

**HANDBOOK
FOR
MSME
ENTREPRENEURS**



**THE INSTITUTE OF
Company Secretaries of India**
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

June 2017

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भारत सरकार
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उद्योग भवन, रफी मार्ग, नई दिल्ली - 110 011
GOVERNMENT OF INDIA
MINISTRY OF MICRO, SMALL AND MEDIUM ENTERPRISES
UDYOG BHAWAN, RAFI MARG, NEW DELHI - 110 011



Foreword

Micro, Small and Medium Enterprises (MSMEs) sector has emerged as a highly vibrant and dynamic sector of the Indian economy and is widely acclaimed as engine of economic growth, particularly in the context of Make in India initiative of the Government of India. MSMEs play a noteworthy role in economic and social development, thereby providing flip to entrepreneurship, as they have inherent characteristics of being innovative and responsive to changing market dynamics. Being complementary to large industries this sector contributes hugely to the socioeconomic development of the country. MSMEs not only play a crucial role in providing large employment opportunities at comparatively lower capital cost but also encourage entrepreneurial activities in rural and backward areas.

I am happy to note that the Institute of Company Secretaries of India as part of its capacity building initiatives, and to support the skills development initiatives of the Government, is playing pivotal role in enhancing the compliance status for strengthening the Governance of MSMEs in India. Apart from this, Institute is organizing seminars and workshops in promoting awareness about the role of MSMEs in the inclusive development of economy; facilitating in establishing MSMEs and providing exacting solutions to issues being faced by this sector.

I have gone through this handbook and found the contents very informative, written in simple language. The emphasizes on the role of MSMEs in the National progress, insight into the registration process of MSMEs, raising of finances, as well as compliances with various regulatory obligations would help MSME Entrepreneurs in management and administration of their businesses in a sustainable manner.

I am confident that MSME Entrepreneurs will find this Handbook quite useful in ensuring Good Governance of their enterprises.

K K Jalan

Preface

The Micro, Small and Medium Enterprises (MSMEs) play a significant role in the social, economic and political growth of the country. MSME sector not only generate the global value of the products and services, it creates various employment opportunities in the country too. MSMEs receive more governmental focus as their role in the economic and social growth is inclusive, employment oriented.

Since the first Industrial Policy Resolution, 1956 itself, priority was given to agricultural growth along with the establishment, growth and development of village and small scale industries. Further, seeing the potential of growth in MSME and their contribution to Indian economy, the Parliament enacted the Micro, Small and Medium Enterprises Development Act, 2006 to facilitate the promotion, development and enhancing the competitiveness of micro, small and medium enterprises.

In the current scenario of promoting MSMEs government is providing various facilities and credits to MSME to ensure smooth working and eventual growth of MSMEs in India. Further, to ease the regulatory burden on the industry and assist MSMEs in complying with the legal requirements and mandatory disclosures, a single window compliances and online mechanism of registration and compliance has been initiated for MSMEs.

Under this backdrop, it is highly required that start-up entrepreneurs of MSME sector as well as professionals assisting the compliances for MSMEs are acquainted with the facilities, ease, assistance and essential compliances afforded at the end of MSMEs. In this context, the Institute has initiated the publication titled Handbook for MSME Entrepreneurs to serve a clear understanding about compliances for MSMEs and operational mechanism.

I commend the dedicated efforts put in by Mr. Chittaranjan Pal, Assistant Director, Directorate of Professional Development, Perspective Planning & Studies, ICSI in preparing the manuscript of this publication and CS Pankila Bhardwaj, Consultant for assistance in finalizing the publication for printing.

I am sure that this Handbook would be an accommodating and guiding one stop document for the professionals to learn and understand the facts and facets of

various compliances required at the end of MSMEs along with the mechanism of adhering those legal and mandatory requirements while ensuring the smooth governance and growth of MSME sector in India.

New Delhi

CS (Dr.) Shyam Agrawal

9 June, 2017

President

The Institute of Company Secretaries of India

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SECTION I

INTRODUCTION

“Compliance is concerned with holding the balance between economic and social goals and between individual and communal goals. The governance framework is there to encourage the efficient use of resources and equally to require accountability for the stewardship of those resources. The aim is to align as nearly as possible the interests of individuals, corporations and society.”

Micro, Small and Medium Enterprises (MSMEs) sector has emerged as a highly vibrant and dynamic sector of the Indian economy over the last five decades. MSMEs not only play a crucial role in providing large employment opportunities at comparatively lower capital cost than large industries but also help in industrialization of rural and backward areas. MSMEs reduce regional imbalances, assuring more equitable distribution of national income and wealth. MSMEs are complementary to large industries as ancillary units and this sector contributes enormously to the socioeconomic development of the country.

The flagship Make in India initiatives aims to facilitate investment, foster innovation, enhance skill development and build an Eco-system for manufacturing infrastructure in the country. The MSMEs of India would be the cradle for the “Make in India” vision. This would be the nursery where small existing businesses have the potential to become world beaters tomorrow. The larger players amongst the MSME space also are in a unique position to become global players attracting partners with technology and funds.

Startup India is a flagship initiative of the Government of India, intended to build a strong ecosystem for nurturing innovation and Startups in the country that will drive sustainable economic growth and generate large scale employment opportunities. The Government through this initiative aims to empower Startups to grow through innovation and design.

More than 90% of MSMEs in India are either proprietorship or partnership enterprise and therefore, it is imperative to strive towards corporatisation of Small & Medium Enterprises for good corporate governance as well as energise the economy as a whole.

Globally, Micro, Small and Medium Enterprises (MSMEs) play a vital role in the

economic development of a nation. MSMEs are the nursery where small existing businesses have the potential to become Global Enterprises.

The MSME sector has emerged as a dynamic sector of the Indian economy over the last five decades. MSMEs contribute enormously to the socio-economic development of the country. MSMEs have a large share of jobs, production and exports. The primary responsibility of promotion and development of MSMEs is of the State Governments. However, the Government of India, supplements the efforts of the State Governments through various initiatives.

MSMEs have the inherent characteristics of being innovative and quickly responsive to changing market conditions. And it is because of these qualities, MSMEs contribute substantially to any economy and are widely acknowledged as the engine of economic growth.

Some highlights of MSME performance are as under :

- The second largest employer after agriculture
- The total number of MSMEs - 3.6 crores
- Employing over 8 crore people
- Accounts for 45 % of total industrial production
- 40% of total exports of India
- Manufacturing segment within the MSME contributes to 7.09% of GDP
- MSMEs also contribute to 30.50% of services
- The total contribution of MSMEs to the GDP is 37.54%

Major contribution of MSMEs is as follows:

1. It provides opportunities at comparatively lower cost;
2. It helps in industrialization of rural and backward areas;
3. Reduce Regional imbalances through the optimum utilization of their resources;
4. More equitable distribution of national income and wealth;
5. Major partner in the process of inclusive growth.

The SME business market of India is large and bubbling with newer opportunities. Increased purchasing power and consumerism is what drives the business scenario in India. Thus, here is an opportunity for competitive advantage that can benefit investors and entrepreneurs to a large extent. An investment in any best small business opportunity promises lucrative returns and success in less time.

There are various reasons due to which the small scale business in India has witnessed a spurt of growth. Some of these factors are:

- Less Capital Intensive
- Extensive Promotion & Support by Government
- Reservation for Exclusive Manufacture by small scale sector
- Project Profiles
- Funding - Finance & Subsidies
- Machinery Procurement
- Raw Material Procurement
- Manpower Training
- Technical & Managerial skills
- Tooling & Testing support
- Reservation for Exclusive Purchase by Government
- Export Promotion
- Growth in demand in the domestic market size due to overall economic growth
- Increasing Export Potential for Indian products
- Growth in Requirements for ancillary units due to the increase in number of Greenfield units coming up in the large-scale sector.

Although Indian MSMEs are a diverse and heterogeneous group, they face some common problems, which are as under :

- Lack of availability of adequate and timely credit. The major dependence for some sectors (eg. handicrafts) is for larger working capital requirement, which directly impacts their production cycle
- High cost of credit
- Collateral requirements being insisted upon by banks
- Limited access to equity capital for MSMEs
- Marketing is one of the critical areas where MSMEs face problems including product differentiation, brand building, customized tailor-made services, clientele building, after sales servicing etc.
- Many entrepreneurs are not entering in the field of exports due to lack of

market knowledge, availability of a growing domestic market, and the complexities of international trade.

- Limited scale of operations leads to low production capacity (and consequent low exportable surplus), which is related to the maximum limits for capital investment for definition of MSME
- Problems of designing, packaging and product display due to limited capacities Inadequate infrastructure facilities, including power, water, roads, etc.
- Low technology levels and lack of access to modern technology.
- Lack of skilled manpower
- Absence of a suitable mechanism which enables the quick revival of viable sick enterprises and allows unviable entities to close down speedily.
- Lack of coordination among the various organizations involved in the promotion of MSMEs, including organizations of the State Governments, and poor linkages with the institutional stakeholders in the private sector. There is also duplication of programmes run by various Ministries for the same target group
- Lack of reliable and updated data base to help in monitoring the development initiatives and formulation of appropriate schemes to meet the differential needs of the heterogeneous beneficiaries.
- Non availability of raw materials at a competitive cost, very often due to low volumes
- High transaction costs and procedural delays leading to high fixed costs.
- Policy and procedural issues.
- Governance Issues.

In nutshell, the major problems for the MSMEs relate to the availability and cost of credit, marketing support, improving productivity, technology/skill upgradation, infrastructure and the institutional framework for the MSMEs.

SECTION II

LEGAL FRAMEWORK -MSMEs

The Micro, Small and Medium Enterprises Development Act, 2006, provides for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto.

In terms of Section 2(e) of the Act "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.

The Micro Small and Medium Enterprises have been defined under MSME Act, 2006. According to the Act, MSME have been broadly classified in two categories:

1. Enterprises engaged in the manufacturing and production of goods pertaining to any industry;
2. Enterprises engaged in providing or rendering services

(a) Manufacturing Enterprises- The enterprises engaged in the manufacture or production of goods pertaining to any industry specified in the first schedule to the industries (Development and Regulation) Act, 1951 and are *defined in terms of investment in Plant & Machinery.*

(b) Service Enterprises: The enterprises engaged in providing or rendering of services and are *defined in terms of investment in equipment.*

Accordingly, the Section 7 of the Act, the ceiling on investment to be classified as micro, small or medium enterprises is as under:

Manufacturing Sector

Enterprises	Investment in plant & machinery
Micro Enterprises	Does not exceed twenty five lakh rupees
Small Enterprises	More than twenty five lakh rupees but does not exceed five crore rupees
Medium Enterprises	More than five crore rupees but does not exceed ten crore rupees

Service Sector

Enterprises	Investment in equipments
Micro Enterprises	Does not exceed ten lakh rupees:
Small Enterprises	More than ten lakh rupees but does not exceed two crore rupees
Medium Enterprises	More than two crore rupees but does not exceed five crore rupees

Computation of Investment limit in Plants & Machineries or in Equipments for the purpose of MSMED Act, 2006

In exercise of the powers conferred by sub-section (1) of Section 7 of the MSMED Act, 2006, the Central Government vide notification S.O. 1722(E) dated 5th October, 2006, the cost of which shall be excluded while calculating the investment in plant and machinery in the case of the enterprises mentioned in Section 7(1)(a) of the said Act, namely:

- (i) equipment such as tools, jigs, dyes, moulds and spare parts for maintenance and the cost of consumables stores;
- (ii) installation of plant and machinery;
- (iii) research and development equipment and pollution controlled equipment
- (iv) power generation set and extra transformer installed by the enterprise as per regulations of the State Electricity Board;
- (v) bank charges and service charges paid to the National Small Industries Corporation or the State Small Industries Corporation;
- (vi) procurement or installation of cables, wiring, bus bars, electrical control panels (not mounted on individual machines), oil circuit breakers or miniature circuit breakers which are necessarily to be used for providing electrical power to the plant and machinery or for safety measures;

- (vii) gas producer plants;
- (viii) transportation charges (excluding sales-tax or value added tax and excise duty) for indigenous machinery from the place of their manufacture to the site of the enterprise;
- (ix) charges paid for technical know-how for erection of plant and machinery;
- (x) such storage tanks which store raw material and finished products and are not linked with the manufacturing process; and
- (xi) firefighting equipment.

2. While calculating the investment in plant and machinery referred to in paragraph 1, the original price thereof, irrespective of whether the plant and machinery are new or second hand, shall be taken into account provided that in the case of imported machinery, the following shall be included in calculating the value, namely;

- (i) Import duty (excluding miscellaneous expenses such as transportation from the port to the site of the factory, demurrage paid at the port);
- (ii) Shipping charges;
- (iii) Customs clearance charges; and
- (iv) Sales tax or value added tax.

Memorandum of Micro, Small and Medium Enterprises

According to Section 8(1) of the MSMED Act, 2006 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 of services may, at his discretion; or
- c. a medium enterprise engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951, shall file the memorandum of micro, small or, as the case may be, of medium enterprise with such authority as may be specified by the State Government under sub-section (4) or the Central Government under sub-section (3):

Provided that any person who, before the 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 the First Schedule to the Industries (Development and Regulation) Act, 1951, having investment in plant and machinery of more than one crore rupees but not exceeding ten crore rupees and, in pursuance of the notification of the Government of India in the erstwhile Ministry of Industry (Department of Industrial Development) number S.O. 477(E) dated the 25th July, 1991 filed an Industrial Entrepreneur's Memorandum shall within one hundred and eighty days from the commencement of this Act, file the memorandum, in accordance with the provisions of this Act.

Section 8(2) provides that the form of the memorandum, the procedure of its filing and other matters incidental thereto shall be such as may be notified by the Central Government after obtaining the recommendations of the Advisory Committee in this behalf.

Section 8(3) states that the authority with which the memorandum shall be filed by a medium enterprise shall be such as may be specified by notification, by the Central Government.

Section 8(4) provides that the State Government shall, by notification, specify the authority with which a micro or small enterprise may file the memorandum.

As per Section 8(5) The authorities specified under sub-sections (3) and (4) shall follow, for the purposes of this section, the procedure notified by the Central Government under sub-section (2).

Udyog Aadhar Memorandum

Ministry of Micro, Small and Medium Enterprises (MSME) has notified the Udyog Aadhaar Memorandum (UAM) under the MSMED Act, 2006 vide gazette notification [SO No. 2576(E)] dated 18-09-2015 in order to promote ease of doing business for MSMEs.

The Salient features of Udyog Aadhaar are:-

- Registration is online and user-friendly
- Udyog Aadhaar Memorandum (UAM) can be filed on self-declaration basis
- No documentation required

- No Fee for filing
- File more than one Udyog Aadhaar with same Aadhaar Number

Further, the Ministry of Micro, Small and Medium Enterprises vide Notification S.O. 85(E) dated 10th January, 2017 in exercise of the powers conferred by sub-section (2) of the section 8 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006) and in supersession of the notification of the Government of India in the Ministry of Micro, Small and Medium Enterprises number S.O. 2576(E), dated the 18th September, 2015, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated the 21st September, 2015 except as respects things done or omitted to be done before such supersession, the Central Government after undertaking a review of the implementation of Udyog Aadhaar Memorandum, hereby specifies that ***any micro, small and medium enterprise shall file Udyog Aadhaar Memorandum, referred to as the memorandum) in Form I in accordance with the following procedure, namely:-***

- (1) The memorandum shall be filed online on the website of the Ministry of Micro, Small and Medium Enterprises, Government of India at <http://udyogaadhar.gov.in>
- (2) Every micro, small and medium engaged in the manufacturing of goods or rendering of services with total investment in plant and machinery below the limit specified in section 7 of the said Act, shall file the memorandum;
- (3) The memorandum shall be filed only after establishing the unit, obtaining all regulatory approvals and starting commercial operations;
- (4) Any number of activities including manufacturing or service or both may be specified in the memorandum;
- (5) The proprietor in the case of a proprietorship firm, managing partner in the case of a partnership firm and a karta in the case of a Hindu Undivided Family (HUF), shall provide his Aadhaar Number in the memorandum;
- (6) In case of a company or a limited liability partnership or a cooperative society or a society or a trust, Permanent Account Number (PAN) of the organisation along with Aadhaar number of the authorised signatory shall be specified in the memorandum;
- (7) A 'one time password (OTP) for verification of the fresh memorandum as well as amending of the existing memorandum shall be sent on mobile phone linked to the Aadhaar Number of the applicant and the applicant shall enter the OTP in the form before submitting the memorandum;

- (8) The memorandum shall be filed on self certification basis and no additional document is required to be uploaded at the time of such filing: Provided that the Central Government or the State Government or such person as may be authorized in this behalf may seek documentary proof of the information provided in the memorandum, wherever necessary;
- (9) Udyog Aadhaar Acknowledgment in Form I to this notification along with a unique Udyog Aadhaar Number (UAN) shall be generated and mailed to the email address provided in the memorandum;
- (10) There shall be no fee for filing the Udyog Aadhaar Memorandum;
- (11) In case an applicant or the authorised signatory does not have Aadhaar Number or in cases where online filing is not possible for any reason, a hard copy of the duly filled form I, shall be submitted to the concerned District Industries Center (DIC) or to the Office of the Micro, Small & Medium Enterprise - Development Institute (MSME-DI) under the Development Commissioner, MSME and the concerned DIC or MSME-DI shall file the Udyog Aadhaar Memorandum online, on the behalf of such enterprise;
- (12) Existing enterprises which have filed Entrepreneurship Memorandum-II or the holders of Small Scale Industry registration, prior to the coming into force of the Micro, Small and Medium Enterprise Development Act 2006 (27 of 2006) shall not be required to file Udyog Aadhaar Memorandum, but if they so desire they may also file the Udyog Aadhaar Memorandum;
- (13) No enterprise shall file more than one memorandum;
- (14) In case of change in address or addition or deletion of activities by the enterprises or for other changes, the proprietor or the managing partner or an authorized person may apply for amendment of the existing memorandum in accordance with the guidelines for filing the online Udyog Aadhaar Form provided in the website of the Ministry of Micro, Small and Medium Enterprises, at <http://udyogaadhaar.gov.in>. The procedure for amendment in the Udyog Aadhaar Memorandum would be same as that for filing new Memorandum;
- (15) General Manager of the District Industries Center of the concerned district shall be authorised to undertake enquiry for verifying the memorandum submitted by the enterprise and in case of any discrepancy, he shall issue a notice to the enterprise, giving it an opportunity to present its case and based on the findings, the authorised officer may amend or cancel the memorandum;
- (16) UAM registration has replaced Entrepreneurship Memorandum-II (EM-II)

and Small Scale Industry Registration for all purposes. Central or State Government regulatory bodies, tax authorities, utilities providing water, power, etc. banks and other financial institutions and similar organisations should accept UAM in place of EM - II for all purposes. Earlier there was a provision to take Enterprise Memorandum-I (EM-I) registration before setting up an enterprise. Applicants used to file applications for obtaining utilities, building plan approval from local bodies, consent to establish from State Pollution Control Board or applying for term loan from bank or a financial institution to set up the enterprise along with a copy of EM-I. UAM registration is given after an enterprise starts commercial operations. Now there is no registration before establishing an enterprise. The practice of EM-I registration is stopped. There is no counterpart document to EM-I. Therefore, utilities, local bodies, regulatory bodies, tax authorities, banks and financial institutions and other similar bodies should not ask for EM-I from the applicants who want to set up an enterprise.

[F. No. A-5411/2014-CDN]

MANOJ JOSHI, Jt. Secy.

FORM-I

UDYOG AADHAR

Type of Enterprise	Micro	Small	Medium
Manufacturing	A	B	C
Service	D	E	F

UDYOG AADHAR MEMORANDUM

1.	Aadhaar Number				
2.	PAN Number*				
3.	Name of Entrepreneur				
4.	Social Category	SC	ST	OBC	General
5.	Gender	Male		Female	
6.	Physically Handicapped	Yes		No	
7.	Name of Enterprise				
8.	Type of Organisation **				

9.	Location of Plant(s)/ Enterprise(s)	Flat/Door/Block No.		
		Name of Premises/ Building/Village		Area/Locality
		Road/Street/ Lane		Pin Code
		City		District
		State		
10.	Official Address of Enterprise Please enter mobile number as in aadhaar for which OTP to be sent			
		District	State	Pin
		Mobile No:	Email:	
11.	Date of commencement			
12.	Previous Registration Number-if any	SSI		
		EM-1		
		EM-2		
13.	Bank Details	IFS Code:		
		Bank Account:		
14.	Major Activity	Manufacturing	Service	
15.	National Industry Classification Code			
16.	Persons employed			
17.	Investment (Plant and Machinery/ Equipment's)			
18.	District Industries Centre			

Declaration

I hereby declare that information given above is true to the best of my knowledge. Any information, that may be required to be verified, shall be provided immediately before the concerned authority.

Submit

* In case of a company or a limited liability partnership or a cooperative society or a society or a trust.

** (1) Proprietary, (2) Hindu Undivided Family (HUF), (3) Partnership, (4) Co-Operative, (5) Private Limited

Company, (6) Public Limited Company, (7) Self Help Group, (8) Others

UDYOG AADHAR

Type of Enterprise	Micro	Small	Medium
Manufacturing	A	B	C
Service	D	E	F

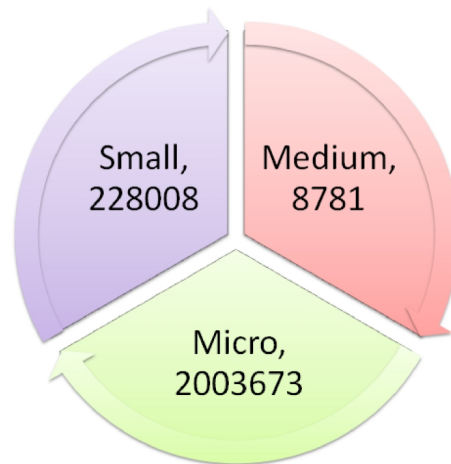
Udyog Aadhaar Acknowledgement

Udyog Aadhaar Number																				
Name of Enterprise																				
Location of Plant(s)/ Enterprise(s)	Flat/Door/Block No.																			
	Name of premises/ Building/Village																			
	Road/Street/ Lane									Area/Locality										
	City									Pin Code										
	State									District										

Official Address of Enterprise			
	District	State	Pin
	Mobile No.:	Email:	
Date of Commencement			
Major Activity	Manufacturing		Service
Enterprise Type	Micro	Small	Medium
National Industry Classification Code(s)			
Previous Registration Number-if any	SSI		
	EM-1		
	EM-2		
Acknowledgement	Date of Filing		Date of Printing

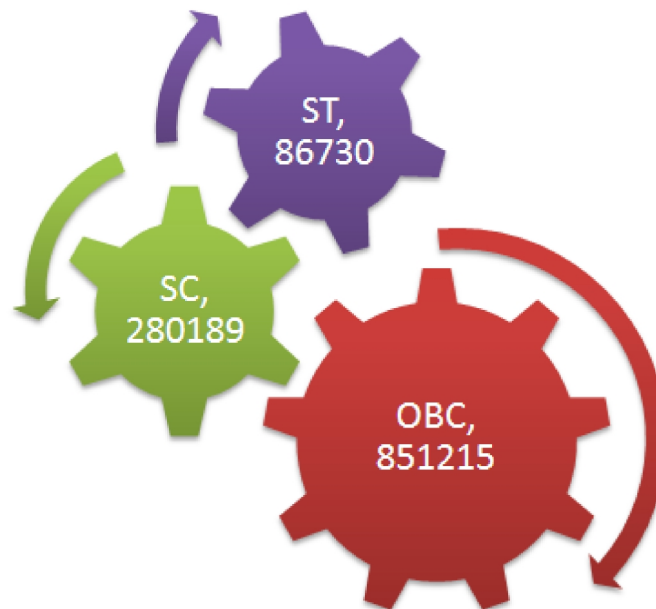
Disclaimer: This is computer generated statement no signature required. Printed from udyogaadhaar.gov.in

Distribution of Micro, Small & Medium Enterprises as per UAM Filing



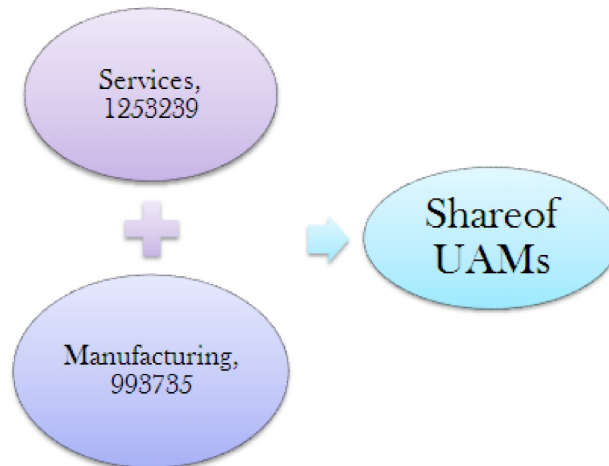
Source: Annual Report 16-7, Ministry of MSME

UAM as per Social Category-SC, ST, OBC on December 31, 2016



Source: Annual Report 16-7, Ministry of MSME

Share of UAMs-Manufacturing & Service



Source : Annual Report 16-7, Ministry of MSME

Micro, Small and Medium Enterprises Development (Furnishing of Information) Rules, 2016

In exercise of powers conferred by clause (e) of subsection (2) of Section 29 of the MSMED Act, 2006 and in supersession of the MSMED (Furnishing of Information) Rules, 2009, Ministry of Micro, Small and Medium Enterprises has notified MSMED (Furnishing of information) Rules, 2016 vide Gazette Notification of. GSR 750(E) dated 29 July 2016.

Details of the MSMED (Furnishing of information) Rules, 2016 are as under:

Rule 2. Definitions

- (1) In these rules, unless the context otherwise requires,-
 - (a) "Act" means the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006);
 - (b) "information" means any information furnished by an enterprise under rule 3 and includes any data or document in hard copy or soft copy.
- (2) Words and expressions used in these rules and not defined but defined in the Act shall have the meanings respectively assigned to them in the Act.

Rule 3. All micro, small and medium enterprises shall furnish the information relating to their enterprise to the Government in the Form annexed to these rules.

Rule 4. The information referred to in rule 3 shall be furnished online to the Central Government in the data bank maintained by it at www.msmedatabank.in.

FORM

(See rule 3)

Data Bank

Basic Details

- Aadhaar Number:*
- UdyogAadhaar Number *Get Udyog Aadhaar:
- PAN Number:*
- Button to Validate and Get Details * Validate UAN
- Enterprise Name:*
- Category Unit Size:*
- Organization Type:*
- Major Activity:*
- State:*
- District:*
- Pin code:*
- Commencement Date:*
- Email ID: *
- Mobile Number: *
- Communication address:*
- Enterprise Social Category:*
- Authorised Person Name:*
- Nature of Operation:*
- Cluster Name (If Any):
- Website:

- Any Special Category of Entrepreneur
 - () Ex-Serviceman () Person with Disability () Woman () Minority
- () Registered in the Factory Act 1948?
- () Unit is an Ancillary?
- () Registered in Shop and Establishment Act?

If any, other, please specify

Factory and Product Details

- Enterprise Address: *
- State: *
- District *
- Pin Code:
- Person Employed:*

Installed Capacity (Per Annum):*

Quantity: Unit :

- Investment on Machinery/Plant (Rs. in lacs):*
- Power load:*
 - H.P. K.W.:
- Enterprise Product Description:
- Major Raw Material used:
 1.
 2.
 3.
- Major Buyers:
- Turnover Last year (Rs. in lacs):
- Upload more products: (Upload pdf/doc file max size limit is 1 MB)

Add Product Details

Product Name Product Code

Production Capacity Production measurement unit
 (Add)

Please provide valid unit

For 'Verification and Capacity Certification', Please click here

Other Details

Bank Name :

Bank Account No. IFSC Code:

Add Assistance Details

Taken From Scheme Name
 on date (Add)

Add Association Details

Association Name Since date
 (Add)

Hand Holding by Development Organisation (If Applicable)

Select Office Name:

Add Appreciation/Award Details

Appreciation/Award Name Details

On Date (Add)

Additional Requirements

1. Are you using Solar Energy in your organisation/Factory?
 (H.P.) (K.W.)
 If No, do you wish to use it? (H. P.)
 (K. W.)
2. Have you got energy audit done for your unit?
3. Do you have Joint Venture?
- If YES, Please provide details.....
- If No, Do you wish to plan , Joint Venture?.....
4. Are you exporting?
- If Yes, Please provide country name

1. 2.
 3.
5. Will you be interested in foreign fairs?
6. Do you have our own brand?.....
 If yes please provide Brand name
7. Will you be interested in availing Marketing Assistance Scheme?

8. Do you intend to participate in Public procurement?
9. Do you wish to upgrade Technology
- If Yes please specify
10. Do you wish to import Technology?
- If YES, Please specify country. Details

11. Do you intend to transfer your Technology to other MSEs?
 Please specify.....
12. Is your enterprise ISO certified?
13. Is your enterprise has quality certification?
- Please specify
14. Will you be interested in Credit facilitation?
15. Have you ever been Black listed?.....

All (*) marked fields are mandatory

*..... This is to certify that the information furnished in the Data bank is true and correct to the best of my knowledge and belief.

..... Would you like to avail insurance with discounted premium?

- registering authority is seen as proof of being MSME and is required to avail the benefits sanctioned for MSMEs.

SECTION III

MSME REGISTRATON

MSME units should seek registration with the Director of Industries of the concerned State Government. All classes of enterprises, whether Proprietorship, Hindu undivided family, Association of persons, Co-operative society, Partnership firm, Company or Undertaking, by whatever name called can apply for the registration and get qualified for the benefits provided under the Act.

The main purpose of Registration is to maintain statistics and maintain a roll of such units for the purposes of providing incentives and support services. States have generally adopted the uniform registration procedures as per the guidelines. However, there may be some modifications done by States.

Objectives of the registration are as under:

1. To enumerate and maintain a roll of small industries to which the package of incentives and support are targeted.
2. To provide a certificate enabling the units to avail statutory benefits mainly in terms of protection.
3. To serve the purpose of collection of statistics.
4. To create nodal centres at the Centre, State and District levels to promote SSI.

Benefits of Registration

The registration scheme has no statutory basis. Units would normally get registered to avail some benefits, incentives or support given either by the Central or State Govt. Benefits available under the MSMED Act. Registration of Micro, Small and Medium (MSM) Enterprises under MSMED Act is a very powerful medium to enjoy the regime of incentives offered by the Centre generally contain the following:

- Easy finance availability from Banks, without collateral requirement
- Protection against delay in payment from Buyers and right of interest on delayed payment

- Preference in procuring Government tenders
- Stamp duty and Octroi benefits
- Concession in electricity bills
- Reservation policies to manufacturing / production sector enterprises
- Time-bound resolution of disputes with Buyers through conciliation and arbitration
- Reimbursement of ISO Certification Expenses
- Credit prescription (Priority sector lending), differential rates of interest etc.
- Excise Exemption Scheme
- Exemption under Direct Tax Laws.
- Financial Assistance for setting up testing facilities through NSIC
- Statutory support such as reservation and the Interest on Delayed Payments Act.
- Subsidy on ISO Certifications
- Subsidy on NSIC Performance and Credit ratings
- Participation in Government Purchase registrations
- Registration with NSIC
- Counter Guarantee from Government of India through CGSTI
- Waiver in Earnest Money (Security Deposit) in Government tenders
- Stamp duty and Octroi benefits,
- Weightage in price Preference.
- Reduction in rate of Interest from banks (Subject to ratings)
- Free of Cost Government tenders

SECTION IV

HOW TO SET UP MSME

Following major steps are included in the formation of MSMEs in India

- Project Selection
- Technology and Machinery
- Arranging Finance
- Unit Development
- Udyog Aadhaar Memorandum
- Clearances
- Quality Certification

Project Selection

Choosing a Project to start can be a difficult undertaking, especially if you have a lot of ideas, but just cannot make up your mind. But even if you have no idea about what project to start, you have to consider a number of factors in your decision making process.

First few questions that you should ask yourself:-

- Is it a viable business proposition in your area?
- Does it match the needs of your clientele?
- Does the idea fire up your motivation?
- Is it a sunrise industry?

Following factors are also to be kept in mind:-

- Check it out with basic market research
- Test it out at market place
- Consult with the experts
- Look out for competition in the field

- Your business opportunity
- Project conceptualization

Also taken into consideration following concepts i.e., –

- PRODUCT (Shape, Size and Nature)
- PROCESS (Technology to produce the product)
- PLACE (Location of Plant)
- PARTNER (Technological or Financial Collaborator)

Once the product is finalised, choices of process technology emerge.

