

THE INDUSTRIES (Development and Regulation) ACT, 1951

For the purpose of implementation of various objects of the Industrial Policy Resolution of 1948, the Government of India has enacted the Industries (Development and Regulation) Act, 1951 which came into force on May 8, 1952.

The Act brought under central control a number of important industries whose activities would greatly affect the economy as a whole and the development of which depend more on the import of the country. In order to achieve a balanced and sound industrial structure in the country the Act urged all new industrial undertakings to obtain license from the Central Government. Moreover, the Act empowered the Central Government to make rule for the registration of existing undertakings, for regulating the production and development of the industries and for consultation with the State Government on the matters. Besides, the Act provided for the establishment of a Central Advisory Council. In taking any action like revocation of a licence, registration or taking over control and management of any industrial concern the Central Government must consult the Central Advisory Council.

Over the Years a number of difficulties cropped up with the changing situation and the Act was amended in 1953 and 1971 to enable the rehabilitation of closed units through government initiative. The new economic policy amended the Act to a great extent.

The Act extends to the whole of India and applies to the industries which are specified in the first Schedule of the Act.

Establishment and Constitution of The Central Advisory Council and Development Councils

For the control and development of the industrial undertakings in consonance with the Industrial Policy Resolution, 1948 the Industries (Development and Regulation) Act, 1951 provided under Section 3 of the Act for the establishment of the Central Advisory Council by the Central Government. Accordingly, the Central Advisory Council was established by the Central Government

under Section 5 of the Act. The functions of the Advisory Council are to advise the Central Government in respect of development and regulation of scheduled industries, and in respect of administration of the Act and to make rules under the Act.

The Advisory Council consists of a Chairman and such other members not exceeding thirty in number, all of whom shall be appointed by the Central Government. The members shall represent the interests of

- (a) Owners of industrial undertakings in scheduled industries.
- (b) Persons engaged in industrial undertakings in scheduled industries.
- (c) Consumers of goods manufactured or produced by scheduled industries.
- (d) Such other class of persons including primary products who ought to be represented on the Advisory Council as per opinion of the Central Government.

The term of the members of the Advisory Council and the procedures to be followed in the discharge of their functions will be determined by the prescribed rules. Likewise, the manner of filling casual vacancies among members will also follow the prescribed rules.

It should also be noted that in the matters of formulation of rules and procedures other than prescribed in Section 3 of the Act, Central Government must consult the Advisory Council in terms of Section 5 of the Act.

Development Councils

The Central Government has the power to establish a body of persons to be called a Development Council for any scheduled industry or group of scheduled industries. The Council consists of members representing the interests of labour, capital, consumers and technical skills. The number and term of the office of and the procedure to be followed in the discharge of their functions, and the manner of filling casual vacancies among members of Development Council shall be such as may be prescribed. So far as the status of the Development Council is concerned the Council will be considered as a Corporate body, capable of holding and transferring property. Further, it may sue and be sued in its own name.

Functions of The Development Council

The purpose of the Development Council is to secure proper development of scheduled industries. To that end the Council is involved in so many functions the most important of which are as follows :

1. To recommend targets for production, co-ordinate production programme and review prospects from time to time.
2. To suggest norms of efficiency with a view to eliminating waste, obtaining maximum production, improving quality and reducing costs.
3. To recommend measures for securing fuller utilization of the installed Capacity.
4. To promote arrangements for better marketing and assist in the distribution of controlled materials.
5. To promote standardisation of product.
6. To promote or undertake enquiry as to materials and equipments and method of production, management and labour utilisation including the discovery and development of new materials, equipments and methods and of improvements in those already in use.
7. To promote the training of persons engaged or propose engagements in the industry in technical subjects.
8. To promote the retaining in alternative occupations of persons engaged in or retrenched from the industry.
9. To promote or undertake scientific and industrial research.
10. To promote improvements and standardisation of accounting and costing methods and practice.
11. To promote or undertake the collection and formulation of statistics.
12. To investigate possibilities of decentralizing stages and processes of production with a view to encouraging the growth of allied small scale and Cottage industries.
13. To promote the productivity of labour and to secure safer and better working conditions.
14. To undertake enquiry for the purpose of tendering advise to the Central Government on matters referred to a Development Council.
15. To undertake arrangements for making available to the industry information obtained and for advising on matters with which the Development Councils are concerned.

