

## MSMED Act, 2006 - Overview

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### Background:

The concept of Small Scale Industrial Undertakings/ Ancillary Industrial Undertakings was popular till the date of coming into force of the Micro, Small and Medium Enterprise Development Act, 2006 of (MSMED Act effective from 2 October 2006). The Central Government was required to issue Necessary Notifications under Section 11B of Industrial Development Regulation Act, 1951 - I(D&R)A 1951 and by notified order specify the requirements which shall be complied with by an Industrial Undertaking to be regarded as a Small Scale Industrial Undertakings/ Ancillary Industrial Undertakings

Following were various governing points for issuing necessary Notifications under the I(D&R)A 1951

- (a) The Investment in Plant & Machinery or Land & Building and Plant & Machinery
- (b) The nature of ownership
- (c) The number of workers employed
- (d) The nature cost and quality of the product
- (e) Foreign Exchange, if any, required for the import of any plant & machinery Other
- (f) relevant factors, if any.

Following definitions were available as per I(D&R)A 1951 for the two terms;

**Small Scale Industrial Undertaking** - An Industrial Undertaking in which the Investment in fixed assets in plant & Machinery, whether held in ownership terms or on lease or on hire purchase, does not exceed Rupees one crore.

**Ancillary Industrial Undertaking** - An Industrial Undertaking which is engaged or is proposed to be engaged in

- the manufacturing or production of parts, components sub assemblies, tooling or intermediaries or
- rendering of services, and undertakings supplies or proposes to supply or renders more than 50% of its production or services to one or more other Industrial Undertaking and
- whose investment in the fixed assets in plant & machinery, whether held in ownership terms or on lease or on hire purchase, does not exceed Rupees one crore

Similarly, the concept of SSI Units was also described under various other laws in India and it was necessary to have a separate Law to govern the Small Scale Undertakings instead of following Notifications issued by the Central Government from time to time Accordingly, a separate legislative enactment, the Micro, Small and Medium Enterprise Development Act, 2006 came into force with effect from 2<sup>nd</sup> October 2006

### Features of MSMED Act of 2006 (The Act)

The Act has been introduced in order to provide for facilitating the promotion and development and enhancing the competitiveness of micro small and medium size enterprises.

The Act defines new concept namely 'Enterprise' instead of 'Industrial Undertaking' and also defines the 'Micro, Small & Medium' Enterprise

The Act provides clear cut provisions for registration of the enterprises under the Act

The Act provides for measures for recovery of delayed payments

The illustrative List of activities of manufacturing and/ or activities relating to service providing which can be registered has been issued under the Act through various circulars.

The Act makes a provision to notify exit route to the enterprises registered under the Act

## Relevant Definitions as per Section 2 of MSMED Act, 2006

1. Enterprise means, an industrial undertaking or a business concern or any other establishment, by whatever name called, engaged in the manufacture or production of goods, in any manner, pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 or engaged in providing or rendering of any service or services;
2. Medium Enterprise means an enterprise classified as such under sub-clause (iii) of clause (a) or sub-clause (iii) of clause (b) of sub-section (1) of section 7
3. Micro Enterprise means an enterprise classified as such under sub-clause (i) of clause (a) or sub-clause (i) of clause (b) of sub-section (1) of section 7
4. Small Enterprise means an enterprise classified as such under sub-clause (ii) of clause (a) or sub-clause (ii) of clause (b) of sub-section (1) of section 7;

## Registration under the MEMED Act, 2006

Section 7 of the MEMED Act, 2006 defines the eligibility for registration under the Act.

Accordingly, the basic criterion for registration is Investment in Plant & Machinery/ equipments in case of Enterprise

Sr. No.	Type of Enterprise	Manufacturing Enterprise	Service providing Enterprise
		Investment in Plant & Machinery (Rs.)	Investment in Equipments (Rs.)
01.	Micro Enterprise	Up to 25.00 Lacs	Up to 10.00 lacs
02.	Small Enterprise	From 25.00 lacs to 5.00 crore	From 10.00 lacs to 2.00 crore
03.	Medium Enterprise	From 5.00 crore to 10.00 crore	Form 2.00 crore to 5.00 crore

It is relevant to note the gist of Section 8 of the MSMED Act, 2006 in this context accordingly:

- (1) Any person who intends to establish;
  - (a) a micro or small enterprise, may, at his discretion, or
  - (b) a medium enterprise engaged in providing or rendering services may, at his discretion, or
  - (c) a medium enterprise engaged in manufacturing or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951shall file the Memoranda of Micro, Small or as the case may be, of medium enterprise with such authority as may be specified by the State Government

