

Incentives and Laws for Data Centers in Maharashtra

The state of Maharashtra has taken initiatives in establishing policies to promote the expansion of the data center industry. Last year, the government of the state of Maharashtra (“**State Government**”) approved the establishment of green integrated data center parks with an expected investment of INR 1,600 billion to strengthen the states’ digital infrastructure. As the state rolls out the carpet for multinational companies and conglomerates to set up data centers, it is vital for the prospective investors to be aware of (i) steps/local laws and regulations involved in acquisition of land for setting up data centers, and (ii) various incentives introduced by the State Government as regards acquiring land for data centers.

STEPS INVOLVED IN ACQUISITION OF LAND FOR DATA CENTERS

- **Initial Documentation**: As a first step, once the land parcel has been identified, usually the interested parties enter into a preliminary arrangement recording the key terms of land acquisition between a seller and a buyer such as consideration, manner of payment, pre-conditions for completion of the sale and its timelines and other key commercial terms.
- **Title Diligence**: Secondly, the entities intending to acquire land for data centers would conduct title diligences in respect of the identified land parcels. The diligence process includes (i) conducting online and physical searches in the relevant sub-registrar’s office in respect of registration records relating to the land as well as local revenue records; (ii) review and inspection of title deeds to establish chain of title and if there are any defects in title; (iii) ascertain if the land is agricultural to determine whether conversion would be required and factor in the timelines for the conversion, and (iv) recommending mitigation of risks (if any). In the state of Maharashtra, the revenue records (7/12 extracts/property card, mutation entries

etc.) are accessible on the [Mahabhumi portal](#), an online portal introduced by the State Government to access land records and other property related details. Further, as part of the diligence, it is prudent to check if there is any litigation subsisting in relation to the relevant land parcel. It is also important to ascertain if there are any existing encumbrances in respect of the relevant land such as mortgages, pending taxes etc. A public notice is issued through the lawyer conducting diligence to ascertain if there are any third party claims in respect of the subject land.

- **Permissions required for sale:** Thirdly, the diligence would also ascertain if any prior permission is required from any statutory or regulatory authority for sale of land in case of agricultural land or fragmented land or tribal land etc. Additionally, where the land is owned by a government authority such as Maharashtra Housing and Area Development Authority, City and Industrial Development Corporation, Maharashtra Industrial Development Corporation (“**MIDC**”) etc., then the underlying transaction would be structured as a lease for a specific time period as against a sale. In such a scenario, as a prospective lessee/ sub-lessee, the acquirer will have to ascertain restriction on transfer of leasehold land and the same may attract payment of transfer charges/premium etc.
- **Documentation:** Pursuant to the completion of diligence and other conditions precedent to the transaction, the parties enter into and register the sale deed/conveyance deed and appropriate stamp duty and registration fees is paid on the sale deed/conveyance deed. The State Government under the current policy has given stamp duty exemptions for transactions relating to data centers which are detailed in the following paragraph.

ISSUES TO BE CONSIDERED AT THE TIME OF ACQUISITION OF LAND PARCELS

Section 63(1C) and 63-IA of Maharashtra Tenancy and Agricultural Lands Act, 1948

Section 63 of Maharashtra Tenancy and Agricultural Lands Act, 1948 (“**MTAL Act**”) provides that agricultural land cannot be transferred to a person who is not an agriculturist without the permission of the Collector or an officer authorised by the State Government. However, such permission is not required in two scenarios i.e. (i) if the land is situated in specific jurisdictions (Municipal Council or Municipal Corporation or within the jurisdiction of a Special Planning Authority) or land is allocated for certain non-agricultural use (residential, commercial, industrial etc.) under Section 63(1C) of

the MTAL Act or (ii) if the land is being sold to a person who intends to convert the same to a bonafide industrial use under Section 63-IA of MTAL Act.