The Development Council is required to perform such other functions as required under the Act.

Under Section 22 of the Act every Development Council, in the exercise of its function, is required to be guided by such instructions as may be given to it by the Central Government. Such instruction may include directions relating to the manner in which, and the purpose for which any proceeds of the cess lived under Section 9 which may have been handed over to it, will be spent.

Cess on Scheduled Industries by The Central Government and Its Utilization

Further, under Section 9, the Central Government may buy and collect a cess on all goods manufactured or produced in any scheduled industry as may be specified by the Central Government by a notified order. Different rates may be specified for different goods or different classes of goods. The amount of cess so collected will have to be utilized by the Development Council strictly for the advancement of scientific and industrial research, improvement in design and quality, training of technicians and labour and for muting administrative expenses.

Report and Accounts of Development Councils

Under Section 7 of the Act the Development Council is required to prepare a detailed report about its functions during the last financial year. This report must be submitted along with the statement of accounts duly audited. The statement must show the total remuneration and allowances paid during the year to members and officers also. A copy of each such report of Development Council shall be laid before the Parliament by the Central Government.

Dissolution of Development Councils

Under Section 8 the Central Government may by notified order, dissolve any Development Council if it considers that this Development Council is not required at all. On its dissolution the assets of the Development Council if any, shall vest in the Central Government.

Regulation of Scheduled Industries

Regulation of scheduled industries can be made by two ways—registration of existing industries and licensing of new ones.

Under the Industries (Development and Regulation) Act, 1951 registration of all the existing industrial undertakings and licensing of new ones are compulsory.

Registration of Existing Industrial Undertakings

Under Section 10 of the Act the registration of all the existing industrial undertakings in the scheduled industries is compulsory. Therefore, the owners of the undertakings must obtain a certificate of registration within a stipulated period. Even when the Central Government is the owner it has to take the certificate of registration for an undertaking owned by it. The certificate will contain the approved productive capacity of the undertakings and such particulars as prescribed by the authority.

Revocation of Registration

Under Section 10 of the Act, the Central Government has the power to revoke any given registration if it deems necessary, especially if it has been obtained by misrepresentation of essential facts, or if the industry or concern has been granted exemption from the registration, or if for any other reason the representation has become useless or ineffective.

Licensing of New Industrial Undertakings

The basic objectives of industrial licensing policy are (a) to promote and regulate industrial development in accordance with the plan priorities, (b) to encourage and project the medium and small industries, (c) to prevent concentration of economic power, and (d) to promote regional economic balance.

The Industries (Development and Registration) Act, 1951 incorporated the industrial licensing policy amended in 1948. The important provisions of the Act were—

(1) No new industrial units could be established or substantial extension to existing plants made without a license from the Central Government, while granting licence for new undertakings, government could lay down conditions regarding location, minimum size etc., if necessary.

(2) The owner of an industrial undertakings, not being the Central Government, is required to obtain a licence or prior permission for the production or manufacture of a new article by the industry so registered or licensed.

(3) The State Governments, however, need not take such licence except that they must seek the prior permission of the Central Government before establishing any new industry.

Procedure for The Grant of Licence or Permission

Under Section 14, before granting any licence or permission under Section 11, Section 11A, Section 13 or Section 29-B, the Central Government may require such officer or authority as it may appoint for the purpose to make a full and complete investigation in respect of the application received in this behalf and report to it about the result of such investigation. In making any such investigation, the officer or authority must follow such procedures as may be prescribed.