Technology and Machinery

Process Selection

Choices of process technology emerge once the product is finalized. For some complex products, process know how has to be imported. In such cases agreements for technology transfer should be made with due care to safeguard interest. A lot of appropriate technology is being developed at CSIR and Defence Research Labs and some of this technology can now be bought. Indigenously developed process know-how has intrinsic benefits such as appropriateness and relative inexpensiveness.

While checking out on a process technology, the following things need to be considered with utmost care:

Whether process requires very high level of skilled workers or complex machines?

Whether process requires large quantities of water and/or power?

Whether any process or product patent needs to be honored while utilising the selected process technology.

Any special pollution or environmental regulations.

Finally, the appropriateness to the Indian environment and conditions. Machinery and equipment

One of the major deficiencies in the micro, small and medium enterprises scenario is the prevalence of outdated production and management methods hindering the efficient operation of micro, small and medium-scale units. It was also found that the most important reason for the reluctance of the small industrialists to install modern machinery and equipment was the lack of investible funds. The main objective of National micro, small and medium enterprises (NMSME) is to provide machinery and equipment to small industrial units offering them long repayment period with moderate rate of interest.

NSIC procedures for hire purchase of machinery

The hire purchase application is to be made on the prescribed form.

The Director of Industries of the State under whose jurisdiction the applicant falls, forwards the application to the head office of the NSIC at Delhi with his recommendation and comments.

All applications for indigenous or imported machines are considered by acceptance committees comprising of the representatives of the Chief Controller of Imports, Development Commissioner, micro, small and medium enterprises and other concerned departments.

Decision of these committees is conveyed to the parties concerned with copies to the regional offices of the NSIC and the concerned Directorate of Industries.

Once all these formalities are completed by the hirer, instructions are sent to the suppliers to dispatch the consignment (duly insured for transit risk) to the hirer and to send the R/R or C/R as the case may be, to the regional office

The NSIC after ensuring that all dues have been paid by the hirer releases the R/R or C/R to him for taking delivery of the machines.

In case of imported machines, the procedure is slightly different in as much as the shipping documents are sent to the clearing agents for clearing the consignment from the Customs and dispatching it to the hirer.

Value of machines that can be supplied

Rs. 7.5 Lacs, F.O.R. or landed cost as the case may be.

Earnest Money

5% or 10% of the value of machinery depending on whether the equipment is imported or indigenous. In the case of furnaces and a few other items of equipment, the rate of earnest money is different. Interest 9 per cent per annum with a rebate of 2 per cent on payment. This interest is calculated on the value of machines outstanding after deducting payment of earnest money.

Administrative Charge

2 per cent on the sales value of machines and its recovery by the NSIC is spread over the total instalment period.

Period of Repayment

The value of the machines, after deducting the earnest money received, called the Balance Value, is payable along with interest and administrative charge in 7 years.

The first installment is payable after one year and six months from the delivery of machines.

The second and subsequent installment are payable half-yearly thereafter.

Gestation Period

In case of certain type of machines which become operative immediately on installation in the service sector industries and job order establishment, a gestation period of only 6 months shall be allowed both to the new and existing units.

A rebate of 2% per annum is allowed on the interest rates, in case an installment is paid on or before the due date.

In case the payment of installment is not made within one month of the specified due date, interest @ 2% per annum over and above the normal rate is charged on the defaulted amount from the date of default to the date of actual payment. Remission in interests is allowed in case one or more than one installment is paid in advance of the due date(s).

Now the Place and Right Partner has to be selected and Project Report has to be prepared.

Arranging Finance

Need of Finance are of following type:-

- Long and medium term loans
- Short term or working capital requirements
- Risk Capital
- Seed Capital/Marginal Money
- Bridge loans

Financial assistance in India for MSME units is available from a variety of institutions. The important ones are:-

- Commercial/Regional Rural/Co-operative Banks.
- SIDBI: Small Industries Development Bank of India (refinance and direct lending)
- SFCs/SIDCs: State Financial Corporations (e.g. Delhi Financial Corporation)/ State Industrial Development Corporations.

For loans from financial institutions and commercial banks a formal application needs to be made. The details of documentation that need to be provided with

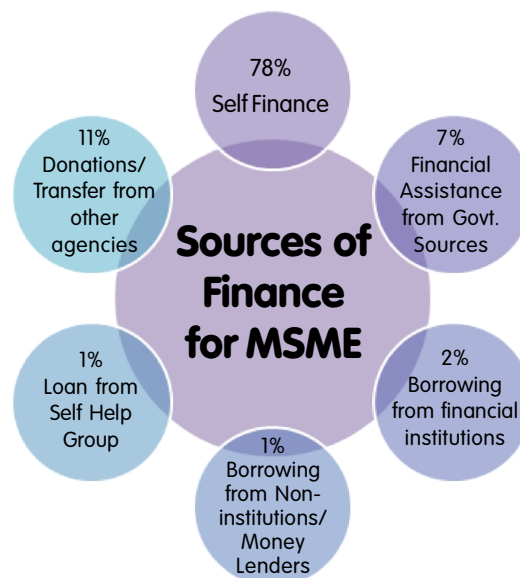
the loan application are indicated below:

- Documentation for Loan Application
- Balance Sheet and Profit Loss Statement for last three consecutive years of firms owned by promoters
- Income Tax Assessment Certificates of Partners/Directors
- Proof of Possession of Land/Building
- Architect's estimate for construction cost
- Partnership deed/Memorandum and Articles of Associations of Company
- Project Report
- Budgetary Quotations of Plant and Machinery

A sanction or rejection letter is issued by bank after its assessment of the application. After receiving a sanction letter, applicants need to indicate in writing their acceptance of terms and conditions laid down by FI/Banks.

Subsequently, loan is disbursed according to the phased implementation of the project. There are other sources apart from commercial banks and Government owned financial institutions. These sources of finance include venture capital funds and non-government finance companies.

Sources of finance for MSME (6th Economic Census)



Source: Annual Report 16-7, Ministry of MSME

Unit development

Setting up an establishment is much more than putting a signboard up and waiting for customers to walk in. It requires negotiating a favourable plot or shed purchase, organising for proper construction of building, design of interiors and finding good deals for equipment and machinery.

Construction of Building

Once an industrial plot for the unit is secured, then the next job is that of finding a suitable architect. Design of factory building has to be in consonance with the type of industry and have an appropriate plant layout.

An architect's estimate of building construction is essential for loan applications. Further, architect's certificate for money spent on building is needed for disbursement of loan.

Getting the Utility Connections

Among the utilities of prime importance are power and water. In many cases getting power connection causes delay in setting up of plant. Therefore it is imperative to commence work on these aspects with diligent follow up. Power connections are generally of either LT (Low Tension) or HT (High-tension) type. If connected load is upto 75 HP, LT connection is provided. For connected loads of 130 HP or higher only HT connection is provided.

A formal application needs to be made in a specified form to the state electricity board. An electrical inspector is deputed for evaluation of application to factory site, after which the load is sanctioned. In areas of power shortage, it is advisable to augment the power supply with a captive generating set.

Water connection is also obtained likewise by applying in advance in formal forms. The water supply can be augmented by installation of tubewell.

Getting 3M's Right

Men

Projections for manpower and staffing are made in the project report. However it is necessary to time the induction of manpower in a planned manner. The engineers and operatives must be available before the installation of the machinery.

Machinery

Choosing and ordering of right machinery is also of paramount importance. In

many cases technology or process provides us with specification which is not provided, then an extensive techno-economic survey of machinery and equipment available must be carried out. International trade fairs and engineering fairs are good places to look at available options. The entrepreneur must also consult experts, dealers / suppliers as well as users, prior to making a selection of equipment and machinery. The advice of DIC, MSMEI and NSIC can also be sought.

Materials

Materials procurement and planning are critical to success, of a start-up with a MSME unit. Inventory management can lead to manageable cash flow situations; otherwise if too much is ordered too soon considerable amount of working capital gets locked up. On the other hand, non-availability may result in production hold-ups, and idle machine and manpower. For essential imported raw material whose lead-time is large proper planning is all the more essential.

Udyog Aadhar Memorandum

On line filing of Udyog Aadhar Memorandum

Clearances

An entrepreneur has to obtain several clearances or permissions depending upon the nature of his unit and products manufactured.

- Environment Clearance
- Regulatory or Taxation Clearances
- Product Specific Clearances

Quality certification

Quality certification has become extremely important in competitive markets and especially in gaining foothold in exports. To avail the certification of ISO , a unit has to undertake significant costs; the small scale industries have been found wanting mainly on account of resource crunch to implement quality systems to obtain this certification.

SECTION V

MASTER DIRECTION – RESERVE BANK OF INDIA [LENDING TO MICRO, SMALL & MEDIUM ENTERPRISES (MSME) SECTOR] - DIRECTIONS, 2016

In exercise of the powers conferred by Sections 21 and 35 A of the Banking Regulation Act, 1949, the Reserve Bank of India, being satisfied that it is necessary and expedient in the public interest to do so, hereby, issued the Master Direction - Lending to Micro, Small & Medium Enterprises (MSME) Sector.

The provisions of the Master Direction - Lending to Micro, Small & Medium Enterprises (MSME) Sector shall apply to every Scheduled Commercial Bank (excluding Regional Rural Banks (RRBs)) licensed to operate in India by the Reserve Bank of India.

Definitions/ Clarifications

The MSMED Act, 2006 means 'Micro, Small and Medium Enterprises Development (MSMED) Act, 2006' as notified by the Government of India on June 16, 2006 and the amendments, if any, carried out therein by the Government of India from time to time.

'Micro, Small and Medium Enterprises' mean the enterprises as defined in the MSMED Act, 2006 and the amendments, if any, carried out therein by the Government of India from time to time.

'Manufacturing' and 'Service' Enterprises mean the enterprises as defined in the MSMED Act, 2006 or as notified by the Government of India, Ministry of MSME under the MSMED Act, 2006 from time to time.

'Priority Sector' means the sectors as defined in Master Direction - Reserve Bank of India (Priority Sector Lending –Targets and Classification) Directions, 2016 dated July 7, 2016 or as modified from time to time.

'Adjusted Net Bank Credit (ANBC)' would mean Adjusted Net Bank Credit (ANBC) as defined in Master Direction - Reserve Bank of India (Priority Sector Lending – Targets and Classification) Directions, 2016 dated July 7, 2016 or as modified from time to time.

Manufacturing Enterprises i.e. Subject to the definition in MSMED Act, 2006, manufacturing enterprises would mean enterprises engaged in the manufacture or production of goods as specified below:

- (i) A micro enterprise is an enterprise where investment in plant and machinery does not exceed Rs. 25 lakh;
- (ii) A small enterprise is an enterprise where the investment in plant and machinery is more than Rs. 25 lakh but does not exceed Rs. 5 crore; and
- (iii) A medium enterprise is an enterprise where the investment in plant and machinery is more than Rs.5 crore but does not exceed Rs.10 crore.

In case of the above enterprises, investment in plant and machinery is the original cost excluding land and building and the items specified by the Ministry of Small Scale Industries vide its notification No.S.O. 1722(E) dated October 5, 2006 .

Service Enterprises i.e. Enterprises engaged in providing or rendering of services and whose investment in equipment (original cost excluding land and building and furniture, fittings and other items not directly related to the service rendered or as may be notified under the MSMED Act, 2006) as specified below:

- (i) A micro enterprise is an enterprise where the investment in equipment does not exceed Rs. 10 lakh;
- (ii) A small enterprise is an enterprise where the investment in equipment is more than Rs.10 lakh but does not exceed Rs. 2 crore; and
- (iii) A medium enterprise is an enterprise where the investment in equipment is more than Rs. 2 crore but does not exceed Rs. 5 crore.

Priority Sector Guidelines for MSME sector

In terms of Master Direction FIDD.CO.Plan.1/04.09.01/2016-17 dated July 7, 2016 on 'Priority Sector Lending - Targets and Classification', bank loans to Micro, Small and Medium Enterprises, for both Manufacturing and Service sectors are eligible to be classified under the Priority Sector as per the following norms:

Manufacturing Enterprises

The Micro, Small and Medium Enterprises engaged in the manufacture or production of goods to any industry specified in the first schedule to the Industries (Development and Regulation) Act, 1951 and as notified by the Government from time to time. The Manufacturing Enterprises are defined in terms of investment in plant and machinery.

Service Enterprises

Bank loans up to Rs.5 crore per borrower / unit to Micro and Small Enterprises and Rs.10 crore to Medium Enterprises engaged in providing or rendering of services and defined in terms of investment in equipment under MSMED Act, 2006.

Khadi and Village Industries Sector (KVI)

All loans to units in the KVI sector will be eligible for classification under the sub-target of 7.5 percent prescribed for Micro Enterprises under priority sector.

Bank loans to food and agro processing units shall form part of agriculture.

Other Finance to MSMEs

- (i) Loans to entities involved in assisting the decentralized sector in the supply of inputs to and marketing of outputs of artisans, village and cottage industries.
- (ii) Loans to co-operatives of producers in the decentralized sector viz. artisans, village and cottage industries.
- (iii) Loans sanctioned by banks to MFIs for on-lending to MSME sector as per the conditions specified in the extant Master Direction on 'Priority Sector Lending - Targets and Classification'.
- (iv) Credit outstanding under General Credit Cards (including Artisan Credit Card, Laghu Udyami Card, Swarojgar Credit Card, and Weaver's Card etc. in existence and catering to the non-farm entrepreneurial credit needs of individuals).
- (v) Overdrafts extended by banks after April 8, 2015 up to Rs.5,000/- under Pradhan Mantri Jan Dhan Yojana (PMJDY) accounts provided the borrower's household annual income does not exceed Rs.100,000/- for rural areas and Rs.1,60,000/- for non-rural areas. These overdrafts will qualify as achievement of the target for lending to Micro Enterprises.
- (vi) Outstanding deposits with SIDBI and MUDRA Ltd. on account of priority sector shortfall.

To ensure that MSMEs do not remain small and medium units merely to remain eligible for priority sector status, the MSME units shall continue to enjoy the priority sector lending status up to three years after they grow out of the MSME category concerned.

Since the MSMED Act, 2006 does not provide for clubbing of investments of

different enterprises set up by same person / company for the purpose of classification as Micro, Small and Medium enterprises, the Gazette Notification No. S.O.2 (E) dated January 1, 1993 on clubbing of investments of two or more enterprises under the same ownership for the purpose of classification of industrial undertakings as SSI has been rescinded vide GOI Notification No. S.O. 563 (E) dated February 27, 2009.

Targets/sub-targets for lending to Micro, Small and Medium Enterprises (MSME) sector by Domestic Commercial Banks and Foreign Banks operating in India

Advances to Micro, Small and Medium Enterprises (MSME) sector shall be reckoned in computing achievement under the overall Priority Sector target of 40 percent of Adjusted Net Bank Credit (ANBC) or credit equivalent amount of Off-Balance Sheet Exposure, whichever is higher, as per the extant guidelines on priority sector lending.

Domestic Commercial Banks are required to achieve a sub-target of 7.5 percent of ANBC or Credit Equivalent Amount of Off-Balance Sheet Exposure, whichever is higher, for lending to Micro Enterprises by March 2017. The sub-target for Micro Enterprises for foreign banks with 20 branches and above operating in India would be made applicable post 2018 after a review in 2017. However, this sub-target for lending to Micro Enterprises is not applicable to foreign banks with less than 20 branches operating in India.

Bank loans above Rs.5 crore per borrower / unit to Micro and Small Enterprises and Rs.10 crore to Medium Enterprises engaged in providing or rendering of services and defined in terms of investment in equipment under MSMED Act, 2006, shall not be reckoned in computing achievement under the overall Priority Sector targets as above. However, bank loans above Rs.5 crore per borrower / unit to Micro and Small Enterprises would be taken into account while assessing the performance of the banks with regard to their achievement of targets prescribed by the Prime Minister's Task Force on MSMEs for lending to MSE sector.

In terms of the recommendations of the Prime Minister's Task Force on MSMEs, banks are advised to achieve:

20 per cent year-on-year growth in credit to micro and small enterprises,

10 per cent annual growth in the number of micro enterprise accounts and

60% of total lending to MSE sector as on preceding March 31st to Micro enterprises

Common guidelines / instructions for lending to MSME sector***1. Issue of Acknowledgement of Loan Applications to MSME borrowers***

Banks are advised to mandatorily acknowledge all loan applications, submitted manually or online, by their MSME borrowers and ensure that a running serial number is recorded on the application form as well as on the acknowledgement receipt. Banks are further advised to put in place a system of Central Registration of loan applications, online submission of loan applications and a system of e-tracking of MSE loan applications.

2. Collateral

Banks are mandated not to accept collateral security in the case of loans up to Rs.10 lakh extended to units in the MSE sector. Banks are also advised to extend collateral-free loans up to Rs. 10 lakh to all units financed under the Prime Minister Employment Generation Programme (PMEGP) administered by KVIC.

Banks may, on the basis of good track record and financial position of the MSE units, increase the limit to dispense with the collateral requirement for loans up to Rs.25 lakh (with the approval of the appropriate authority).

Banks are advised to strongly encourage their branch level functionaries to avail of the Credit Guarantee Scheme cover, including making performance in this regard a criterion in the evaluation of their field staff.

3. Composite loan

A composite loan limit of Rs.1 crore can be sanctioned by banks to enable the MSE entrepreneurs to avail of their working capital and term loan requirement through Single Window.

4. Revised General Credit Card (GCC) Scheme

In order to enhance the coverage of GCC Scheme to ensure greater credit linkage for all productive activities within the overall Priority Sector guidelines and to capture all credit extended by banks to individuals for non-farm entrepreneurial activity, the GCC guidelines were revised on December 2, 2013.

5. Credit Linked Capital Subsidy Scheme (CLSS)

Government of India, Ministry of Micro, Small and Medium Enterprises had launched Credit Linked Capital Subsidy Scheme (CLSS) for Technology Upgradation of Micro and Small Enterprises subject to the following terms and conditions:

- (i) Ceiling on the loan under the scheme is Rs.1 crore.
- (ii) The rate of subsidy is 15% for all units of micro and small enterprises up to

loan ceiling at Sr. No. (i) above.

- (iii) Calculation of admissible subsidy will be done with reference to the purchase price of plant and machinery instead of term loan disbursed to the beneficiary unit.
- (iv) SIDBI and NABARD will continue to be implementing agencies of the scheme.

6. Streamlining flow of credit to Micro and Small Enterprises (MSEs) for facilitating timely and adequate credit flow during their 'Life Cycle':

In order to provide timely financial support to Micro and Small enterprises facing financial difficulties during their 'Life Cycle', guidelines were issued to banks vide our circular FIDD.MSME & NFS.BC.No.60/06.02.31/2015-16 dated August 27, 2015 on the captioned subject. Banks are advised to review and tune their existing lending policies to the MSE sector by incorporating therein the following provisions so as to facilitate timely and adequate availability of credit to viable MSE borrowers especially during the need of funds in unforeseen circumstances:

- i) To extend standby credit facility in case of term loans
- ii) Additional working capital to meet with emergent needs of MSE units
- iii) Mid-term review of the regular working capital limits, where banks are convinced that changes in the demand pattern of MSE borrowers require increasing the existing credit limits of the MSMEs, every year based on the actual sales of the previous year.
- iv) Timelines for Credit Decisions

7. Debt Restructuring Mechanism for MSMEs

(i) All scheduled commercial banks are advised to follow the guidelines / instructions pertaining to SME Debt Restructuring, as contained in circular DBR.No.BP.BC.2/21.04.048/2015-16 dated July 1, 2015 on 'Master Circular - Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances' and as updated from time to time.

(ii) In the light of the recommendations of the Working Group on Rehabilitation of Sick MSEs (Chairman: Dr. K.C. Chakrabarty), all commercial banks are advised vide our circular RPCD. SME & NFS.BC.No.102/06.04.01/2008-09 dated May 4, 2009 to:

- (a) put in place loan policies governing extension of credit facilities, Restructuring/Rehabilitation policy for revival of potentially viable sick units / enterprises (now read with guidelines on Framework for Revival and

Rehabilitation of Micro, Small and Medium Enterprises issued on March 17, 2016) and non- discretionary One Time Settlement scheme for recovery of non-performing loans for the MSE sector, with the approval of the Board of Directors and

- (b) implement recommendations with regard to timely and adequate flow of credit to the MSE sector.

(iii) Banks are advised to give wide publicity to the One Time settlement scheme implemented by them, by placing it on the bank's website and through other possible modes of dissemination. They may allow reasonable time to the borrowers to submit the application and also make payment of the dues in order to extend the benefits of the scheme to eligible borrowers.

8. Framework for Revival and Rehabilitation of MSMEs

The Ministry of Micro, Small and Medium Enterprises, Government of India, vide their Gazette Notification dated May 29, 2015 had notified a 'Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises' to provide a simpler and faster mechanism to address the stress in the accounts of MSMEs and to facilitate the promotion and development of MSMEs. The Reserve Bank was advised to issue necessary instructions to banks for effective implementation and monitoring of the said Framework. After carrying out certain changes in the captioned Framework in consultation with the Government of India, Ministry of MSME so as to make it compatible with the existing regulatory guidelines on 'Income Recognition, Asset Classification and provisioning pertaining to Advances' issued to banks by RBI, the guidelines on the captioned Framework along with operating instructions were issued to banks on March 17, 2016. The revival and rehabilitation of MSME units having loan limits up to Rs.25 crore would be undertaken under this Framework. Banks were required to put in place their own Board approved policy to operationalize the Framework not later than June 30, 2016. The revised Framework supersedes the earlier Guidelines on Rehabilitation of Sick Micro and Small Enterprises issued vide circular RPCD. CO. MSME & NFS.BC.40/06.02.31/2012-2013 dated November 1, 2012, except those relating to Reliefs and Concessions for Rehabilitation of Potentially Viable Units and One Time Settlement, mentioned in the said circular.

The salient features of the Framework are as under:

- i) Before a loan account of an MSME turns into a Non-Performing Asset (NPA), banks or creditors should identify incipient stress in the account by creating three sub-categories under the Special Mention Account (SMA) category as given in the Framework

- ii) Any MSME borrower may also voluntarily initiate proceedings under this Framework
- iii) Committee approach to be adopted for deciding corrective action plan
- iv) Time lines have been fixed for taking various decisions under the Framework

9. Structured Mechanism for monitoring the credit growth to the MSE sector

In view of the concerns emerging from the deceleration in credit growth to the MSE sector, an Indian Banking Association (IBA)-led Sub-Committee (Chairman: Shri K.R. Kamath) was set up to suggest a structured mechanism to be put in place by banks to monitor the entire gamut of credit related issues pertaining to the sector. Based on the recommendations of the Committee, banks are advised to:

- strengthen their existing systems of monitoring credit growth to the sector and put in place a system-driven comprehensive performance management information system (MIS) at every supervisory level (branch, region, zone, head office) which should be critically evaluated on a regular basis;
- put in place a system of e-tracking of MSE loan applications and monitor the loan application disposal process in banks, giving branch-wise, region-wise, zone-wise and State-wise positions. The position in this regard is to be displayed by banks on their websites; and
- monitor timely rehabilitation of sick MSE units. The progress in rehabilitation of sick MSE units is to be made available on the website of banks.

Institutional arrangements

1. Specialised MSME branches

Public sector banks are advised to open at least one specialised branch in each district. Further, banks have been permitted to categorise their general banking branches having 60% or more of their advances to MSME sector as specialised MSME branches in order to encourage them to open more specialised MSME branches for providing better service to this sector as a whole. As per the policy package announced by the Government of India for stepping up credit to MSME sector, the public sector banks would ensure specialised MSME branches in identified clusters/centres with preponderance of small enterprises to enable the entrepreneurs to have easy access to the bank credit and to equip bank personnel to develop requisite expertise. The existing specialised SSI branches, if any, may also be redesignated as MSME branches. Though their core

competence will be utilized for extending finance and other services to MSME sector, they will have operational flexibility to extend finance/render other services to other sectors/borrowers. Banks may take care to train the officials posted in such branches appropriately.

2. State Level Inter Institutional Committee (SLIC)

In order to deal with the problems of co-ordination for rehabilitation of sick micro and small units, State Level Inter-Institutional Committees were set up in the States. However, the matter of continuation or otherwise, of the SLIC Forum has been left to the individual States / Union Territory. The meetings of these Committees are convened by Regional Offices of RBI and presided over by the Secretary, MSME or Industry of the concerned State Government. It provides a useful forum for adequate interfacing between the State Government Officials and State Level Institutions on the one side and the term lending institutions and banks on the other. It closely monitors timely sanction of working capital to units which have been provided term loans by SFCs, implementation of special schemes such as Margin Money Scheme of State Government and reviews general problems faced by industries and sickness in MSE sector based on the data furnished by banks. Among others, the representatives of the local state level MSE associations are invited to the meetings of SLIC which are held quarterly.

3. Empowered Committee on MSMEs

As part of the announcement made by the Union Finance Minister, at the Regional Offices of Reserve Bank of India, Empowered Committees on MSMEs are constituted under the Chairmanship of the Regional Directors with the representatives of SLBC Convenor, senior level officers from two banks having predominant share in MSME financing in the state, representative of SIDBI Regional Office, the Director of MSME or Industries of the State Government, one or two senior level representatives from the MSME Associations in the state, and a senior level officer from SFC/SIDC as members. The Committee would meet periodically and review the progress in MSME financing as also rehabilitation of sick Micro, Small and Medium units. It would also coordinate with other banks/ financial institutions and the state government in removing bottlenecks, if any, to ensure smooth flow of credit to the sector. The committees may decide the need to have similar committees at cluster/district levels.

4. Banking Codes and Standards Board of India (BCSBI)

The Banking Codes and Standards Board of India (BCSBI) has formulated a Code of Bank's Commitment to Micro and Small Enterprises. This is a voluntary Code, which sets minimum standards of banking practices for banks to follow when they are dealing with Micro and Small Enterprises (MSEs) as defined in the Micro

Small and Medium Enterprises Development (MSMED) Act, 2006. It provides protection to MSE and explains how banks are expected to deal with MSE for their day to-day operations and in times of financial difficulty.

The Code also mentions, inter alia, that the banks are expected to dispose of MSE loan application for a credit limit or enhancement in the existing credit limit up to Rs.5 lakh within two weeks; and for credit limit above Rs.5 lakh and up to Rs.25 lakh within 3 weeks; and for credit limit above Rs.25 lakh within 6 weeks from the date of receipt, provided the application is complete in all respects and is accompanied by documents as per 'check list' provided.

While banks may voluntarily adhere to such time limits in the Code, every effort should be taken to reduce further the time taken to process and dispose of MSE loan applications.

The Code does not replace or supersede regulatory or supervisory instructions issued by the Reserve Bank of India (RBI) and banks will comply with such instructions /directions issued by the RBI from time to time.

Objectives of the BCSBI Code

The Code is developed to:

- (a) Give a positive thrust to the MSE sector by providing easy access to efficient banking services.
- (b) Promote good and fair banking practices by setting minimum standards in dealing with MSE.
- (c) Increase transparency so that a better understanding of what can reasonably be expected of the services.
- (d) Improve understanding of business through effective communication.
- (e) Encourage market forces, through competition, to achieve higher operating standards.
- (f) Promote a fair and cordial relationship between MSE and banks and also ensure timely and quick response to banking needs.
- (g) Foster confidence in the banking system.

5. Micro and Small Enterprises Sector – The imperative of Financial Literacy and consultancy support

Keeping in view the high extent of financial exclusion in the MSME sector, it is imperative for banks that the excluded units are brought within the fold of the formal banking sector. The lack of financial literacy, operational skills, including

accounting and finance, business planning etc. represent formidable challenge for MSE borrowers underscoring the need for facilitation by banks in these critical financial areas. Moreover, MSE enterprises are further handicapped in this regard by absence of scale and size. To effectively and decisively address these handicaps, Scheduled commercial banks were advised vide circular RPCD.MSME & NFS.BC.No.20/06.02.31/2012-13 dated August 1, 2012 that they could either separately set up special cells at their branches, or vertically integrate this function in the Financial Literacy Centres (FLCs) set up by them, as per their comparative advantage. The bank staff should also be trained through customised training programs to meet the specific needs of the sector.

6. Cluster Approach

All SLBC Convenor banks are advised to incorporate in their Annual Credit Plans, the credit requirement in the clusters identified by the Ministry of Micro, Small and Medium Enterprises, Government of India. They are also encouraged to extend banking services in such clusters / agglomerations which have come up and identified subsequently by SLBC / DCC members.

- (i) As per Ganguly Committee recommendations (September 4, 2004), banks are advised that a full-service approach to cater to the diverse needs of the SSI sector (now MSE sector) may be achieved through extending banking services to recognized MSE clusters by adopting a 4-C approach namely, Customer focus, Cost control, Cross sell and Contain risk. A cluster based approach to lending may be more beneficial:
 - (a) in dealing with well-defined and recognized groups;
 - (b) availability of appropriate information for risk assessment and
 - (c) monitoring by the lending institutions.

Clusters may be identified based on factors such as trade record, competitiveness and growth prospects and/or other cluster specific data.

- (ii) All SLBC Convenor banks were advised vide letter RPCD.PLNFS.No.10416/06.02.31/ 2006-07 dated May 8, 2007 to review their institutional arrangements for delivering credit to the MSME sector, especially in 388 clusters identified by United Nations Industrial Development Organisation (UNIDO) spread over 21 states in various parts of the country.
- (iii) The Ministry of Micro, Small and Medium Enterprises has approved a list of clusters under the Scheme of Fund for Regeneration of Traditional Industries (SFURTI) and Micro and Small Enterprises Cluster Development Programme (MSE-CDP) located in 121 Minority Concentration Districts.

Accordingly, appropriate measures have been taken to improve the credit flow to the identified clusters of micro and small entrepreneurs from the Minority Communities residing in the minority concentrated districts of the country.

- (iv) In terms of recommendations of the Prime Minister's Task Force on MSMEs banks should open more MSE focused branch offices at different MSE clusters which can also act as Counselling Centres for MSEs. Each lead bank of a district may adopt at least one MSE cluster.

7. Delayed Payment

In the Micro, Small and Medium Enterprises Development (MSMED), Act 2006, the provisions of the Interest on Delayed Payment Act, 1998 to Small Scale and Ancillary Industrial Undertakings, have been strengthened as under:

- (i) The buyer has to make payment to the supplier on or before the date agreed upon between him and the supplier in writing or, in case of no agreement, before the appointed day. The period agreed upon between the supplier and the buyer shall not exceed forty five days from the date of acceptance or the day of deemed acceptance.
- (ii) In case the buyer fails to make payment of the amount to the supplier, he shall be liable to pay compound interest with monthly rests to the supplier on the amount from the appointed day or, on the date agreed on, at three times of the Bank Rate notified by Reserve Bank.
- (iii) For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the interest as advised at (ii) above.
- (iv) In case of dispute with regard to any amount due, a reference shall be made to the Micro and Small Enterprises Facilitation Council, constituted by the respective State Government.

Further, banks are advised to fix sub-limits within the overall working capital limits to the large borrowers specifically for meeting the payment obligation in respect of purchases from MSMEs.

Guidelines for Special Credit Linked Capital Subsidy Scheme (SCLCSS) for SC/ST Micro & Small Enterprises

1. Background

Manufacturing has emerged as one of the high growth sectors in India. 'Make in India' program has been launched to place India on the world map as a manufacturing hub and give global recognition to the Indian economy.

Presently, the Ministry of Micro, Small and Medium Enterprises (MSME) is operating a scheme for technology upgradation of Micro & Small Enterprises called the Credit Linked Capital Subsidy Scheme (CLCSS). CLCSS aims at up-gradation of technology and 15% (subject to maximum of Rs.15.00 lakhs) upfront subsidy on capital investment for technology upgradation is provided to micro and small enterprises for modernization of their production equipment (plant and machinery).

As being the case with MSE sector in general, SC/ST owned MSEs continue with outdated technology and plant & machinery and due to lack of awareness and inadequate finance, the problem gets further compounded and put them in disadvantageous position as they lose out on economy of scale. The existing CLCSS has been able to benefit negligible number of SC/ST MSEs. The Public Procurement Policy mandates each Central Ministry/Deptt./PSUs to procure at least 4% of its total annual procurement requirement from SC/ST owned MSEs. In order to make SC/ST MSEs more participative in the public procurement, it is imperative to promote new enterprises and support the existing enterprises in their expansion. Hence, a new scheme providing assistance in the form of subsidy for capital investment in plant & machinery, linked to credit, is requirement of the day.