**Provided that** any person who before commencement of this Act, established -

- (a) a small scale industry and obtained a registration certificate, may, at his discretion; and
- (b) an industry engaged in the manufacture or production of goods pertaining to any industry specified in First Schedule to Industries (Development and Regulation) Act, 1951 having investment in plant & machinery of more than one crore rupees but not exceeding ten crore rupees and in pursuance of Notification of Government of India in the erstwhile Ministry of Industry (Department of Industrial Development) number S.O. 477 (E) dated the 25<sup>th</sup> July 1991 filed an IEM (Industrial Entrepreneur's Memoranda) shall within 180 days from the commencement of this Act, file the memoranda, in accordance with the provisions of this Act"

To summaries above,

### **In case of New Enterprises**

It is not mandatory to obtain registration under MSMED Act, 2006 for

- Micro & Small Scale Manufacturing Enterprises OR
- Medium Scale Service providing Enterprise

But, it can be stated that the registration for the Medium Scale Manufacturing enterprise is compulsory.

### **In case of Existing Units**

- Existing Small & Micro enterprises can obtain the registration under the Act at their discretion
- Units having Investment in Plant & Machinery exceeding Rs. 1.00 crore but not exceeding Rs. 10.00 crore were required to obtain registration under the Act, within 180 days from the date of commencement of this Act

Further it is to be noted that, such Industrial Units applying for the Registration under the MSMED Act will not be issued a separate IEM under the Industries Development Regulation Act, 1951

### **Calculation of Investment in Plant & Machinery**

The Central Government has specified following items, the cost of which shall be excluded while calculating the Investment in plant & machinery in case of enterprises

1. Equipments such as tools, jigs, dies, moulds and spare parts for maintenance and the cost of consumables stores
2. Cost of Installation of plant & machinery
3. Research & development equipments and pollution control equipments Power generation set and extra transformer installed by the enterprise as per the regulations of State Electricity Board
4. Bank charges and service charges paid to National Small Industries Corporation or State Small Electricity Board
5. Procurement or installation of cables, wiring, bus bars, electrical control panels, oil circuit breakers or miniature circuit breakers which are necessarily to be used for providing electrical power to the plant & machinery or for safety measures.
6. Gas producer plants
7. Transportation charges (excluding sales tax or value added tax or excise duty) for indigenous machinery from the place of their manufacture to the sit of enterprise
8. Charges paid for technical know-how for erection of plant & machinery
9. Such storage tanks which store raw material and finished products only and are not linked with such manufacturing process
10. Fire fighting equipments

Further it is to be noted that, while calculating the cost of plant & machinery the original price thereof irrespective of whether the plant and machinery are new or second hand shall be considered

In case of Imported Machinery, following items are to be considered while calculating the cost of machinery;

1. Import Duty (excluding miscellaneous expenses such as transportation from the port to the site of the factory, demurrage paid to the port, etc.)
2. Shipping Charges
3. Custom clearance charges
4. Sales tax or value added tax

### **Procedure for Registration**

List of activities for manufacturing enterprises and List of activities for Service enterprises which can be registered under the Act has been notified through the circulars/ notifications issued by the Central Government.

### **Procedural formalities:**

Schedule I of the MEMED Act, 2006 provides for the EM Form (Entrepreneurs Memoranda) for setting up Micro Small Medium Enterprise. The Memorandum has 2 parts. Part -I shall be filed for registration of the Enterprise and Part II shall be filed after commencement of the actual manufacturing or production or actually starting of rendering of services by the enterprise alternatively, it can be said that Part -II shall be filed by the Existing unit.

1. Four copies of Memoranda are required to be filed with the district Industries center as per Section 8 (1) of MSMED Act, 2006
2. There are No fees for submission of the Memoranda
3. Application forms are required to be obtained from the office of the District Industries Center on payment of necessary charges for the application.
4. The forms are machine numbered and are required to be submitted in physical after filling up all necessary information.

### **Information required for registration**

1. Name and complete address of the Applicant
2. Address of Location of the enterprise
3. category under which the registration is required
4. Nature of Activity
5. Schedule of proposed investment in Plant & Machinery
6. Type of organization
7. NIC code of the activity - 5 digit code of INC 1998
8. Proposed Investment in fixed assets
9. Installed capacity
10. Anticipated power load
11. Other source of energy/ power supply
12. Expected employment
13. Entrepreneurs' profile
14. Expected schedule of production/ activity

Information required in Part I and Part II is similar in nature, except with the difference that, under Part II i.e. registration of existing unit the information of actual is required to be mentioned instead of anticipated information, i.e. actual date of commencement of production/ activity, actual amount of installation of machinery etc.