Notwithstanding what is stated herein above, the agricultural land will be required to be converted to non-agricultural land and necessary payments towards conversion will have to be made. It is advisable that such conversion of land and necessary payments for conversion should be done prior to entering the sale deed. This becomes crucial, considering that the property tax on non-agricultural land far exceeds that on agricultural land which would impact the overall structure of the transaction.

Zone/usage of the land

Ordinarily, the zone/permitted usage of land (residential/commercial/industrial etc.) would determine whether the proposed activity (i.e. setting up data centers) on the land is permissible. However, in light of the relaxation in zoning laws permitting the setting up of data centers in any zone, zoning would not affect the construction of data centers.

INCENTIVES FOR SETTING UP DATA CENTERS IN RELATION TO ACQUISITION OF LAND

Information Technology and Information Technology Enabled Services Policy of Maharashtra, 2023 dated June 27, 2023

The State Government has introduced a comprehensive policy specifically for data centers, recognizing them as an essential service and granting specific incentives for setting up the data centers. Some of the key incentives and benefits provided to the investors in relation to acquiring and development of data centers under the Information Technology and Information Technology Enabled Services Policy of Maharashtra, 2023 dated June 27, 2023 ("IT & ITES Policy") are set out below:

- Earmarking land parcels: The State Government will earmark land parcels especially in MIDC industrial areas to be developed as dedicated data center parks. Further, MIDC will take up data center parks with all prior clearances/permissions for land being allotted to data centers.
- Setting up of data centers in any zone: As discussed above, data centers will be allowed to be set up in any zone (including residential, no development zone and green zone etc.).

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- Floor space index (“FSI”) norms: Data centers being a unique activity will be permitted to avail additional FSI as provided in the IT & ITES Policy.
 - Stamp duty exemptions: 100% stamp duty exemption is available for purchasing land/premises required for setting up a new data center and for its expansion as well as conveyance, lease, assignment of lease, leave and license agreement etc.
 - Relaxed restrictions on buildings: The development control regulations have been amended on parameters such as parking norms, height of floors, FSI etc. and in this regard, amendments were made in the Unified Development Control and Promotion Regulations for Maharashtra State.
 - Property Tax: Property tax shall be levied at par with residential rates as applicable in the relevant jurisdictions which is much lower than the commercial rates.

The IT & ITES Policy was amended by and under [Government Resolution dated October 9, 2024](#) issued by the Industries, Energy and Labour Department which provides for additional incentives for first three integrated green data center parks. The IT & ITES Policy defines the “integrated green data center parks” as an IT infrastructure which hosts servers to store, manage and transmit data designed to be highly energy efficient and reduce the environmental impact. The green data centers being set up in MIDC areas will be allowed free of cost without charging any sub-letting charges and any other additional charges. Further, in addition to the 100% stamp duty waiver available on transaction of conveyance and lease for data center project, 100% stamp duty waiver on first lease/sub-lease will be available to entities setting up data center parks.

Draft Data Center Policy, 2020

The Ministry of Electronics and Information Technology (“**MeitY**”) introduced the Draft Data Center Policy, 2020 (“**Draft Policy**”) to streamline the process of setting up data centers in India. The Draft Policy *inter alia* provides for (i) demarcation by states of specific zones (land parcels) for setting up data center parks, and (ii) promotion of pre provisioned data center parks to enable ‘plug and play’ model for data center parks by providing access to land parcel, pre-approved clearances/approvals etc. Although the Draft Policy was introduced in the year 2020, it has not been implemented yet and MeitY plans to revise the Draft Policy. Whilst the proposed amendments to the Draft Policy are not specified yet, the intention is to align the Draft Policy with the changes in the growing sector and consider providing incentives for companies establishing artificial intelligence data centers.

CONCLUSION

Maharashtra's data center policy is designed to support the rapid growth of the industry by providing various incentives. The focus on land acquisition, through incentives such as stamp duty waivers and relaxed norms on development, is a critical component in facilitating the establishment of data centers.

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