Allotment Of Industrial Lands In Odisha

- *Key Considerations*

June 3, 2025

Odisha has emerged as a major Indian industrial investment destination in the recent years – particularly, for manufacturing and heavy industrials sector. Between 2018-2023, Odisha's industrial sector grew at 8.3%, compared to the national average of 4.7%[i], fuelled by State Government's push for ease of doing business.

Land allocation and subsequent transfers are a critical part of both greenfield and brownfield investments. The Odisha Industrial Infrastructure Development Corporation ("**IDCO"**), a statutory corporation, acts as the nodal authority for administration of industrial lands in Odisha.

Entrepreneurs and businesses with land as their key asset must factor-in legal implications under the regulatory framework governing allocation and transfer of industrial lands. This article is the first part of a two-part article series, highlighting certain critical and high-level considerations regarding allotment and acquisition of industrial lands in Odisha through IDCO. In the second part of the series, we deal with key aspects regarding post allotment actions and conditionalities around transfer, change in name and shareholding, change in activity, subletting, etc. which can be accessed here.

For ease of reference, in case of a fresh allotment of land, an entity seeking allotment / lease of land from IDCO is referred to as an "**allottee**". An entity intending to acquire IDCO property from an original allottee is referred to as the "**acquirer**".

1. Prior in principle approval from the State Government

While land can be acquired through direct purchase from private parties (on 'freehold' basis), interested entities often acquire large swathes of industrial lands on leasehold basis through IDCO. For fresh allocation, the entrepreneur / company must apply for project evaluation and allotment of land (PEAL) with project feasibility report, audited financials, corporate approvals, proof of experience and technical qualification of the promoters, etc.

Entities may apply through the web-based single window portal hosted by the Industries Department, Government of Odisha. After receipt of an '*in-principle*' approval of the High-Level Clearance Authority (HLCA) / State Level Single Window Clearance Authority (SLSWCA) under the Odisha Industries (Facilitation Act), 2004 read with IDCO Circular No. 15995 dated 23 July 2016 ("**IDCO Master Circular, 2016**"),[ii] IDCO proceeds with the land allocation subject to the applicant's compliance with conditionalities set out in the approval.

The conditionalities under the in-principle approval include submission of action plan and detailed land use plan, provision for local employability, and environment mitigation steps including rainwater harvesting, ground water recharge and mandatory green belts, etc.

2. Provisional allotment and agreement to lease - limited rights for the allottee

At a preliminary stage, the possession right to the land is granted on a temporary basis, with conditionalities for the allottee set out in the provisional allotment letter. Typical conditionalities include restrictions around alienation or encumbrance of the allotted land and change in entity's shareholding, receipt of all environmental and forest clearances, construction approvals from building regulation authorities, execution of electricity and water supply agreements, payment of the applicable land cost and other statutory dues, etc. The provisional allotment letter also prescribes the timelines for the execution of the agreement to lease by the allottee from the handover of possession.

Subsequently, on successful payment of the applicable land cost and other statutory dues, among other things, an "**agreement to lease**" is executed in favour of the allottee under the Odisha Industrial Infrastructure Development Corporation (Disposal of land, building, amenities) Regulations, 2016 (hereinafter referred to as "**IDCO Regulations, 2016**") for implementation of the project (construction and 'land utilisation'[iii]) within the moratorium period.[iv]

Under the agreement to lease, regardless of the nomenclature, the allottee has limited license rights (right to use) over the land – to access and enter the land and set up the infrastructure for the industrial unit.

An acquirer intending to acquire land at this stage (i.e., where final lease deed has not been executed) cannot lawfully acquire leasehold rights. Consequently, the acquirer, in the definitive documents, may consider appropriately negotiating the contractual provisions requiring execution of lease deed as a condition precedent prior to transfer and appropriate representations and warranties (backed by indemnities) around adherence to conditions set forth in agreement to lease.

3. Allotment conditionalities under provisional allotment letter / agreement to lease – a critical diligence item

Typically, IDCO provides a moratorium period of 5 years (for large industries) and 3 years (in case of MSMEs) from the date of handover of possession to establish the unit and commence commercial production.[v] Commercial production may be indicated to have commenced by obtaining a 'Commercial Production Certificate' from the Director of Industries. The industrial unit is required to obtain all necessary approvals and permissions[vi] during the implementation period.