Revocation and Amendment of Licence

Under Section 12 the Central Government has the power to revoke or amend a licence, if the licensee has failed to establish an industry within the time fixed in the licence. Before the Central Government may revoke the licence, it must be satisfied that the person or authority has, without reasonable cause, failed to establish the new industrial undertakings.

Present Position of Licensing and Registration

With the idea of globalisation of the Indian economy the new Industrial Policy, 1991 makes a big departure from the old policy and the Act, 1951 as well. In the sphere of industrial licensing, the role of the government has to be changed from that of only exercising control to one of providing help and guidance by making essential procedure fully transparent and by eliminating delays. In the above context industrial licensing will hence forth be abolished. For all industries, except 18 specified industries. Similarly, all existing registration schemes will be abolished. Entrepreneurs will henceforth be required only to file an information memorandum on new projects and substantial expansion.

Basic Features of Present Licensing Policy

(1) Industrial licensing will be abolished for all projects except for a short list (18) of specified industries. These specified industries will continue to be subject to compulsory licensing for reasons related to security and strategic concerns, social

reasons, hazardous chemicals and overriding environmental issues and articles of elitist consumption.

(2) Areas where security and strategic concerns predominate will continue to be reserved for the public sector.

(3) In projects where imported capital goods are required, automatic clearance will be given.

(4) In locations other than cities of more than 1 million population there will be no requirement of obtaining industrial approvals from the Central Government except for industries subject to compulsory licensing.

(5) The exemption from licensing will apply to all substantial expansions of existing units.

(6) The Compulsory licensing provisions would not apply in respect of the small-scale units taking up manufacture of any of the 18 specified items reserved for exclusive manufacture in small scale sectors.

List of Industries in Respect of Which Industrial Licensing Will Be Compulsory

(1) Coals and lignite, (2) petroleum (other than crude) and its distillation products, (3) distillation and brewing of alcoholic drugs, (4) sugar, (5) animal fats and oils, (6) cigars and cigarettes of tobacco and manufactured tobacco substitutes, (7) asbestos and asbestos-based products, (8) plywood, (9) raw hides and skins, leather and patent leather, (10) tanned or dressed furskins, (11) motor cars, (12) paper and newsprint except baggage-based units, (13) electronic aerospace and defence equipment, all types, (14) industrial explosives, (15) hazardous chemicals, (16) drugs and pharmaceutical, (17) entertainment electronics, colour TVs, C.D. Players, tape recorders, (18) white goods (domestic refrigerators, domestic dish washing machines, domestic washing machines, microwave ovens, airconditioners).

Power to Cause Investigation to be Made in to Scheduled Industries or Industrial Undertakings

Under Section 15 of the Industries (Development and Regulation) Act, 1951, only the registration and licensing of industrial undertakings is not enough for the purpose of regulation of industries, but it is also essential to keep a careful watch on the day to day working of scheduled industries. To that Section 15 empowers the Central Government to cause investigation to

be made into selected industries or industrial undertakings under certain circumstances which are as follows—

- (1) that there has been a substantial fall in the volume of production in respect of any article, without any justification ;
- (2) that there is a fall of quality of any article without any justification ;
- (3) that there has been a rise in the price of any article without any justification ;
- (4) that it is necessary to take any such action as it is provided for the purpose of conserving any resource of national importance which are utilized in the industry or industrial undertaking as the case may be ;
- (5) that any industrial undertaking is being managed in a manner highly detrimental to the scheduled industry or to the public interest.

Under Section 15A of the Act, where a company owning an industrial undertaking is being wound up by or under the supervision of the High Court, the Central Government may apply to the Court for the permission to make an investigation into the possibility of running or restarting an industrial undertaking. The investigation shall be done by such person or body of persons as the Central Government may appoint for the purpose.

Power of The Central Government

Under Section 10 of the Act, if after due investigation the Central Government is satisfied that action under Section 16 is desirable, then it may issue such directions to the industrial undertaking or industrial undertakings concerned as may be appropriate in the circumstances for all or any of the following purposes namely—

- (1) to regulate the production of any article or class of articles and fix the standards of production,
- (2) to require the industrial undertakings to take such step as the Central Government may consider necessary to stimulate the development of the industry to which the industrial undertakings relate,
- (3) to prohibit the industrial undertakings from resorting to any act or practice which might reduce their production capacity or economic value.