2. National SC-ST Hub

Hon'ble Prime Minister of India has launched the Scheme of National SC-ST Hub (NSSH) on 18.10.2016. Ministry of MSME, Govt. of India has formulated a scheme with an outlay of Rs. 490 crore (2016-2020) for creation of NSSH with an objective to provide professional support to SC/ST enterprises in public procurement, adopt applicable industry practices and leveraging Stand-up India initiative. The Hub is operating out of the National Small Industries Corporation (NSIC), a CPSE under Ministry of MSME. In order to achieve the above objectives, the Hub will be closely working with various stakeholders including Industry Association, Incubators, Mentors, MSME-Development Institutes (MSME-DIs), District Industries Centres (DICs), CPSEs and State Governments.

The guidelines dated 25.7.2016 for creation of National SC-ST Hub, inter-alia,

mandates to create Special Credit Linked Capital Subsidy Scheme (CLCSS) with 25% capital subsidy, overall investment ceiling of Rs.1 crore without any restriction on the sectors or machinery & technology for SC/ST enterprises.

3. Special Credit Linked Capital Subsidy Scheme (SCLCSS) for SC/ST Micro & Small Enterprises

i. Objective

The scheme aims at facilitating purchase of plant & machinery by providing 25 per cent upfront capital subsidy to the existing as well as new SC/ST owned MSEs on institutional finance availed of by them. The objective of this scheme is to promote new enterprises and support the existing enterprises in their expansion for enhanced participation in the public procurement.

ii. Scope of the Scheme

- The scheme would cover existing SC/ST MSEs for upgradation or expansion as well as new SC/ST MSEs.
- The scheme would cover purchase of all plants & machinery without any restriction on the technologies but subject to Consent/NOC from Pollution Control Board.
- Industries covered under RED category as per the Classification of industries for consent management (Schedule- VIII, rules 3(2) and 12 of Ministry of Environment & Forests, Govt. of India) shall not be eligible for subsidy under above scheme.
- The scheme shall be applicable only for the purchase of Plant & Machinery eligible for Term Loan from the Prime Lending Institutions (PLIs).
- This scheme shall be applicable to the eligible enterprises where term loan has been sanctioned by the PLIs on or after the date of notification of the scheme.

iii. Eligible Beneficiaries

Sole Proprietorships, Partnerships, Co-operative societies, Private and Public limited companies owned by SC/ST Entrepreneurs of MSE sector engaged in the manufacturing activities are eligible for seeking assistance under this scheme. The existing enterprises should have obtained registration under **Udyog AadhaarMemorandum** as well as have enrolled in the **MSME Data Bank**.

Office of the DC (MSME), Ministry of MSME vide its memorandum no. **F. No. 22(1)/**

2012-MA dated 20th February 2014 clarifies the definition of SC-ST Enterprises as under:

Definition of SC/ST Enterprises

- a. In case of proprietary MSE, proprietor shall be SC/ST
- b. In case of partnership MSE, the SC/ST partners shall be holding at least 51% shares in the unit
- c. In case of private limited companies, at least 51% shares shall be held by SC/ST promoters.

iv. Implementing Agency

The implementing agency would be Office of DC (MSME).

v. Nodal Agencies

The Nodal Agencies approved for CLCSS scheme would act as Nodal Agencies for SCLCSS also. Accordingly, Small Industries Development Bank of India (SIDBI), National Bank for Agriculture and Rural Development (NABARD) and below mentioned banks will act as nodal banks/agencies for implementation and release of capital subsidy under the scheme:

1. State Bank of India
2. Canara Bank
3. Bank of Baroda
4. Punjab National Bank
5. Bank of India
6. Andhra Bank
7. State Bank of Bikaner & Jaipur
8. Tamil Nadu Industrial Investment Corporation

The above banks would consider proposals only in respect of credit approved by their respective branches, whereas, for other Primary Lending Institutions (PLI), the SIDBI and the NABARD would be the nodal agencies for release of subsidy under this scheme.

vi. Primary Lending Institutions (PLI)

All Scheduled Commercial Banks, Scheduled Cooperative Banks (including the urban cooperative banks co-opted by the SIDBI under the Technological

Upgradation Fund Scheme (TUFS) of the Ministry of Textiles], Regional Rural Banks (RRBs), State Financial Corporations (SFCs) and North Eastern Development Financial Institution (NEDFI) are eligible as PLI under this scheme after they execute a General Agreement (GA) with either of the nodal agencies i.e. SIDBI or NABARD. Details of eligible Scheduled Commercial Banks, SFC, Cooperative Banks [including urban cooperative banks co-opted by the SIDBI under the Technological Upgradation Fund Scheme(TUFS) of the Ministry of Textiles]/ and RRBs under this scheme are provided at Appendix-A.

This scheme shall also be implemented through other Nodal agencies notified from time to time by Ministry of MSME. Nomination of Nodal Agencies will be a continuous process.

vii. Eligibility Criteria

- a. Capital subsidy @ 25% of the Term Loan sanctioned for purchase of plant and machinery shall be available under the Scheme. This would be applicable for proposals/projects, where Term Loans have been sanctioned by the PLIs after notification of this scheme.
- b. Eligibility for capital subsidy under the Scheme is not linked to any refinance Scheme of the Nodal Agency (ies). Hence, it is not necessary that the PLI will have to seek refinance in respect of the term loans sanctioned by them from any of the refinancing Nodal Agencies.
- c. SC/ST Units graduated from small scale to medium scale are eligible for subsidy under SCLCSS for a period of three years from the date of graduation.
- d. Industry graduating from small scale to medium scale on account of sanction of additional loan under this scheme shall be eligible for assistance.

viii. Subsidy & Ceiling on eligible loan amount

- Under the scheme, 25 per cent capital subsidy, limited to maximum of Rs. 25 lakh is provided to the SC/ST Micro and Small Enterprises on institutional finance availed of by the eligible SC/ST Enterprises for purchase of Plant & Machinery in the form of Term Loan. The maximum eligible loan under this scheme is Rs. 1 Crore for capital investment in Plant & Machinery.
- SC/ST owned MSEs who have already availed subsidy under the existing CLCSS, before the date of notification of this scheme, cannot claim additional subsidy on account of difference in the rate of subsidy which is now permissible under this scheme.

- In calculating the value of plant & machinery, the following shall be excluded, namely:
 - a. The cost of equipments such as tools, jigs, dies, moulds and spare parts for maintenance and the cost of consumable stores;
 - b. The cost of installation of plant & machinery;
 - c. The bank charges /service charges paid to the State Small Industries Corporation;
 - d. The cost involved in procurement or installation of cables, wiring, bus bars, electrical control panels (not those mounted on individual machines), 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;
 - e. Transportation charges (excluding of sales-tax and excise) for indigenous machinery from the place of manufacturing to the site of the factory;
 - f. Charges paid for technical know-how for erection of plant & machinery;
 - g. Cost of such storage tanks which store raw materials, finished products only and are not linked with the manufacturing process; and
 - h. Cost of fire-fighting equipment.

ix. Duration of the Scheme

The Scheme shall remain valid till 31-3-2020 subject to availability of funds which means that subsidy to PLIs can be disbursed up to 31-03-2020. Further continuation of the Scheme shall be subject to review/ evaluation.

x. Working Capital Requirements

Since success of this scheme to a large extent would depend upon the availability of adequate working capital, lending institutions would like to be assured that the borrowing units have made adequate arrangements for meeting the working capital requirements. The banks should also accord priority in providing adequate working capital support to the assisted units.

xi. Other conditions for loans

- a. Promoters' contribution, security, debt-equity ratio, up-front fee, etc. will

be determined by the lending agency as per its existing norms.

- b. Cases covered under National Equity Fund (NEF) Scheme, which are otherwise eligible under this scheme can also be covered under this scheme. Besides, SC/ST MSEs which are availing financial incentives/ subsidy under any other scheme from the Government would be eligible for subsidy under this scheme.

xii. Procedural Aspects

- a. All the eligible PLIs (excluding the nodal banks / agencies as mentioned above) will have to execute a General Agreement (GA) with either of the nodal agencies for availing capital subsidy under the scheme, irrespective of the fact whether refinance is availed by them or not.
- b. After sanction of the assistance, the eligible PLI will get an agreement executed with the concerned SC/ST MSE on behalf of Government of India (GoI). Format of the agreement to be executed by the eligible PLI with the SC/ST MSE is provided in **Appendix-B**.
- c. The PLI would obtain application for assistance under the scheme in the prescribed form provided in **Appendix-C**.
- d. The PLI shall furnish subsidy forecast on quarterly basis, through their Head Office (HO), which will act as a nodal office, to the Regional Office (RO)/Branch Office (BO) of the SIDBI or the NABARD (as the case may be) located in the region. The subsidy forecast information for every quarter on or before 1st March for April- June quarter, on or before 1st June for July- September quarter, on or before 1st September for October-December quarter and on or before 1st December for January-March quarter, may be furnished as per prescribed format.
- e. The PLI would release the subsidy amount with each installment of loan in a manner proportionate to the amount of term loan disbursed (on pro-rata basis), subject to the ceiling of the term loan/ subsidy amount as per applicable guidelines of the scheme.
- f. The eligible PLI shall furnish details of release of subsidy to the beneficiary units, together with the request for replenishing advance money placed with PLI for release of subsidy, on quarterly basis on March 1, June 1, September 1 and December 1. The requests of PLI for replenishment of advance money for subsidy, however, would be entertained by the nodal agencies only on receipt of complete details of subsidy released to the beneficiary units.

- g. The PLI shall be responsible for ensuring eligibility for sanction of subsidy to the SC/ST MSE in terms of establishing category and its status with documentary support under this scheme and also for disbursement and monitoring of the assisted units.

xiii. Time Limit for applying for Subsidy

Eligible claim with reference date (date of release of last installment of term loan) of each quarter should reach up to the end of next quarter. For example, if reference date falling between 1st January, 2018 to 31st March, 2018 the claim should be forwarded latest by 30th June, 2018 to Ministry of MSME.

xiv. Mechanism for disbursement of subsidy to the unit

Subsidy is to be kept in the form of Term Deposit Receipt (TDR) for 3 years by PLI after release by the Ministry of MSME in the concerned unit's account and interest amount on the term loan shall be reduced accordingly. The beneficiary unit shall remain in commercial production for a period of at least three years after installation of eligible plant & machinery on which subsidy under SCISS has been availed. If the unit fulfils the condition of regular payment of loan installments, the TDR will be transferred to unit's account after three years.

xv. Other Parameters

- a. The Governmental assistance cannot be utilised for the purposes other than for which it has been sanctioned. The eligible PLI shall have to strictly follow this norm and no deviation would be permitted.
- b. In case, it is found that capital subsidy from the Government has been availed of on the basis of any false information, the industrial unit shall be liable to refund the Government the capital subsidy availed, along with interest to be charged from the date of disbursement to the date of refund. The rate of interest shall be the prime lending rate of the PLIs concerned at the time of invoking this penal clause.
- c. The eligible PLI shall, therefore, incorporate suitable conditions in respect of point at (b) above in their security documents entered into with the unit, which would give necessary authorisation to proceed legally in such eventualities.
- d. The credit risk under the Scheme will be borne by the eligible PLI and as such, they will have to make their own commercial judgement while appraising the project. The credit decision of the eligible PLI will be final.
- e. There shall not be any binding obligation on the part of the nodal banks/

agencies to obtain sanction from Ministry of MSME for the government assistance in respect of the proposals which are covered under this scheme.

- f. Both the SIDBI and the NABARD shall have the right to inspect the books of eligible PLI and the loan accounts irrespective of whether refinance is availed or not from the Nodal Agency(ies) under this Scheme and/ or call for any other information as may be required by from time to time.
- g. Both the SIDBI and the NABARD shall have the right to recall from eligible PLI the entire amount of the capital subsidy in respect of their assisted units irrespective of whether or not the eligible PLI have recovered the said subsidy from their units, if they come to the conclusion that any of the accounts do not conform to the policies, procedures and guidelines laid down under the SCLCSS guidelines and as stipulated by the Ministry of MSME/the Nodal Agencies from time to time.
- h. The beneficiary unit shall remain in commercial production for a period of at least three years after installation of eligible plant and machinery on which subsidy under this scheme has been availed.

xvi. Online system of Application

For effective implementation and transparency, Online Application and Tracking System is adopted for submission of online application by concerned Nodal Banks. However, no individual SC/ST MSE can directly apply for subsidy but banks will forward the application to Ministry of MSME.

xvii. Monitoring of the scheme

This scheme shall be monitored by the Ministry of MSME on regular basis. Any proposal for changes/amendments in this scheme shall be placed before Empowered Project Approval Committee for approval.

Appendix-A**Small Industries Development Bank of India (SIDBI)****List of Primary Lending Institutions (PLI)****1. BANKS****A. State Bank Group**

1. State Bank of India
2. State Bank of Indore
3. State Bank of Mysore
4. State Bank of Bikaner & Jaipur

B. Public Sector Banks

1. Andhra Bank
2. Bank of Baroda
3. Bank of India
4. Canara Bank
5. Central Bank of India
6. Corporation Bank
7. Indian Overseas Bank
8. Punjab National Bank
9. Punjab & Sind Bank
10. Union Bank of India
11. UCO Bank
12. Vijaya Bank
13. Bank of Maharashtra
14. United Bank of India
15. Oriental Bank of Commerce
16. Indian Bank
17. Allahabad Bank

C. Private Sector Banks

1. City Union Bank Ltd.
2. Karnataka Bank Ltd.
3. Tamil Nadu Mercantile Bank Ltd.
4. Bank of Rajasthan Ltd.
5. Bharat Overseas Bank
6. KarurVysya Bank Ltd.
7. J & K Bank Ltd.
8. United Western Bank
9. ING Vysya Bank
10. UTI Bank Ltd.
11. Federal Bank Ltd.
12. Catholic Syrian Bank

D. SFCs

1. Gujarat State Financial Corporation
2. Haryana Financial Corporation
3. J & K State Financial Corporation
4. Madhya Pradesh Financial Corporation
5. Maharashtra State Financial Corporation
6. Orissa State Financial Corporation
7. Punjab Financial Corporation
8. Tamil Nadu Industrial & Investment Corporation Ltd.
9. Uttar Pradesh Financial Corporation
10. West Bengal Financial Corporation
11. Karnataka State Financial Corporation
12. Andhra Pradesh State Financial Corporation
13. Rajasthan State Industrial Development & Investment Corporation

E. Other Institutions:

The Small Industries Development Bank of India (SIDBI)

Urban Cooperative Banks co-opted by the SIDBI under the TUFs operated by the Ministry of Textiles

Sl. No.	Name of the Urban Cooperative* Had Office	Head Office
1	ShamraoVithal Cooperative Bank	Mumbai
2	Rupee Cooperative Bank	Pune
3	Sangli Urban Cooperative Bank Ltd.	Sangli
4	Surat People's Cooperative Bank Ltd.	Surat
5	Kalapur Commercial Cooperative Bank Ltd.	Ahmedabad
6	Rajkot NagarikSahakari Bank Ltd.	Rajkot
7	Cosmos Cooperative Bank Ltd.	Pune
8	Abhyudaya Cooperative Bank Ltd.	Mumbai
9	Saraswat Cooperative Bank Ltd.	Mumbai
10	Mumbai Mercantile Cooperative Bank Ltd.	Mumbai
11	The A.P. Mahesh Cooperative Urban Bank Ltd.	Hyderabad
12	The Ahmedabad Mercantile Cooperative Bank Ltd.	Ahmedabad
13	The Surat Textiles Traders Cooperative Bank Ltd.	Surat
14	Janata Cooperative Bank Ltd.	Nasik
15	Textile Cooperative Bank Ltd.	Bangalore
16	Ichalkaranji Janata Sahakari Bank Ltd.	Kolhapur
17	The SarvodayaSahakari Bank Ltd.	Surat
18	Surat National Cooperative Bank Ltd.	Surat
19	Solapur NagariAudyogikSahakari Bank	Solapour
20	The Bharat Cooperatives Bank (Mumbai) Ltd.	Mumbai
21	The Gujarat Industrial Cooperative Bank Ltd.	Surat
22	Prime Cooperative Bank Ltd.	Surat
23	The Nasik Merchants Cooperative Bank Ltd.	Nashik
24	ApnaSahakari Bank Ltd.	Mumbai

25	DombiviliNagariSahkari Bank Ltd.	Mumbai
26	The Surat District Cooperative Bank Ltd.	Surat
27	The Zoroastrian Cooperative Bank Ltd.	Mumbai
28	Parasik Janata Sahakari Bank Ltd.	Thane
29	The Varchha Cooperative Bank Ltd.	Surat
30	Shree WaranaSahakari Bank Ltd.	Warnanagar
31	Jalgaon Janata Sahakari Bank	Jalgaon
32	The Kapol Cooperative Bank Ltd.	Surat
33	The Shirpur Peoples Cooperative Bank Ltd.	Shirpur (Dhule)
34	Rajkot NagarikSahakari Bank Ltd.	Surat
35	Shri Veershaiv Cooperative Bank Ltd.	Kolhapur
36	The Panchsheel Mercantile Cooperative Bank Ltd.	Surat
37	The DhuleVikasSahakari Bank Ltd.	Dhule
38	The Ichalkaranji Urban Cooperative Bank Ltd.	Ichalkaranji (Kolhapur)
39	The Udhna Citizen Cooperative Bank Ltd.	Surat
40	The Vita Merchants Cooperative Bank Ltd.	Vita(Sangli)

The above Urban Cooperative Banks will have to sign a "**General Agreement**" with either of the nodal agencies i.e. the SIDBI or the NABARD for claiming reimbursement of capital subsidy under the SCLCSS.

APPENDIX – B

(To be stamped as an Agreement)

Agreement for Financial Assistance under Special Credit Linked Capital Subsidy Scheme (SCLCSS) for SC/ST Micro & Small Enterprises

This Agreement made at..... on this..... day of..... in the year Two thousand..... between M/s a..... Public/Private Limited Company/Proprietary concern, incorporated under the Companies Act of 1956 and having its Registered Office at..... and being an industrial concern hereinafter called the Beneficiary(which expression shall unless repugnant to the context or meaning thereof include its successors and assigns) of the One Part:

OR

FOR PARTNERSHIP FIRM

- (i) Shri son of..... Aged years residing at
- (ii) Shri son of..... Aged years residing at
- (iii) Shri son of..... Aged years residing at

carrying on business in partnership in the firm name and style of..... and having their office at..... (hereinafter referred to as 'Beneficiary' which expression shall, unless it be repugnant to the subject or context thereof, include its/his/her/their 11 legal representatives, heirs, administrators, successors and assigns) of the One part.

AND

.....(hereinafter referred to as the financing institution/bank/which expression shall unless repugnant to the context or meaning thereof include its successors and assigns) of the Other part.

WHEREAS

1. The Ministry of MSME appointed..... as Nodal Agency (hereinafter referred to as the Agent) for channelising Special Credit Linked Capital Subsidy Scheme (SCLCSS) for SC/ST Micro & Small Enterprises under Ministry of MSME, Govt. of India (hereinafter referred to as "the Scheme") and permitting the financial institution/ bank under the scheme for claiming capital subsidy on the

term loan sanctioned and disbursed by financing institution/ bank to the beneficiary.

2. The beneficiary has requested the financing institution/bank for providing assistance under the Scheme to the extent..... of Rs (Rupees..... only) for purchase of plant & machinery for setting up / expansion of Micro/Small Enterprise, which the financing institution/bank has agreed to lend in proportion to the investment made or to be made in purchase of machineries by the Beneficiary as per terms and conditions provided in the Agreement executed between the financing institution/bank and the Beneficiary.

3. The Agent has agreed to act as nodal agency for Government of India for channelising disbursement of capital subsidy sanctioned to the Beneficiary by the financing institution /bank, and the parties hereto desire to enter into an agreement for the said purpose, being these presents providing for the terms hereinafter appearing.

NOW THESE PRESENTS WITNESS AND IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. The Beneficiary, hereby, covenants:

- a) That the Beneficiary will comply with and faithfully observe all terms and conditions of the said Scheme and also all the subsequent amendments and modifications and additions thereto together with the conditions of the sanction of the said financial assistance.
- b) That the Beneficiary will allow the officers of the Agent and/or the Government of India or any other person or persons authorized, by the Agent or by Government of India to inspect the work for which the capital subsidy has been granted and also the machines, plant, appliances, tools, equipments, etc. for the procuring of which the subsidy has been granted and will furnish such information concerning the machines, plant implements, etc., for procuring of which the capital subsidy has been granted or concerning the matter connected with the capital subsidy or incidental thereto as the Agent or their nominees may, from time to time require.
- c) That the Beneficiary will not change the place or location of the industrial unit entirely or partly, nor enter into partnership with any one, or change its constitution by merger, amalgamation or in any manner nor the Beneficiary effect disposal of fixed capital investment without the express prior permission of the Agent in writing.
- d) The Beneficiary unit shall remain in commercial production for a period of at least three years after installation of eligible plant and machinery on

which subsidy under SCISS has been obtained, otherwise, the entire amount of subsidy along with the interest to be charged from the date of disbursement to the date of refund will have to be refunded by the Beneficiary unit. This is except in cases where the unit remains out of production for short periods not exceeding three months due to reasons beyond its control such as shortage of raw material / power, etc. to the satisfaction of the lending institution / concerned PLI.

2. It is further hereby agreed and declared by and between the parties hereto, that in any of the following cases, namely,

- a) where the Beneficiary has obtained the capital subsidy by misrepresentation as to an essential fact, or by furnishing of false information; or,
- b) where the Beneficiary fails to furnish the prescribed statement or information which it is called upon to furnish, If the Beneficiary commits breach of any one of the covenants herein contained or of the terms and conditions of the Scheme as amended from time to time, the Beneficiary shall refund the same forthwith to the financing institution/bank together with interest at the then prevailing prime lending rate of financing institution/bank.

3. The interpretation/clarification/decision of agent regarding the eligibility, subsidy and any other benefits of a unit/borrower under the Scheme, either before or after release of the loan facility by the financing institution/bank shall be binding on the beneficiary and the beneficiary will not raise any objection either against agent/financing institution/ bank.

4. It is hereby further agreed and declared that the stamp duty chargeable on these presents, shall be paid and borne by the Beneficiary and that the Beneficiary will also be liable to bear the expenses, if any, incurred by enforcing the terms and conditions of these presents.

IN WITNESS WHEREOF the Beneficiary has caused its common seal to be affixed hereto and to duplicate hereof on the day, month and year first hereinabove written and the financing institution/bank has caused these presents and the said duplicate to be executed by the hand of Shri..... (Name & Designation) of bank, as hereinafter appearing.

THE COMMON SEAL OF LIMITED has pursuant to the Resolution of its Board of Directors passed in that behalf on the.....day ofhereunto been affixed in the presence of Shri..... and Shri..... Shri....., Director who have signed these presents in token thereof and Shri..... Secretary*/Authorised*

person who has signed/countersigned the same in token thereof.

SIGNED AND DELIVERED BY the within named bank by the hand of Shri (Name & Designation), an authorized official of financing institution/bank.

IN WITNESS WHEREOF the partners of the Beneficiary have set their respective hand hereto and to a duplicate hereof on the day, month and year first hereinabove written and bank has caused these presents and the said duplicate to be executed by the hand of Shri (Name & Designation) of financing institution/Bank as hereinafter appearing.

1)* SIGNED AND DELIVERED BY the within named Shri..... Partner Of..... the within named Partnership Firm.

2)* SIGNED AND DELIVERED BY the within named..... By the hand of Shri..... in pursuance to the Board Resolution dated and common seal has been affixed in presence of Shri..... who has signed in token thereof.

SIGNED AND DELIVERED BY the within named FI/NSIC/Bank/SFC by the hand of Shri..... authorised official. (*whichever is applicable).

Note: Relevant Board Resolution authorizing the person(s) to execute the document on behalf of the Beneficiary has to be submitted with the Agreement.

Appendix - C**Application Form for assistance under Special Credit Linked Capital Subsidy Scheme (SCLCSS) for SC/ST Micro & Small Enterprises**

(To be submitted in triplicate, Photocopies may be used)

1. Name of the firm/company
2. Constitution (Proprietary concern, partnership firm, Pvt. Ltd. Co., Public Ltd. Co., Coop. Societies)
3. Name(s) of sole proprietor/partners/directors
4. Category of borrower (SC/ST)
5. Registered Office Address
- Pin
- Phone No. Fax
- Email
6. Factory
- Address
- Pin
- Phone No. Fax
- Email
7. Location of factory – Backward/ Non backward area/North Est Region
8. Date of incorporation/commencement of production
9. Product(s)/Subsector
10. Installed capacity
11. Past Performance (for last three years on the basis of audited balance sheets – in respect of existing units. In respect of new units projections for next three years may be given).

(a) Financial position*Rupees in Lakh*

		Financial Year (Y-1)	Financial Year (Y-2)	Financial Year (Y-3)
I	Net block			
II	Current assets			
III	Current liabilities			
IV	Term Loan			
V	Share Capital			
VI	Reserve & Surplus (less accumulated losses)			
VII	Net worth (V+VI)			

(b) Working Results*Rupees in Lakh*

		Financial Year (Y-1)	Financial Year (Y-2)	Financial Year (Y-3)
I	Total Sales			
II	Gross profit (Before interest & depreciation)			
III	Depreciation			
IV	Interest			
V	Operating Profit			
VI	Net Profit(after tax)			

12. Total cost of scheme (as approved by Bank/FI) (Rs. in lakh)

13. Total Sources of funding (as approved by Bank/FI) (Rs. in lakh)

Term Loan

Add share capital

Internal accruals

Capital Subsidy

- 14. Time frame for completion of the project
- 15. Incremental benefits from implementation of the project (indicate in terms of capacity utilization, increased sales, exports, reduction in cost of production, increase in productivity, quality upgradation, attainment of pollution standards – give quantitative results).
- 16. List of eligible plant and machinery along with their detailed specifications, rates, quantities and total value for which subsidy under SCISS is claimed.

DECLARATION

I/We, hereby declare that the information given above and the statement and other papers enclosed are to the best of our knowledge and belief are true and correct.

Place:

Signature(s)

Date:

Name and designation

SECTION VI

Compliances based on Formation of MSME

Hon'ble Minister of Finance, Arun Jaitley in his Budget Speech 2017-18 stated that **"156. In order to make MSME companies more viable and also to encourage firms to migrate to company format, I propose to reduce the income tax for smaller companies with annual turnover upto Rs. 50 crore to 25%. As per data of Assessment Year 2015-16, there are 6.94 lakh companies filing returns of which 6.67 lakh companies fall in this category and, therefore, percentage-wise 96% of companies will get this benefit of lower taxation. This will make our MSME sector more competitive as compared to large companies. The revenue forgone estimate for this measure is expected to be Rs. 7,200 crore per annum."**

More than 90% of MSMEs are proprietorship or partnership enterprise. Therefore, it is imperative to strive towards corporatisation of Small & Medium Enterprises for good corporate governance as well as energise the economy as a whole.

MSME may be incorporated as:



Starting a business in India requires one to choose a type of business entity. In India one can choose from different types of legal entities to conduct business. These include Sole Proprietorship, One Person Company, Partnership Firm, Limited Liability Partnership, Private Limited Company and Public Limited Company. The choice of the business entity is dependent on various factors such as taxation, owner liability, compliance burden, and investment and funding and exit strategy.

Choosing a form of business organization for Start-ups:

<i>Criteria</i>	<i>Most beneficial</i>	<i>Least beneficial</i>
Cost of formation	Sole Proprietorship	Company
Ease of formation	Sole proprietorship	Company
Transfer of Ownership	Public Ltd Company	Partnership
Continuity	Company	Sole proprietorship
Flexibility	Sole proprietorship	Company
Availability of capital	Company	Sole proprietorship
Liability	Company and LLP	Sole proprietorship

Sole Proprietorship

A sole proprietorship is a business that is owned, managed and controlled by one person. It is one of the most common forms of business in India, used by small businesses operating in the unorganized sectors. Proprietorships are very easy to start and have very minimal regulatory compliance requirement for getting started. However, after the start-up phase, proprietorship's do not offer the promoter a host of other benefits such as limited liability, separate legal entity, independent existence, transferability, etc., which are desirable features for any business. Therefore, proprietorship's are suited for unorganized, small businesses that will have a limited existence.

There is no mechanism provided by the Government of India for the registration or incorporation of a Proprietorship. Therefore, the existence of a proprietorship is established only by tax registrations and other business registrations that a Proprietorship is required to have as per the rules and regulations.

Registration of Proprietorship Firm	Service Tax Registration	MSME Registration
Proprietorship firm can be done in 7 to 14 days, subject to Government processing time.	The identity of a Proprietorship can be established through Service Tax Registration (if applicable) mentioning the business name. Service tax registration takes 10 to 15 days, subject to Government processing time.	The identity of a Proprietorship can be established by MSME Registration (if applicable) mentioning the business name. MSME Registration can be completed in 10 to 15 days, subject to Government processing time.

Incorporation of Sole Proprietorship

To start a sole proprietorship in India, all we need is a bank account, a Pan Card number and few licenses.

1. For bank Account, we have to go to a bank and then we can open a bank account in the name of the company that we wish to operate in.
2. For PAN card we have apply online to the website of Income Tax department and a Pan Card will be issued to us.
3. Following Licenses to be taken depending on the kind of business
 - Service Tax/GST Registration,
 - VAT/GST Registration,
 - IEC,
 - Shops & Establishment license,
 - Importer Exporter Code,
 - ESI,
 - Professional Tax,
 - Central Excise Duty/GST Registration,
 - CST Registration/GST Registration,
 - Employee Provident Fund Registration and many more.

After getting the respective licenses as per the sole proprietorship business~ one can commence with his her sole proprietorship firm in India.

Annual Compliances of Sole Proprietorship

Proprietorship will have to file their annual tax return with the Income Tax Department. Other tax filings like service tax filing or VAT/CST/GST filing as may be necessary from time to time, based on the business activity performed. However, annual report or accounts need not be filed with the Ministry or Corporate Affairs, which is required for Limited Liability Partnerships and Companies.

Partnership Firm

A business registered in the name of an individual is called Sole Proprietorship. A single person is completely responsible for the entire business with the business and the owner not being separate from each other. The owner funds the business, takes any profits and bears any losses.

It does not involve any complex rules or accounting. Personal assets and business assets are not separated from each other. Any profits from the business are just added to the business owner's income for taxation purposes.

Similarly, any losses become the personal losses of a business owner. In case the business starts incurring losses and additional money is needed to compensate those losses, the personal assets of the owner itself are put at risk. Partnership business entities are quite similar to sole proprietorship. The basic difference between partnership and sole proprietorship is that more than one individual is involved in a partnership.

The roles, responsibilities and the share of each partner are specifically defined in a legal partnership agreement. Any profit earned by the business is shared between partners according to the legal partnership agreement. In case there are losses, each of the partners is personally responsible. Personal assets of partners may be used to compensate the losses incurred, if any.

A Partnership Firm is a popular form of business constitution for businesses that are owned, managed and controlled by an Association of People for profit. Partnership firms are relatively easy to start and are prevalent amongst small and medium sized businesses in the unorganized sectors. With the introduction of Limited Liability Partnerships in India, Partnership Firms are fast losing their prevalence due to the added advantages offered by a Limited Liability Partnership.

There are two types of Partnership firms, registered and un-registered Partnership firm. It is not compulsory to register a Partnership firm; however, it is advisable to register a Partnership firm due to the added advantages. Partnership firms are created by drafting a Partnership deed amongst the Partners.

Registration of Partnership firm	Partnership Deed	Partnership Deed Registration	Tax Registration
Registration of a Partnership firm Can be done startup a Partnership in 7 to 14 days.	Partnership Deed that is acceptable to all Partners	Based on requirements and the service level register the Partnership Deed with the relevant authorities to make the Partnership a Registered Partnership Firm.	PAN and TAN registration can issued once the Partnership Firm is registered.

Incorporation of Partnership Firm

A partnership firm can be registered whether at the time of its formation or even subsequently. Partners need to file an application with the Registrar of Firms of the area in which business is located.

