (based on technology, raw material and intermediate and finished products

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such as chemicals, pharmaceuticals, dyes and dye intermediates, aluminium, iron and steel, fertilizers, petrochemicals, distillery etc) and infrastructural sub sectors for better assessment of projects submitted for clearance.

Confederation of Indian Industry (CII)

20. The view of CII is that starting infrastructure projects has become a cumbersome procedure on account of the plethora of clearances to be obtained from multiple agencies. It is suggested that clearance timelines need to be benchmarked against countries such as China where the speed of project execution is much faster. The recommendations of CII in this regard are: delegation and de-centralization of approval powers to State Governments and progressively to district levels to bring them as close as possible to the ultimate end user (delegation of environment and forest clearances to the regional offices of the Ministry has been specifically recommended); outsourcing of due diligence efforts for quicker processing to a panel of approved consultants; instituting a system of 'deemed' approvals where after lapse of specified time, the necessary permission may have been deemed to be granted; creation of a nodal agency for the purpose of co-ordinating clearances from various Ministries and Departments; and, discontinuation of the existing practice of taking annual clearances from the State Pollution Control Boards (SPCBs).

21. The specific recommendations made in the context of specific sectoral clearances are summarized below:

- i. Empanelment of a list of consultants by MoEF to quicken the process of clearances and address the constraint on account of excessive work load resulting from a two stage process of clearances.
- ii. Mandatory constitution of State level Environment Impact Assessment committees.
- iii. Prescribing timelines, similar to environment clearances, in case of clearances under the Forest Act, 1980.
- iv. Timelines to be prescribed for security clearances, e.g., three months.

22. CII, at the same time, have also made a strong case for sustainability of development in the context of climate change issues, community rights and the

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overwhelming need for preserving the environment. It has been stated that industrial progress in India will also be determined by environmental sustainability in the long run. Finally, CII has maintained that in cases of large/critical process projects, pre-operational analysis is the key – the more diligent and detailed the analysis, the better the result.

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CHAPTER 6

Recommendations of the Expert Group

1. At the outset, the Group acknowledges the concerns highlighted by some members, particularly CII, on the need to preserve the sanctity of environment and ensure that industrial and infrastructure development is carried out in a sustainable manner. The Group is acutely conscious of the overarching need to give adequate importance to climate change and community rights and the recommendations being made herein under are to be viewed in the context of rationalization of procedures, rather than of diminishing the significance of sustainable growth.

Key challenge: meeting infrastructure targets for XI Plan

2. The recommendations of the Expert Group are being made in the overall context of the targets that have been fixed for infrastructure creation in the XI Plan. The plan includes construction of additional power generation capacity of 78,577 MW; construction of national highways of around 50,000 km in length; construction of rural roads of nearly 1,65,000 km in length; capacity addition of 750 million MT in major and minor ports combined; and, construction of 10,000 km of new railway lines, gauge conversion of additional 10,000 km of railway lines besides the construction of the dedicated freight corridors of 2,700 km in length. The total investment envisaged in infrastructure creation in the XI Plan period is to the tune of Rs 20,00,000 crore.

3. In the backdrop of this challenging target, it is imperative that infrastructure creation is given the highest priority by ensuring that projects are grounded expeditiously, and all reasonable measures, which can aid in this endeavour are taken both at the level of the Central Government and in the States.

Rationalization of the system of clearances

4. The recommendations are being made in two parts: the first part deals with generic recommendations which are relevant to all clearances, whether at the State or Central levels; in the second part, specific recommendation are made in respect of Central and State level clearances that have been examined in the report.

5. The Central Government clearances in respect of which recommendations are proposed to be made are: environment and CRZ clearance, forest and wildlife clearance,

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security clearance, groundwater clearance and clearances required under the Electricity Act, 2003 and Explosives Act, 1884. Since the procedure for 'stack height clearance' has recently been revamped by Ministry of Civil Aviation (MoCA), no further recommendations are being made in this regard, notwithstanding the fact that in the earlier system, time taken for issuing clearances was in excess of even a year in certain cases. The issue of securing clearance from Ministry of Defense for taking land on short term lease/permanent basis (with or without exchange of equivalent amount of other land) was not highlighted by any of the stakeholders consulted during the deliberations of the Expert Group; hence, this category of clearance is not covered under the recommendations.

6. Recommendations are also being made in respect of the system to be developed for according clearances for industrial/infrastructural projects expeditiously at the State level, based on the inputs given by State Governments consulted during the deliberations of the Expert Group.

Generic recommendations (applicable to all clearances)

7. There are certain principles which should be made applicable to all clearances. All Ministries/Departments administering clearances should undertake a detailed scrutiny of their processes and ensure adherence with the principles outlined as under:

- i. The information sought through application formats and proformas should be as objective and clearly defined as possible. Quantitative evaluation criteria can be used to the extent possible so that there is no scope for multiple interpretations.
- ii. The data requirements should be relevant to the location where the project is being planned; besides, data sources should be clearly identified in the application formats themselves so that scope for dispute on the authenticity of data at the appraisal stage is ruled out.
- iii. Emphasis should be placed on 'self certification' to the extent possible. However, a caveat may be introduced that if at any stage any information furnished in the application is found to be wrong, Government can withdraw the clearance and the project will have to bear the consequences. The onus of proof that the information was correct should also fall on the applicant.