(4) to control the prices or regulate the distribution of any articles which have been the subject matter of investigation.

The Central Government may issue all interim directions pending conclusion of investigations.

Management or Control of Industrial Undertakings by Central Government

Under Section 18A, when the Central Government is of the opinion that an industrial undertaking has failed to comply with any directions issued by the Government, or

Is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest, the Central Government may, by notified order, authorise any person or body of persons to take over the management of the whole or any part of the undertaking or to exercise in respect of the whole or any part of the undertaking such functions of control as may be specified in the order.

The period of management remains effective upto five years depending upon the order specified. However, if the Central Government is of the opinion that it is necessary for public interest to extent the period then it may be extended upto 12 years by stages—not extending more than two years at a time after 5 years. Where any such order is issued, a copy thereof shall be laid as soon as may be, before both houses of Parliament.

Section 18F empowers the Central Government to cancel the notified order issued under Section 18A under certain circumstances. On the cancellation of any such order, the management or control of the industrial undertaking shall vest in the owner of the undertaking.

Power to Take Over Industrial Undertakings Without Investigations

Under Section 18-AA of the Act, wide powers of taking over the management of industrial undertakings are vested in the Central Government. The grounds upon which this power can be exercised are as follows—

(a) The persons incharge of the industrial undertakings have, by reckless investments or creation of encumbrances on the assets of industrial undertaking or by diversion of funds, brought about a situation which is likely to affect the production of articles

manufactured or produced in the industrial undertaking and that immediate action is necessary to prevent such a situation.

(b) The industrial undertaking has been closed for a period of not less than 3 months and such closure is prejudicial to the concerned scheduled industry and that the financial condition of the company owning the industrial undertaking and the condition of the plant and machinery of such undertaking are such that it is possible to restart the undertaking and such restarting is necessary in the interest of the general public.

Where notified order has been made by the Central Government, the person or body of persons having for the time being control of the industrial undertaking must immediately make over the charge of management or control of the industrial undertaking to the authorised person.

Effects of Notified Order

The effects of the notified order under Section 18A authorising the taking over the management of an industrial undertaking are as follows :

(a) All persons in charge of the management shall be deemed to have vacated their office.

(b) Any contract of management between the industrial undertaking and any director thereof holding office as such immediately before the issue of the notified order shall be deemed to have been terminated.

(c) The persons or body of persons authorised under Section 18A to take over the management shall take all necessary steps to take into his or their custody or control all the property, effects and actionable claim, from the date of the notified order.

(d) The persons, authorised under Section 18A to take over the management of an industrial undertaking which is a company shall be for all interests and purposes, the directors of the industrial undertaking duly constituted under the Companies Act.

The business of the undertaking shall be carried on pursuant to any directions given by the authorised persons in accordance with the provisions of the notified order. The persons or the body of the persons authorised must exercise his or their functions in accordance with such directions as may be given by the Central Government.

Section D of the Act takes away the right to compensation for termination of office or contract.

EXERCISES

1. Describe the constitution of the Central Advisory council in the Industries (Development & Regulation) Act, 1951.
(Pages 1068-1069)
2. Describe about the establishment, constitution and function of Development Council.
(Pages 1068-1070)
3. Discuss about the regulation of Scheduled Industries.
(Pages 1071-1072)
4. State the procedure for the grant of licence or permission.
(Page 1073)
5. Discuss about the take ones, management and control of Industrial Undertakings.
(Page 1076)
6. What are the effects of Notified order under Section 19A ?
(Page 1077)
7. Write short notes :
(a) Central Advisory Council ; (b) Registration ; (c) Industrial Licencing Policy. [Pages (a) 1068 ; (b) 1072 ; (c) 1073]

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