Application for partnership registration should include the following information:

1. Name of the firm
2. Name of the place where business is carried on
3. Names of any other place where business is carried on
4. Date of partners joining the firm
5. Full name and permanent address of partners
6. Duration of the firm
7. Every partner needs to verify and sign the application

Following documents and prescribed fees are enclosed with the registration application:

1. Application for Registration in the prescribed Form
2. Duly filled Specimen of Affidavit
3. Certified copy of the Partnership deed
4. Proof of ownership of the place of business or the rental/lease agreement thereof

Compliances of Partnership Firm

Partnership is simple to form and manage compared to company and LLP. However there are requirement of filing various forms in case of change in address, addition / removal of partner, change in firm name or business place etc.

<i>S.No.</i>	<i>Subject</i>	<i>Section</i>
1.	Registration of Partnership Firm	58(1) & (1A)
2.	Change in Principal Place/ nature of business / firm name	60(1)
3.	Opening and closing of branches	61
4.	Change in the name (person/limited company and address of the partner)	62

5.	Change in Constitution-Admission/ Retirement/Dissolution/ Death of Partner/ minor partner	63
6.	Minor attaining majority and elects to become/ not to become a Partner	63(2)
7.	Appeal against refusal by registrar to register the firm under a particular name	58(4)

ONE PERSON COMPANY

The introduction of OPC in the legal system is a move that would encourage corporatization of micro businesses and entrepreneurship with a simpler legal regime so that the small entrepreneur is not compelled to devote considerable time, energy and resources on complex legal compliances. This will not only enable individual capabilities to contribute economic growth, but also generate employment opportunity. One Person Company of sole-proprietor and company form of business and has been provided with concessional /relaxed requirements under the Companies Act, 2013. With the implementation of the Companies Act, 2013, a single national person can constitute a Company, under the One Person Company (OPC) concept.

As per section 2(62) of the Companies Act, 2013, "One Person Company" means a company which has only one person as a member.

ONE PERSON COMPANY V/S SOLE PROPRIETORSHIP

ONE PERSON COMPANY	SOLE PROPRIETORSHIP
<i>Separate Legal entity</i>	<i>Not a Separate Legal Entity</i>
<i>Limited Liability</i>	<i>Unlimited liability</i>
<i>Perpetual succession</i>	<i>No perpetual succession</i>
<i>Loan -not the sole responsibility of the owner</i>	<i>Loan-sole responsibility of the owner</i>
<i>Registration required</i>	<i>Registration not required</i>
<i>Finance –credit record of the OPC</i>	<i>Finance –credit record of the Owner</i>

OPC structure would be similar to that of a proprietorship concern without the ills generally faced by the proprietors. *One most important feature of OPC is that the risks mitigated are limited to the extent of the value of shares held by such person*

in the company. This would enable entrepreneurial minded persons to take the risks of doing business without the botheration of litigations and liabilities getting attached to the personal assets. One Person Company has a separate legal identity from its shareholders, i.e., the company and the shareholders are two different entities for all purposes. On the other hand proprietorship does not have a separate legal identity from its members. The existence of a One Person Company is not dependent upon its members and hence, it has a perpetual succession, i.e., death of a member does not affect the existence of the company and the Sole proprietorship is an entity whose existence depends on the life of its members and death or any other contingency may lead to the dissolution of such an entity.

In OPC the business head is the decision maker, he is not dependent on others for suggestions or implementation of suggestions etc., resulting in quicker and easier decision making. He is the sole person who runs the business and hence, the question of consensus or majority opinion etc., does not arise.

COMPANY V/S OPC

COMPANY	Common Seal	OPC
	Perpetual Succession	
	Separate legal entity	
	Limited Liability	
	Separate Ownership	
	Management and Control	

Salient Features of OPC

The salient features of OPC are:

- Desire for personal freedom that allows the Professional skilled person to adopt the business of his choice.
- Personality driven passion and implementation of a business plan.
- The desire of the entrepreneurial person to take extra risk and willingness to take additional responsibility.
- Personal commitment to the business which is a sole idea of the person and close to his heart.
- It is run by individuals yet OPCs are a separate legal entity similar to that of any registered corporate.

- A One Person Company is incorporated as a private limited company.
- It must have only one member at any point of time and may have only one director.
- The member and nominee should be natural persons, Indian Citizens and resident in India. The term "resident in India" means a person who has stayed in India for a period of not less than 182 days during the immediately preceding one calendar year.
- One person cannot incorporate more than 1 OPC or become nominee in more than 1 OPC.
- If a Member of OPC becomes a member in another OPC by virtue of his being nominee in that OPC then within 180 days he shall have to meet the eligibility criteria of being Member in one OPC.
- OPC to lose its status if paid up capital exceeds Rs. 50 lakhs or average annual turnover is more than 2 crores in 3 immediately preceding consecutive years.
- No minor shall become member or nominee of the One Person Company or hold share with beneficial interest.
- Such Company cannot be incorporated or converted into a company under section 8 of the Companies Act, 2013.
- Such Company cannot carry out Non Banking Financial Investment activities including investment in securities of any body corporate.
- No such company can convert voluntarily into any kind of company unless 2 years have expired from the date of incorporation, except in cases where capital or turnover threshold limits are reached.
- An existing private company other than a company registered under section 8 of the Act which has paid up share capital of Rs. 50 Lakhs or less or average annual turnover during the relevant period is Rs. 2 Crores or less may convert itself into one person company by passing a special resolution in the general meeting.

Privileges Available to OPC

Some of the privileges and benefits identified with OPCs are:

- OPCs would provide the start-up entrepreneurs with new business idea .
- OPC provides an outlet for the entrepreneurial impulses among the professionals.

- The advantages of limited liability. The most significant reason for shareholders to incorporate the 'single-person company' is certainly the desire for the limited liability.
- OPCs are not proprietorship concerns; hence, they give a dual entity to the company as well as the individual, guarding the individual against any pitfalls of liabilities. This is the fundamental difference between OPC and sole proprietorship.
- Unlike a private limited or public limited company (listed or unlisted), OPCs need not bother too much about compliances.
- Business currently run under the proprietorship model could get converted into OPCs without any difficulty.
- OPCs require minimal capital to begin with. Being a recognized corporate, could well raise capital from others like venture capital financial institutions etc., thus graduating to a private limited company.
- Mandatory rotation of auditor after expiry of maximum term is not applicable.
- The annual return of a One Person Company shall be signed by the company secretary, or where there is no company secretary, by the director of the company.
- The provisions of Section 98 and Sections 100 to 111 (both inclusive), relating to holding of general meetings, shall not apply to a One Person Company.
- A One Person Company needs to have minimum of one director. It can have directors up to a maximum of 15 which can also be increased by passing a special resolution as in case of any other company.
- For the purposes of holding Board Meetings, in case of a one person Company which has only one director, it shall be sufficient compliance if all resolutions required to be passed by such a Company at a Board meeting, are entered in the minutes-book, signed and dated by the member and such date shall be deemed to be the date of the Board Meeting for all the purposes under this Act. For other One Person Companies, at least one Board Meeting must be held in each half of the calendar year and the gap between the two meetings should not be less than 90 days.
- The financial statements of a one person company can be signed by one director alone. Cash Flow Statement is not a mandatory part of financial statements for a One Person Company. Financial statements of a one person company need to be filed with the Registrar, after they are duly adopted by the member, within 180 days of closure of financial year along with all necessary documents.

- Board's report to be annexed to financial statements may only contain explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report.

Types of OPC

- a company limited by shares; or
- a company limited by guarantee; or
- an unlimited company.

Memorandum of OPC

The memorandum of a company shall state –

- the name of the company with the last word "Private Limited";
- the State in which the registered office of the company is to be situated;
- the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof;
- the liability of members of the company, whether limited or unlimited, with details
- the amount of share capital with which the company is to be registered and the division thereof as specified;
- the number of shares each subscriber to the memorandum intends to take, indicated opposite his name;
- in the case of One Person Company, the name of the person who, in the event of death of the subscriber, shall become the member of the company.

Directors of OPC

- Articles of a company may provide for the appointment of the first directors
- If articles are silent then the subscriber to the memorandum who is an individual shall be deemed to be the first director of the company
- May have a single director
- Maximum-15 directors and more than 15 directors after passing Special Resolution
- Director must have stayed in India for a total period of not less than 182 days in the previous calendar year.

Meetings of board of OPC

- At least one meeting of the Board of Directors to be conducted in each half of a calendar year
- Gap between the two meetings should not be less than ninety days
- Exemption – if company has only one director.

Contract by OPC

- One Person Company limited by shares or by guarantee enters into a contract with the sole member of the company who is also the director of the company, the terms of contract or offer are in writing or contained in a memorandum or recorded in the minutes of the Board meeting held next after entering into the contract.
- Inform the Registrar about every contract entered into by the company within a period of fifteen days from the date of approval by the Board of Directors.
- Contracts in ordinary course of business not required to comply with the above.

Financial statement of OPC

- The financial statement, signed by one director, for submission to the auditor for his report thereon.
- The report of the Board of Directors to be attached to the financial statement.
- Board of Directors Report of OPC means a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report.
- Filed with ROC within 180 days from the closure of the financial year.
- Financial statement may not include the cash flow statement.

Exemption available to OPC

- Section 96. Option to dispense with the requirement of holding an AGM
- Section 98. Power of Tribunal to call meetings of members
- Section 100. Calling of extraordinary general meeting.
- Section 101. Notice of meeting.
- Section 102. Statement to be annexed to notice.

- Section 103. Quorum for meetings.
- Section 104. Chairman of meetings
- Section 105. Proxies
- Section 106. Restriction on voting rights
- Section 107. Voting by show of hands
- Section 108. Voting through electronic means
- Section 109. Demand for poll
- Section 110. Postal ballot
- Section 111. Circulation of members' resolution

Incorporation of One Person Company

Obtain Digital Signature Certificate [DSC] for the proposed Director(s)



Obtain Director Identification Number [DIN] for the proposed director(s).



Select suitable Company Name, and make an application to the Ministry of Corporate Affairs for availability of name.



Draft Memorandum of Association and Articles of Association [MOA & AOA].



Sign and file various documents including MOA & AOA with the Registrar of Companies electronically.



Payment of Requisite fee to Ministry of Corporate Affairs and also Stamp Duty.



Scrutiny of documents at Registrar of Companies [ROC].



Receipt of Certificate of Registration/Incorporation from ROC.

Reservation of name

An application for the reservation of a name shall be made in Form No. INC.1 along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014.

Application for incorporation of companies

An application shall be filed, with the Registrar within whose jurisdiction the registered office of the company is proposed to be situated, in prescribed Form along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 for registration of a company:

Signing of Memorandum and Articles of Association

The memorandum and articles of association of the company shall be signed by each subscriber to the memorandum, who shall add his name, address, description and occupation, if any, in the presence of at least one witness who shall attest the signature and shall likewise sign and add his name, address, description and occupation, if any and the witness shall state that "I witness to subscriber/subscriber(s), who has/have subscribed and signed in my presence (date and place to be given); further I have verified his or their Identity Details (ID) for their identification and satisfied myself of his/her/their identification particulars as filled in".

Affidavit of Subscriber and first directors

The affidavit shall be submitted by each of the subscribers to the memorandum and each of the first directors named in the articles in Form No. INC.9

Particulars of Subscriber

Particulars of every subscriber to be filed with the Registrar at the time of incorporation

Nomination by the subscriber or member

(1) The subscriber to the memorandum of a One Person Company shall nominate a person, after obtaining prior written consent of such person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of that One Person Company.

(2) The name of the person nominated shall be mentioned in the memorandum of One Person Company and such nomination in Form as may be prescribed along with consent of such nominee obtained in Form No INC.3 and fee as

provided in the Companies (Registration offices and fees) Rules, 2014 shall be filed with the Registrar at the time of incorporation of the company along with its memorandum and articles.

Declaration by professionals

The declaration by an advocate, a Chartered Accountant, Cost accountant or Company Secretary in practice shall be in Form No. INC-8.

Important Instructions - Filing of eForm for Incorporation of OPC

- For incorporation of One Person Company required filing e-Form.
- It is suggested that e-Form DIR-12 should be filed Nominee Form.
- In case the address for correspondence is not the address of the registered office of the Company, user is required to file INC-22 within 30 days of its incorporation.
- Stamp duty, Memorandum of Association (MoA) and Articles of Association (AoA) can be paid electronically through the MCA portal.
- Payment of stamp duty electronically through MCA portal is mandatory in respect of the States which have authorized the Central Government to collect stamp duty on their behalf. Now e-Stamp duty payment is to be done online through MCA portal for all the states.
- Refund of stamp duty, if any, will be processed by the respective state or union territory government in accordance with the rules and procedures as per the state or union territory stamp Act.
- Scan the photograph of every subscriber with MOA and AOA.
- The company can have its registered office from the date of incorporation or on and from the 15th day of its incorporation. Till the same is established and intimated to the RoC, company can have its correspondence address capable of receiving and acknowledging all communications and notices as may be addressed to it.
- Details of registered office address of the company if the company is having its registered office from the date of its incorporation.
- Valid email id of the company. Ensure that this email ID is valid as intimation regarding processing of the eForms, important communication from RoC office shall also be communicated electronically at the email ID being mentioned here.

- Details of the address of the police station under whose jurisdiction the registered office of the company is to be situated.
- Details of authorized and subscribed share capital break up in case of a company having share capital.
- Minimum and maximum number of members for One Person Company is one only.
- The subscriber to the Memorandum shall ensure that the payment for the total amount of shares subscribed by him is made to the company upon incorporation.
- Enter the number of shares, total amount of shares and nominal amount per share for each type of share. At least one type of share capital (Equity/ Preference) should be greater than zero.
- In case company has shares of multiple nominal amounts per share, then multiple nominal values per share separated by comma in the field Nominal amount per share.
- Main division of industrial activity of the company.
- Details of promoter.
- User is required to file eForm DIR-12 in case promoter and director are not the same persons.
- DIN or Income-tax PAN. In case DIN is entered it should be an approved DIN.
- For cases of PAN, name and address of the promoter is required to be entered. System shall verify the name of the promoter based on PAN entered.
- Surname or family name in the field Family Name.
- Other relevant particulars of the promoter including duration of stay at present address. If duration of stay is less than a year at present address, enter the details of previous residence of the promoter. Ensure that Promoter to One Person company is always an Indian citizen and resident in India and promoter shall be eligible to incorporate only one OPC.
- Every One Person Company is required to indicate the name of other person as nominee to the sole member in the memorandum and nominee for the subscriber should be an individual who is an Indian citizen and resident in India.
- The name of such nominee.

- Enter the details of nominee by entering approved DIN or valid Income-tax PAN. In case DIN is entered, the system shall automatically display the name, middle name, surname, father's name and gender of such person.
- Provide details of stamp duty already paid.
- Ensure the e-Form is digitally signed by the same person whose designation is reflected in the declaration section of the e-Form.
- In case the person digitally signing the e-Form is a Director - Enter the approved DIN. In case the person digitally signing the e-Form is Company Secretary - Enter valid membership number. In case the person digitally signing the e-Form is Manager - Enter approved DIN or valid income-tax PAN.
- It is mandatory to attach Memorandum of Association, Articles of Association, proof of identity of the member and the nominee, residential proof of the member and the nominee, copy of PAN card of member and nominee, consent of nominee in Form INC-3 along with enclosures, affidavit from the subscriber and first director to the memorandum in Form No. INC-9.
- It is mandatory to attach Specimen Signature in Form INC-10 in case company is 'Not having share capital'.
- It is mandatory to attach Entrenched Articles of association if any of the articles are entrenched.
- Proof of registered office address and copies of the utility bills not older than two months are required to be attached in case of address of correspondence is the address of registered office of the company.
- It is mandatory to attach proof that the company is permitted to use the address of the registered office of the company if the same is owned by director/any other entity/ Person (not taken on lease by company).
- It is mandatory to attach consent to act as a director in case subscriber and director are the same persons.
- List of all the companies (specifying their CIN) having the same registered office address, if any.

Company can be incorporated through integrated route by filing SPICe-Form INC-32

Procedure for Filing SPICe- FORM INC-32

Form INC-32 must be accompanied by supporting documents including details of Directors and Subscribers, affidavits, declarations, identity proof, address proof, MOA, AOA etc. Once the e-form is filed, its process by MCA's Central Processing Centre. If found complete, Company would be registered and CIN would be allotted. Also DINs gets issued to the proposed directors who do not have a valid DIN. Maximum three Directors are allowed for using this integrated form for filing application of allotment of DIN while incorporating a company.

In addition to allotment of DIN and providing of Incorporation Certificate, the Company's PAN, TAN and ESIC registration can also be obtained easily in a single step while using Form INC-32.

Declaration by Professional

The digital signature of a professional (Chartered Accountant/ Company Secretary/ Cost Accountant/ Advocate) is require to file Form INC-32. The professional must declare that all information presented in the form is correct and enter his/her membership number and certificate number.

Documents required for SPICe FORM INC-32

The following documents must be filed with SPICe Form INC-32 for incorporation of Company:

1. Memorandum of Association – Applicable and mandatory only in case of Section 8 company or company with foreign subscribers not having DIN
2. Articles of Association – Applicable and mandatory only in case of Section 8 Company or company with foreign subscribers not having DIN
3. Affidavit and declaration by first subscriber(s) and director(s) – Mandatory in all cases

If the address for correspondence is the address of registered office of the company, then following attachments are mandatory:

4. Proof of office address
5. Copies of utility bills that are not older than two months.

If proposed name require approval of Central government then attach the following:

6. Copy of approval in case the proposed name contains any word(s) or expression(s) which requires approval from central government

If the proposed name is based on a registered trademark or is subject

matter of an application pending for registration under the Trade Marks Act, then it is mandatory to attach:

7. Approval of the owner of the trademark or the applicant of such trademark for registration of Trademark

If the promoters are carrying on any Partnership firm, sole proprietary or unregistered entity in the name as applied for, then it is mandatory to attach:

8. NOC from the sole proprietor/ partners/other associates/ existing company

If proposed name requires approval from any sectoral regulator, then it is mandatory to attach (if already received):

9. In principle approval from the concerned regulator

If any subscriber to the proposed company is Foreign company and/or company incorporated outside India, then it is mandatory to attach:

10. Copy of certificate of incorporation of the foreign body corporate and resolution passed

Note: It is optional to attach Copy of certificate of incorporation in case the subscriber to the proposed company is Body Corporate.

If any subscriber to the proposed company is a Company itself, then it is mandatory to attach:

11. Resolution passed by promoter company

In case the name is similar to any existing company, then it is mandatory to attach:

12. A certified true copy of No objection certificate by way of board resolution/ resolution

In case any of the director has any interest in the proposed company, then it is mandatory to attach:

13. Interest of first director(s) in other entities

In case of an OPC, it is mandatory to attach:

14. Consent of nominee

15. Proof of identity and residential address of the nominee

If any one of the subscriber does not have a DIN, it is mandatory to attach:

16. Proof of identity and residential address of the subscribers

If any of the director (including subscriber cum director) does not have DIN, then it is mandatory to attach:

17. Proof of identity and residential address of such director

If SRN of INC-1 is mentioned in the form and any of the person mentioned in INC-1 as promoter is not subscribing to MOA, then attach:

18. NOC in case there is change in the promoters (first subscribers to Memorandum of Association)

Any other information can be provided as an optional attachment. A separate declaration in format of INC-8 is not required to be attached.

This is recommended to name the attachments with proper name. For, e.g., If PAN is attached as proof of identity then recommended name of the attachment is "PAN – Proof of Identity". This should be followed while attaching any attachment.

Certificate of Incorporation

Registrar after being satisfied issue Certificate of Incorporation.

Annual Compliances for One Person Companies

In addition to the compliances under MSMED Act, Labour Law, Environmental Law etc., MSME incorporated in the form of One Person Company has to comply following compliances prescribed under Companies Act, 2013:

Particular of Compliance

- Every Director of the Company in First Meeting of the Board of Director in each Financial Year will disclose his interest in other entities **(Form MBP-1)**
- Every Director is required to submit with the company fresh MBP-1 whenever there is change in his interest from the earlier given MBP-1.
- Every Director of the Company in each Financial Year will file with the Company disclosure of non-disqualification. **(Form DIR-8)**
- Meaning of AGM for the OPC mean "Resolution passed for the ordinary Business entered into the Minutes Book. In case of OPC, there is no need to hold AGM. Because there is only one Member.
- **Annual Return:** OPC will file its Annual Return within 60 days of entry of ordinary resolution in Minute Book. Annual Return will be for the period 1st April to 31st March. In Case of OPC, there is no need to hold AGM. **(Form MGT-7)**

- **Financial Statement:** The Company is required to file its Balance Sheet along with statement of profit and Loss account and Directors' Report in this form.
- **Attachment:** Balance Sheet, Statement of Profit & Loss account, Directors' Report, Auditors' Report and Notice of AGM. **(Form AOC-4)**
- Directors' report shall be prepared by mentioning of all the information required for Small company under Section 134.
- It should be signed by only One Director.
- Company shall send to the Members of the Company approved financial statement, Directors' report and auditors' Report at least 21 clear days before the date of AGM.
- OPC shall hold a minimum number of Two Meetings of its Board of Directors every year in such a manner that Minimum gap between both the Meetings, should be not less than 90 (Ninety) days.
- Auditor will be appointed for the 5 (Five) year and **form ADT-1** will be file for 5-year appointment.
- After that every year in AGM, Shareholder will ratify the Auditor but there is no need to file form **ADT-1**.

LIMITED LIABILITY PARTNERSHIP

A limited liability partnership can at best be described as a hybrid between a company and partnership that provides the benefit of limited liability but allows its members the flexibility of organising their internal structure as a partnership based on a mutually arrived agreement.

As the famous saying goes, "Everything is good in a limit ". The same holds true for liability as well. A limited liability partnership (LLP) is viewed as an alternative business vehicle in which the liability of its partners is limited to the extent of their capital contribution or as agreed as per the Limited Liability Partnership Agreement. The primary intention of LLP is that its external structure should mirror that of the limited company but in terms of conduct of internal affairs it would be similar to traditional partnership.

The existing business organization structures in India, which are most commonly used – like proprietary concerns, partnerships and companies are subject to varying regulatory and tax requirements and are not suitable for some businesses and professions. In India, several professionals are barred from forming companies with limited liability. The LLP Act, 2008 does not restrict the benefit of

LLP structure only to certain classes of professionals and will be available for use by any enterprise that fulfils the requirements of this Act. Owing to flexibility in its structure and operations, the LLP would be a suitable vehicle for Professionals, Service Providers, Traders and Manufacturers, small enterprises and for investment by venture capital.

A limited liability partnership (LLP) is a body corporate, with a distinct legal entity separate from that of its partners. It has perpetual succession and a common seal. A limited liability partnership, which is a separate legal person, will be liable to the third parties independent of the other partners. Any change in its partners, will not affect the existence, rights or liabilities of the limited liability partnership. Like a company, a limited liability partnership can do all the things an individual or company can do. It can make contracts, sue or be sued, hold property or become insolvent.

A limited liability partnership can at best be described as a hybrid between a company and a partnership that provides the benefits of limited liability but allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. An LLP is formed pursuant to a "Limited Liability Partnership agreement" which means any written agreement between the partners of the limited liability partnership or between the limited liability partnership and its partners, which determines the mutual rights, and duties of the partners and their rights and duties in relation to that limited liability partnership. This form of business structure has been prevalent in many countries including USA, UK, Japan, and Singapore.

Key Characteristics of LLP:

- **Separate Legal Entity:** LLP is a separate legal entity from its partners.
- **Limited liability:** Liability of the partner is limited to the extent of his contribution in the LLP. No exposure of personal assets of the partner, except in cases of fraud.
- **Right to manage business:** Unlike corporate shareholders, the partners have the right to manage the business directly.
- **Perpetual succession:** It has perpetual succession. It means LLP has existence, no matter how many changes occur in membership.
- **Profit motive:** It should be 'for profit' business.
- **Agreement:** The rights and duties of partners in LLP will be governed by the agreement between partners and the partners have the flexibility to devise the agreement as per their choice.

- **Legal proceedings:** It is a legal entity which can sue and be sued.
- **Compliances:** There are minimum compliances required to be complied with under LLP Act.
- **Related Party Transactions:** There is no restriction for entering into contracts with related parties.
- **Tax benefit:** Profit will be taxed only in the hands of LLP and not in the hands of its partners. Thus, it helps avoiding double taxation.
- **No requirement for Minimum Capital Contribution:** There is a requirement for a minimum capital contribution from the partners, which then shall be available for the Creditors of the LLP or for a guarantee from the partners for the obligations of the LLP.
- **Rights of Partners are transferable:** LLP Act, 2008 provides that the rights of a partner to a share of the profits and losses of the LLP and to receive distributions in accordance with the LLP agreement are transferable either wholly or in part.
- **Partner can enter into transactions and give loan to the LLP:** LLP Act provides that a partner may lend money to and transact other business with the LLP and has the same rights and obligations with respect to the loan or other transactions as a person who is not a partner.
- **Contributions may be given in Instalments:** The Act does not prevent a partner from making his contributions in instalments. However the Partner shall remain liable for the full amount that he has agreed to contribute but has not been paid up.

LLP alternative to traditional form of Partnership

LLP is defined as a partnership firm registered under the Act. It shall have a written agreement either between partners or between partners and LLP. Such agreement to provide for mutual rights and duties of the partners amongst themselves and in relation to LLP. A traditional partnership firm can be brought into existence either by an oral or by a written agreement. It may be registered (with written agreement) under the Indian Partnership Act, 1932. Unlike an incorporated company, a traditional partnership does not have a legal personality of its own and, therefore, the partners are liable for the debts of the firm.

An alternative is available under Indian law to register a partnership under the LLP Act, 2008. LLP is a body corporate, separate from its partners. It shall have perpetual succession, meaning, partners may come and partners may go, but LLP continues. Any change in partners shall not affect the existence, rights and

liabilities of the LLP. Where a partnership is registered under the LLP Act, then the provisions of the Partnership Act 1932 shall not apply to it.

Advantage of LLP over traditional form of Partnership

In traditional partnerships, the partners are fully liable for the debts of the firm. Each partner's personal asset is at risk irrespective of culpability. Indian traditional partnerships are, therefore, restricted to persons who know each other closely. With the enactment of the LLP Act, such liability of partners will no longer be unlimited. Limited partners are liable only to the extent of their investment. Just like an incorporated company, LLP have a legal personality of its own and, therefore, partners are not liable for the debts of the LLP firm. LLP can sue in its own name and be sued by others. LLP can own property in its own name. Where a partner of LLP does any wrongful act or omits to do an act, in the course of business of LLP or where such act or omission of a partner is in exercise of authority of LLP, then in such cases, liability if any, shall be that of LLP only and not of the partner who did or omitted any act. This is similar to a private limited company, where for any wrong done, generally the private limited company would be liable and not its directors.

Like private limited company, LLP is considered as a separate legal entity, different from its partners. However where such an act (wrongful act) or omission (to do) is not in the course of the business of LLP or not under the authority of LLP, then such partner who acts or omits to do any act, shall alone be liable and not any other partner of LLP. This is different from traditional partnership where act of one partner binds the other and hence makes all partners liable. An obligation of LLP, whether arising in contract or otherwise, shall solely be the obligation of the LLP only. Since partners of LLP are not liable, those who deal with LLP need to take adequate precautions, which may comprise of knowing. Liabilities of the LLP shall be met out of the property of the LLP.

Thus, LLP is different from traditional partnership, amongst other things, in the sense that property of the partners is not affected in discharging obligation of LLP.

- Limited liability - reduced risk to personal wealth from creditors' claims;
- Internal flexibility - facilitates participation in management and maintenance of ethos of partnership.

Advantages of LLP form

LLP form is a form of business model which:

- is organized and operates on the basis of an agreement.

- provides flexibility without imposing detailed legal and procedural requirements.
- enables professional/technical expertise and initiative to combine with financial risk taking capacity in an innovative and efficient manner.

Comparative Analysis – Partnership vs. LLP

PARTNERSHIP	LIMITED LIABILITY PARTNERSHIP
Partnership under Indian Partnership Act	Limited Liability Partnership under LLP Act
Unlimited personal liability of each partner for dues of the partnership firm.	Liability limited to the properties of LLP except in case of unauthorized fraud and negligence of partner(s) when the delinquent partner will be acts, personally liable.
Registration of partnership is not mandatory	Incorporation of partnership as LLP is mandatory.
Not a legal entity separate from its partners. Firm cannot hold property in its own name (only in the names of the partners); cannot sue or be sued in its own name.	Legal entity separate from its partners. The firm may hold property in its own name and sue or be sued in its own name.
Partnership deed is executed.	Incorporation Document' is executed. LLP Agreement/First Schedule governs the mutual rights and duties of partners <i>inter se</i> and between the partners and the LLP.
Minimum 2 partners	Minimum 2 partners; no maximum limit.
Documents are required to be filed with Registrar of firms (of respective states).	MCA/ROC LLP is the administrative ministry/authority.
Partners are liable for statutory compliances.	Only Designated Partners are liable for statutory compliances except when LLP has only one Designated Partner (when all the partners are liable).

Partner cannot enter into business with firm since the latter is not a separate legal entity.	Partners may enter into contracts with their LLP including lending of money; they have rights and obligations therefor as in the case of third parties/ outsiders.
Every partner of a firm is an agent of the firm and also of other partners.	Every partner of LLP is an agent only of the firm and not of the other partner(s).
No filing of Accounts or Solvency Statement or Annual Return with Registrar of Firms.	Accounts, Solvency Statement and Annual Return are to be filed with RoC each year.
Partnership firm can be dissolved as per Act/Partnership Deed.	LLP to be wound up and dissolved as per LLP Act.

Comparative Analysis - Limited Company v. LLP

LIMITED COMPANY	LIMITED LIABILITY PARTNERSHIP
Memorandum & Articles of Association to be filed with RoC. Table A applies in the absence of Articles.	Incorporation document and LLP Agreement to be filed. First Schedule applies in the absence of LLP Agreement.
Name to end with 'Limited or 'Private Limited' (Government Companies exempted from latter).	Name to end with 'Limited Liability Partnership or 'LLP'.
Managing Director/Manager vested with powers of day to day administration subject to the supervision, control and direction of the Board of directors.	Management rests with those Partners (including designated partners) who are authorised by LLP agreement (As Designated Partners they are responsible only for legal compliances).
Certain restrictions on remuneration payable to the Directors, their relatives etc.	No legal restriction on remuneration to partner. Partners will be eligible for remuneration as per LLP Agreement.
Charges/mortgages to be valid should be registered with RoC.	No such provision for LLPs.
AGM of shareholders mandatory	No AGM of partners.

Restrictions exist on inter-corporate investments and loans.	No such restrictions
Incorporation fee and Document Registration fees are high - also many forms to be filed.	Moderate fee for incorporation and Filing of documents -only annual filing.

Partners for an LLP

Every LLP shall have:

- at least two partners. Both of them shall be individuals. In case where an LLP has only body corporate as partners, atleast two of its nominee shall be individuals. If, for a period of more than six months, the number of partners of the LLP is reduced below two, it may be wound up.
- at least two designated partners (who shall be individuals. Body corporate cannot be designated partner of LLP. However individual nominee of body corporate can be designated partner).
- one of the designated partners, shall be resident in India (i.e. stayed in India for atleast 182 days during previous one year. Term 'year' is not defined and hence shall have its meaning as per the General Clauses Act – i.e. calendar year as per Georgian Calendar i.e. from January to December).

Who can be partner in LLP

- An individual (other than one who has been found to be of unsound mind by Court, an un discharged insolvent; has applied to be adjudged insolvent and application is pending)
- Indian private and/or public company
- foreign company
- any other LLP
- LLP registered outside India

Who cannot be partner in a LLP?

- a corporation sole
- a co-operative society
- a HUF or its karta

Disqualification of a Partner

LLP Act specifies the disqualifications that will prevent an individual from becoming a Partner. Accordingly, an individual shall not be capable of becoming a partner of a limited liability partnership, if –

- (a) he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;
- (b) he is an un discharged insolvent; or
- (c) he has applied to be adjudicated as an insolvent and his application is pending.

The LLP Act, 2008 has not specified the qualifications to be a partner but has specified the above three disqualifications in respect of an individual. It is to be noted that these are apart from the eligibility by the conditions and requirements as may be prescribed by the Central Government in respect of designated partners as laid down in the LLP Rules and Forms, 2008 as well as the requirements in LLP Agreement.

Designated Partners

“Designated partner” means any partner designated as such pursuant to section 7 of the said Act .Every LLP should have at least 2 designated partners and at least 1 should be resident in India.

The term “resident in India” means a person who has stayed in India for a period of not less than one hundred and eighty-two days during the immediately preceding one year.