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- iv. A lot of time is spent in public hearings. This is essentially because these get converted into 'roving enquiries', with no definite mandate. Public hearings should be conducted in a transparent manner that provides objective information to the project affected people (PAPs) in a timely fashion. Information on the issues, dates, process etc should be disseminated widely – in local languages - using a variety of methods so that all parties can participate. Public authorities conducting enquiries should have well defined questionnaires which need to be filled up in as objective a manner as possible. The questionnaires should be widely disseminated and a maximum period prescribed for receiving them. Further, the details of public functionaries and experts from whom information has to be collected should be clearly indicated to the public authorities conducting enquires. Finally, the questionnaires should be analyzed prior to the hearing and discussion in the hearing limited to only those issues which are in dispute.
- v. A major cause for delay in concluding public hearings expeditiously is that these are mandatorily specified to be conducted through the District Magistrate and his subordinate authorities. Further, the onus is placed on the State Pollution Control Boards (SPCBs) to co-ordinate the entire process of conducting the hearing in consultation with the office of the District Magistrate. A large number of bides can be empowered to conduct and co-ordinate public hearings, e.g., State Industrial Development Boards. The panels so formed should be objective, unbiased and may also include, besides statutory government authorities, members of credible non government organizations or research institutions working in the region. Finally, a panel of agencies can be notified by the Ministry/Department seeking a public hearing – in addition to the SPCBs – for co-ordinating the process of holding the hearings.
- vi. It should be expressly specified in the rules governing public hearings that the enquiring authority has to make a clear and unequivocal recommendation, which leaves no scope for varied interpretations.
- vii. The entire process of according clearances – by all major Central and State authorities – should be web enabled and made accessible to project proponents in an electronic format. The status of the application should be available 'on line' at all times for monitoring by the project authorities. A maximum time period

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should be specified for receiving the application, 'complete in all respects', so that a major cause for delay is 'ring fenced' and not allowed to remain open ended. A receipt should be electronically generated after the application form has finally been accepted by the approving authority.

- viii. The system of collecting applications in e-format, processing them and making available the data in a concise, structured format for consideration of appraising and approving authorities should be outsourced to the extent possible, in respect of all major clearances. The extra expenditure involved in this process of outsourcing would be more than compensated by the advantage that the system, as a whole, reaps through expeditious and timely grant of clearances for industrial and infrastructural projects.
- ix. Timelines should be defined in respect of all major clearances. It should also be specified that all applications, which are nearing completion of their timelines, and, about a week before the stipulated period, should be taken up for appraisal in a high powered group which comprises the Secretaries of the Ministry/Department granting the approval and the concerned sectoral Ministries/Departments. The group can unanimously recommend an extension of the timeline by a reasonable period, in case some major requirement for the purpose of according the clearance remains to be fulfilled, and the extension can be notified on the website of the concerned Ministry/Department along with reasons for extension; failing which, the remaining action (s) required to complete the processing in respect of the application should be expedited and concluded within the specified period.
- x. In case no extension of timeline is specified and the clearance is not given within the specified timeline, with reference to the date on which the application was received, complete in all respects, then it shall be 'deemed' to have been made available on expiry of the timeline. This stipulation should be clearly specified both in the receipt issued at the time of accepting the application and on the website of the Ministry/Department. It would be pertinent to mention here that not all 'deemed' approvals shall actually be made use of, considering the huge financial outlays involved, particularly in case of medium and large infrastructure projects. However, this condition would impose an obligation on the approval

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granting authorities and considerable improvements are likely to be witnessed in the time taken to accord clearances.

- xi. It has been the experience of many developers that in a number of cases, the responsibility of according clearances, even in respect of major matters, is delegated to lower levels in the hierarchy, where the importance of issuing them in a timely fashion is not appreciated. It should be scrupulously ensured that the delegation of powers for issuing approvals is confined to appropriate levels in the hierarchy where responsibility can be assigned in case of a major lapse in not issuing the clearance within the specific timeline.

Recommendations in respect of Central clearances

Environment clearance (including CRZ clearance)

8. The fact that environment clearances under the EIA Notification of 2006 are required by majority of industrial and infrastructure projects; and, the time taken in actually according the clearances is much beyond the prescribed time limits as per the Notification in most of the cases makes this particular clearance the object of maximum attention.

9. The Environment Impact Assessment (EIA) Notification, 2006 has been issued under the powers conferred by Section 3 of the Environment (Protection) Act, 1986 read with Rule 5(3) of Environment (Protection) Rules, 1986. The latter, i.e., the Environment (Protection) Rules, 1986 are themselves issued under the powers conferred vide Sections 6 and 25 of the Environment (Protection) Act, 1986. At the same time, a number of rules, e.g., Hazardous Wastes (Management and Handling) Rules, 1989; Manufacture, Storage and Import of Hazardous Chemical Rules, 1989; Bio-Medical Waste (Management and Handling) Rules, 1998; Municipal Solid Wastes (Management and Handling) Rules, 2000 et al have also been issued under the powers of Sections 3,6,8 and 25 of the Environment (Protection) Act, 1986. Sections 3,6 and 25 of the Environment (Protection) Act, 1986 and Rule 5(3) of the Environment (Protection) Rules, 1986 are reproduced (relevant portions thereof) as under:

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Section 3, EP Act, 1986

"...Central Government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution...."

Section 6, EP Act, 1986

"...Central Government may, by notification, make rules in respect of all or any of the matters referred to in Section 3...."

Section 8, EP Act, 1986

"...Central Government may, by notification, make rules for carrying out the purposes of this Act...."

Rule 5(3), EP Rules, 1986

"...Wherever it appears to the Central Government that it is expedient to impose prohibition or restrictions on the location of an industry or the carrying on of processes and operations in an area, it may, by notification in the Official Gazette and in such manner as the Central Government may deem necessary from time to time, give notice of its intention to do so...."

