

Latest changes in MSMED Act & Govt Schemes Director's Responsibility & Protection

Speaker

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Bizfirst Professionals

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PCS – powerful business enabler



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Game Changers for CS profession

- KMP
- Expert
- OD consultant
- Business Consultant
- Independent evaluator

Micro Small Medium Entp

- Industrial undertaking or business concern or other establishment
- Businesses registered under MSME Act – Udyog Aadhar (erstwhile IEM)
- Manufacturing & Service Sector
- Trading not covered
- Threshold definition is changing from 1.7.2020.
- Both Criteria of Investment & turnover to be complied
- Investment in plant & machinery or equipment's (purchase Value – depreciation) – MSME notification 5.10.2006
- Turnover as per last FS – Gross amount of revenue recognized in P & L form the sale supply or distribution of goods or on account of services rendered or both –
- Exclusion of Export turnover?
- Existing MSME to be re classified automatically?

MSME criteria's w.e.f. 1.7.2020

Updated MSME Definition		
Type of Enterprise	Investment	Turnover
Micro	Rs 1 Crore	Rs 5 Crore
Small	Rs 10 Crore	Rs 50 Crore
Medium	Rs 50 Crore	Rs 250 Crore

Usual benefits to register MSME

- About 30 government schemes available
- Dues recovery in 45 days. Provision for Interest if any delay in payments
- Facilitation center for recovery disputes
- Concession in OD interest rate
- Electricity bills concessions
- Stamp duty concessions
- E- market
- Cluster developments
- TReDs platform – bill discounting
- Sambandhaan Portal
- Champions Portal

Government Support Measures for Businesses including MSMEs

- Rs 3 lakh cr Collateral free Automatic Loans for Business, incl MSME
- Rs 20,000 cr Subordinate Debt for MSMEs
- Rs 50,000 cr equity infusion through MSME Fund of Funds
- New definition of MSMEs
- Discontinuation of Global tenders upto Rs 200 crores
- Other interventions for MSMEs
- Rs 2500 cr EPF support for Businesses and Workers for 3 more months
- EPF contribution reduced for Business & Workers for 3 months- Rs 6750 crores
- Rs 30,000 cr Liquidity Facility for NBFC/ HCs/ MFIs
- Rs 45,000 cr Partial Credit Guarantee Scheme 2.0 for NBFC
- Rs 90,000 cr Liquidity Injection for DISCOMs
- Relief to contractors
- Extension of Registration and Completion Date of Real Estate Projects under RERA
- Rs 50,000 cr liquidity through TDS/TCS reductions
- Other Direct tax Measures
- Relief from Insolvency operations

Government Relaxations

- Extending dues dates – Tax, Co Law, LLP, FEMA, SEBI, GST, Customs etc
- Mandatory Board meetings extended by 60 days till 30th September
- Allowing General Meetings through Video Conference with e-voting/simplified voting facility
- Increased the banks' limit for borrowing under the marginal standing facility (MSF), allowing the banking system to avail an additional ₹1,37,000 crore of liquidity at the reduced MSF rate.
- Moratorium on payment of instalments and payment of Interest on Working Capital Facilities in respect of all Term Loans
- Easing of Working Capital Financing by reducing margins
- MSME receivables from Gov and CPSEs to be released in 45 days



Rs 3 lakh crores Collateral-free Automatic Loans for Businesses, including MSMEs

**Emergency
Credit Line
Guarantee
Scheme (ECLGS)**



Scheme Highlights

- Guidelines dated 23.5.20 issued by NCGTC to all lenders
- GECL under this Scheme is additional working capital term loan facility.
- Udyog Aadhar registration or recognition as MSME is not pre condition for eligibility under this Scheme
- No guarantee fee, no fresh collateral, no processing fees
- Scheme can be availed till 31st Oct 2020

Borrowers Eligibility Criteria

- Existing Borrowers with upto Rs.25 cr outstanding loans & Rs. 100 cr turnover are eligible.
- Turnover as per 19-20 FS or through borrowers declaration.
- Outstanding loans as on 29.2.2020 to be considered
- Off balance sheet loans & Non Fund based facilities to be excluded.
- Borrower accounts classified as regular, SMA-0 or SMA-1 as on 29.2.2020 are eligible- NPA or SMA-2 will not be eligible
- The MSME borrower must be GST registered where ever applicable.
- Individual borrowers are not eligible

Lenders

- Banks/ FS/ NBFC - other lenders like co-op bank not covered
- Multiple Lender: Through 1 or ALL-
Depends upon the agreement between the borrower and the MLI.