The Incorporation document of the LLP can specify the names of the designated partners and if so, they will become designated partners. The Incorporation Document can also state that every person who from time to time is Partner will be Designated Partner.

The Individual should have given his consent to act as a designated partner in the form and manner prescribed and every designated partner of a limited liability partnership will have to obtain a Designated Partner Identification Number (DPIN) from the Central Government. The designated partner shall be answerable for doing of all acts, matters and things as are required to be done by LLP pursuant to the Act and will be responsible for filing of documents, returns, statements and the like pursuant to the provisions of this Act and as may be specified in the LLP agreement. The designated partners are liable to all penalties imposed on the LLP for any contravention of the specified provisions. Notice has to be filed with the Registrar when changes occur in the partnership and/or designated partnership of a LLP within 30 days of the change.

Where an LLP does not have a Designated Partner or has only one Designated Partner, every partner of LLP shall be treated as designated partner. Any partner of LLP can become and cease to be its 'designated partner' as per LLP agreement. The First Schedule to the Act contains mutual rights and duties of (i) partners and (ii) LLP and partners. In the absence of LLP agreement as to any matter, provisions of the first schedule shall apply. The First Schedule does not contain any provision pertaining to manner of becoming/appointing and cease to be 'designated partner'. Hence, the LLP agreement shall contain provisions for making a partner as 'designated partner' as well as for cessation of 'designated partner'. Prior consent of an individual shall be obtained to make him 'designated partner'. 'Designated partner' shall have a DPIN (Designated Partner Identification Number).

Designated Partner shall ensure compliance of the LLP Act and are liable:

- for penalties imposed under the Act on them and
- for penalties imposed under the Act on LLP.

Capital/Contribution of LLP

Partners of LLP can contribute in cash and/or kind or even by agreeing to perform services. LLP agreement to specify about nature and amount of contribution. The law does not prescribe any minimum or maximum amount of capital/contribution. Liability of partners of LLP is to the extent of contribution agreed in the LLP agreement.

Pre-incorporation Contracts

Prior to registration of LLP, a contract can be entered into by persons who become partners of LLP upon its registration. Such contract can become binding on LLP if after its registration, all partners of LLP Rules such agreement.

Name of LLP

Elaborate provisions have been made regarding the name and incorporation requirements. The name of LLP shall end with "Limited Liability Partnership" or "LLP".

The name of LLP shall be such that in the opinion of the Central Government, is not:

- undesirable,
- identical or too nearly resembles to name of:
 - other partnership firm, or

- LLP, (Indian or foreign), or
- company (Indian or foreign), or
- other body corporate, or
- registered trade mark of other person or
- a trade mark of other person, whose registration is applied for registration and is pending for registration.

Registered Office

Every LLP shall have a registered office in India.

Limitation of liability

A limited liability partnership is not bound by anything done by a partner in dealing with a person if –

- (a) the partner in fact has no authority to act for the limited liability partnership in doing a particular act; and
- (b) the person knows that he has no authority or does not know or believe him to be a partner of the LLP.

The LLP is liable if a partner of the LLP is liable to any person as a result of the wrongful act or omission on his part in the course of the business of the LLP or with its authority. The LLP will have unlimited liability when any activity is carried out with intent to defraud creditors of the limited liability partnership or any other person, or for any fraudulent purpose, unless it is proved that such acts were without the knowledge or authority of the LLP. An obligation of the LLP whether arising in contract or otherwise, is solely the obligation of LLP. The liabilities of the limited liability partnership shall be met out of the property of the limited liability partnership.

Do we need a Limited Liability Partnership agreement?

Partners in a limited liability partnership are not obliged to enter into a formal LLP agreement. In practice, however, they will almost certainly get together to decide on the structure and regulation of all aspects of their limited liability partnership, in just the same way as prospective partners in a traditional partnership. The agreement they make is then binding on them after the limited liability partnership has been properly registered. According to section 2(1)(o) of the LLP Act 2008, Limited Liability Partnership Agreement means any written Agreement between the partners of the LLP, or between the LLP and its Partners, which determines the mutual rights and duties of the partners and their rights and duties in relation to

the LLP. It is not mandatory by law to enter into a formal LLP agreement, but it should be done as it avoids unnecessary disputes in the future.

Where no LLP agreement has been executed between the partners of LLP or the agreement is silent on certain issues, the provisions of the First Schedule to the LLP Act 2008 shall apply. LLP Agreement is the most important document and execution of LLP agreement and any changes made therein should be filed with the Registrar in Form 3 annexed to the LLP Rules 2009 within 30 days from the date of incorporation of LLP/date of change made in LLP agreement, as the case may be, along with the filing fee as per Annexure A of the LLP Rules 2009.

The LLP Agreement is important for the following reasons:

- The effect of LLP Agreement is that it defines the rights, duties and liabilities between partners *inter se* and of partners with the LLP, and helps in avoiding any disputes
- Execution of a LLP agreement provides for efficient running of the company.
- Among other things, the LLP Agreement defines the form of contribution and liability for contribution of the partners.
- A written LLP agreement will assist in assessing the profitability of partners for taxation purposes under the Income Tax Act 1961.

Content of LLP Agreement

- Mutual rights and duties of the partners
- Mutual rights and duties of the limited liability partnership and its partners.
- Entitlement of partners to share in the capital, profits and losses of the limited liability partnership
- Indemnity of partner
- Participation of partner in the management of the limited liability partnership.
- Partner remuneration
- Change in the nature of business of the limited liability partnership
- decisions taken by it are recorded in the minutes
- Consent of the limited liability partnership, if any partner carries on any business of the same nature
- Expulsion of partner
- Arbitration mechanism

Books of Accounts and Audit

LLP to maintain prescribed books of accounts. Basically books showing receipt, payment, assets and liabilities are to be maintained. Book keeping can be on cash (suitable for professionals) or accrual basis on double entry system of accounting. It shall be maintained at the registered office of the company. Books to be preserved for eight years. LLP whose turnover does not exceed, in any financial year, Rs. 40,00,000, or

whose contribution does not exceed Rs. 25,00,000 shall not be required to get its accounts audited. However it may voluntarily get the accounts audited.

Forms and Fees

Every LLP shall use the forms annexed to the LLP Rules 2009 for the purpose of the LLP Act 2008, and shall specify therein its limited liability partnership identification number (LLPIN). The electronic form shall be authenticated by authorized signatories using digital signatures. "Digital signature" means authentication of any electronic record by a subscriber by means of an electronic method or procedure.

The fees payable in pursuance of the various provisions of the Act and the rules shall be as mentioned in Annexure 'A' to the LLP Rules 2009, and shall be paid into the Public Account of India. However, where the amount involved does not exceed 50/-, the fees payable to the Registrar may be paid also through postal orders or through bank drafts payable at and/or drawn on post offices or banks, as the case may be, located at the same city or town where the office of the Registrar is situated. Such fee shall not be deemed to have been paid unless and until the relevant postal orders or drafts are en cashed and the amount credited.

Where an application is filed through electronic media or through any other computer readable media, the user may choose any one of the following payment options namely,

- (i) Credit Card; or
- (ii) Internet Banking; or
- (iii) Remittance at the Bank Counter; or
- (iv) any other mode as approved by the Central Government.

Business Activities of LLP

Section 11(1) of the LLP Act 2008 states that two or more persons associated for carrying on a lawful business with a view to profit can incorporate an LLP. Therefore,

an LLP cannot be created for non-profit making activities and existence of business is a pre-requisite for the legal existence of LLP.

There is no universal definition of the term 'business'. However generally in its most broadest meaning it includes all activity by the community of suppliers of goods and services. The expression 'business' is defined in the Income Tax Act, 1961, as any trade, commerce, manufacture or any adventure or concern in the nature of trade, commerce or manufacture.

Section 2(1) (e) of the LLP Act 2008 has defined the term 'Business' to include 'every trade, profession, service and occupation'. However, the Act does not define the terms trade, profession, service and occupation.

Incorporation of Limited Liability Partnership

1. Deciding the Partners and Designated Partners

A LLP can be incorporated with a minimum of at least two partners who can be Individuals or bodies Corporate through their nominees. Further for incorporating an LLP, of the total number of partners, at least two shall be Designated Partners, of which at least one must be an Indian Resident.

Parameters for deciding the Partners and Designated Partners:

- At least Two Partners; Individual or Body Corporate through individual nominees.
- Minimum of Two Individuals as Designated Partners, of total no. of Partners.
- At least One Designated Partner to be Resident Indian.

A person 'Resident in India' means a person who has stayed in India for a period of not less than one hundred and eighty two days during the immediately preceding one year.

'Designated Partner' means a partner who is designated as such in the incorporation documents or who become a designated partner by and in accordance with the Limited Liability Partnership Agreement.

2. To obtain Director Identification Number (DIN) & Digital Signature Certificate:

- All designated partners of the proposed LLP shall obtain "Director Identification Number (DIN)" by filing an application individually online in Form - DIN 1.
- Partner/Designated partner of LLP/proposed LLP, whose signatures are to be affixed on the e-forms has to obtain class 2 or class 3 Digital Signature Certificate (DSC) from any authorized certifying agency.

3. To Apply for Name of LLP:

- To file Form-1 for reservation of name and fill in the details.
- Any partner or designated partner in the proposed LLP may submit Form-1.
- Details of minimum two designated partners of the proposed LLP, one of them must be a resident of India, is required to be filled in the application for reservation of name. Only individuals or nominees on behalf of the bodies corporate as partners can act as designated partners.

The name of the limited liability partnership shall not be similar or identical with Company or LLP already registered in India and it should not contain words prohibited under the 'Emblems and Names (Prevention of improper use) Act, 1950 or which are also not 'Undesirable' in the opinion of Central Government or which satisfies the conditions prescribed under rule 18(2).

In case any Body Corporate is partner, copy of Board resolution authorizing the incorporation of LLP shall be attached.

4. After Name Approval following procedure is to be followed:

- To file Form-2 "Incorporation Document and Statement" & Pay the prescribed registration fee as per the slab given in Annexure A of the LLP Rules, 2009, based on the total monetary value of contribution of partners in the proposed LLP.
- Statement in the e-form is to be digitally signed by a person named in the incorporation document as a designated partner having permanent DIN and also to be digitally signed by an advocate/company secretary/ chartered accountant/ cost accountant in practice and engaged in the formation of LLP.
- On submission of complete documents the Registrar after satisfying himself about compliance with relevant provisions of the LLP Act will register the LLP, maximum within 14 days of filing of Form-2 and will issue a certificate of incorporation in Form-16.

5. To File LLP agreement (i.e. Form-3) and Partners' details (i.e. Form-4):

- Form 3 - Information with regard to LLP agreement and changes, if any made therein In case the LLP Agreement is executed outside India, then it must be notarized and consularized.
- Form-4 (Notice of Appointment of Partner/Designate Partner, his consent etc.)-Consent of each partner to become a partner of Limited Liability Partnership along with their address and identity proof to be filed with the

Registrar of Companies in Form 4 with the prescribed fee simultaneously at the time of filing Form-2 or within 30 days of the date of incorporation.

6. Subscription Sheet:

- Just like in case of Company formation, the partners are required to subscribe their names along with signatures to the subscription sheet, which shall be witnessed by any chartered Accountant/Company Secretary/Advocate in practice.
- In case the subscription sheet is executed outside India, then it must be notarized and consularized.

7. Stamp Duty

The Stamp Duty payable of LLP Agreement is a State subject and same may be paid as per the State Stamp Act. Till the time specific Stamp Duty is prescribed in respective Stamp Act, the Stamp duty on LLP Agreement may be paid as per the stamp duty payable on partnership agreement in view of the Finance Bill, 2009.

Annual Compliances for LLP

In addition to the compliances under MSMED Act, Labour Law, Environmental Law etc., MSME incorporated in the form of LLP has to comply following compliances prescribed under LLP Act, 2008:

Filing with Registrar of LLP

1. Filing of Annual Return :-

An LLP is required to file the Annual Return with the Registrar of LLP (Form 11) within 60 days of closure of its financial year. An LLP has to close its financial year on every 31st March. So, the Annual Return is to be filed on or before 30th May Every year.

2. Filing of Annual Accounts :-

Every LLP has to maintain books of accounts as per double entry system of accounting and prepare a Statement of Accounts and Solvency (Accounts) every year ending on 31st March. LLP has to file such Accounts to the Registrar of LLP (Form 8) within 30 days from the end of 6 months of such financial year. So, the filing of Accounts is to be filed on before 30th October every year.

In case of an LLP whose annual turnover exceeds Rs. 40 lakhs or whose contribution exceeds Rs. 25 lakhs, shall be required to get its accounts audited by a qualified Chartered Accountant.

Income Tax

As per Income Tax Act, LLP has to close its financial year as on 31st March every year and has to file the returns with Income Tax Department.

In Case of LLP whose annual turnover is more than 60 Lakhs, the accounts have to be audited as required under Income Tax Act as well.

All LLP have to file its Income tax Returns on or before the due dates as follows:

LLP whose accounts are not required to be audited under any Law	31 st July of every year
LLP whose accounts are subject to Audit under any Law	30 th September of every year or such other date as may be notified by the Income Tax authorities.

Other Statutory Compliances

A. To maintain financial affairs and file accounts

- a) To maintain proper books of accounts relating to its affairs for each year on cash or accrual basis and according to the double entry system of accounting and shall maintain the same at the registered office of the company.
- b) The accounts of LLP shall be audited by an auditor.

B. Returns and records required by LLP

Books of Account	LLP should maintain proper books of account.
Minute Book	Minute book should be maintained to record minutes of meetings of partners and managing/ executive committee of partners.
Change in partners	Any change in partner and designated partner (admission, resignation, cessation, death, expulsion) should be filed electronically in e-form 4 within 30 days of change with fees.
Supplementary LLP agreement	Such admission and cessation will alter mutual rights and duties of partner shall change. Hence, supplementary LLP agreement will be required which is also required to be filed in e-form 3 within 30 days of change with fees

Statement of Account and solvency	Statement of Account and Solvency (SAS) is to be filed annually in e-form 8 with required fees. It is to be filed within 30 days from expiry of 6 months from end of each financial year i.e. by 30th October.
Annual Return	Annual Return should be filed with ROC in e-form 11 with filing fees, within 60 days from close of financial year i.e. by 30th May
Heavy penalty	Heavy penalty of Rs 100 per day for late filing of returns
Inspection of documents	Incorporation document (form 2), Annual Return (form 11), Statement of Account and Solvency (SAS) (form 8) and Name of partners and changes, if any, made therein (form 4) are available for public inspection on payment of fees but LLP agreement is not available for public inspection.

C. Compliance of Meetings of LLP as per LLP agreement

Sr. No	Nature of Meeting	Number of meetings	Period
1.	First General	N.A	Within 30 days of incorporation
2.	General Meeting	1	In 1 Financial Year
3.	Executive Committee	2	In 1 Financial Year

PUBLIC COMPANY/PRIVATE COMPANY

Categories of Companies

- Public Company
- Private Company
 - o One Person Company
 - o Small Company

The above said companies may be classified as [Section 3(2)]:

- Company limited by shares [as defined in Section 2(22)]: a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them.

- Company limited by guarantee [as defined in Section 2(21)]: a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up.
- Unlimited Company [defined in section 2(92)]: a company not having any limit on the liability of its members.

Public Limited Company

- No Minimum paid-up share capital
- Minimum Subscribers-7
- Minimum Directors-3

Private Limited Company including Small Companies

- No Minimum paid-up share capital
- Minimum Subscribers-2
- Minimum Directors-2

One Person Company

- No Minimum paid-up share capital
- Minimum & Maximum Subscriber-1
- Minimum Director-1

Memorandum of Association

- The Memorandum of Association is the charter of a Company. It is a document, which amongst other things defines the area within which the company can operate.
- As per section 2(56) "memorandum" means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act.
- The Memorandum of a company shall be in respective forms specified in Tables, A, B, C, D and E in Schedule I as may be applicable to such company.
- The Memorandum of a limited company must state the following Six clauses i.e.
 - Name Clause: The name will be the name which got reserved with

ROC. The Last word of the name of company will include "Limited" in case of Public Company and "Private Limited" in case of Private Company

- Registered Office Clause (also called Situation Clause)
- Object Clause
- Liability clause
- Capital Clause
- Subscriber's clause
- Nominee Clause (In case of OPC)

Articles of Association

- The articles of association of a company are bye-laws or rules and regulations that govern the management of internal affairs and the conduct of business. The articles deals with the rights of the members of the company inter se. They are subordinate to and are controlled by the memorandum of association.
- According to Section 2(5) of the Companies Act, 2013, 'articles' means the articles of association of a company as originally framed or as altered from time to time or applied in pursuance of any previous company law or of this Act.
- As per section 5(3) of the Companies Act, 2013, an entrenchment provision in Articles enables a company to follow a more restrictive procedure than passing a special resolution for altering a specific clause of articles of association. A private company can include entrenchment provisions only if agreed by all its members or, in case of a public company, if a special resolution is passed.
- The articles of a company shall be in respective forms specified in Tables, F, G, H, I and J in Schedule I as may be applicable to such company.

Signing of MOA & AOA

- The Memorandum and Articles of the company would be signed by subscribers as per section 7(1)(a) read with Rule 13 of Companies (Incorporation) Rules, 2014.
- Subscribers Clause will have to take into consideration and mention following:-

- Name
- Fathers name
- Occupation
- Residential Address
- Share subscribed
- Affix one Passport Size Photo graph
- Signed in given column
- One person will act as witness and will sign in the witness column along with mentioning following details:
 - o Name
 - o Address
 - o Description
 - o Signature

**DIFFERENCE BETWEEN PUBLIC AND PRIVATE COMPANY
AS PER COMPANIES ACT, 2013**

Private Limited Company	Public Limited Company
Minimum Capital- NIL	Minimum Capital- NIL
Right to transfer the shares: Restricted	Right to transfer of shares are allowed
Minimum members 2 (Two),	Minimum members 7 (Seven)
Maximum members 200 (Two Hundred)	Maximum members No Limits
Public offer is not applicable and no requirement of dematerialization of securities	In case of public offer of securities, the securities have to be in Dematerialized Form
Listing of securities on Stock exchange Not Applicable	Securities offered in Public Offer, to be listed in Recognized Stock Exchanges
Quorum of Meetings	Quorum of Meetings
Two members personally present	Five in case of Members up to 1000; Fifteen in case of Members more than 1000 up to 5000;

	Thirty in case of Members exceed 5000.
No restriction on amount of managerial remuneration	Managerial Remuneration is restricted to 11% of Net profit (subject to conditions); OR at least Rs. 30 lakh p.a. depending upon paid up capital
Retire by rotation Not Applicable	At least two-third of total number of directors be liable to retire by rotation and eligible of being re-appointed in AGM

Incorporation of Company (Private/Public)

There are two routes to Incorporate Companies:

- a) Through various stage wise forms.
- b) Simplified Proforma for Incorporating Company Electronically (Spice) E-Form.

A. Through various stage wise forms.

Incorporation of Public /Private Company

Application for Director Identification Number and Digital Signature Certificate

- Every person intended to be appointed as Director must first obtain Digital Signature Certificate and then apply to the Central Government for grant of Director Identification Number in Form DIR-3 pursuant to section 152 read with rule 9(1) of Companies (Appointment and Qualification of Directors) Rules, 2014.

Reservation of Name with ROC

- File e-Form INC-1 under Section 4(4) of the Companies Act, 2013 read with Rule 8 & 9 of Companies (Incorporation) Rules, 2014 with ROC with payment of prescribed fees.
- The name should not be undesirable i.e. identical, resembling, restricted or prohibited as per the conditions specified in Rule 8.
- The name shall stand reserved for a period of 60 days from the date of application for reservation of name. (Section 4(5))

Drafting of MOA & AOA

- MOA & AOA shall be drafted in accordance with the formats prescribed in

Schedule I as may be applicable. Both shall be signed by Subscribers.
[MOA-Tables A, B, C, D, E; AOA-Tables F, G, H, I, J]

- The names of First Directors are mandatory to be given in AOA.

It should be noted that the main objects should match with the objects shown in e-Form INC.1, i.e., Name Approval

*Filing of Forms**

- File e-form INC-7 for incorporation of company with ROC pursuant to Section 7 (1) of the Companies Act, 2013 read with Rule 10, 12, 14 and 15 of Companies (Incorporation) Rules, 2014.
- File e-Form INC-22 for notice of Registered Office of the Company with ROC pursuant to Section 12 (2) & 12 (4) of the Companies Act, 2013 read with Rule 25 & 27 of the Companies (Incorporation) Rules, 2014.
- File e-Form DIR-12 for Appointment of Directors with ROC pursuant to section 7(1)(c) read with Rule 17 of the Companies (Incorporation) Rules, 2014.

Issue of Certificate of Incorporation by Registrar

- Registrar on being satisfied with the documents submitted under section 7(2) will grant the Certificate of Incorporation in e-form INC-11.
- A Certificate of Incorporation given by the Registrar shall be the conclusive evidence that all requirements of the Act have been complied with.

Allotment of Corporate Identification Number

- The Registrar would allot distinct Corporate Identification Number (CIN) which shall be mentioned on the Certificate of Incorporation.

Attachments

e-Form INC-1 (Application for reservation of name)

- o Trademark or authorization to use trade mark, if the name of the company is based on trade mark or application for deed of assignment or a copy of application of registered trademark.
- o In case the proposed name contains such word or expression for which the approval of Central Government is required, a copy of Central Government's approval.
- o Proof of relation is required to be attached if the proposed name(s) include(s) the name of relatives.

- o In principal approval from the concerned regulator wherever is applicable.
- o NOC from sole proprietor/ partners/ other associates.
- o NOC from existing company
- o Copy of affidavit in case of proposed name includes phrase 'Electoral Trust'
- o NOC as required in Rule 8(4) if proposed name includes name of promoters or their closed relatives.

e-Form INC-7 [Application for Incorporation of Company (other than OPC)]

- o Copy of Memorandum of Association and Articles of Association
- o Declaration by Professionals (CA/CS/CWA) in form INC-8. [Section 7(1) (b) and rule 14 of the Companies (Incorporation) Rules, 2014]
- o Affidavit from the subscriber to the memorandum in Form No. INC-9 [Section 7(1)(c) read with rule 15 of the Companies (Incorporation) Rules, 2014]
- o Proof of residential address which should not be older than two months, and proof of identity of subscribers.
- o Specimen Signature in Form INC-10. [Rule16(1)(q) of Companies (Incorporation) Rules, 2014]
- o Entrenched Articles of association if any of the articles are entrenched.
- o NOC in case there is change in the promoters (first subscribers to Memorandum of Association)
- o Proof of nationality in case the subscriber is a foreign national
- o PAN card (in case of Indian national)
- o Copy of certificate of incorporation of the foreign body corporate and proof of registered office address
- o Certified true copy of board resolution/consent by all the partners in case subscriber is Body Corporate.
- o Principal approval taken from RBI for carrying NBFC activity as the case may be.
 - Trademark or authorization to use trade mark, if the name of the company is based on trade mark or application for deed of assignment or a copy of application of registered trademark.

- In case the proposed name contains such word or expression for which the approval of Central Government is required, a copy of Central Government's approval.
- Proof of relation is required to be attached if the proposed name(s) include(s) the name of relatives.
- In principal approval from the concerned regulator wherever is applicable.
- NOC from sole proprietor/ partners/ other associates.
- NOC from existing company
- Copy of affidavit in case of proposed name includes phrase 'Electoral Trust'
- NOC as required in Rule 8(4) if proposed name includes name of promoters or their closed relatives.

e-Form INC-22 (Notice of situation or change of situation of registered office)

- Proof of registered office's address (Conveyance/ Lease deed/ Rent Agreement etc. along with the rent receipts).
- Copies of the utility bills (proof of evidence of any utility service like telephone, gas, electricity etc. depicting the address of the premises not older than two months).
- Proof that the company is permitted to use the address as the registered office of the Company (Authorization from the owner or occupant of the premises along with proof of ownership or occupancy and it is mandatory if registered office is owned by any other entity/ person (not taken on lease by company)).
- e-Form DIR-12
- Declaration by first director in Form INC-9
- Interest in other entities of director in case number of entities entered is more than one.
- Declaration of the appointee director in Form No. DIR-2.
- Proof of identity and Address.

B. SIMPLIFIED PROFORMA FOR INCORPORATING COMPANY ELECTRONICALLY (SPICE) E-FORM

The Ministry of Corporate Affairs has taken another bold initiative in Government Process Re-engineering (GPR) and launched Simplified Proforma for Incorporating Company Electronically (SPICE) e-Form, on the occasion of Gandhi Jayanthi 2016, with the specific objective of providing speedy incorporation related services within stipulated time frames which are in line with international best practices.

SPICE's is as follows: -

- Simplified and completely Digital form for Company Incorporation
- Standard format of e-Memorandum of Association as per Companies Act, 2013
- Standard format of e-Articles of Association as per Companies Act, 2013
- Memorandum and Articles will now be filed as linked e-forms (except for Section 8 companies)
- Provision to apply for Company Incorporation with a preapproved Company Name
- Mandatory DSCs of Subscribers and Witnesses (max 7+1) in SPICE MOA and SPICE AOA
- Back Office productivity gains due to faster review of e-MOA and e-AOA by approving authorities.
- Resulting in doing away of filing of the following e-forms:
 - Form DIR-3 (Application for allotment of DIN in case proposed Directors have no DIN)
 - Form INC-1/INC-2 (Application for Reservation of name)
 - Form INC-7 (Application for incorporation of a company other than OPC)
 - Form DIR-12 (Details of Directors)
 - Form INC-22 (Details of registered office) (Optional at the time of incorporation)
- Filing Fees:- Fee for Integrated Incorporation Form is Rupees 2,000 (Two Thousand Only)
- Scope of E-Form INC-32:- The following types of companies can be registered:

- Private Limited Company
- Public Limited Company
- One Person Company
- Section 8 Company
- Procedure Company

Procedure for Filing SPICe- FORM INC-32

Form INC-32 must be accompanied by supporting documents including details of Directors and Subscribers, affidavits, declarations, identity proof, address proof, MOA, AOA etc. Once the e-form is filed, its process by MCA's Central Processing Centre. If found complete, Company would be registered and CIN would be allotted. Also DINs gets issued to the proposed directors who do not have a valid DIN. Maximum three Directors are allowed for using this integrated form for filing application of allotment of DIN while incorporating a company.

In addition to allotment of DIN and providing of Incorporation Certificate, the Company's PAN, TAN and ESIC registration can also be obtained easily in a single step while using Form INC-32.

Declaration by Professional

The digital signature of a professional (Chartered Accountant/ Company Secretary/ Cost Accountant/ Advocate) is require to file Form INC-32. The professional must declare that all information presented in the form is correct and enter his/her membership number and certificate number.

Documents required for SPICe FORM INC-32

The following documents must be filed with SPICe Form INC-32 for incorporation of Company:

1. Memorandum of Association – Applicable and mandatory only in case of Section 8 company or company with foreign subscribers not having DIN
2. Articles of Association – Applicable and mandatory only in case of Section 8 Company or company with foreign subscribers not having DIN
3. Affidavit and declaration by first subscriber(s) and director(s) – Mandatory in all cases

If the address for correspondence is the address of registered office of the company, then following attachments are mandatory:

4. Proof of office address
5. Copies of utility bills that are not older than two months.
If proposed name require approval of Central government then attach the following:
6. Copy of approval in case the proposed name contains any word(s) or expression(s) which requires approval from central government
If the proposed name is based on a registered trademark or is subject matter of an application pending for registration under the Trade Marks Act, then it is mandatory to attach:
7. Approval of the owner of the trademark or the applicant of such trademark for registration of Trademark
If the promoters are carrying on any Partnership firm, sole proprietary or unregistered entity in the name as applied for, then it is mandatory to attach:
8. NOC from the sole proprietor/ partners/other associates/ existing company
If proposed name requires approval from any sectoral regulator, then it is mandatory to attach (if already received):
9. In principle approval from the concerned regulator
If any subscriber to the proposed company is Foreign company and/or company incorporated outside India, then it is mandatory to attach:
10. Copy of certificate of incorporation of the foreign body corporate and resolution passed
Note: It is optional to attach Copy of certificate of incorporation in case the subscriber to the proposed company is Body Corporate.
If any subscriber to the proposed company is a Company itself, then it is mandatory to attach:
11. Resolution passed by promoter company
In case the name is similar to any existing company, then it is mandatory to attach:
12. A certified true copy of No objection certificate by way of board resolution / resolution
In case any of the director has any interest in the proposed company, then it is mandatory to attach:

13. Interest of first director(s) in other entities

In case of an OPC, it is mandatory to attach:

14. Consent of nominee

15. Proof of identity and residential address of the nominee

If any one of the subscriber does not have a DIN, it is mandatory to attach:

16. Proof of identity and residential address of the subscribers

If any of the director (including subscriber cum director) does not have DIN, then it is mandatory to attach:

17. Proof of identity and residential address of such director

If SRN of INC-1 is mentioned in the form and any of the person mentioned in INC-1 as promoter is not subscribing to MOA, then attach:

18. NOC in case there is change in the promoters (first subscribers to Memorandum of Association)

Any other information can be provided as an optional attachment. A separate declaration in format of INC-8 is not required to be attached.

This is recommended to name the attachments with proper name. For e.g. If PAN is attached as proof of identity then recommended name of the attachment is "PAN – Proof of Identity". This should be followed while attaching any attachment.

Certificate of Incorporation

Registrar after being satisfied issue Certificate of Incorporation.

Annual Compliances for Private Limited Company

In addition to the compliances under MSMED Act, Labour Law, Environmental Law etc., MSME incorporated in the form of Private Company has to comply following compliances prescribed under Companies Act, 2013:

Particular of Compliance

- Every Director of the Company in First Meeting of the Board of Director in each Financial Year will disclose his interest in other entities **(Form MBP-1)**
- Every Director is required to submit with the company fresh MBP-1 whenever there is change in his interest from the earlier given MBP-1.
- Every Director of the Company in each Financial Year will file with the Company disclosure of non-disqualification. **(Form DIR-8)**

- **Annual Return:** Every Company will file its Annual Return within 60 days of holding of Annual General Meeting. Annual Return will be for the period 1st April to 31st March. **(Form MGT-7)**
- **Financial Statement:** The Company is required to file its Balance Sheet along with statement of profit and Loss account and Directors' Report in this form.
- **Attachment:** Balance Sheet, Statement of Profit & Loss account, Directors' Report, Auditors' Report, Cash Flow Statement and Notice of AGM. **(Form AOC-4)**
- **Private Company:** Having paid up share capital of 10 Crore or more or turnover of Rs. 50 crore or more shall be certified by a Company Secretary in Practice. **(Form MGT-8)**
- Directors' report shall be prepared by mentioning of all the information required for Small company under Section 134.
- It should be signed by the "Chairperson" authorized by the Board, Where he is not so authorized by at least 2 Directors.
- Company will send to the Members of the Company approved financial statement (including consolidated Financial Statement), cash flow statement, Directors' report and auditors' Report at least 21 clear days before the Annual General Meeting. (Except in case of AGM is called on Shorter Notice).
- Every Notice of Annual General Meeting will be prepared as per Section 101 of Companies Act 2013 and Secretarial Standard – II.
- Notice of Annual General Meeting will be send to followings:
 - All Directors, Members, Statutory Auditor.
- Every Company shall hold a minimum number of FOUR Meetings of its Board of Directors every year in such a manner that maximum gap between two Meetings should not be more than 120 (One hundred Twenty) days. Company should hold at least 1 (one) Board Meeting every quarter of calendar year.
- Auditor will be appointed for the 5 (Five) year and **form ADT-1** will be file for 5-year appointment.
- After that every year in AGM, Shareholder will ratify the Auditor but there is no need to file **formADT-1**.
- Company will maintain the following mandatory Registers:

- Register of Director, Director Shareholding, Members.
- Annual Return of Every Private Company (Except Small Company) should be signed by Company Secretary in Practice.