10. A plain reading of the Sections/Rules as above leads to the inescapable conclusion that the present scheme of environment clearances for industrial and infrastructural projects needs to be simplified. The clearance under the EIA Notification should be comprehensive enough to subsume the multiplicity of clearances under the other Rules for Hazardous waste, Bio-medical waste, Municipal solid waste and so on. These rules can still apply to non industrial/infrastructure projects, e.g., municipal authorities would need to obtain clearances under the Municipal Solid Waste Rules, 2000; however, once an industrial/infrastructure project has been cleared under the EIA Notification guidelines, multiple other clearances then should not be required to be obtained. The case study of the Municipal Waste Processing plant in Delhi (paras 13-15 of Chapter 4) clearly brings out the additional time which the project took for getting clearance from the Delhi Pollution Control Board under the Municipal Solid Wastes Rules, 2000 even after the EIA clearance had been obtained. Such delays can be obviated if the recommendation of a 'single point' clearance for industrial/infrastructural projects is operationalized.

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11. In similar fashion, the 'consent to establish' from the State Pollution Control Boards can also be subsumed within the scheme of the EIA Notification. These consents are prescribed under the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974, both of which are Central legislations (like the Environment (Protection) Act, 1986) whose date of enactment precedes the enactment of the Environment (Protection) Act, 1986 under which the EIA Notification has been issued.

12. In sum, the environment clearance prescribed for industrial/infrastructure projects under the terms of the EIA Notification of 2006 should be made comprehensive enough to cover the requirements of multiple rules formulated under Sections 3,6 and 25 of the Environment (Protection) Act, 1986 as also the 'consent to establish' clearances required under the Air Act, 1981 and Water Act, 1974. The 'consent to operate' clearance under the Air and Water Acts can continue to be accorded by the State Pollution Control Boards after the requisite prescribed conditionalities under the EIA Notification have been given effect to by the project proponents.

13. On the basis of the views received from different stakeholders, the following recommendations are being made for rationalizing further the procedure for according environment clearances:

- i. The State level Environment Impact Assessment Authorities (SEIAAs) should be constituted expeditiously for the remaining States (17 out of 28 States and 3 out of 6 UTs have constituted the authorities so far, Annex 6.1) so that the appraisal process in respect of Category 'B' projects is de-centralized and completed at the State level. As per Clause 3(5) of the Notification, the State Government/UT administration shall forward the names of the Members and the Chairman of the SEIAA to the Central Government, which will then notify the Authority under the powers conferred on it under sub-section (3) of Section 3 of the Environment (Protection) Act, 1986. Efforts should be made – through repeated follow up, if required – to have the State Governments forward their nominations for the posts of Members/Chairman of the Authority and the necessary action in this regard should be completed within a definite time frame.

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- ii. Standardized Terms of Reference (ToRs) should be evolved for activities which are of repetitive nature. In the first instance, based on the suggestions received from Central Ministries/Departments, the formulation of standardized ToRs is being recommended for the following sectors: construction of berths and jetties; widening of national highways and construction of thermal power plants of capacity less than 1,000 MW.
- iii. As per the current EIA notification, in case the State/UT Pollution Control Board does not undertake and complete the public hearing within the specified period, the regulatory authority (MoEF/SEIAA) shall engage another public agency or authority which is not subordinate to the regulatory authority, to complete the process within a further period of forty five days. Despite the presence of such a provision, it has been observed that in some case studies (ropeway project in Uttarakhand, thermal power project in Andhra Pradesh), the public hearing by the SPCB took an unreasonably long length of time. In order to ensure that this provision is used far more freely and with greater regularity (in case the State agency is taking a disproportionate amount of time in completing its requirements), MoEF/SEIAAs (wherever constituted) should give adequate publicity to the existence of the provision and all applications in this regard may be expeditiously dealt with.
- iv. Under the existing notification, expansion of roads and highways which does not involve any further acquisition of land is exempted from public hearing. Since national highways projects are basically of the same nature, the exemption from public hearing may be exempted for all expansion cases of roads and highways, irrespective of whether land acquisition is involved or not. Similarly, expansion projects of major ports, which do not require additional acquisition of land may be also be exempted from public consultation.
- v. The clearances under the CRZ Notification of 1991 and the EIA Notification of 2006 should be combined for Port projects and the EIA process should be comprehensive enough to include CRZ clearances too.
- vi. It should be endeavoured to hold meetings of the sectoral EACs (in MoEF) and SEACs (in SEIAAs) at regular intervals and at least once every month.

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- vii. The environment protection guidelines/processes for clearance should be re-drafted/re-engineered in line with the general recommendations of Para 7 of this chapter.

Forestry (including Wildlife) clearance

14. The process of forest and wildlife clearance, unlike environmental clearance, starts much prior to the application having been made in the relevant office of Central Government (Ministry of Environment and Forests). In the first instance, a Project proposal has to be prepared with the assistance of the local Divisional Forest Officer (DFO) and approved at the level of the State Government. The processing in MoEF (RCCF, FAC, NBW etc) starts only after the State Government has accorded its clearance to diversion of forest land/ diversion/use of lands in protected areas, e.g., National parks and Sanctuaries. As pointed out in the case studies discussed earlier in the report, this process takes a long time (the proposal for diversion of forest land in the Uttarakhand ropeway project had taken 14 months already at the time of writing the report; in the Kota bypass project, the State Government took 21 months in forwarding the proposal to NBW). In view of the inordinate time taken at the State Government level (which is often blamed on Central Government procedures), it is strongly advised that a reasonable time period should also be prescribed in the Rules relating to the Forest (Conservation) Act, 1980 and Wildlife (Protection) Act, 1972 for State Governments to complete all activities related to their internal procedures and processes. States should also be requested by MoEF to formulate rules (including timelines) at their end, for ensuring that forestry clearances are expeditiously processed by their own Forest Departments and subordinate offices.

15. The other recommendations in this regard are as under:
 - i. Standard conditions should be stipulated for compensatory afforestation in each sector, to bring about uniformity in this regard in the entire country. Additional conditions imposed by State Governments should be disallowed in the interest of project viability and completing it within the stipulated time.