The allottee's failure to comply with the prescribed timelines for implementation of the project[vii] or breach of any of the conditions set out in the provisional allotment letter, agreement to lease and/or any other provision of IDCO laws, exposes the allottee to the risk of cancellation of the allotment / agreement to lease by IDCO.[viii]

In this regard, the Supreme Court and various High Courts have ruled that statutory authorities (such as IDCO) are justified in cancelling land allotment and resuming the land due to significant non-performance of the mandatory conditions set out in the allotment letters / memorandum of understandings, including failure to execute lease deed in the prescribed format.[ix]

In the absence of a lease deed in the prescribed format, a lessor-lessee relationship cannot be established and IDCO can dispose of the land in a manner provided under law. In our experience, minor or routine non-compliances are typically condoned by IDCO, but such actions may be subsequently scrutinised.

4. Final lease deed – transferability of rights

On commencement of commercial production, a final lease deed is executed for a period of 90 years or so from the date of allotment.[x] At this stage the leasehold rights are crystalized in the allottee's favour. The leasehold rights are governed under IDCO's standard-form lease deed. The allotee may transfer such leasehold rights pursuant to any commercial transaction involving the land, subject to IDCO's approval and other conditionalities.[xi]

Conclusion

An entity seeking allotment of lands from IDCO has to comply with various conditions under the regulatory framework. Even post allotment, the allottee's rights in the land is not absolute and leasehold rights are only crystallised in its favour once the final lease deed is executed. An acquirer seeking transfer of allotted land from the original allottee prior to execution of final lease deed cannot lawfully acquire leasehold rights. Assessment of potential successor liabilities underscore the need for thorough diligence of allottee's compliance.

The legal framework allows for post allotment transfers from the original allottee to an acquirer. We deal with nuances around other post allotment actions, such as transfer of lease, subletting, change in name and shareholding, and change in business activity, etc., separately in the second part of this series (*Transfer of Industrial Lands in Odisha and Other Post Allotment Considerations (Part II)*). The considerations addressed in the second part assume importance in mergers and acquisitions involving transfer of land as one of primary business assets.

Authors: *Puneet Rathsharma*, *Aditya Pattnaik*, *Natasha Agarwal*

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[i] Directorate of Economics and Statistics Planning and Convergence Department, Government of Odisha, 'Odisha Economic Survey 2024 – 2025', https://pc.odisha.gov.in/publication/economic-survey-report accessed on 22 April 2025

[ii] By way of a circular dated 28 November 2019 (Circular No. IDCO-LAE-6534/2016-20751), IDCO has clarified and confirmed that the existing IDCO Master Circular, 2016 dated 23 July 2016 shall be applicable for all MSME projects and Large / Mega projects for following all the procedures and processes required for effecting the post allotment activities.

[iii] Regulation 2(n) of IDCO Regulations, 2016 defines "Land Utilization" as utilization of land for the purpose of establishment of industry by "*completion of construction activities partially or fully or commencement of commercial production*".

[iv] Regulation 5(2) of the IDCO Regulations, 2016 prescribes for the execution of agreement for implementation of project with respect to entrepreneurs for large scale industries while execution of agreement for MSME entities are prescribed under Regulation 8(2) of IDCO Regulations, 2016. Also see Paragraph 1.9 of the IDCO Master Circular, 2016.

[v] Regulation 5(2) and Regulation 8(2) of the IDCO Regulations, 2016.

[vi] Among others, (i) consent to operate under the Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974, (ii) environmental clearance under EIA notification 2006, (iii) fire and building approvals, and (iv) production commencement certificate, etc.

[vii] Regulation 5(4) of the IDCO Regulations, 2016 for large scale industries and Regulation 8(4) of the IDCO Regulations, 2016 for MSMEs.

[viii] Regulation 12 of the IDCO Regulations, 2016

[ix] Orissa Industrial Infrastructure Development Corporation vs Mesco Kalinga Steel Limited and Ors. (2017) 5 SCC 86; Anil v. State of Maharashtra. 2021(6) ABR 626.

[x] Regulation 5(1) and Regulation 8(1) of the IDCO Regulations, 2016.

[xi] Regulation 19 of the IDCO Master Circular, 2016.