Annual Compliances for Unlisted Public Limited Companies

In addition to the compliances under MSMED Act, Labour Law, Environmental Law etc., MSME incorporated in the form of Unlisted Public Company has to comply following compliances prescribed under Companies Act, 2013:

Particular of Compliance

- Every Director of the Company in First Meeting of the Board of Director in each Financial Year will disclose his interest in other entities **(Form MBP-1)**
- Every Director is required to submit with the company fresh MBP-1 whenever there is change in his interest from the earlier given MBP-1.
- Every Director of the Company in each Financial Year will file with the Company disclosure of non-disqualification. **(Form DIR-8)**
- Every Company will file its Annual Return within 60 days of holding of Annual General Meeting. Annual Return will be for the period 1st April to 31st March. **(Form MGT-7)**
- The Company is required to file its Balance Sheet along with statement of profit and Loss account, Cash Flow Statement and Directors' Report in this form.
- Balance Sheet, Statement of Profit & Loss account (Including Consolidated Financial Statement), Director Report, Auditors' Report, Cash Flow Statement and Notice of AGM **(Form AOC-4)**
- Company will file MGT-14 along with copy of Board Resolution within 30 days of Board Meeting.
- Every Company Having paid up share capital of 10 Crore or more or turnover of Rs. 50 crore or more shall be certified by a Company Secretary in Practice. **(Form MGT-8)**
- Directors' report will be prepared by mention of all the information required for Small company under Section 134. It should be signed by the "Chairperson" authorized by the Board, Where he is not so authorized by at least 2 Directors; one of them should be Managing Director if any .
- Company will send to the Members of the Company approved financial

statement (including consolidated Financial Statement), cash flow statement, Directors' report and auditors' Report at least 21 clear days before the Annual General Meeting. (Except in case of AGM is called on Shorter Notice).

- Every Notice of Annual General Meeting will be prepared as per Section 101 of Companies Act 2013 and Secretarial Standard – II. If there is more than 200 Members then Company will give e-voting Facility.
- Notice of Annual General Meeting will be send to followings:
 - All Directors, Members, Statutory Auditor.
 - Secretarial Auditor, If any.
 - Debenture Trustee, if any
- Every Company shall hold a minimum number of FOUR Meetings of its Board of Directors every year in such a manner that maximum gap between two Meetings should not be more than 120 (One hundred Twenty) days. Company should hold at least 1 (one) Board Meeting every quarter of calendar year.
- Auditor will be appointed for the 5 (Five) year and **form ADT-1** will be file for 5-year appointment.
- After that every year in AGM, Shareholder will ratify the Auditor but there is no need to file **formADT-1**.
- Company will maintain the following mandatory Registers:
 - Register of Director, Director Shareholding, Members.
 - Register of Loan, Guarantee, Investment made by the Company.
 - Register of Contract with Related Parties.
 - Annual Return of Every Private Company (Except Small Company) should be signed by **Company Secretary in Practice**.

Annual Compliance for Unlisted Public Companies (Based on Paid-up share capital/turnover)

Particular of Compliance

- Company if accept deposit during the year then required to file return of deposit within 30 days of end of financial year. (Form DPT- 3)
- Return of appointment and re-appointment of Managing Director or Whole time Director or Manager or KMP. (Form MR-1)

- Appointment of Independent Director. (Form DIR-12)
- Appointment of Women Director. (Form DIR-12)
- Appointment of Internal Auditor. (Form MGT-14)
- All below mentioned company are required to get Secretarial Audit of the Company from the Practicing Company Secretary and report of PCS will be part of Directors' Report (MR-3).
 - a) All Listed Companies
 - b) Every Public Company having;
- Paid-Up Share Capital of Rs. 50 Crore (fifty crore rupees) or more; or
- Every Public Company having a Turnover of Rs. 250 Crore (two hundred fifty crore rupees) or more.
- All below mentioned companies are required to constitute a Audit Committee and meetings of Committee will be as per Secretarial Standard-I:
 - All public companies with a paid up capital of ten crore rupees or more;
 - All public companies having turnover of one hundred crore rupees or more;
 - All public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more.
- All below mentioned companies are required to constitute a Nomination & Remuneration Committee
 - All public companies with a paid up capital of ten crore rupees or more;
 - All public companies having turnover of one hundred crore rupees or more;
 - All public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more
- All below mentioned companies are required to constitute a Vigil Mechanism:
 - The Companies which accept deposits from the Public;
 - The Companies which have borrowed money from banks and public financial institutions in excess of fifty crore rupees.

LISTING OF SPECIFIED SECURITIES OF SMALL AND MEDIUM ENTERPRISES ON THE INSTITUTIONAL TRADING PLATFORM IN A SME EXCHANGE WITHOUT MAKING AN INITIAL PUBLIC OFFER

In order to facilitate capital raising by small and medium enterprises including start-up companies which are in their early stages of growth and to provide for easier exit options for informed investors like angel investors, VCFs and PEs etc., from such companies, it has been decided to permit listing without an Initial Public Offer and trading of specified securities of small and medium enterprises (SMEs) including start-up companies on Institutional Trading Platform (ITP) in SME Exchanges.

The legal framework for such listing and trading of the specified securities on the ITP was laid down vide SEBI (Listing of Specified Securities on Institutional Trading Platform) Regulations, 2013 (ITP Regulations) vide Gazette notification No. LAD-NRO/GN/2013-14/27/6720 dated October 08, 2013. In this regard, through said ITP Regulations, necessary amendments have been made in the SEBI (Issue of Capital and Disclosure Requirements) Regulations 2009 (ICDR Regulations) by inserting a "Chapter XC" on "Listing and Issue of Capital by Small and Medium Enterprises on Institutional Trading Platform without initial public offering". Further, vide said ITP Regulations, consequential amendments have also been made to SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and SEBI (Delisting of Equity Shares) Regulations, 2009.

The Institutional Trading Platform

- (i) The ITP shall be a platform for listing and trading of specified securities of small and medium enterprises including start-up companies in a 'SME Exchange' as defined under regulation 106N(1)(c) of ICDR Regulations;
- (ii) The ITP shall be accessible only to informed investors who are either individuals or institutions and the minimum trading lot shall be ten lakh rupees on this platform;
- (iii) Companies listed on ITP shall not make a public issue of its securities.

Eligibility for Listing

A public company seeking listing on ITP should comply with the following requirements:

- (i) the company, its promoter, group company or director does not appear in the wilful defaulters list of Reserve Bank of India as maintained by Credit Information Bureau (India) Limited;

- (ii) there is no winding up petition against the company that has been admitted by a competent court;
- (iii) the company, group companies or subsidiaries have not been referred to the Board for Industrial and Financial Reconstruction within a period of five years prior to the date of application for listing;
- (iv) no regulatory action has been taken against the company, its promoter or director by SEBI, Reserve Bank of India, Insurance Regulatory and Development Authority or Ministry of Corporate Affairs within a period of five years prior to the date of application for listing;
- (v) the company has at least one full year's audited financial statements, for the immediately preceding financial year at the time of making listing application;
- (vi) the company has not completed a period of more than 10 years after incorporation and its revenues have not exceeded one hundred crore rupees in any of the previous financial years;
- (vii) the paid up capital of the company has not exceeded twenty five crore rupees.
- (viii) In addition to the above requirements, the company should have received certain minimum investment from at least any one of the following categories of investors as specified below in order to qualify for listing on ITP:
 - (i) Atleast one alternative investment fund, venture capital fund or other category of investors/lenders approved by SEBI, has invested a minimum amount of fifty lakh rupees in the equity shares of the company.
 - (ii) One or more angel investor who is a member of an association / group of angel investors which fulfils the criteria laid down by the recognised stock exchange, has invested a minimum amount of fifty lakh rupees in the equity shares of the company through the association/group.
 - (iii) The company has received finance from a scheduled bank for its project financing or working capital requirements and a period of three years has elapsed from the date of such financing and the funds so received have been fully utilized.
 - (iv) A registered merchant banker has exercised due diligence and has invested not less than fifty lakh rupees in equity shares of the

company which shall be locked in for a period of three years from the date of listing.

- (v) A qualified institutional buyer has invested not less than fifty lakh rupees in the equity shares of the company which shall be locked in for a period of three years from the date of listing.
- (vi) A specialized international multilateral agency or domestic agency or a public financial institution under section 2(72) of the Companies Act, 2013 has invested in the equity capital of the company. For the purposes of sub-clause (iii) above, investments as facilitated through the angel association/group after due process followed by such association alone shall be eligible. Investments made by the angel investor on his own individual initiative shall not be eligible. For the purposes of sub-clause (vi) above, domestic agency means a domestic developmental institution like Small Industries Development Bank of India (SIDBI) or National Bank for Agriculture or Rural Development (NABARD).

Process of Listing

(i) A company which meets the requirements of the Regulations may apply to the recognised stock exchange for listing along with the information document containing disclosures as specified under Schedule XIX A of ICDR Regulations. This Information document shall be made available to public through the website of the recognised stock exchange.

(ii) The concerned recognised stock exchange may issue an in-principle approval to companies eligible for listing on ITP.

(iii) A company which has received in-principle approval from a recognised stock exchange for listing of its specified securities on ITP shall be deemed to have been waived by SEBI from rule 19(2)(b) of Securities Contracts (Regulation) Rules, 1957 for the limited purpose of listing on ITP.

(iv) Such listing shall not be accompanied by any issue of securities or capital raising from public in any manner.

Capital Raising

(i) A company listed on ITP shall not make an initial public offer while being listed on the platform.

(ii) Such a company may raise capital through private placement or through a rights issue.

(iii) In case of a rights issue, there shall be no option for renunciation of rights and the company seeking to get listed on ITP shall agree to make necessary amendments to its articles of association to this effect.

(iv) Such companies raising funds through private placement shall be governed by the specific requirements in this regard such as, obtaining in-principle approval of the recognised stock exchange prior to allotment, obtaining shareholders' approval under section 81(1A) of the Companies Act, 1956 (Now section 62 of Companies Act, 2013), completing allotment within two months of such approval, disclosures to be made in explanatory statement to the notice to shareholders and pricing norms as elaborated in Chapter XC of ICDR Regulations.

(v) the company making a rights issue shall send a letter of offer to its shareholders through registered post or speed post or electronic mode and the same shall be made available on the website of the company and the recognised stock exchange.

Minimum Promoter Shareholding and Lock In

Not less than twenty percent of the post listing capital of the company shall be held by the promoters at the time of listing and the same shall be locked-in for a period of three years from date of listing.

Exit from the Platform

(i) A company listed on ITP may exit the platform voluntarily after obtaining approval of its shareholders as below:

- (a) its shareholders approve such exit by passing a special resolution through postal ballot where ninety per cent. of total votes and the majority of non-promoter votes have been cast in favour of such proposal;
- (b) it shall also obtain the SME Exchange's approval.

(ii) In the event of any of the following, the company would be required to exit the platform within 18 months from the occurrence of such event:

- a. the company has been listed on ITP for a period of 10 years;
- b. the company has paid up capital of more than twenty five crore rupees;
- c. the company has revenue of more than three hundred crore rupees in the last audited financial statement;
- d. the company has market capitalization of more than five hundred crore rupees: For the purposes of clause (d) above, the market capitalization shall be calculated based on the average closing price of the shares for the previous three months.

(iii) A company listed on ITP shall be delisted and permanently removed from that under any of the following circumstances:

- (a) failure to file periodic filings with the recognised stock exchange for more than one year;
- (b) failure to comply with corporate governance norm(s) for more than one year;
- (c) notwithstanding (a) and (b) above, non-compliance of the condition of listing as may be specified by the recognised stock exchange.

Liabilities

(i) The draft and final information memorandum shall be approved by the board of directors of the company and shall be signed by all directors, the Chief Executive Officer, i.e., the Managing Director or Manager within the meaning of the Companies Act, 1956 (Now Companies Act, 2013) and the Chief Financial Officer, i.e., the whole-time finance director or any other person heading the finance function and discharging that function.

(ii) The signatories shall further certify that all disclosures made in the information document are true and correct.

(iii) In case of misstatement in the information document or any omission therein, any person who has authorized the issue of information document shall be liable in accordance with the provisions of the SEBI Act, 1992 and regulations made there under.

Some Other Concept

A company seeking listing on ITP shall enter into an agreement with the recognized stock exchange. Provisions regarding minimum public shareholding do not apply to companies listed on this platform since they are not allowed to make public issues while being listed on ITP and hence the same has been excluded from this listing agreement.

All recognised stock exchanges have been advised to:

- (i) execute a listing agreement with companies seeking listing on ITP in line with the Model listing agreement, without limiting or diluting any of the requirements thereof;
- (ii) make necessary and consequential amendments, if any, to their bye-laws for the implementation of Regulations;

- (iii) Disseminate the contents of this circular on their website for easy access to the small and medium enterprises and informed investors; and
- (iv) Communicate to SEBI, the status of the implementation of the provisions of this circular in the Monthly Development Report.

General Benefits of Listing at SME Platform in India

1. Future Financing Opportunities

Going public would provide the MSME's with equity financing opportunities to grow their business - from expansion of operations to acquisitions. The option of equity financing through equity market allows the company to raise long-term capital and also get further credits from banks or other financial institutions on the basis of additional equity infusion. The issuance of public shares expands the investor base, and this in turn will help set the stage for secondary equity financings, including private placements.

In addition, companies often receive more favourable lending terms when borrowing from financial institutions. In addition, equity financing lowers the debt burden leading to lower financing costs and healthier balance sheets for the firms.

The continuing requirement for adhering to the stock market rules for the issuers lowers the on-going information and monitoring costs for the banks. Equity financing also lowers the debt burden, leading to lower financing costs and healthier balance sheets for the firms.

2. Increased visibility and prestige

Going public is likely to enhance the company's visibility. Greater public awareness gained through media coverage, publicly filed documents and coverage of stock by sector investment analysts can provide the SME with greater profile and credibility. This can result in a more diversified group of investors, which may increase the demand for the company's shares, leading to an increase in the company's value.

3. Venture Capital (VC)

It has been seen that there is greater vitality of venture capital in stock market centered systems. The underdeveloped equity culture has made it difficult for companies to get into the VC phase as well as graduate from venture capital/start-up phase to a scale of operations that would make them internationally competitive. A vibrant equity market would prove to be an added incentive for greater venture capital participation by providing an exit option, leading to a reduction in their lock-in period.

4. Liquidity for shareholders

Becoming a public company establishes a market for the company's shares, providing its investors with an efficient and regulated vehicle in which to trade their own shares. Greater liquidity in the public market can lead to better valuation for shares than would be seen through private transactions.

5. Create employee incentive mechanisms

The employees of the SME enterprises can participate in the ownership of their own company and benefit from being shareholders. This can serve to ensure stronger employee commitment to the company's performance and success.

6. Facilitate growth through Mergers and Acquisitions

As a public company, company's shares can be utilized as an acquisition currency to acquire target companies, instead of a direct cash offering. Using shares for an acquisition can be a tax efficient and cost effective vehicle to finance such a transaction.

7. Encourages Innovation & Entrepreneurial Spirit

The ability of companies in their early stages of development to raise funds in the capital markets allows these companies to grow very quickly. This growth helps speed up the dissemination of new technologies throughout the economy. In addition, by raising the returns available from pursuing new ideas, technologies, etc., the capital markets facilitate entrepreneurial activities.

8. Efficient Risk Distribution

The development of the capital markets has helped distribute risk more efficiently by transfer of risk to those best able to bear it. Thus, the capital markets ensure that capital flows to its best uses and that riskier activity with higher payoffs are funded.

9. Migration to Main Board All companies listed on SME Exchange can migrate to the Main Board of BSE at any time, provided that the shareholders approval is accorded.

SECTION VII

Labour Laws Applicable for MSMEs

The prosperity of any economy largely depends on industry. There can be no labour without activity of industrial nature. The industrial law covers a spectrum of activities like manufacturing, trading, transporting, exporting, importing, storing, polishing, packaging etc. It also covers conditions of labour including wages deductions against Provident Fund, ESI, employment of contractual labour etc. Mention should be made that labour law focuses its attention more on work aspects and the consequent remuneration whereas industrial law aims at the origin, growth and regulation of industries, employing large number of workers including women and children. Labour legislations are aimed at achieving congenial relationship between employer and workmen.

Two basic features of labour legislation are that:

- (i) It aims at the establishment of amicable relationship between a worker and employer to emphasize the need for healthy participation in the production of goods and provision of services and thereby constitute measures for strengthening the economy of the nation.
- (ii) It emphasizes that both, management and labour, belong to a single family and should endeavour to improve the standard of living of the workers, giving room for labour harmony.

Need for Labour Laws Compliance

It is important to mention that existing labour laws are applicable to all the sectors, but unfortunately Indian labour for whom these laws have been enacted are not much conversant about these laws. The malice of unfair labour practice and victimization is still at large. Compliance of labour legislations is neglected and nobody treats non-compliance as a heinous crime. Besides, no government machinery comes to the rescue of the workers at the time of distress.

Business enterprises employing personnel, both in the executive cadre as also those categorized as workers in the context of labour laws are required to be fully aware of these laws. Further, considering the number and complexity of the labour laws, professional help and assistance of an independent qualified

professional are essentially required on a prompt and proficient basis to deal with counselling and advise on the interpretation and compliance of applicable legal provisions in a variety of circumstances. To ensure compliance of all these laws, there is a need to introduce labour laws compliance by the MSMEs.

The following laws are applicable for Micro, Media and Small Scale Industries in India:

- Employee's Provident Funds and Miscellaneous Provisions Act, 1952
- Employees State Insurance Act, 1948
- The Contract Labour (Regulation & Abolition) Act, 1970
- Employee's Compensation Act, 1923
- Equal Remuneration Act, 1976
- The Factories Act, 1948
- Maternity Benefit Act, 1961
- The Payment of Bonus Act, 1965
- The Payment of Gratuity Act, 1972
- The Payment of Wages Act, 1936
- Minimum Wages Act, 1948
- The Child and Adolescent Labour (Prohibition & Regulation) Act, 1986
- Industrial Employment (Standing Orders) Act, 1948
- The Industrial Disputes Act, 1947
- The Trade Union Act, 1926
- The Apprentice Act, 1961
- Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988
- The Shops and Establishments Act, 1953
- The Bidi and Cigar Workers (Conditions of Employment) Act, 1966
- The Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979

Employee's Provident funds and Miscellaneous Provisions Act, 1952

Objectives

- To make provisions for the future of the industrial worker after he retires or for his dependents in the case of his early death.
- Employees' Provident Fund Scheme (EPF)
- Employees' Family Pension Scheme (EPS)
- Employees' Deposit linked insurance Scheme(EDLI)

Applicability

- Every establishment which is factory engaged in any industry specified in Schedule 1 and in which 20 or more persons are employed.
- Any other establishment employing 20 or more persons which Central Government may, by notification, specify in this behalf.
- Any establishment employing even less than 20 persons can be covered voluntarily u/s 1(4) of the Act.

Major Compliance

- The employer shall pay the contribution payable to the EPF, EDLI and Employees' Pension Fund in respect of the member of the Employees' Pension Fund employed by him directly by or through a contractor.
- It shall be the responsibility of the principal employer to pay the contributions payable to the EPF, EDLI and Employees' Pension Fund by himself in respect of the employees directly employed by him and also in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor.

UNDER EPF

- The contributions are payable on maximum wage ceiling of Rs. 15,000 by employee and employer.
- The employee can pay at a higher rate and in such case employer is not under any obligation to pay at such higher rate.
- To pay contribution on higher wages, a joint request from Employee and employer is required. In such case employer has to pay administrative charges on the higher wages (wages above Rs. 15,000)

- For an International Worker, wage ceiling of Rs. 15000/- is not applicable.

UNDER EPS

- Contribution is payable out of the employer's share of PF and no contribution is payable by employee.
- Pension contribution not to be paid:
 - When an employee crosses 58 years of age and is in service (EPS member's ceases on completion of 58 years).
 - When an EPS pensioner is drawing Reduced Pension and re-joins as an employee.

In both the cases the Pension Contribution @8.33% is to be added to the Employer Share of PF.

In case an employee, who is not existing EPF/EP member joins on or after 01-09-2014 with wages above Rs. 15000/-

In these cases the pension contribution part will be added to employee share, EPF.

- In all other cases Pension Contribution is payable. A member joining after 50 years age, if not a pensioner does not have choice of not getting the Pension Contribution on grounds that he will not complete 10 years of eligible service. The social security cover is applicable till he/she is a member.

UNDER EDLI:

1. Contribution to be paid on up to maximum wage ceiling of Rs. 15,000 even if PF is paid on higher wages.
2. Each contribution is to be rounded to nearest rupee. (Example for each employee getting wages above Rs.15000)
3. EDLI contribution to be paid even if member has crossed 58 years of age and pension contribution is not payable. This is to be paid as long as the member is in service and PF is being paid.

Benefits

- Apart from terminal disbursement of non-refundable withdrawals for Life Insurance Policies
- Family pension

- Retirement-cum-withdrawal benefits
- Employees' Deposit Linked Insurance Scheme.
- House building
- Medical treatment
- Marriage
- Higher education

Main requirements of Compliance

1. The provident fund, pension and insurance benefits are protected against attachment. It cannot be assigned or charged and shall not be liable to attachment under any decree or order of any court.
2. Employee's Provident Fund as also Provident Fund of exempted establishments is a recognized provident fund under the Income Tax Act, 1961.
3. An employee is eligible to avail the rebate on income tax on his provident fund contributions subject to ceiling prescribed under the Income Tax Act, 1961.
4. Non payment of employees provident fund dues by an employer may lead to recovery action by regional provident fund commissioner such as prosecution, attachment of Bank account, property, arrest and detention.
5. Non payment of employees contribution recovered from the wages of the employees would constitute "Criminal Breach of Trust" punishable under section 406/409 IPC.
6. Employee's Provident Fund dues paid after due date (15th of the following month) will result in payment of interest and penalty by employer.
7. Employee's Provident Fund account of an employee can be transferred to any place in the country.
8. Employee's Provident Fund may be withdrawn partially for certain specified purposes such as housing, marriage, illness, etc.
9. All Provident Fund claims of the member are deposited by EPF office within 30 days.
10. Members are given the benefit of filling nomination of provident fund/ pension and employees deposit linked insurance.

11. The annual provident fund balance is informed to every employee by the Employee's Provident Fund before 30th September of each year.
12. The Employee's Provident Fund organization is marching ahead to achieve its goal for total computerization and inter connection of all its officers in the country so as to ensure service delivery within 2-3 days and anywhere, at all time service and issue of social security number to all its members.
13. In order to simplify the process of PF settlement, it is instructed by EPFO that, henceforth amount of PF Accumulation / Withdrawal Benefit may also be credited in the Joint Bank Account of the Member as against earlier it was being credited only in the single Bank account of the Member.
14. While joining an establishment, employee shall furnish details of previous employment, if any, with Provident Fund Account number and Scheme Certificate.
15. In case of exiting Provident Fund/Pension A/c apply for transfer of previous balance to the present A/c number
16. Employee may apply for Nomination of his family members.
17. Employer shall ensure that enrolment to Employee Provident Fund/ Employee Pension Scheme is done immediately on joining of the establishment.
18. Employee can contribute more than 12% to the Fund. However, Employer contribution is restricted to 12%.
19. The wages of any employee should not be reduced by the employer to meet any liability by the employer to pay contribution of PF or pension or any charges under the Act.
20. Arrears of employees' contribution cannot be recovered from the subsequent wages unless specifically permitted by the Provident Fund Inspector.

Compliance requirement to be verified

- Whether the EPF Act, 1952 applicable to the Company
- Whether timely deposit of Employer and Employee's dues with the Provident Fund Commissioner/Trust.
- Whether any proceedings under the Act have been initiated against the Directors for recovery of dues.
- If the Employer has created its own trust, whether the terms of trust are

more beneficial than those provided under the trust?

- Whether conditions imposed by PF Commissioner for the creation of Trust is satisfied.
- Whether the periodical returns sent by employer to the Provident Fund Office.
- Number of members in the Employee Family Pension Scheme

- **Number of members in the** Employees' Deposit Linked Insurance Scheme

Employees' Provident Fund Scheme (EPF)

Claim Forms

1. For final settlement by member: Form 19
2. For Transfer of old account to the new one: Form 13
3. For withdrawal in certain cases: Form 31
4. For financing LIC Policy: Form 14
5. For final settlement in favour of nominee/beneficiary of a deceased member: Form 20

The Employees' Pension Scheme 1995 (EPS)

Claim Forms

1. For Monthly Pension: Form 10D
2. For Withdrawal Benefit and Scheme Certificate: Form 10C

The Employees' Deposit Linked Insurance Scheme 1976 (EDLI)

Claim Forms

1. For Claiming Insurance benefit by a nominees/beneficiary in case of member's death while in service: Form 51F

As on date, the Act extends to 187 classes of establishments. Any establishment falling in any of the 187 categories mentioned above and employing more than 19 persons automatically comes under the purview of the EPF & MP Act, 1952. On coming under the purview of the Act the employers are required to submit Particulars of Ownership, [Form 5A] and comply with the relevant statutory provisions.

Employees State Insurance Act, 1948

Objective

To provide for health cover, Medical care and Cash benefits for

- Sickness
- Maternity
- Employment injury
- Pensions to dependents in case of Death (or) Employment injury

Applicability

- All factories running with the aid of power and employing 10 or more persons
- Shops (Factories not running with the aid of Power or establishment) employing 20 or more persons

Eligibility

Employees drawing salary / wages not exceeding Rs. 21,000/- per month are covered under the provisions of ESI Act.

Benefits

Various benefits that the insured employees and their dependents are entitled to are as follows

- ✓ Medical Benefits
- ✓ Sickness Benefits
- ✓ Maternity Benefits
- ✓ Disablement Benefits
- ✓ Dependent Benefits
- ✓ Other Benefits (like funeral expenses, vocational rehabilitations, free supply of physical aids etc.)

ESI Contribution Rate

<i>Obligation</i>	<i>Monthly Contribution</i>
Employer Obligation	4.75% of the wages payable to an employee
Employee's Obligation	1.75% of the wages payable to an employee

Main Requirements

- Principal employer is required to pay employees contribution at the first instance and recover employee's contribution from employee's wages for related period.
- Principal employer to require every employee before taking him into service to furnish his particulars and that of his family in Form I.
- Principal employer shall pay for extra expenditure incurred as sickness benefit by the corporation, if it is due to insanitary conditions at work place or residence of the insured person, attributable to the principal employer.
- Not to discharge/ dismiss/ punish an employee during the period of receipt of sickness benefit, maternity benefit, temporary disablement or under medical treatment or absence due to illness duly certified except for reasons specified under regulation 98.
- Not to reduce the wages of employee for payment of employer's contribution.
- The employer is required to give all assistance to corporation in the registration of his factory or establishment and of his employees particularly in photographing the employees and affixing the photographs on identity cards.

Compliances

- Every principal employer is required to register his establishment under Section 2A.
- Principal employer shall send to the office of the corporation in Form 3 all declaration forms by registered post/ special messenger along with temporary identification certificate.
- Principal employer shall send family declaration in Form 1A or Form 2 submitted by the insured employee to appropriate Government.
- Principal employer shall submit annual information to Regional office in Form 1-A.

- To issue certificate of employment, if so requested by an insured person who has lost his Temporary Identification Certificate.
- To furnish to corporation information of abstinence of insured person in respect of sickness/ temporary disablement benefit in Form 10.
- To record entry of accident in the accident book/ in other book either under regulation 65 or 67 and send a report of the accident, maintenance of accident book, to furnish particulars of accident and report of death etc. as stipulated under the heads 'accident' and 'death' mentioned above and furnish further particulars of accident.
- Make available records/ information to the Inspectors for the purpose of enquiry etc.
- To maintain and submit returns and registers.
- Payment of Contribution on or before due dates.

Compliance requirement to be verified

- Whether the ESI Act applicable to the company
- Whether registration of factories and establishment under the Act
- Whether Rate of Contribution of the Employers' in accordance with the Act
- Whether Rate of Contribution of the Employees' in accordance with the Act
- Whether the manner and time Limit for making payment of contribution in accordance to the Act
- Whether Registers to be maintained by the employers
- Whether Maternity Benefits availed by any employees under the Act
- Whether Medical Benefit availed by any employees under the Act
- Whether disablement benefit given to any employee

THE CONTRACT LABOUR (REGULATION & ABOLITION) ACT, 1970

Objectives

To regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith.

Applicability

- Every establishment in which 20 or more workmen are employed or were employed on any day of the preceding 12 months as contract labour.
- Every contractor who employs or who employed on any day of the preceding twelve months 20 or more workmen.

Benefits

Following benefits are provided to the employees under this Act:-

- ✓ First Aid Facilities
- ✓ Canteens Facilities
- ✓ Drinking Water Facilities
- ✓ Latrines and Urinals Facilities
- ✓ Washing Facilities
- ✓ Rest room Facilities etc.

Main requirement:

Registration of Establishment (Section 7)

- Every Principal Employer of an establishment to which this Act applies shall, make an application to the registering officer in the prescribed manner for registration of the establishment.
- Principal employer can take temporary registration for immediately engaging contract labour in case of emergency for a period of not more than 15 days.

Licensing of Contractor (Section 12)

No contractor to whom this Act applies, shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing officer.

Responsibility

- No contractor to whom this Act applies shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing officer.
- Follow all the instructions mentioned in the License.

Effect of non-registration and absence of license

- The principal employer /contractor cannot employ contract labour
- They render themselves liable for prosecution for contravention under the Act.
- It opens the possibility for contractor and the contract worker to put forward a claim to be regular employees of the principal employer.

Practical tips for Employers

- The principal employer, while selecting a contractor shall ensure that the contractor has adequate experience in the execution of the work that is contracted out and his past conduct in compliance of the Act is good.
- The principal employer shall not intervene in the supervision and control of the contract labour and it should be left entirely to the contractor otherwise the principal employer may have to face claims to permanency by contract labour.
- The principal employer shall ensure through his representative the contractor is paying proper wages /minimum wages to the workers on the due date.
- He should ensure that the PF and ESI contributions are deducted from wages thus paid.
- Establishment shall check respective State Rules to decide applicability and coverage under the Act.
- Establishment shall check respective State Rules in respect of registers/ forms and returns to be maintained under the Act.

Major Compliances

- Principle employer must ensure the provision for canteen, restrooms, sufficient supply of drinking water, latrines and urinals, washing facilities.

- Contract labour either one hundred or more employed by a contractor for one or more canteens shall be provided and maintained by the Contractor.
- Contractor must ensure the provisions for First Aid facilities, Number of rest-rooms as required under the Act, Drinking water, latrines and washing facilities.
- Contractor must maintain the Muster Roll, Wages Register, Deduction Register and Overtime Register.
- To display an abstract of the act and Rules in English and Hindi and in the language spoken by the Majority of workers in such forms as may be approved by appropriate authority.
- To display notices showing rates of wages, hours of work, wage period, dates of payment, names and addresses of the inspector and to send copy to the inspector and any change for with.

Compliance requirement to be verified

- Whether the contractors have obtained license from the Licensing Authority for the jobs assigned to them.
- Whether the Contractors get their license renewed in time?
- If not, whether the contractors have made requisite application for renewal in time.
- Whether the contractors are employing workmen as per license and registration certificate.
- Whether the number of workmen actually employed by the contractors tallies with the number of workmen shown in the license.
- Whether the contractors are sending half-yearly and yearly returns in time.
- Whether the contractors are issuing wages slips one day in advance from the payment
- Whether Principle Employer maintains form in respect of contractors.
- Whether annual return is being sent by the Principle Employer in specified form to the registering Authority.
- Whether minimum rate of wages are being paid to the contractor Labour in the presence of authorized representative of the Principle employer.
- Whether the authorized representative of the Principle Employer gives a certificate to this effect at the end entries in the register of wages.

- Whether the contractors are properly depositing ESI, EPF contributions in respect of his workmen and submitting copies of the Challan to the HR Department.
- Whether the contract Labour is provided the facility of rest room, canteen, wash room etc.
- Whether the contract Labour is provided the leave with wages.
- Whether the contract Labour is being paid over time at the double rate.
- Whether the contractor workmen are ensured benefits from ESI Scheme including issue of cards, temporary slips and are provided medical facilities.
- Whether the contract Labour is being given contribution slips of EPF issued by the Regional Provident Commissioner?
- In case of problem whether the HR Department or contractor render necessary help in cases of PF and ESI.
- Whether the payment to contract Labour is being made on the pay day of the establishment.
- Do the names of contract Labour appear on any of the shift schedules of the company?
- Whether the leave applications and gate passes of the contract Labour are being signed by Contractor and his agent.
- Whether the gate passes to the contract Labour are issued and signed by the company's employees.
- Whether the contractors are maintaining Muster Roll.
- Whether the contractors are maintaining Wages Register.
- Whether principal employer is maintaining a help desk in the company to address the complaints / problems of the workmen.