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- ii. As far as the felling of trees is concerned, standard stipulations may be prescribed by MoEF which are uniform and binding on State Governments. These guidelines should also prescribe the felling agency so that delays are avoided.
- iii. The forest clearance guidelines/processes for clearance should be re-drafted/re-engineered in line with the general recommendations of Para 7 of this chapter.

Security clearance

16. It has been brought out in the case studies that no standard guidelines in regard to security clearances in respect of pre-qualified/selected bidders have been prescribed by Ministry of Home Affairs (MHA). While some Departments are referring the matter to MHA as per their own internal rules of business, others like Ministry of Power have decided to approach the Cabinet Committee on Security (CCS) for appropriate guidance in regard to the procedure to be adopted for implementation of hydro electric projects in border areas.

17. In view of the prevailing lack of clarity, it would be appropriate for Ministry of Home Affairs to identify the sectors that are critical for strategic national interest and the geographical locations where scrutiny is to be exercised, and evolve guidelines and clearance processes in regard to grant of security clearance for industrial/infrastructural projects being executed in such sectors/areas. These guidelines/processes should be governed by the general principles articulated in Para 7 of this chapter.

Groundwater clearance

18. The procedure for according groundwater clearance is convoluted. In the first instance, the State Pollution Control Board (SPCB) refers the matter to the Central Ground Water Authority (CGWA). Thereafter, CGWA causes an enquiry to be made through its regional office located in the same State. This causes wastage of precious time. Hence, CGWA may be asked to evolve a much simpler process and notify the same to all SPCBs so that the reference can be made in the first instance to the regional office of CGWA itself; which, after verification can report the findings to CGWA for a final decision. The confusion which prevails as of now wherein ground water clearances are being sought even in respect of zones which are not in the list of critical and exploited categories should be addressed and the requirement for taking this clearance clearly

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articulated and publicized. CGWA may also specify separately that no permission for use of groundwater will be given in case of blocks which fall in the severely exploited areas.

19. The guidelines/processes for ground water clearance should be governed by the general principles articulated in Para 7 of this chapter.

Clearance under the Electricity Act, 2003

20. A reasonable time limit (say, four months) needs to be prescribed through notification for clearance by Central Electricity Authority (CEA) for setting up of “hydro” power plants above the specified capital cost.

Clearance under Explosives Act and Rules

21. On similar lines as the time period specified (6 months) for the district authorities to give their recommendations to the licensing authority in respect of a NoC for the applicant, a similar timeline needs to be introduced in the Explosives Rules, 1973 for the licensing authority to communicate its decision (on award of license) to the applicant in case the district authority has recommended issuance of NoC. In this case, since the NoC has been given by the district authority, the license should be deemed to have been granted in case no decision is communicated within the prescribed time period. In respect of cases where the NoC is not recommended and the matter is referred for consideration of the Central Government, no such timeline may be necessary. The processes and guidelines for obtaining clearance under the Explosive Act and Rules should be rationalized as per the generic recommendations of Para 7 of the Report.

22. The recommendations made above are summarized along with the responsibility for implementing them in Annex 6.2.

Recommendations in respect of State clearances

16. The models being followed in Gujarat and Haryana need to be combined for best results. Accordingly, the following “best practice” is being recommended for adoption at the State level for rationalization of the system of clearances for setting up of industrial and infrastructural projects:

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- i. States may enact an “Industries Facilitation” Act and Rules which provide for the following: (The present status of legislations in various States is at Annex 6.3)
 - a. Composite Application Forms (CAFs) for both stages, i.e., at establishment and operation stages, with additional information, if required, for specific sectoral clearances required at each stage.
 - b. Single window Committees (preferably chaired by Chief Minister/senior functionary of Chief Minister’s office at the apex level; and, by Principal Secretary, Industries and District Collectors at subordinate levels) with powers to approve investment proposals with different monetary limits.
 - c. Timelines for each clearance required for establishing/operating a project with deeming provisions in respect of all major clearances.
 - d. The total time taken in receiving applications, complete in all respects, may also be specified in the rules.
 - e. Facility of joint inspection by all concerned Departments rather than individual inspections at periodic intervals.
 - ii. Self certification and e-filing of such self certification forms may be resorted to in simple cases, e.g., applications under the Factories’ Act, application for building permission and occupancy certificate and so on. Suitable penalties can be prescribed for defaulters who furnish wrong information.
 - iii. Robust, IT based systems may be established both for providing information support to the investors as also for monitoring the status of their clearances on periodic basis.
17. The e-Biz project of Department of Industrial Policy and Promotion under the National e-Governance Programme (NeGP) promises to create a one stop shop for convenient and efficient services to investors. It will be implemented by October 2009 in nine Central Government Ministries and five State Governments. The project would have much enhanced efficacy if it is implemented alongside the legislative framework as suggested earlier.

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ANNEX I.1

Constitution of the Expert Group on statutory clearances for industrial and infrastructure projects

F No 10/3/2008-INF
Ministry of Finance
Department of Economic Affairs
(Infra Division)

New Delhi; April 3, 2008.

Notification

Prime Minister, in his closing remarks at the 54th Meeting of the National Development Council (NDC) on December 19, 2007 made the following announcement :

“I will request the Finance Minister to constitute an Expert Group to go into the system of statutory clearances, including forests/environment clearances for Industrial and Infrastructure Projects and suggest concrete ways for speeding these up.”