Process

- Pre-approved loan
- An offer will go out from the MLI
- An 'opt-out' option will be provided to eligible borrowers under the Scheme
- Borrower may accept or reject
- Required to complete requisite documentation.

GECL Terms

- Interest capping – bank & FI - 9.25% NBFC – 14%
- Tenure 4 year – moratorium 1 year for principal repayment. Interest is payable
- No pre payment penalty
- No collateral
- No guarantee fees by NCTGTC to lenders
- 100% guarantee cover to lenders

Rs 20,000 crores Subordinate Debt for Stressed MSMEs

- Stressed MSMEs need equity support
- Govt will facilitate provision of **Rs. 20,000 cr** as subordinate debt
- **Two lakh MSMEs** are likely to benefit
- Functioning MSMEs which are **NPA** or are **stressed** will be eligible
- Govt. will provide a support of **Rs. 4,000 Cr.** to CGTMSE
- CGTMSE will **provide partial Credit Guarantee support to Banks**
- Promoters of the MSME will be given debt by banks, which will then be infused by promoter as equity in the Unit.



Rs 50,000 cr. Equity infusion for MSMEs through Fund of Funds

- MSMEs face severe shortage of Equity.
- Fund of Funds with **Corpus of Rs 10,000 cr** will be set up.
- Will provide equity funding for **MSMEs with growth potential and viability.**
- FoF will be operated through a **Mother Fund** and few **daughter funds**
- **Fund structure will help leverage Rs 50,000 cr of funds at daughter funds level**
- Will help to expand MSME size as well as capacity.
- Will **encourage MSMEs to get listed** on main board of Stock Exchanges.



Insolvency Reliefs



The infographic is set against a light orange background. At the top right, a hand holds a fan of blue and red human figures. Below this, a hand holds a white gavel. At the bottom right, a small figure in a suit stands on a white platform, holding up the gavel. The text is arranged in three main sections, separated by horizontal lines.

Insolvency Suspension

Sections 7,9, 10
suspended for 6 months

Suspension can be
extended for up to a year

Provisions suspended
both for borrowers
& creditors

Insolvency can
be filed for debt
defaults before
Mar 25

BCCL

Working Capital management : Way Forward

- Working capital availability- Major factor for deciding amount of Profit
- Normal operating cycle decides the working capital requirement of each business
- Good working capital management enables the business to maximise the Profits

Manage Stock: DO NOT

- Order extra out of anxiety
- Order extra for MOQ restrictions
- Order extra for small discount in rate on large order quantity
- Ignore risk of damage, wastage, obsolesces etc while stocking

Manage Debtors:

- Satisfied customer is the key to manage Debtors
- Focus on customer satisfaction - which will reduce working capital requirement **by way of**
lower rejections, timely release of payments, timely return of security deposit, timely release of Bank Guarantee etc

Follow good business ethics, practises which will help in attracting & retaining good human resources/relations which will help in reducing wastages & increase in efficiency. This is also a factor in working capital management.

Perception

- Lenders are not flexible ? Reality check?
- Lending institutions- Governed by strict rules – Failures lead to Mallya & Nirav Modi.
- Amount of resources which can be raised in the form of Cash Credit / Creditors / Payables etc. has a direct relation to own Capital/funds.
- Focus on margins since there are limitations on turnover to maximise the profits
- Avoid risky projects in a zeal to do something big.
- Review projections- Setting realistic/achievable goals.

What they Don't teach you at Harvard Business School

Few practical quick tips : Improve Current Ratio & WC eligibility

- Utilize full CC limit at the end of the year- Pay the creditors.
- Keep advances from customers at minimum at year end
- Smart debtors management at year end will help you minimise debtors beyond 90 days and improve your working capital loan eligibility



**DIRECTORS DEALINGS,
RESPONSIBILITIES & PROTECTIONS**

Critical Business Transactions & Dealings

- Approval of Budget & Business plan
- Approval of Financial Statements
- Constitutional changes in the company
- Business expansion, takeover, amalgamation or other restructuring
- Replying to audit observations, if any
- Preparation & approval of Board's Report
- Distribution of profits
- Dealings with assets, liabilities and manpower of the co.
- Dealings with lending and borrowings in the Company
- Investment Decisions
- Formulation of the policies of the Company
- CSR Committee / related project funding

Directors to ensure ...