EMPLOYEE'S COMPENSATION ACT, 1923

Objectives

The Act has been enacted to provide payment of compensation to workmen or their dependants in case of injury / accident arising out of and in the course of employment and resulting in disablement or death.

Applicability

- It applies to workmen employed in factories, mines, plantations, mechanically propelled vehicles, construction works and certain other hazardous occupations in any such capacity as is specified in Schedule II of the Act.
- It applies to persons recruited for working abroad and who is employed outside India in any such capacity as is specified in Schedule II of the Act.
- It also applies to a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle and to a captain or other member of crew of an aircraft.

Eligibility

The workmen or their dependants shall be entitled for compensation under the Act in case of injury / accident arising out of and in the course of employment and resulting in:

- Death, or
- Permanent Total Disablement, or
- Permanent Partial Disablement, or
- Temporary Disablement (whether total or partial)

Benefits

The workmen or their dependants shall be entitled for compensation under the Act in case of injury / accident arising out of and in the course of employment resulting in disablement or death.

Main Requirements

If personal injury is caused to a by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable –

- (a) in respect of any injury which does not result in the total or partial disablement of the for a period exceeding three days;
- (b) in respect of any injury, not resulting in death or permanent total disablement caused by an accident which is directly attributable to –
 - (i) the employee having been at the time thereof under the influence of drink or drugs, or

- (ii) the willful disobedience of the employee to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of employees, or
- (iii) the willful removal or disregard by the employee of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of employee

Practical tips for Employers

- Establishment shall check respective State Rules to decide applicability and coverage under the Act.
- Establishment shall check respective State Rules in respect of registers/ forms and returns to be maintained under the Act.
- Establishment shall consult insurance companies and cover all direct and indirect employees

Compliance Requirement

<i>Death</i>	50 % of monthly wages X relevant factor or 1,20,000 whichever is more
<i>Permanent total disablement</i>	60% of monthly wages X relevant factor or 1,40,000 whichever is more
<i>Permanent partial disablement</i>	(If scheduled injury)- % of compensation for total disablement as loss of earning capacity(If nonscheduled injury)- % of compensation for total disablement in proportion to loss of earning capacity
<i>Temporary disablement</i>	25% monthly wages in half monthly payments

THE MINIMUM WAGES ACT, 1948

Objectives

The Act has been enacted to provide the minimum wages in certain specified employments. The Minimum Wages Act binds the employers to pay the minimum wages fixed under the Act from time to time. Under the provisions of the Act both the Central and State Government have authority to fix, review, revise and enforce the minimum wages to workers employed in scheduled employment under their respective jurisdictions.

Applicability

It applies on persons employed in an employment specified in **Part I** (Non-agricultural Employment) & **Part II** (Agricultural Employment) of the Schedule to the Minimum Wages Act, 1948.

The Central Government and the State Governments have fixed different rate of minimum wages for different spheres / sectors of employment in their respective jurisdictions.

Main provisions

- Fixation of minimum wage of employees.
- Procedure for fixing and revising minimum wages.
- Obligation of employees.
- Rights of workers.

Practical tips for the Employer

- An establishment may seek appropriate permission for maintenance of certain records like attendance, salary statement, leave with wage register, etc. Such establishment shall submit an application in writing to the Labour Commissioner for this purpose.
- The Government revised the minimum wages once/twice/thrice during the financial year and the Establishment has paid to all its employees' minimum wages in accordance with the rates at respective point of time and at respective rates specified in notification under Section 5 of the Act.
- Basic salary and Dearness allowance should be equal to or more than minimum wages prescribed by the Government from time to time.
- Establishment shall not make any unauthorized deductions from wages of its employees and give an opportunity of being heard before imposing any fine or recovering damages from wages of its employees.
- Establishment shall check respective State Rules to decide applicability and coverage under the Act.
- Establishment shall check respective State Rules in respect of registers/forms and returns to be maintained under the Act.

Compliances Requirement

- Payment of minimum wages and extra remuneration for extra work, i.e.,

overtime in respect of work for more than 9 hours on any day and 48 hours in any week and such overtime payment is double the ordinary rate of wages.

- Adhere to norms as to work hours and spread over etc.
- Grant a day of rest in a week with wages.
- Pay wages even a workers work for less than normal working hours.
- Pay wages in cash and if permitted by Appropriate Government in kind.
- Pay wages on working day on 7th or 10th of every month.
- Maintain Register of fines/damages or loss, overtime, muster roll, wage slip, inspection book and wage register etc.
- Maintain records for 3 years.
- Produce all records/ register on demand by the Inspector appointed under the Act.
- Display notice of minimum wages and extracts of the Act.
- The employer shall intimate the employee in writing about the act or omission or damage or loss for which the deduction and the amount thereof is proposed and offer him an opportunity to submit his explanation in the presence of another person and stick to the limits of deduction.
- All deductions to be recorded in the register.

THE PAYMENT OF WAGES ACT, 1936

Objectives

The Act has been enacted to regulate the payment of wages of certain specified classes of workers. The Act provides for prompt and effectual remedy to the workers against illegal and unjustified deductions from their wages. Further, the Act also seeks to ensure timely payment of wages to workers and prescribes mode of payment of wages to the employed persons.

Applicability

- It applies to all persons employed, whether directly or through contractors, in a factory or certain specified industrial or other establishments.
- Applicable on employees drawing wages up-to Rs. 18000/- per month.

Main Provisions

- Responsibility of the employer for payment of wages and fixing the wage period.
- Procedures and time period in wage payment.
- Payment of wages to discharged workers.
- Permissible deductions from wages.
- Nominations to be made by employees.
- Penalties for contravention of the Act.
- Equal remuneration for men and women.
- Obligations and rights of employers.
- Obligations and rights of employees.

Main Requirements:

- Every employer shall be responsible for the payment to persons employed by him of all wages required to be paid under this Act.
- The main objective of the Act is to avoid unnecessary delay in the payment of wages and to prevent unauthorized deductions from the wages.
- The total deductions in any wage period shall not exceed 75% of wages in case of deductions made to co-operative societies and in all other cases 50%.
- Wages must be paid on a working day and not on holiday.
- Establishment employing less than 1,000 persons must pay wages before the expiry of the 7th day of every month and other establishment must pay wages before the expiry of the 10th day of every month.
- When the employment of any person is terminated, the wages earned by him must be paid before the expiry of the second working day from the day of termination.
- An advance of wages shall not exceed four months wages and the advance may be recovered in instalments by deductions from wages spread over not more than 18 months. No instalment shall exceed 1/3rd of the wages for the month. The rate of interest charged for advance shall not exceed 6.25 % per annum.

Practical tips to Employees

- Payment of wages by credit to the bank account of respective employee is considered as compliance of this Act. Labour Authorities may consider payment of wages in cash as bogus payment.
- In one of the case Supreme Court held that a right to carry on business is subject to compliance of constitutional obligations and as such financial stringencies may not a ground for non-payment of wages to the employees.
- Every year the employer shall give increment in salary to all its employees based on their performance and efficiency unless the establishment has become economically weak.
- Establishment shall check respective State Rules to decide applicability and coverage under the Act.
- Establishment shall check respective State Rules in respect of registers/ forms and returns to be maintained under the Act.

Compliance requirement to be verified

- Whether the Payment of Wages Act, 1936 applicable to the company.
- Number of employee drawing average wage per month as prescribed under the Act.
- Whether the numbers of employees are less than 1000 or more than 1,000.
- Whether the payment of wages made before the due date as per Payment of Wages Act, 1936.
- *When less than 1000 persons are employed wages shall be paid before the expiry of the 7th day of the following month. When more than 1000 workers, wages shall be paid before the expiry of the 10th day of the following month.*
- Whether any deduction has been made from the wages of the employee. If yes whether the deduction are eligible deduction or not
- *Eligible deduction: Deductions such as, fine, deduction for amenities and services supplied by the employer, advances paid, over payment of wages, loan, granted for house-building or other purposes, income tax payable, in pursuance of the order of the Court, PF contributions, cooperative societies, premium for Life Insurance, contribution to any fund constituted by employer or a trade union, recovery of losses, ESI contributions etc.*

- Whether any deduction has been made on account of damage or loss.
- If any deduction has been made on account of damage or loss, whether any Show cause notice has been given to the employee.
- Whether any deduction has been made on unauthorized absence. If yes, whether the opportunity of being heard is given or not.
- Whether registers and records giving particulars of persons employed, the work performed by them, the wages paid to them, the deductions made from their wages, the receipts given by them are maintained and preserved for a period of 3 years or more.
- Whether employer display the abstract of the Act and Rules made thereunder .

MATERNITY BENEFIT ACT, 1961

Objectives

The Act has been enacted to regulate the employment of women in certain establishments for a certain period before and after the child birth and also to provide for maternity and other benefits.

Applicability

- It applies to every establishment being a factory, mine or plantation including any such establishment belonging to Government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances;
- It also applies to every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which 10 or more persons are or were employed on any day of the preceding 12 months;

Eligibility

- Every woman shall be entitled to maternity benefit;
- No woman shall be entitled to maternity benefit unless she has actually worked in an establishment for a period not less than 80 days during 12 months immediately preceding the date of her expected delivery.

Benefits

- Maternity Benefits may be claimed for a **maximum** period of **twenty-six weeks** of which not more than eight weeks shall precede the date of her expected delivery.
- Maternity Benefits are calculated at the rate of Average Daily Wages for the period of her actual absence.

Main Requirements

- Minimum 80 days of actual work (includes lay off / holidays) with the employer, in 12 months prior to date of expected delivery.
- She should take payment for the first six weeks before she goes on leave
- She will get the payment for the six weeks after child birth within 48 hours of giving proof that she has delivered a child.
- Employer shall be responsible for the payment of bonus of Rs. 3500 (or as amended from time to time) to woman employee who is entitled to receive the maternity benefit. The medical bonus shall be paid along with the second installment of the maternity benefit.
- She will be entitled to two nursing breaks of 15 minutes each in the course of her daily work, till her child is 15 months old.
- Her employer cannot discharge her or change her conditions of service while she is on maternity leave.
- On receipt of notice in writing in Form I cum nomination for maternity benefit, the employer shall permit the woman to absent herself from the workplace.
- She has to produce the production of certificate in Form 2 from Registered Medical Practitioner certifying the proof of pregnancy, delivery, miscarriage or illness arising out of pregnancy etc
- She will get additional leave of one month with pay if the woman shows the proof of illness due to the pregnancy, delivery, miscarriage or premature birth of child.
- Employer cannot discharge or terminate her while she is on maternity leave.
- Women discharged for gross misconduct cannot claim maternity benefit.

Compliance requirement to be verified

- Whether the Maternity Benefit Act, applicable to the company
- Whether the employer knowingly employing a woman in any establishment during the six weeks immediately following the day of her delivery or her miscarriage.
- Whether any pregnant woman made any request, not to give her any work which is of an arduous nature or which involves long hours of standing, etc. during the period of one month immediately preceding the period of six weeks, before the date of her expected delivery .
- Whether any woman employee entitled maternity benefit, medical bonus and nursing break .
- Whether the employer exhibited the abstract of the provisions of the Act and the rules made thereunder in a conspicuous place in every part of the establishment in which women are employed.
- Whether the employer maintain a muster roll in the prescribed form.
- Whether the employer submitted annual returns in the prescribed forms.

**THE CHILD AND ADOLESCENT LABOUR
(PROHIBITION AND REGULATION) ACT, 1986****Objective**

To prohibit the engagement of children in all occupations and to prohibit the engagement of adolescents in hazardous occupations and process and the matters connected there with or incidental thereto.

Applicability

It extends to the whole of India.

Main Provisions

- Prohibition of employment of adolescent in certain occupations and processes
- Child Labour Technical Advisory Committee
- Hours and period of work
- Weekly holidays

- Notice to Inspector
- Maintenance of register
- Health and safety

Compliance requirement to be verified

- Whether Employer employed any adolescence labour in hazardous occupations or process set forth in the schedule.
- Whether maintain Register in respect of adolescent employed or permitted to work
- Whether maintain Certificate of age whenever required by the Inspector.

EQUAL REMUNERATION ACT, 1976**Objectives**

The Act provides for the payment of equal remuneration to men and women workers for the same work or work of a similar nature and for the prevention of discrimination on the ground of sex against women in the matter of employment.

Main Provisions of the Act

- No employer shall pay to any worker employed by him remuneration at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex for performing the same work or work of similar nature.
- No employer shall make any discrimination against women while making recruitment for the same work or work of a similar nature.
- Every employer shall maintain in the prescribed form a register in relation to the workers employed by him.

Benefits

- Act provides for the payment of equal remuneration to men and women workers for the same work or work of a similar nature and for the prevention of discrimination on the ground of sex against women in the matter of employment.
- Right of Complaints with regard to the contravention of any provision of the Act and claims arising out of non-payment of wages at equal rates to men and women workers for the same work or work of similar nature.

Compliance Requirements

- Employer shall not pay less remuneration to workers than that paid to workers of opposite sex for same work or work of similar nature.
- Employer shall not reduce rate of remuneration of any worker.
- Employer shall not make any discrimination against women at the time of recruitment for same work or work of similar nature.
- Employer shall check respective State Rules to decide applicability and coverage under the Act.
- Employer shall check respective State Rules in respect of registers/forms and returns to be maintained under the Act.

THE FACTORIES ACT, 1948

Objectives

The Act has been enacted to regulate the working conditions in factories and to ensure provision of the basic minimum requirements for safety, health and welfare of the workers as well as to regulate the working hours, leave, holidays, employment of children, women, etc.

Applicability

- Any premises including the precincts thereof where **10 or more** workers are or were working on any day of the preceding 12 months and in any part of which a manufacturing process is being carried on **with the aid of power** or is ordinarily so carried on; or
- Any premises including the precincts thereof where **20 or more** workers are or were working on any day of the preceding 12 months and in any part of which a manufacturing process is being carried on **without the aid of power** or is ordinarily so carried on

Main Requirements

Formalities before Starting a Factory

- Submit a plan of factory to Chief Inspector or State Government.
- Obtain permission of the site of Factory from Chief Inspector or State Government

- Pay prescribed registration and license fees
- Give notice of occupation of factory with all details.
- Submit a plan of factory to Chief Inspector or State Government.
- Obtain permission of the site of Factory from Chief Inspector or State Government
- Pay prescribed registration and license fees
- Give notice of occupation of factory with all details.

Duties of Occupier

- Submit a plan of factory to Chief Inspector or State Government.
- Obtain permission of the site of Factory from Chief Inspector or State Government
- Pay prescribed registration and license fees
- Give notice of occupation of factory with all details.

Provisions for Health

- Health and Safety policy
- Cleanliness- to keep free from effluents, dirt, drains, clean and white wash.
- Disposal of wastes and effluents
- Ventilation and temperature
- Artificial Humidification
- Provision for exhaust appliances
- Overcrowding
- Lighting – artificial and natural
- Drinking water
- Latrines and urinals

Provisions for Safety

- Fencing of machinery
- Precautions for work on or near machinery in motion

- Employment of young persons
- Striking gear
- Self acting machines
- Casing of machinery
- Employment of women and Children
- Lifting machines, chains etc
- Revolving machinery
- Pressure Plants
- Floor Stairs
- Pits and Sumps
- Excessive weights
- Protection of eyes
- Dangerous fumes
- Explosive or inflammable light
- Fire

Provisions for Welfare

- Washing facilities
- Storing and drying wet clothes
- Sitting facilities
- First aid box, ambulance room and dispensary
- Canteen
- Shelters/ Rest room / Lunch room
- Crèches

Benefits

- Prevent haphazard growth of factories through the provisions related to the approval of plans before the creation of a factory.
- Regulates working condition in factories.

Compliance requirement to be verified

- Focus of Compliances shall be on Health, Safety, Welfare and security of the employee.
- Establishment shall check respective State Rules to decide applicability and coverage under the Act.
- Establishment shall check respective State Rules in respect of registers/forms and returns to be maintained under the Act.
- Whether the Factories Act, 1948 applicable to the company
- Whether the Employer to ensured with the health of workers pertaining to cleanliness, overcrowding etc.
- Whether the Employer appointed the Manager/Occupier of the factory under the Act and sent notice to the Inspector of Factory
- Whether Safety Measures taken by the Employer and appointed safety officer
- Whether Welfare Measures taken by the Employer and appointed Welfare office where there are 500 or more workers are working.
- Whether the employer complied with the Working Hours, Spread Over and Overtime of Adults
- Whether the employer complied with the provisions relating to Annual Leave with Wages
- Whether the employer complied with the provisions relating to Employment of Young Persons
- Whether the employer complied with the washing facilities like facilities for storing and drying clothing.
- Whether the employer complied with the First-aid appliances – one first aid box not less than one for every 150 workers.
- Whether the employer complied with the provision of crèches when there are 30 or more women workers.
- Whether the employer complied with the provisions of canteens when there are 250 or more workers.
- Whether the employer complied with the provisions of shelters, rest rooms and lunch rooms when there are 150 or more workers employed.

THE PAYMENT OF GRATUITY ACT, 1972

Objectives

The Act has been enacted to provide for a scheme for payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments upon their superannuation, retirement, resignation, death or disablement due to accident or disease.

Applicability

- It applies to every factory, mine, oilfield, plantation, port and railway company, shop or establishment in which 10 or more persons are or were employed on any day of the preceding 12 months;
- It applies to all such other establishments or class of establishments in which 10 or more persons are or were employed on any day of the preceding 12 months as the Central Government may, by notification, specify in this behalf.

Eligibility

- Gratuity is payable to employees who have rendered continuous service of at least 5 years.
- Act provides a scheme for payment of gratuity to employees engaged in their superannuation, retirement, resignation, death or disablement due to accident or disease.

Compliance requirement to be verified

- Whether the Gratuity Act applicable to the company
- Whether there are employees who has worked for continuous period of 5 years or more
- Whether proper provisions has been made in the books of accounts for the payment of Gratuity.
- Whether any gratuity has been paid to any employee. If yes, check the calculation of the gratuity.
 - *Generally @ 15 days' wages for every completed year as if the month comprises of 26 days at the last drawn wages.*
 - *In case of Piece-rated employee: @ 15 days wages for every*

completed year on an average of 3 months' wages

- *In case of Seasonal employee: @ 7 days' wages for every completed year of service*
 - *The maximum ceiling of Gratuity is Rs. 10 Lakhs*
- Whether details of nomination as sent by employee kept in safe custody
 - Whether gratuity of any employee has been forfeited. If yes whether an opportunity of being heard is given or not.
 - Whether the gratuity has been forfeited for the reasons as specified in the Act or not.
 - Whether employer display the abstract of the Act and Rules made thereunder at or near the main entrance.

THE PAYMENT OF BONUS ACT, 1965

Objectives

The Act has been enacted to provide & regulate the payment of bonus to employees in certain specified establishments either on the basis of profits or on the basis of productivity of the establishment.

Applicability

- Payment of Bonus Act, 1965 applies to every factory and to every other establishment in which 20 or more persons are employed on any day during an accounting year;
- The Government may also apply the act on any factory or establishment in which has less than 20 but not less than 10 persons are employed;
- Payment of Bonus Act, 1965 is applicable on every employee whether doing any skilled, unskilled, manual, supervisory, managerial, administrative, technical or clerical work for hire or reward and whether the terms of employment are express or implied.

Eligibility

- Payment of Bonus Act, 1965 is applicable on employees drawing wages / salary up-to **21,000/-** per month.
- Only those employees are entitled for bonus, who has worked for at least

30 working days in an accounting year.

Main Requirements

- Payment of Minimum bonus: 8.33% of Salary or Wages (Basic + DA) or Rs. 100, whichever is higher
- Payment of Maximum : 20% of Salary or Wages
- The principle behind fixing a minimum and maximum limit for payment of Bonus is that rate of Bonus should not fluctuate widely from year to year.
- If an employee has not worked for all the working days in an accounting year the minimum bonus shall be proportionately reduced. Computation of Available Surplus: Gross Profit minus sums deductible u/s 6 like Depreciation, Taxes, Dividend etc and sums mentioned in Schedule III.
- Calculate Allocable Surplus: 60% of Available Surplus.
- Set On- if allocable surplus exceeds maximum bonus.
- Set off- if allocable surplus fall short of minimum bonus.

Bonus Act Not Applicable to:

- To the employees of insurer carrying on the business of general insurance and employees of LIC
- Seaman, Dock workers
- Establishments belonging to Governments
- Employees of Red cross Society, Universities and other educational institutions
- Employees of RBI
- Employees of IFCI, UTI, IDBI, NABARD etc
- Employees of inland water transport establishments

Compliance requirement to be verified

- Whether the Payment of Bonus Act, 1965 applicable the company
- Whether Computation of available surplus, allocable surplus and Components of Bonus are accurately computed by the company.
- Whether any amount Deducted from Bonus
- Checked the eligibility of employees for entitlement of Bonus

- Whether minimum amount of bonus payable by the company
- Whether maximum amount of bonus payable by the company
- Whether company adhered to time line for payment of bonus
- Whether company Maintained of Registers and Records etc showing details of amount of bonus due to each employee
- Whether company submitted to the Inspector the Return of payment of bonus
- Whether the Set-off and Set-on of bonus as per Schedule IV of the Act.

THE APPRENTICES ACT, 1961

Applicability

The Act is applicable only to any area or to any industry within the meaning of section 2(k) of the Act as notified by central Government or to any special apprenticeship scheme for imparting training to apprentices as notified by Central Government. Thus it is not applicable to any area industry without Government notification.

Main Requirements

- A person shall not be qualified for being engaged as an apprentice to undergo apprenticeship training in any designated trade, unless he-
 - Is not less than fourteen years of age, and
 - Satisfies such standards of education and physical fitness as may be prescribed:
 - Different standards may be prescribed in relation to apprenticeship training in different designated trades
- He has entered into a contract of apprenticeship with the employer

Compliance requirement to be verified

- Whether the Apprentices Act, 1961 applicable to the company.
- Whether the age of Apprentice is more than 14 years or not.
- Whether the Apprentices employed in designated trade.
- Whether the physical fitness of the Apprentices is as per the prescribed standard.

- Whether the working hours, overtime, leave and holidays of apprentices are within the limit as prescribed in the Act.
- Whether an agreement has been entered with the Apprentice.
- Whether minimum stipend paid by the employer.
- Whether the Register of attendance of apprentice undergoing apprentice training maintained by the employer.
- Whether provisions for reservation of apprentice training places for SC/ST/OBC in designated trade.
- Whether contract of Apprenticeship send by employer to the Apprenticeship Advisor for registration.

THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946

Applicability

Act applicable to industrial establishment where one hundred or more (fifty or more for Karnataka & Maharashtra States) workmen are employed, or were employed on any day of the preceding twelve months.

Main requirements

- The employer has to submit to the certifying officer draft standing orders for certification within 6 months from the date of applicability of the Act.
- The draft standing orders should provide for every matter set out in the Schedule.
- The employer has to pay subsistence allowance at prescribed rates if he suspends an employee pending investigation / enquiry into the charges.
- Posting of Standing Orders or Model Standing Orders along with all the amendments, finally certified prominently on special board in English or in the language understood by majority of workmen.
- Filing a copy of the certified standing orders in the register in Form III.

Matters to be provided in standing orders under the Act

1. Classification of workmen e.g.: whether permanent, temporary, apprentices, probationers, or badlis.
2. Manner of intimating to workmen, periods and hours of work, holidays, pay days, wage rates.

3. Shift Working
4. Attendance and late coming.
5. Conditions of, procedures in applying for, and the authority which may grant leave and holidays.
6. Requirement to enter premises by certain gates, and liability to search.
7. Closing and reopening of sections of the industrial establishment, and temporary stoppage of work and the rights and liabilities of the employer and workmen arising there from
8. Termination of employment, and the notice thereof to be given by the employer and workmen.
9. Suspension or dismissal for misconduct, and acts for omissions which may constitute misconduct.
10. Means of redress for workmen against unfair treatment or wrongful exactions by the employer or by his agents or servants.

Compliance requirement to be verified

- Whether the Industrial Employment (Standing Order) Act, 1946 applicable to the company.
- Whether one hundred or more workmen are employed, or were employed on any day of the preceding twelve months.
- Whether the industrial establishment submitted to the Certifying Officer, five copies of the draft Standing Orders proposed by him for adoption in the establishment.
- Whether the text of the Standing Orders as finally certified prominently posted by the company in English and in the language understood by the majority of workmen on special boards to be maintained for the purpose.
- Whether the industrial establishment modified the Standing Orders, on agreement between the employer and the workmen or a trade union or other representative body of the workmen.
- Whether any workman suspended by the industrial establishment pending investigation or inquiry into complaints or charges of misconduct.
- Whether the industrial establishment paid any subsistence allowance to any suspended employees.

LABOUR LAWS (SIMPLIFICATION OF PROCEDURE FOR FURNISHING RETURNS AND MAINTAINING REGISTERS BY CERTAIN ESTABLISHMENTS) ACT, 1988

Applicability

- Small Establishment & Very Small Establishment
- Small establishment means an establishment in which ***not less than ten and not more than forty*** persons are employed or were employed on any day of the preceding twelve months.
- Very small establishment means an establishment in which ***not more than nine*** persons are employed or were employed on any day of the preceding twelve months.
- Establishment has the meaning assigned to it in a Scheduled Act, and includes –
 - (i) an “industrial or other establishment” as defined in Sec. 2 of the Payment of Wages Act, 1936 ;
 - (ii) a “factory” as defined in Sec. 2 of the Factories Act, 1948 ;
 - (iii) a factory, workshop or place where employees are employed or work is given out to workers, in any scheduled employment to which the minimum wages Act, 1948 , applies.
 - (iv) a “plantation” as defined in Sec. 2 of the Plantations Labour Act, 1951; and (v) a “newspaper establishment” as defined in Sec. 2 of the Working Journalists and other Newspaper Employees (conditions of Service) and Miscellaneous Provisions Act, 1955.

Following are the sixteen Acts specified in the Schedule. They are as under:

1. The Payment of Wages Act, 1936
2. The Weekly Holidays Act, 1942
3. The Minimum Wages Act, 1948
4. The Factories Act, 1948
5. The Plantations Labour Act, 1951
6. The Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955
7. The Motor Transport Workers Act, 1961

8. The Payment of Bonus Act, 1965
9. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966
10. The Contract Labour (Regulation and Abolition) Act, 1970
11. The Sales Promotion Employees (Conditions of Service) Act, 1976
12. The Equal Remuneration Act, 1976
13. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
14. The Dock Workers (Safety, Health and Welfare) Act, 1986
15. The Child Labour (Prohibition and Regulation) Act, 1986
16. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996

Compliance requirement to be verified

- Employer of very small establishments furnishes annual return in Form I
- Employer of very small establishments maintains at the work spot a register in Form III
- Employer of small establishments furnishes annual return in Form I
- Employer of small establishments maintains at the work spot registers in Form II and Form III
- Every such employer shall continue to issue wage slips in the Form prescribed in the Minimum Wages (Central) Rules, 1950 made under sections 18 and 30 of the Minimum Wages Act, 1948
- Every such employer to issue slips relating to measurement of the amount of work done by piece-rated workers required to be issued under the Payment of Wages (Mines) Rules, 1956 made under sections 13A and 26 of the Payment of Wages Act, 1936
- Every such employer to file returns relating to accidents under sections 88 and 88A of the Factories Act, 1948 and sections 32A and 32B of the Plantations Labour Act, 1951.

- Annual return in Form I and the registers in Forms II and III and wage slips, wage books and other records, may be maintained by an employer either in physical form or on a computer, computer floppy, diskette or other electronic media.
- In case of computer, computer floppy, diskette or other electronic form, a printout of such returns, registers, books and records or a portion thereof is made available to the Inspector on demand.

RECOMMENDED BEST PRACTICES TO EMPLOYER

- If you are in doubt about applicability of certain provisions in labour laws, please approach local labour authorities
- It is appropriate to seek exemption from applicability of certain provisions than presuming those provisions would not apply to your entity/ establishment e.g. many companies provide benefits to women in excess of those required under Maternity Benefits Act. It would be inappropriate to presume exemption under this law, without obtaining formal approval from Labour authorities.
- One should keep track of amendments to Labour Laws and keep management advised of those changes.
- An establishment should present compliance statement to the management highlighting non-compliances, if any.
- In the event of any non-compliance, establishments should not hesitate to contact local labour authorities in order to promptly remediate the breach.
- Establishments may consider making effective use of MS Word/ Excel (or comparables) or robust tool for maintaining database of employees containing data required under various labour laws e.g. name, address grade, date of joining...etc.

FOR NEWLY SET UP ESTABLISHMENTS

- To develop good understanding on basic facts about the establishment, its operations, nature of business, network of branches/ factories etc.
- To check applicability of laws (and specific terms used under labour laws e.g. workman, factory, apprentice etc.)
- To ensure compliance under local State laws (including rules)
- To seek appropriate professional advice on case to case basis to avoid potential breach scenarios.

- To prepare list of compliances applicable to such establishment or its respective branches/ factories/ units (depending on the facts)
- To allocate the role of implementing and tracking compliances on regular basis
- To conduct training/ awareness sessions for those who are having responsibility for compliance
- To encourage team members to attend training programs on labour laws to understand industry practices and develop knowledge
- Conducting sessions for benefit of employees to explain new provisions e.g. Sexual Harassment related legislation etc.

PRACTICAL TIPS FOR EMPLOYERS

- Enhance awareness about Labour Laws
- Seek clarification from Labour authorities, if in doubt.
- Set mechanism to review applicability of Laws
- Review company policies to ensure alignment with Labour Laws.
- Send do's and don'ts to employees to avoid loss of benefit to employees due to ignorance
- Take corrective steps in case of non-compliance
- Set up Compliance Check-List
- Keep track of amendments
- Do not Treat compliance casually
- Do not Ignore key definitions for each Labour Law
- Do not Follow malpractices

SECTION VIII

ENVIRONMENTAL LAWS COMPLIANCES FOR MSMEs

Introduction

India's economic development propelled by rapid industrial growth and urbanization is causing severe environmental problems that have local, regional and global significance. Deforestation, soil erosion, water pollution and land degradation continue to worsen and are hindering economic development in rural India, while the rapid industrialization and urbanization in India's booming metropolises are straining the limits of municipal services and causing serious environmental problems.

The Government of India has established an environmental legal and institutional system to meet these challenges within the overall framework of India's development agenda and international principles and norms. The National Environment Policy of 2006 provides a guide to action in regulatory reform, environmental conservation, and enactment of legislation by government agencies at all levels. India also has a number of national policies governing environmental management, including the National Policy on Pollution Abatement (NPPA, 1992) and the National Conservation Strategy and Policy Statement on Environment and Development (NCS/PSED, 1992). While these national policies are not judicially enforceable, they serve as guiding principles for the Central and State Governments to follow.

Legal Framework

India has an elaborate legal framework with over number of laws relating to environmental protection. Key national laws for the prevention and control of industrial and urban pollution include the following:

- Water (Prevention and Control of Pollution) Act, 1974;
- Water (Prevention and Control of Pollution) Cess Act, 1977;
- Air (Prevention and Control of Pollution) Act, 1981;
- Environment (Protection) Act, 1986;

- The Public Liability Insurance Act, 1991;
- The Biodiversity Act, 2002
- The National Green Tribunal Act, 2010
- Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2016.

The Water (Prevention and Control of Pollution) Act, 1974 has been enacted to provide for the prevention and control of water pollution and maintaining or restoring wholesomeness of water, for the establishment of Boards, with a view to carrying out these purposes, for the prevention and control of water pollution, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith.

The Air (Prevention and Control of Pollution) Act, 1981 provides for the prevention, control and abatement of air pollution. The Air Act gave the central and state boards authority to issue consents to industries operating within designated air pollution control areas. States also prescribe emission standards for stationary and mobile sources.

The Environment Protection Act, 1986 provides for the protection and improvement of environment and the prevention of hazards to human beings, other living creatures, plants and property.

The Act fixes responsibility on persons carrying on industrial operations for handling hazardous substances to comply with certain safeguards for the prevention, control and abatement of environmental pollution and also enjoins upon them responsibility to furnish certain information to the authorities in certain cases. The Central Government has been granted general powers for taking all necessary measures for protecting the quality of the environment, for laying down standards for emission or discharge of environmental pollutants, and safeguards for prevention of accidents and in respect of handling hazardous substances, requiring persons to furnish certain information, issuing directions to persons, planning nationwide pollution control programmes and co-ordination of the actions of various agencies and authorities etc.

Among other relevant legislation, **the Public Liability Insurance Act, 1991** mandates that business owners operating with hazardous substances take out insurance policies covering potential liability from an accident and establish Environmental Relief Funds to deal with accidents involving hazardous substances.