2.0 In pursuance of the announcement as above, it has been decided to constitute an Expert Group with the following composition:

1. Additional Secretary, Department of Economic Affairs.....Chair
2. Adviser (Industry); Planning Commission;
3. Representative of Deptt. Of Industrial Policy & Promotion, Govt. of India, (not below the level of Joint Secretary);
4. CEO, IDFC;
5. CEO, IL&FS;
6. CEO, IIFCL;
7. Shri Shubendu Amitabh, Sr. President (Corporate Affairs), Aditya Birla Management Corporation Ltd;
8. Shri Ravi Singh, General & CEO, World Wide Fund for Nature – India;
9. Representative of FICCI (to be decided);
10. Joint Secretary (Infra), Deptt. Of Economic Affairs.....Member Convener

2.1 The Expert Group may invite representatives of Central Ministries, organizations, subject matter specialists etc. in its meetings, as required, for consultation

3.0 The terms of reference of the Expert Group shall be as under:

- (i) To examine the existing system of statutory clearances including forests & environmental clearances, as mandated by Central Government, for approval of Industrial & Infrastructure Projects;
- (ii) To examine the time and cost impact of obtaining clearances for industry infrastructure projects (based on case studies);

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- (iii) To suggest specific steps for removal of bottlenecks and speeding up the approval process of industrial & infrastructure projects; and
- (iv) Any other relevant issues as deemed fit by the Group;

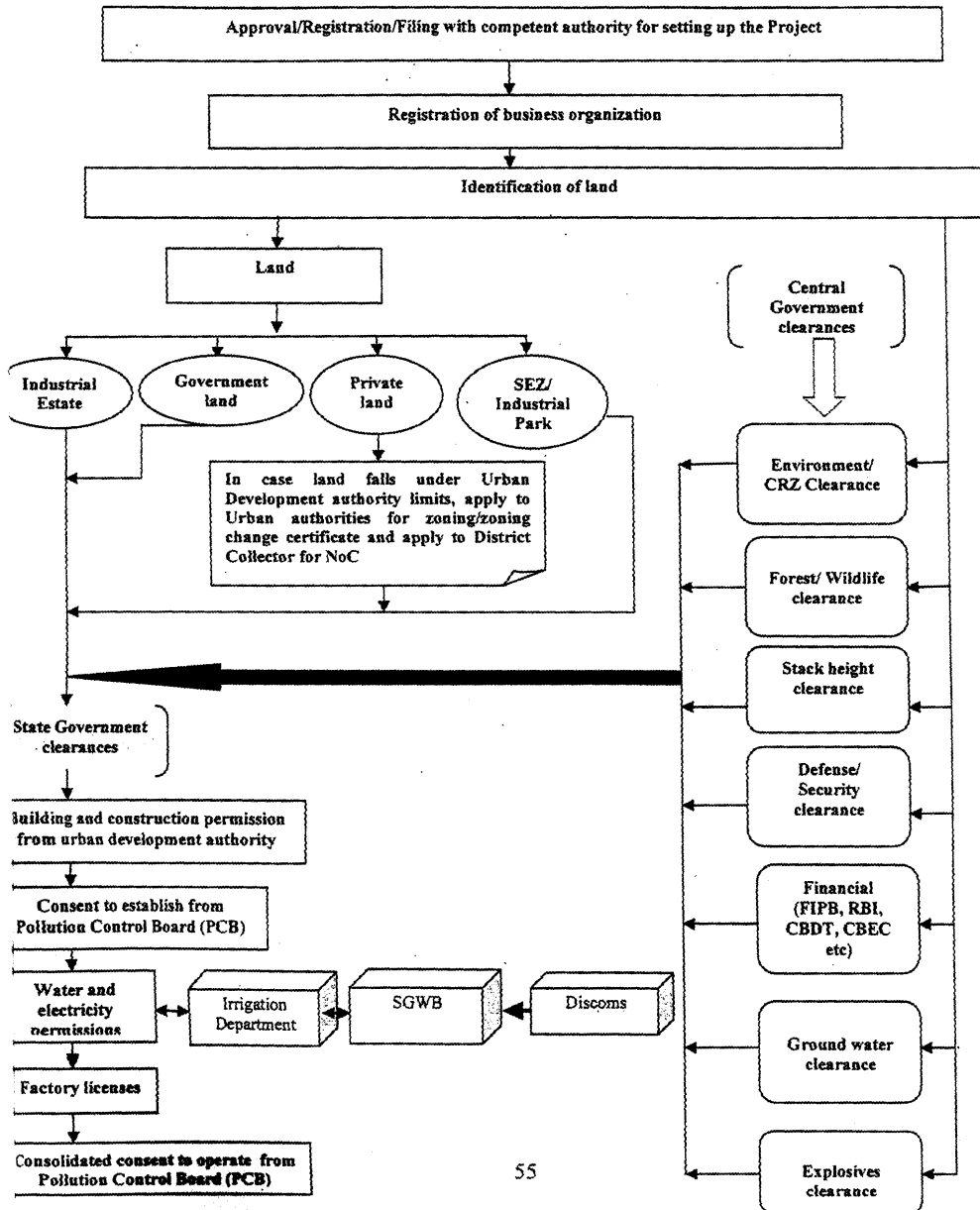
4.0 The Expert Group shall submit its report within 4 months of the date of this notification.