- Timely and correct compliances of all applicable laws by the Company
- Regular compliance monitoring and reporting
- Key Managerial Personnel appointments and functioning
- Proper recording of decisions in minutes of the Meetings
- Implementation of decisions of the Board & policies of the Company
- Timely personal disclosures to Board and Company
- Personal Compliances–DIN KYC/ SBO declarations/ providing information to auditors as and when required.
- Acting within the parameters of the provisions of the Companies Act, Memorandum and Articles of Association.

Directors to avoid ...

- Involvement in fraud or fraudulent situations.
- Conflict of Interest & making personal profit from his position.
- Being Non-responsive to Board proposals.
- Signing/ certifying documents/ papers without proper knowledge.
- Disclosing confidential information to those who are not entitled for.
- Public briefings or announcements without authority.
- Interaction with employees without authority or providing directions to them.
- Indulging with auditors in his independent functioning.

Directors to avoid ...

- Indulging into Insider trading.
- Non cash transactions with the Company. Negligence in performing duties.
- Misconduct.
- Material breach.
- Acts beyond the objects of company or outside the scope of his own authority
- Unauthorized acceptance of any loan/ advance from company or by his partner, relatives or firms.
- Violation of any contractual obligations

Director's Liabilities

Liabilities arising out of :

- Position as a Director.
- Personal non-compliances.
- Contractual liabilities.
- Attribution to defaults – by knowledge through Board Agenda Papers
- Consent or connivance – otherwise or deemed
- “**Holding out**” as Director
- Liability arising out of entering into position of Shadow Director.

Holding out - conduct by a person leading another to believe that he possesses an authority that in reality he does not. Such conduct in effect amounts to a representation such that he will be prevented by **ESTOPPEL** from denying that the authority exists.

Impacts

- Incurring disqualification & thereby vacation arising out of companies default (Section 164(2) and Section 167(1)(a))
- Incurring disqualification & thereby vacation arising out of other companies default (Section 164(2) and Section 167(1)(a))
- Incurring disqualification & thereby vacation arising out of personal default (Section 164(1) and Section 167(1)).
- On incurring disqualification director, is prohibited from appointment & reappointment in another company for 5 years (Section 164(2) and Section 167(1)(a))
- He continues as director in defaulting company (Section 167(1) (a) proviso)
- Listing as “Willful defaulter” by RBI
- Listing as “Defaulter” by SEBI
- Listing as Vanishing Company Director.
- Deactivation of DIN on account of defaults in filing Form DIR 3 KYC.
- Marking DIN as “Director of ACTIVE non-compliant company” on account of non-compliance of Active status by the Company.



PROTECTION OF DIRECTORS

Protection Measures

- Imbibe culture of compliance.
- Strong compliance management, monitoring & reporting system.
- Ensure the company has proper Board-processes & compliance mechanism and availability of platform for expressing views & recording dissent.
- Ensure Company is following ICSI Secretarial Standards relating to Board & General Meeting and of Dividend, Directors Report
- Devise proper system to ensure compliance with applicable laws & ensuring that these systems are adequate and are operating effectively.
- Ensure proper KMP appointments & assignment of responsibilities to them .
- Identify & list out officers in defaults by filing form GNL-3.

Protection Measures

- Encourage Company Secretary functioning.
- Avoid backdated signing & paper meetings.
- Periodically check validity & status of DIN on MCA portal.
- Preserve board papers & documents related to directorship at least for 8 years.
- Ensure acknowledgement of resignations & its regulatory filing eForm DIR 11.
- Attend meetings regularly.
- Be inquisitive & peruse agendas for unusual items and seek additional information in writing, if necessary.
- Ensure disagreements/ dissenting views are recorded in the minutes.

Protection Measures

- Report concerns about unethical behavior, actual or suspected fraud or violation of the company's code of conduct or ethics policy.
- Seek professional advice & engage external agencies, if situation demands.
- Provide requisite disclosures of interests/ conflicts.
- Seek Directors & Officers Liability Insurance Cover from the company to protect against malicious actions.
- Protection against non-compliances by the Company – Trigger Compounding of offenses provisions.

Any Questions please





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