Duly filled in EM shall be submitted to the District Industries Center/ Joint Director (MMR) and he shall issue the necessary registration certificate regarding the same. Validity of the Entrepreneur's Memoranda is 2 years and no further Renewal is granted in the matter.

## **Advantages of Registration under the Act**

### **To the Undertaking**

#### **1. Remedy against delayed payments to Micro and Small enterprises**

##### **(i) Payment for goods and/ or services**

In case of supply of goods or services, the buyer of the goods or person procuring services is required to make payment of the amount due to the supplier within such period as may be agreed in between both of them subject to the maximum period of 45 days from the day of acceptance or the day of deemed acceptance of goods/ services

##### **(ii) Payment of Interest in case of delayed payments**

In case of failure to make payment in time, the buyer of goods/ services, shall be liable to pay compound interest with monthly rests to the supplier on the amount due from the appointed day (as per definition in the Act, appointed day means, a day following immediately after 15 days from the date of acceptance or the date of deemed acceptance of the goods and/ or services) or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.

It is noteworthy that the Act requires the buyer of the goods/ services to specify unpaid amount with interest in the annual statement of accounts, where he is required to get his annual accounts audited under any law for the time being in force and amount of such Interest amount is not allowed as a deduction from income while calculating Income as per the Income Tax Act,.

##### **(iii) Reference to Micro and Small Enterprises Facilitation Council**

An Aggrieved party may make a reference to the Micro and Small Enterprises Facilitation Council with regard to any amount due.

#### **2. Establishment of Micro and Small Enterprises Facilitation Council.-**

The State Government shall, by notification, establish one or more Micro and Small Enterprises Facilitation Councils for considering the disputes, at such places, exercising such jurisdiction and for such areas, as may be specified in the notification.

Wherever the council receives any reference for recovery of delayed payments, it shall either itself conduct conciliation in the matter or may make a reference to any institution or centre providing alternate dispute resolution services for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 shall apply to such a dispute as if the conciliation was initiated under Part III of that Act. Where the conciliation is not successful and stands terminated without any settlement between the parties, the matter will be referred to arbitration and the provisions of the Arbitration and Conciliation Act, 1996 shall then apply to the dispute as if the

arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of Section 7 of that Act.

Every such reference is required to be decided within 90 days of making of such reference.

### **3. Credit facilities -**

The policies and practices in respect of credit to the micro, small and medium enterprises shall be progressive and such as may be specified in the guidelines or instructions issued by the Reserve Bank of India, from time to time,

### **4. Scheme for closure of business of micro, small and medium enterprises**

The power to notify a suitable scheme with a view to facilitating closure of business by a micro, small or medium enterprise (other than a Company registered under the Companies Act, 1956), has been granted to the Central Government.

### **5. Procurement preference policy -**

The Central Government or the State Government may, by order notify from time to time, preference policies in respect of procurement of goods and services, produced and provided by micro and small enterprises, by its Ministries or Departments, as the case may be, or its aided institutions and public sector enterprises.

### **General provisions beneficial in the interest of the small scale sector**

#### **Creation of specified Funds -**

The Central Government may constitute by notification, one or more Funds and may credit any grants to such fund after due appropriation made by Parliament by law in this behalf, such sums of money as that Government may consider necessary to provide.

#### **Constitution of National Board for Micro, Small or Medium Enterprise**

The Act specifies the formation of National Board for Micro, Small or Medium Enterprise which shall have following powers to exercise;

- to examine the factors affecting the promotion and development of micro, small and medium enterprises and review the policies and programs of the Central Government in regard to facilitating the promotion and development and enhancing the competitiveness of such enterprises and the impact thereof on such enterprises
- to make recommendations on matters referred to in the first clause or on any other matter referred to it by the Central Government which, in the opinion of that Government, is necessary or expedient for facilitating the promotion and development and enhancing the competitiveness of the micro, small and medium enterprises; and
- to advise the Central Government on the use of the Fund or Funds constituted under section 12 of the Act.

Thus the Board will ensure the promotion and development of Micro, Small and Medium Enterprises

Above all benefits directly derive from various provisions in the Sections of MEMED Act, 2006. There can be some other exemptions which will be made effective from of the State-level incentive schemes like the one were available to SSI units for instance, SSI units set up in less industrialized zones were given special stamp and octroi benefits, concessions on electricity billing, etc. To

conclude by introducing MSMED Act, 2006, the Central Government has specifically recognized the existence of Small Scale units by categorizing them under Small, Micro and Medium Enterprises and has moved a step ahead for the promotion and development of small scale sector of Industries.