5.0 This issues with the approval of Finance Minister.

Sd/-
(Govind Mohan)
Director (Infra)

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ANNEX 2.1
Clearances required for industrial and infrastructural projects



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ANNEX 2.2
details of clearances required for industrial and
infrastructural projects

S No	Sub category of clearance	Clearances required
1	Commencement of business	1. Industrial licenses under Industrial Policy 2. Technology Transfers 3. Clearance under Industrial Park Scheme 4. Business Constitution <ul style="list-style-type: none"> i. Registration with Registrar of Companies ii. CBDT: issue of PAN, tax deduction account no etc. iii. CBEC: service tax registration
2	Financial	1. Raising finances abroad 2. FDI Clearances 3. Clearance of Forex transactions from RBI 4. Importer Exporter Code from DGFT 5. ESIC Filing 6. EPF Filing 7. Registration certificate under State Sales Tax laws and filing of returns
3	Sectoral	1. Sectoral rules, e.g., <u>Municipal Solid Waste (MSW) Rules, 2000</u> framed under the Environment (Protection) Act, 1986 2. Use of sea water for cooling purposes by thermal power plants etc 3. Ports: Design of LNG Berth clearance 4. Power: <ul style="list-style-type: none"> • Coal Linkage/Fuel Supply Agreement (FSA) • Gas Sales Agreement (GSA) • CERC/SERC permission for adoption of tariff • Mega Power Status from MoP 5. Clearance from Ministry of Railways for constructing Road over Bridges (RoBs) and Road under Bridges (RuBs) 6. Clearances required from DGCA, AAI, MoD, CBEC, MHA, BCAS etc for construction/expansion/modification of Greenfield/Brownfield airports
4	Major Central Government clearances	1. Environment Clearance under Environment Impact Assessment (EIA) Notification of 2006 2. Diversion of Forest Land under Forest Conservation Act, 1980 3. Clearances under Electricity Act, 2003. 4. Stack height clearance from Ministry of Civil Aviation 5. Security clearance from Ministry of Defense and Ministry of Home Affairs 6. Groundwater use clearance from Central Ground Water Board (CGWB) 7. Clearance to use Explosives from Petroleum and Explosives' Safety Organization (PESO)
5	Major State Government clearances	1. Approval of building plans by municipal authorities 2. Licenses under Factories' Act, 1948 3. Sanction for water and power connections 4. Consent to operate and establish from Pollution Control Board

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ANNEX 4.1
Foundry park in west Bengal: summary of chronological milestones

Environmental clearance

S No	Time (in days from zero date)	Milestone achieved
1	Zero	Submission of request for Terms of Reference (ToR) and draft EIA Report
2	75	Resubmission of request since original application not traceable
3	150	ToR issued by MoEF imposing a number of conditions
4	280	EIA report, revised on the basis of the public hearing, submitted to MoEF
5	360	On follow up, EIA report not traceable in MoEF
6	378	Project finally listed on website of MoEF in the "pending projects list". The list mentions that the project has been received only on day 391 (!)
7	478	Presentation by project proponent to the sectoral Expert Appraisal Committee (EAC) of MoEF
8	488	Grant of environmental clearance under EIA, 2006 to the Project.

Note: The period mentioned above does not include the time taken previously by the West Bengal Pollution Control Board (PCB). The WBPCB had taken 12 months to appraise the project and grant technical clearance in August 2006. However, as per the new EIA Notification of 2006, the project was designated as a Category "A" Project and as per the new guidelines, to be appraised directly by the EAC in MoEF. Therefore, the earlier process was stopped and the processing in MoEF started afresh.

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ANNEX 4.2
Thermal power project in Tripura : summary of chronological milestones

Clearance for diversion of forest land

S No	Time (in days from zero date)	Milestone achieved
1	Zero	Submission of request for diversion of forest land to the nodal officer, Government of Tripura
2	na	Submission of proposal by office of RCCF, Shillong to MoEF
3	173	“In principle” (Stage I) approval of MoEF to the project
4	193	Requisite information sent to MoEF for second stage clearance
5	380	Approval for diversion of forest land accorded by MoEF

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ANNEX 4.3
Ropeway project in Uttarakhand: summary of chronological milestones

Environmental clearance

S No	Time (in days from zero date)	Milestone achieved
1	Zero	Submission of request for Terms of Reference (ToR)
2	51	ToR approved by MoEF
3	168	Application submitted to Uttarakhand Pollution Control Board (UPCB) for public hearing along with draft EIA report
4	348	Public hearing concluded by UPCB and minutes sent to MoEF
5	416	Final EIA report submitted by project proponent to MoEF after incorporating the concerns expressed during public hearing
6	481	Considered for Expert Committee Meeting and recommended for clearance

Note: The final environmental clearance is yet to be received by the project proponent at the time of writing the report. Further developments will be known in due course of time.

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ANNEX 4.4
Thermal Power Project in Andhra Pradesh: summary of
chronological milestones

Environmental clearance

S No	Time (in days from zero date)	Milestone achieved
1		The time taken for approval of ToR is not known
2	Zero	Application submitted to Andhra Pradesh Pollution Control Board (APPCB) for public hearing
3	72	Minutes of public hearing sent to MoEF
4	135	Final EIA Report submitted to MoEF
5	169	Presentation made by project proponents to the sectoral Expert Appraisal Committee (EAC) in MoEF
6	239	Environmental clearance obtained from MoEF

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ANNEX 4.5
Municipal solid waste processing plant in Delhi: summary of
chronological milestones

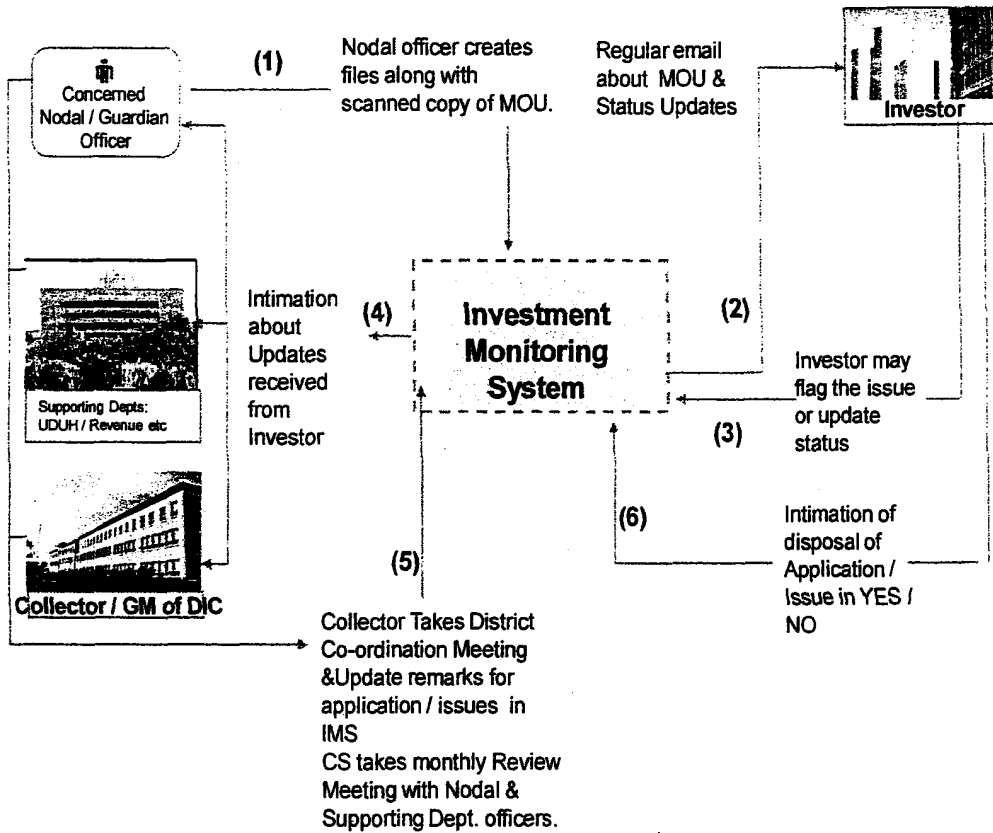
Environmental clearance

S No	Time (in days from zero date)	Milestone achieved
1	Zero	Submission of request for Terms of Reference (ToR) and draft EIA Report
2	33	ToR approved by MoEF
3	53	Application made to Delhi Pollution Control Committee (DPCC) for conducting public hearing
4	97	Public hearing completed
5	112	Final EIA Report submitted to MoEF
6	158	Environmental clearance obtained from MoEF

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ANNEX 5.1
Investment Monitoring System of Government of Gujarat

Investment Monitoring System



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ANNEX 6.1

Status of constitution of State level Environment Impact Assessment Authorities (SEIAA) and State Environment Appraisal Committees (SEAC) for the States/UTs

S No	States	Date of Constitution
1	Andhra Pradesh	July 05, 2007
2	Arunachal Pradesh	March 27, 2008
3	Chhattisgarh	January 29, 2008
4	Daman, Diu, Dadar & Nagar Haveli*	October 11, 2007
5	Delhi	July 30, 2008
6	Gujarat	June 12, 2007
7	Haryana	April 21, 2008
8	Himachal Pradesh	November 11, 2007
9	J & K	January 08, 2008
10	Madhya Pradesh	January 08, 2008
11	Maharashtra	April 21, 2008
12	Meghalaya	July 23, 2007
13	Puducherry	December 13, 2007
14	Punjab	November 19, 2007
15	Rajasthan	July 30, 2008
16	Sikkim	July 08, 2008
17	Uttar Pradesh	July 12, 2007
18	West Bengal	April 13, 2007
19	Karnataka	June 11, 2007
20	Tamilnadu	March 03, 2008

* This includes two Union Territories as common committees have been constituted for the UTs of Daman, Diu, Dadar & Nagar Haveli.

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ANNEX 6.2

Summary of main recommendations in respect of Central Government clearances

S No	Ministry/Department concerned	Recommendations
1	Environment and Forests	<ul style="list-style-type: none"> i. Constitution of SEIAAs in remaining States and UTs ii. Standardized terms of reference for berths, jetties, expansion of <u>national highways and thermal power plants below 1,000 MW capacity.</u> iii. Wide publicity and liberal use of the provision to have the public hearing conducted by other agencies if the State agency does not complete it within the prescribed time of 45 days. iv. (Public hearing to be exempted in all national highway expansion cases (irrespective of whether land acquisition is involved or not) and in expansion cases of ports where land acquisition is not involved.) → <i>public hearing</i> v. The clearance under CRZ and EIA Notifications should be combined for port projects. vi. It should be endeavoured to hold one EAC meeting in every month, if not more. → <i>already happened</i> vii. In respect of wildlife and forest clearances, reasonable timelines should be prescribed in respect of State authorities as well, so that the processing at State level does not draw out over an unreasonable length of time. viii. Standard guidelines should be prescribed for compensatory afforestation and <u>States disallowed</u> to impose their own conditions. ix. Instructions on felling of trees – including appropriate agencies in this regard – should be issued by MoEF. x. The processes and guidelines for obtaining clearance under the forest and environment act and rules should be rationalized as per the generic recommendations of Para 7 of the Report.
2	Ministry of Home Affairs	<ul style="list-style-type: none"> i. Standard guidelines should be prescribed for security clearance of bidders (pre-qualified and/or finally selected) in strategic sectors and locations. ii. The processes and guidelines for obtaining security clearance should be rationalized as per the generic recommendations of Para 7 of the Report.
3	Central Ground Water Authority	<ul style="list-style-type: none"> i. A simplified procedure should be prescribed for giving clearance for extraction of ground water which reduces the time involved in referring the matter between various agencies. ii. It may be widely publicized that in case of blocks which are not critical, semi-critical or exploited, no groundwater clearance is required. → <i>we need to</i> iii. In case of severely exploited groundwater blocks, it may be clarified upfront that permission to draw groundwater will not be granted. iv. The processes and guidelines for obtaining groundwater clearance should be rationalized as per the generic recommendations of Para 7 of the Report.
4	Ministry of Power	<ul style="list-style-type: none"> i. A reasonable time period may be specified by notification within which the Central Electricity Authority (CEA) shall approve all hydro projects (above the notified size) that are referred to it for clearance.
5	Department of Industrial Policy and Promotion	<ul style="list-style-type: none"> i. Explosives Rules, 1973 may be amended to provide for a timeline (with deeming provision) for grant of license in such cases where an NoC has been recommended by the district authority. ii. The processes and guidelines for obtaining clearance under the Explosive Act and Rules should be rationalized as per the generic recommendations of Para 7 of the Report.

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ANNEX 6.3

Acts enforced by States/ UTs for Industrial & Infrastructural Developments

S No	States/ UTs	Name of Act enforced for promotion of Industries & Infrastructures
1.	Andaman & Nicobar (UT)	NIL
2.	Andhra Pradesh	<ul style="list-style-type: none"> AP Infrastructure Development Enabling Act, 2001 Industrial Single Window Clearance Act, 2002
3.	Arunachal Pradesh	NIL
4.	Assam	NIL
5.	Bihar	<ul style="list-style-type: none"> Bihar State Infrastructure Development Enabling Act, 2006 Bihar Industrial Area Development Act 1974 Bihar Single Window Clearance Act, 2006
6.	Chandigarh (UT)	<ul style="list-style-type: none"> Punjab Development and Regulation Act, 1952
7.	Chhattisgarh	<ul style="list-style-type: none"> Chhattisgarh Audyogik Nivesh Protsahan Adhinyam, 2002
8.	Dadra and Nagar Haveli (UT)	NIL
9.	Daman and Diu (UT)	<ul style="list-style-type: none"> The Goa Daman and Diu Industrial Development (Amendment) Act, 1991
10.	Delhi (UT)	<ul style="list-style-type: none"> Delhi Development Act, 1957 Industrial Employment (Standing Orders) Act, 1946
11.	Goa	<ul style="list-style-type: none"> The Goa Daman and Diu Industrial Development (Amendment) Act, 1991
12.	Gujarat	<ul style="list-style-type: none"> Gujarat Industrial Development Act, 1962 Gujarat Infrastructure Development Act, 1999
13.	Haryana	<ul style="list-style-type: none"> Haryana Development and Regulations of Urban Areas Act, 1975 Haryana Special Economic Zone (Amendment) Act 2008 Haryana Industrial Promotion Act 2005 Haryana Special Economic Zone Act 2005
14.	Himachal Pradesh	<ul style="list-style-type: none"> Infrastructure Development Act, 2001
15.	Jammu and Kashmir	<ul style="list-style-type: none"> Jammu and Kashmir Professions, Trades, Callings and Employment Tax Act, 2005 Jammu and Kashmir Development Act, 1976
16.	Jharkhand	NIL
17.	Karnataka	<ul style="list-style-type: none"> Karnataka Industries (Facilitation) Act, 2002 The Karnataka Industrial Areas Development Act, 1966 Karnataka Udyog Mitra, a Society under Karnataka Societies Registration Act 1960 to promote investment; extend escort services to the entrepreneurs / investors for establishment of industries Karnataka Electricity Reforms Act 1999
18.	Kerala	<ul style="list-style-type: none"> The Kerala Industrial Revitalisation Fund Act, 1999 Kerala State Single Window Clearance Boards and Industrial Township Area Development Act 1999
19.	Lakshadweep (UT)	NIL
20.	Madhya Pradesh	<ul style="list-style-type: none"> Avyaparik Nigam (Nirsan) Adhinyam, 1998 State Aid to Industries Act, 1958 Indore Special Economic Zone (Special Provision) Act, 2003 Infrastructure Investment Fund Board Act, 2000
21.	Maharashtra	<ul style="list-style-type: none"> Maharashtra Industrial Development Act, 1961 Maharashtra Infrastructure Development and Support Act (MIDAS)2002 Maharashtra SEZ Act, 2003 Maharashtra State SEZ Act, 2002
22.	Manipur	NIL
23.	Meghalaya	<ul style="list-style-type: none"> The Warehousing Corporations Act, 1962
24.	Mizoram	<ul style="list-style-type: none"> The Mizoram Urban and Regional Development Extent and Act, 1990

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		• Profession, Trades, Callings and Employments Taxation Act, 1995
25.	Nagaland	NIL
26.	Orissa	• Orissa Industries Facilitation Act 2004 • Orissa Industries (Facilitation) Rules, 2005
27.	Puducherry (UT)	• Industrial Employment (Standing Orders) Act • The Puducherry Value- Added Tax Act
28.	Punjab	• The Punjab Land Improvement Scheme Act, 1963 • Punjab Municipal Act, 1911 • Industrial Employment (Standing Orders) Act
29.	Rajasthan	• Rajasthan Power Sector Reforms Act, 1999 • Rajasthan Road Development Act, 2002
30.	Sikkim	• The Sikkim Industrial Promotion & Incentive (Amendment) Act, 2003 • The Sikkim State Agricultural produce Marketing (Development and Regulation) Act, 2005
31.	Tamil Nadu	• Tamil Nadu Special Economic Zone Act 2005 • Tamil Nadu SEZ Policy 2003 • Tamil Nadu Electricity Regulatory Commissions Act 1998
32.	Tripura	NIL
33.	Uttar Pradesh	• UP Industrial Area Development Act of 1976 • U.P. Special Economic Zone (Amended) Policy 2007
34.	Uttarakhand	• Industrial Development Corporation of Uttarakhand Ltd (SIDCUL) • Uttarakhand Value Added Tax Act - 2005
35.	West Bengal	• West Bengal Town and Country (Planning & Development) Act, 1979 • WB Industries (Development and Regulation) Act 1951 • WB SEZ Act 2003 • WB Infrastructure Development Corporation Act 1974/Rules 1978