Biological Diversity Act, 2002 provides for conservation of biological diversity, sustainable use of its components and fair and equitable sharing of the benefits

arising out of the use of biological resources, knowledge and for matters connected therewith or incidental thereto.

The Biological Diversity Act, 2002 outcome of India's attempt to realise the objectives enshrined in the United Nations Convention on Biological Diversity (CBD) 1992 which recognizes the sovereign rights of states to use their own Biological Resources. The *Biological Diversity Act, 2002* aims at the conservation of biological resources and associated knowledge as well as facilitating access to them in a sustainable manner and through a just process.

Taking into account the large number of environmental cases pending in higher courts, a need was felt to establish a specialized Tribunal to handle the multidisciplinary issues involved in environmental cases. Accordingly, Parliament enacted a law to provide for the establishment of the National Green Tribunal for effective and expeditious disposal of civil cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment.

The National Green Tribunal Act, 2010 intends to provide for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto.

National Green Tribunal is a specialized body equipped with the necessary expertise to handle environmental disputes involving multidisciplinary issues. The Tribunal shall not be bound by the procedure laid down under the Code of Civil Procedure, 1908, but shall be guided by principles of natural justice. The Tribunal's dedicated jurisdiction in environmental matters shall provide speedy environmental justice and help reduce the burden of litigation in the higher Courts.

The Central Government has enacted the National Green Tribunal Act, 2010 thereby repealing National Environment Tribunal Act, 1995 and National Environment Appellate Authority Act, 1997.

AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981

Objective

The objective of the Act is to provide for the prevention, control and abatement of air pollution, for the establishment, with a view to carrying out the aforesaid purposes, of Boards, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith.

Scope and coverage

- The Act is applicable to whole India.
- Central / State Govt. in consultation with SPCB is vested with power to declare AIR POLLUTION CONTROL AREA in which the provisions of the Act shall be applicable.
- No person can establish or operate any industrial plant without the consent of State Pollution Control Board shall complete the formalities to either grant or refuse consent

Major Requirements

- Comply with the conditions in the "Consent to Establish" or "Consent to Operate"
- Not to discharge air pollutant(s) in excess of the prescribed standards
- Furnish information to the SPCB of any accident or unforeseen act or event
- Allow entry to the SPCB to ascertain that provisions of the Act are being complied with
- Provide information to enable SPCB to implement the Act
- Provide access to the SPCB for taking samples
- Comply with the directions issued in writing by the SPCB
- Apply for the renewal of "Consent to Operate" before expiry of the validity period
- Consent to be deemed as granted after four months from the date of receipt of application if no communication from the SPCB is received
- A prior "Notice of Inspection" to be served by the SPCB
- Industry to ensure that specified emission sampling procedure is being followed by the SPCB
- Opportunity to file objections with the SPCB within 15 days from the date of service of notice

THE NOISE POLLUTION (REGULATION AND CONTROL) RULES, 2000

Objective

Aiming to regulate and control noise from sources like, industrial activity, construction activity, generator sets, loud speakers, public address systems, music systems, vehicular horns and other mechanical devices.

Major Compliances

- The noise levels in any area/zone shall not exceed the ambient air quality standards in respect of noise as specified in the Schedule.
- A loud speaker or a public address system shall not be used except after obtaining written permission from the authority
- A loud speaker or a public address system shall not be used at night (between 10.00 p.m. to 6.00 a.m.) except in closed premises for communication within, e.g. auditoria, conference rooms, community halls and banquet halls.

Role of State Government and other authorities:

- The State Government may categorize the areas into industrial, commercial, residential or silence areas/zones for the purpose of implementation of noise standards for different areas.
- The State Government shall take measures for abatement of noise emanating from vehicular movements and ensure that the existing noise levels do not exceed the ambient air quality standards specified under these rules.
- All development authorities, local bodies and other concerned authorities while planning developmental activity or carrying out functions relating to town and country planning shall take into consideration all aspects of noise menace and to achieve the objective of maintaining the ambient air quality standards in respect of noise.
- An area comprising not less than 100 metres around hospitals, educational institutions and courts may be declared as silence area/zone for the purpose of these rules.

Ambient Air Quality Standards in respect of Noise

Area Code	Category of Area/Zone	Limit in dB(A) Day Time 1	Leq* Night Time 2
(A)	Industrial area	75	70
(B)	Commercial area	65	55
(C)	Residential area	55	45
(D)	Silence area	50	40

*Leq: It is energy mean of the noise level over a specified period.

1. Day time shall mean from 6.00 a.m. to 10.00 p.m.
2. Night time shall mean from 10.00 p.m. to 6.00 a.m.

Compliance requirement to be verified

- Whether the company comply with the direction for use of approved fuel–

Adhering to the directions of State Government regarding use of approved fuel.

- Whether the company made an application for consent to establish or operate any industrial plant in air pollution control area-

A company shall have to obtain prior consent of the State Board, to establish or operate any industrial plant in an air pollution control area. Upon consent being granted by the State Board to the Company, the Company shall comply with the conditions as may be imposed by the State Board within the stipulated period.

- Whether the company complied with the specification regarding the control equipment –

After consent has been granted by the State Board it, shall have to comply with the following :-

- (i) the control equipment of such specification as the State Board may approve in this behalf shall be installed and operated in the premises where the industry is carried on/ proposed to be carried on;
- (ii) the existing control equipment, if any, shall be altered or replaced in accordance with the directions of the State Board; the control equipment referred to in clause (i) or clause (ii) shall be kept at all times in good running condition.

Chimney, wherever necessary, of such specifications as the State Board may

approve in this behalf shall be erected or re-erected in such premises;

Such other conditions as the State Board may specify in this behalf shall be complied with within such period as the State Board may specify in this behalf.

- Whether the company allowed emission of any air pollutant in excess of the prescribed standards –

Company not to operate any industrial plant, in any air pollution control area, which shall discharge or cause or permit to be discharged the emission of any air pollutant in excess of the standards laid down by the State Board.

- Whether the company furnish the information to the State Board regarding emission of any air pollutant into the atmosphere in excess of the standards –

Where in any area the emission of any air pollutant into the atmosphere in excess of the standards laid down by the State Board occurs or is apprehended to occur due to accident or other unforeseen act or event, the person in charge of the premises from where such emission occurs or is apprehended to occur shall forthwith intimate the fact of such occurrence or the apprehension of such occurrence to the State Board and to the prescribed authorities or agencies.

- Whether the company render all assistance to the authorised person –

The Company operating any control equipment or any industrial plant, in an air pollution control area shall be bound to render all assistance to the person empowered by the State Board for carrying out the functions and if he fails to do so without any reasonable cause or excuse, he shall be guilty of an offence under this Act.

- Whether the company cooperate to the authorised person in the discharge of his duties –

If any person willfully delays or obstructs any person empowered by the State Board in the discharge of his duties, he shall be guilty of an offence under this Act.

- Whether the company complied with the direction of State Board-

If any direction is given by the State Board, the Company is to comply with such direction.

THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974

Objective

This was enacted for the prevention and control of water pollution and maintaining or restoring wholesomeness of water.

Scope and coverage

- It applies in the first instance to the whole of the States of Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala, Madhya Pradesh, Rajasthan, Tripura and West Bengal and the Union territories; and it shall apply to such other State which adopts this Act by resolution passed in that behalf under clause (1) of article 252 of the Constitution.
- It shall come into force, at once in the States of Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala, Madhya Pradesh, Rajasthan, Tripura and West Bengal and in the Union territories, and in any other State which adopts this Act under clause (1) of article 252 of the Constitution on the date of such adoption and any reference in this Act to the commencement of this Act shall, in relation to any State or Union territory, mean the date on which this Act comes into force in such State or Union territory.

Major Compliances

- Comply with the conditions in the "Consent to Establish" or "Consent to Operate"
- Apply for renewal of the "Consent to Operate" before the expiry of validity period
- Consent to be deemed as granted automatically and unconditionally after four months from the date of application already given or refused before this period
- Refusal of "Consent" to be recorded in writing
- Pay Water Cess as indicated in the assessment order
- Affix water meters of the prescribed standards
- Provide access to SPCB
- Pay interest in case of delay in paying the Water Cess
- Pay penalty for non-payment of Cess

- Industry is entitled to 25% rebate if meeting certain conditions

Compliance requirement to be verified

- Whether the company complied with the direction of State Government –

Directions from state government regarding abstracting water from any stream or well as also discharge of sewage and effluents.

- Whether the company knowingly cause or permit any poisonous, noxious or polluting matter on use of streams or well for the disposal of water pollutant –

A company shall not knowingly cause or permit any poisonous, noxious or polluting matter determined in accordance with such standards as may be laid down by the State Board to enter (whether directly or indirectly) into any stream or well or sewer or on land to enter into any stream any other matter which may tend, either directly or in combination with similar matters, to impede the proper flow of the water of the stream in a manner leading or likely to lend to a substantial aggravation of pollution due to other causes or of its consequences.

- Whether the company made an application to State Board for establish or take any steps to establish any industry –

A company to take previous consent of the State Board by making Application in prescribed form :

- (i) to establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land or

- (ii) to bring into use any new or altered outlet for the discharge of sewage or

(iii) to begin to make any new discharge of sewage.

- Whether the company intimate the occurrence of any accident act or event to the State Board –

If at any place where any industry, operation or process, or any treatment and disposal system or any extension or addition thereto is being carried on, due to accident or other unforeseen act or event, any poisonous, noxious or polluting matter is being discharged, or is likely to be discharged into a stream or well or sewer or on land and, as a result of such discharge, the water in any stream or well is being polluted, or is likely to be polluted,

then the person in charge of such place shall forthwith intimate the occurrence of such accident act or event to the State Board.

THE ENVIRONMENT (PROTECTION) ACT, 1986

Objective

This Act is an umbrella legislation designed to provide a framework for the co-ordination of central and state authorities established under the Water (Prevention and Control) Act, 1974 and Air (Prevention and Control) Act, 1981. Under this Act, the central government is empowered to take measures necessary to protect and improve the quality of the environment by setting standards for emissions and discharges; regulating the location of industries; management of hazardous wastes, and protection of public health and welfare.

Applicability

It extends to the whole of India.

Major Compliances

- Comply with the directions issued by the Central Government. The direction may include:
 - closure, prohibition or regulation of any industry, or
 - stoppage or regulation of the supply of electricity, water or any other service
- Prevent discharges or emissions excess of the prescribed standards
- Furnish information of any accidental or unforeseen event
- Allow entry and inspection to ascertain compliance
- Allow samples to be taken
- Submit an "Environmental Statement" every year before 30th September to the SPCB
- Obtain prior "Environmental Clearances" from Ministry of Environment and Forests, in case of a new project or for modernization/expansion of the existing project

Compliance requirement to be verified

- Whether the company complied with the directions received from Central Government –

A company has to follow directions given by the Central Government. The direction shall specify the nature of action to be taken and the time within which it shall be complied with by the company.

The Directions may include closure, prohibition of industry, process or operation, stoppage of electricity or water etc.

- Whether the company complied with the prescribed standards regarding discharged of any environmental pollutant in excess of standard –

A company carrying on any industry, operation or process shall not discharge or emit or permit to be discharged or emitted any environmental pollutant in excess of such standards as may be prescribed.

- Whether the company Complied with the safeguard measure as prescribed for handling any hazardous substance –

Company not to handle or cause to be handled any hazardous substance except in accordance with such procedure and after complying with such safeguard as may be prescribed.

- Whether company take step to prevent or mitigate the discharge of environmental pollutant in excess of prescribed standard –

A company shall be responsible for the discharge of any environmental pollutant in excess of the prescribed standard due to any accident or other unforeseen act or event and the person in charge the place at which such discharge occurs or is apprehended to occur shall be bound to prevent or mitigate the environmental pollution caused as a result of such discharge and shall also forthwith – (i) intimate the fact of such occurrence or apprehension of such occurrence (ii) be bound, if called upon, to render all assistance, to such authorities or agencies as may be prescribed.

- *Whether the company render all assistance to authorised person –*

A company has to assist the person empowered by the Central Government for carrying out the functions.

- Whether company facilitate to authorised officer to collect samples -

A company has to give access to the Central Government or any offices empowered by it to collect samples of air, water, soil or other substance from the factory, premises or other place in such manner as may be prescribed.

- Whether company furnish of information to authorised person where the discharge of environmental pollutant in excess of the prescribed standard –

Where the discharge of environmental pollutant in excess of the prescribed standard occurs or is apprehended to occur due to any accident, the person in charge of the place at which such discharge occurs or is apprehended to occur shall forthwith intimate the fact of such occurrence to the authorities as specified in these provisions.

- Whether company submitted Environmental Audit Report **in Form-V** -

Every person carrying on an industry, operation or process requiring consent under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 or under section 21 of the Air (Prevention and Control of Pollution) Act, 1981 or both or authorization under the Hazardous Wastes (Management and Handling) Rules, 1989 issued under the Environment (Protection) Act, 1986 shall submit an environmental audit report for the financial year ending the 31st March in prescribed form to the concerned State Pollution Control Board.

THE PUBLIC LIABILITY INSURANCE ACT, 1991

Objective

The main objective of the Public Liability Insurance Act, 1991 is to provide for damages to victims of an accident which occurs as a result of handling any hazardous substance.

Scope and coverage

- The Act applies to all owners associated with the production or handling of any hazardous chemicals.
- The Public Liability Insurance Act, 1991 is an Act to provide for public liability insurance for the purpose of extending immediate relief to the persons affected by accident occurring while handling any hazardous substance in a project, industry or storage and for matters connected therewith or incidental thereto.

Major Compliances

- Owner of the project is to provide relief, as specified, in case of death, or injury to any person (other than workman); or damage to property from an accident occurring while handling specified hazardous substances, on the principle of no fault

- Owner is to draw an insurance policies equal to the paid up capital of the undertaking, but less than or equal to Rs. 50 Crores (maximum).
- "Paid up Capital" in case of an owner not being a company (may be proprietorship partnership firm) implies the market value of all assets and stocks of the undertaking or the date of insurance.
- Owner is to pay additional amounts, as prescribed, to the insurer not exceeding the amount of premium, as contribution to the Environmental Relief Fund established under the Act.
- Owner is to pay the amount of an award as specified by the Collector in the prescribed manner.
- Owner is to comply with the directions under the Act issued in writing by the Central Government, within the specified time, as mentioned in the order. The directions may include:
 - Prohibition or regulation of handling of any hazardous substances; or
 - Stoppage or regulation of the supply of electricity, water or any other service.

HAZARDOUS AND OTHER WASTES (MANAGEMENT & TRANSBOUNDARY MOVEMENT) RULES, 2016

The salient features of the Rules

- i. The ambit of the Rules has been expanded by including 'Other Waste'.
- ii. Waste Management hierarchy in the sequence of priority of prevention, minimization, reuse, recycling, recovery, co-processing; and safe disposal has been incorporated.
- iii. All the forms under the rules for permission, import/export, filing of annual returns, transportation, etc. have been revised significantly, indicating the stringent approach for management of such hazardous and other wastes with simultaneous simplification of procedure.
- iv. The basic necessity of infrastructure to safeguard the health and environment from waste processing industry has been prescribed as Standard Operating Procedure (SOPs), specific to waste type, which has to be complied by the stakeholders and ensured by SPCB/PCC while granting such authorisation.

- v. Procedure has been simplified to merge all the approvals as a single window clearance for setting up of hazardous waste disposal facility and import of other wastes.
- vi. Co-processing as preferential mechanism over disposal for use of waste as supplementary resource, or for recovery of energy has been provided.
- vii. The approval process for co-processing of hazardous waste to recover energy has been streamlined and put on emission norms basis rather than on trial basis.
- viii. The process of import/export of waste under the Rules has been streamlined by simplifying the document-based procedure and by revising the list of waste regulated for import/export.
- ix. The import of metal scrap, paper waste and various categories of electrical and electronic equipments for re-use purpose has been exempted from the need of obtaining Ministry's permission.
- x. The basic necessity of infrastructure to safeguard the health and environment from waste processing industry has been prescribed as Standard Operating Procedure (SOPs) specific to waste type.
- xi. Responsibilities of State Government for environmentally sound management of hazardous and other wastes have been introduced as follows:
 - To set up/ allot industrial space or sheds for recycling, pre-processing and other utilization of hazardous or other waste
 - To register the workers involved in recycling, pre-processing and other utilization activities.
 - To form groups of workers to facilitate setting up such facilities;
 - To undertake industrial skill development activities and ensure safety and health of workers.
- xii. List of processes generating hazardous wastes has been reviewed taking into account technological evolution in the industries.
- xiii. List of Waste Constituents with Concentration Limits has been revised as per international standard and drinking water standard.

The following items have been prohibited for import:

- Waste edible fats and oil of animals, or vegetable origin;
- Household waste;

- Critical Care Medical equipment;
- Tyres for direct re-use purpose;
- Solid Plastic wastes including Pet bottles;
- Waste electrical and electronic assemblies scrap;
- Other chemical wastes especially in solvent form.

State Government is authorized to prepare integrated plan for effective implementation of these provisions, and have to submit annual report to Ministry of Environment, Forest and Climate Change.

State Pollution Control Board is mandated to prepare an annual inventory of the waste generated; waste recycled, recovered, utilised including co-processed; waste re-exported and waste disposed and submit to the Central Pollution Control Board by the 30th day of September every year.

Compliance requirement to be verified

- Whether the occupier engaged in handling of hazardous wastes as specified in the Schedules.
- Whether the occupier takes adequate steps for safe and environmentally sound handling of hazardous wastes generated in his establishment.
- Whether the occupier give to the operator of a facility information regarding disposal of hazardous wastes as determined by the State Pollution Control Board.
- Whether the occupier take all adequate steps while handling hazardous wastes.
- Whether the occupier obtained authorization for handling hazardous wastes.
- Whether the occupier maintain the record of hazardous wastes handled by him.
- Whether the occupier prepares and submitted to the State Pollution Control Board, an annual return on or before the 30th day of June following to the financial year to which that return relates.
- Whether the occupier made an application for the renewal of an authorization before its expiry to the State Pollution Control Board.

SECTION IX

GST VIS-A-VIS MSME

GST is one indirect tax for the whole nation, which will make India one unified common market. GST is a single tax on the supply of goods and services, right from the manufacturer to the consumer. Credits of input taxes paid at each stage will be available in the subsequent stage of value addition, which makes GST essentially a tax only on value addition at each stage. The final consumer will thus bear only the GST charged by the last dealer in the supply chain, with set-off benefits at all the previous stages.

At the **Central** level, the following taxes are being subsumed in to GST:

- a. Central Excise Duty,
- b. Additional Excise Duty,
- c. Service Tax,
- d. Additional Customs Duty commonly known as Countervailing Duty, and
- e. Special Additional Duty of Customs.

At the **State** level, the following taxes are being subsumed in to GST:

- a. Subsuming of State Value Added Tax/Sales Tax,
- b. Entertainment Tax (other than the tax levied by the local bodies), Central Sales Tax (levied by the Centre and collected by the States),
- c. Octroi and Entry tax,
- d. Purchase Tax,
- e. Luxury tax, and
- f. Taxes on lottery, betting and gambling.

The benefits of GST can be summarized as under:

For business and industry

- *Easy compliance*: A robust and comprehensive IT system would be the foundation of the GST regime in India. Therefore, all tax payer services

such as registrations, returns, payments, etc. would be available to the taxpayers online, which would make compliance easy and transparent.

- *Uniformity of tax rates and structures*: GST will ensure that indirect tax rates and structures are common across the country, thereby increasing certainty and ease of doing business. In other words, GST would make doing business in the country tax neutral, irrespective of the choice of place of doing business.
- *Removal of cascading*: A system of seamless tax-credits throughout the value-chain, and across boundaries of States, would ensure that there is minimal cascading of taxes. This would reduce hidden costs of doing business.
- *Improved competitiveness*: Reduction in transaction costs of doing business would eventually lead to an improved competitiveness for the trade and industry.
- *Gain to manufacturers and exporters*: The subsuming of major Central and State taxes in GST, complete and comprehensive set-off of input goods and services and phasing out of Central Sales Tax (CST) would reduce the cost of locally manufactured goods and services. This will increase the competitiveness of Indian goods and services in the international market and give boost to Indian exports. The uniformity in tax rates and procedures across the country will also go a long way in reducing the compliance cost.

For Central and State Governments

- *Simple and easy to administer*: Multiple indirect taxes at the Central and State levels are being replaced by GST. Backed with a robust end-to-end IT system, GST would be simpler and easier to administer than all other indirect taxes of the Centre and State levied so far.
- *Better controls on leakage*: GST will result in better tax compliance due to a robust IT infrastructure. Due to the seamless transfer of input tax credit from one stage to another in the chain of value addition, there is an in-built mechanism in the design of GST that would incentivize tax compliance by traders.
- *Higher revenue efficiency*: GST is expected to decrease the cost of collection of tax revenues of the Government, and will therefore, lead to higher revenue efficiency.

For the consumer

- Single and transparent tax proportionate to the value of goods and services:

Due to multiple indirect taxes being levied by the Centre and State, with incomplete or no input tax credits available at progressive stages of value addition, the cost of most goods and services in the country today are laden with many hidden taxes. Under GST, there would be only one tax from the manufacturer to the consumer, leading to transparency of taxes paid to the final consumer.

- Relief in overall tax burden: Because of efficiency gains and prevention of leakages, the overall tax burden on most commodities will come down, which will benefit consumers.

The macroeconomic impact of introduction of the GST could turn out to be significant in the years ahead, given the dominance of the services sector in India.

Besides giving a major boost to tax revenue, the larger impact on the fiscal health would be from reduction in the administrative compliance cost. GST is likely to be supportive of fiscal consolidation without compromising capital expenditure.

Under the prevailing tax structure in India, investment is discouraged through the application of excise duties and VAT on capital goods, for which no set off or input tax credit is provided. For example, input tax credits are not allowed for union excise duties on capital equipment acquired for non-manufacturing sectors; similarly, no credit is allowed for the state VAT on capital goods acquired by the services sector.

Moreover, GST implementation is likely to boost the small and medium scale enterprises (SME) sector by

- (i) improving their ease of doing business;
- (ii) lowering logistical costs;
- (iii) extending outreach beyond state borders; and
- (iv) aiding SMEs dealing in sales and services.

Furthermore, economic activity would also benefit from exports becoming more competitive as the GST regime will eliminate the cascading impact of taxes.

SECTION X

ROLE OF COMPANY SECRETARIES

India is witnessing a phenomenal growth and expansion in the corporate sector. The growing demand for specialists in almost every sphere of the corporate functions has led to emergence of professionals who can perform specialized skills with near perfection in their respective fields. A company secretary is one such professional who is responsible for efficient management of the corporate sector. He ensures compliance of various company legislations and advises directors on statutory requirements of the company. Apart from carrying out these functions, he also looks after finance, accounts, legal, secretarial, personnel and administrative functions in private as well as public sectors.

The Companies Act, 2013 confers a special status to Company Secretary as the key managerial personnel and has bracketed him along with Managing Director (MD) or Chief Executive Officer (CEO) or Manager, Whole-time director(s) or Chief Financial Officer (CFO). Every listed company and every other public company having a paid up share capital of ten crore rupees or more has to appoint a whole time Key Managerial Personnel. Whole time Company Secretary is also required to be appointed in other companies which have a paid up share capital of five crore rupees or more.

Almost every kind of organization whose affairs are conducted by boards, councils or other corporate structures, be it a company, trust, association, federation, authority, commission or the like, find it useful to appoint a person who holds the qualification of Company Secretaryship in key administrative position. Practising Company Secretaries have been authorized to issue Certificate regarding compliance of conditions of Corporate Governance. Practising Company Secretaries have also been recognized to appear before various Tribunals such as NCLT, NCLAT, Securities Appellate Tribunal, Competition Commission of India, Telecom Disputes Settlement and Appellate Tribunal, Consumer Forums, Tax Tribunals etc. Reserve Bank of India has also recognized the Practising Company Secretaries to undertake Diligence Report for Banks.

The rapid corporatisation has brought about a sea change in the role and profile of a company secretary. They are now being seen as corporate development planners. Besides embarking upon traditional areas of practice, Company

Secretaries in Practice are increasingly required to advise and guide on legal aspects of business which intimately concern areas such as production, sales, marketing and administration for identifying expansion opportunities, issuing due diligence or comfort certificate, arranging foreign collaborations, amalgamations, mergers, acquisition, takeovers, setting up of subsidiaries and joint ventures within and outside India etc. The new opportunities offered by the growing capital markets and financial services have greatly contributed to the development of the practice side of the profession.

Company Secretaries – One Stop Professional Advisory Services to SMEs

Company Secretaries can offer One Stop Professional Advisory Services to SMEs in the following areas:

- Legal Setting up of SMEs - Getting Basic Registrations for startup- PAN-TAN-VAT-MSME etc.
- Selection of Organization Structure for SME - Sole Proprietor, Partnership, LLP, Limited Liability Company (Private-Public), OPC
- Incentives available to SMEs
- Financial Advisory Services for SMEs
- Funding Options for SMEs
- Labour Laws aspects for SMEs
- Taxation aspects for SMEs
- Listing of SMEs
- Legal & Regulatory Compliances
- Corporate Governance for SMEs

Thus, a Company Secretary can help SMEs and its directors operate within the law.

Company Secretaries - Single Window Services to SMEs

Some other ways in which a company secretary can help the SMEs include:

- Obtaining Project Financing and Term Loans.
- Co-ordinating the process of obtaining funds from Angel Investors / Venture Capital Funds / Private Equity.
- Conducting Secretarial Audit / Due Diligence which will of great help before approaching for funds.

- Providing Compliance Certificate to ensure compliance of various regulatory prescriptions in case of listing in SME Exchange.
- Helping in converting Sole Proprietor / Partnerships to Companies
- Management of the public issue if a company goes public
- Maintaining Statutory Registers;
- Monitoring changes in the share ownership of the company;
- Ensuring that the company files statutory information promptly;
- Monitoring changes in the relevant legislation and the regulatory environment and taking appropriate action;
- Developing and overseeing the systems that ensure that the company complies with all applicable codes as well as its legal and statutory requirement.
- Drafting documents and filing with RBI under FDI guidelines and ECB norms.
- Act as legal advisor and representative
- Sign the annual returns of the company, as also represent the company when a situation demands it.
- Handle matters related to central/state sales tax, GST, excise laws, labour laws and corporate laws
- Handle matters related to obtaining institutional finance. Responsibilities in this regard would include getting project approvals, obtaining relevant licences and permits, zeroing in on all requirements under the Competition Act and FEMA (Foreign Exchange Management Act) and any other relevant legislation.

Company Secretaries - Guide and Support in MSME Financing

Financing is the lifeblood of Small and Medium Enterprises and Practising Company Secretary can effectively guide and support SMEs as follows:

- Timely & adequate availability of finance
- Reasonable cost
- Simple delivery process
- Single window for all financing requirements
- Transparency in dealings

- Awareness of schemes of Banks
- Support and Handholding services

Company Secretaries - SME Exchange

In order to provide better, focused and cost effective financing service to the SMEs, SEBI set up dedicated exchanges and/or dedicated platforms of the exchanges for listing and trading of securities issued by SMEs.

Certain relaxations are provided to the issuers whose securities are listed on SME exchange in comparison to the listing requirements in Main Board.

Some of the services that could be provided by Company Secretaries (both in employment and practice) with regard to SME Exchange include:

- Advisor/consultant for SMEs on listing at SME Exchange
- Advisor to Public Issue by SME
- Compliance Officer for SME
- Compliance Certificate for issue / listing of shares by SMEs. The purpose of this certification is to provide comfort and assurance to the Regulator and Stock Exchanges to the effect that the proposed listing of SMEs conforms to all regulatory prescriptions. This Compliance Certificate will enable the SMEs to seek the 'in-principle' approval for listing of shares in SME Exchange.

Company Secretary Guide in development of Business policies and implementation

A Company Secretary can guide the MSMEs both at policy and operational level in formulation of various responsible Business policies, implementation of the principles enshrined, allocation of budgets and approval of the budgets allocated for these activities and reporting & disclosures.

Company Secretaries can also help MSMEs to comply with environmental regulations and assist in funding of compliance programs to meet the pollution standards and also avail of government sponsored incentives and training assistance.

SECTION XI

CHECKLIST FOR COMPLIANCES

CHECK LIST FOR INCORPORATION

Incorporation as One Person Company

S.No.	Compliance	Action
1.	Obtain Digital Signature Certificate [DSC] for the proposed Director(s)	
2.	Obtain Director Identification Number [DIN] for the proposed director(s).	
3.	Select suitable Company Name, and make an application to the Ministry of Corporate Affairs for availability of name	
4.	Draft MOA & AOA	
5.	Sign and file various documents including MOA & AOA with the Registrar of Companies electronically	
6.	Payment of Requisite fee to Ministry of Corporate Affairs and also Stamp Duty.	
7.	Receipt of Certificate of Registration/Incorporation from ROC	

Incorporation as Small Company

1.	Obtain Digital Signature Certificate [DSC] for the proposed Director(s)	
2.	Obtain Director Identification Number [DIN] for the proposed director(s).	
3.	Select suitable Company Name, and make an application to the Ministry of Corporate Affairs for availability of name	

4.	Draft MOA & AOA	
5.	Sign and file various documents including MOA & AOA with the Registrar of Companies electronically	
6.	Payment of Requisite fee to Ministry of Corporate Affairs and also Stamp Duty.	
7.	Receipt of Certificate of Registration/Incorporation from ROC	
Incorporation as Private Limited Company		
1.	Obtain Digital Signature Certificate [DSC] for the proposed Director(s)	
2.	Obtain Director Identification Number [DIN] for the proposed director(s).	
3.	Select suitable Company Name, and make an application to the Ministry of Corporate Affairs for availability of name	
4.	Draft MOA & AOA	
5.	Sign and file various documents including MOA & AOA with the Registrar of Companies electronically	
6.	Payment of Requisite fee to Ministry of Corporate Affairs and also Stamp Duty.	
7.	Receipt of Certificate of Registration/Incorporation from ROC	
Incorporation as Public Limited Company		
1.	Obtain Digital Signature Certificate [DSC] for the proposed Director(s)	
2.	Obtain Director Identification Number [DIN] for the proposed director(s).	
3.	Select suitable Company Name, and make an application to the Ministry of Corporate Affairs for availability of name	
4.	Draft MOA & AOA	

5.	Sign and file various documents including MOA & AOA with the Registrar of Companies electronically	
6.	Payment of Requisite fee to Ministry of Corporate Affairs and also Stamp Duty.	
7.	Receipt of Certificate of Registration/Incorporation from ROC	
Incorporation as Limited Liability Partnership		
1.	Deciding the Partners and Designated Partners	
2.	To obtain Director Identification Number (DIN) & Digital Signature Certificate	
3.	To Apply for Name of LLP (LLP-1)	
4.	After Name Approval file form 2 and Form 18 to the ROC	
5.	After that File LLP agreement (i.e. Form-3) and Partners' details (i.e. Form-4)	
Register as Partnership Firm		
1.	File Form A for Registration of Firm along with the Form A following documents required to be submitted:- <ul style="list-style-type: none"> - Duly filled specimen of affidavit - Certified true copy of the partnership deed - Ownership proof of the principal place of business or rental/lease agreement 	
Register as Sole Proprietorship		
1.	Decide on a Business Name	
2.	Search Availability of Name(s)	
3.	Register Your Name	
4.	Obtain Business Licenses and Permits from:- <ul style="list-style-type: none"> - The Federal Government - The State Government - The Local Government 	

CHECK LIST AFTER INCORPORATION

S.No.	Compliance	Action
1.	Register enterprise as Micro, Small or Medium Enterprise depends upon the limit of investment on Plant & Machinery or on Equipment	
2.	File Udyog Aadhar Memorandum	
3.	Renewal of Registration of NSIC after every two years	
4.	Obtaining Factory Licence	
5.	Renewal of Factory License in every year	
6.	Obtaining Pollution Clearance Certificate in every Two Year	
7.	Filing of ASI(Annual Survey of Industries) Return every year to the Ministry of Statistics & Programme Implementation	

CHECK LIST OF ANNUAL COMPLIANCES DEPENDING ON THE FORMATION OF MSMES

Annual Compliances for One Person Company		
S.No.	Compliance	Action
1.	Receipt of MBP-1	
2.	Receipt of DIR-8	
3.	Board Meeting:-OPC shall hold a minimum number of Two Meetings of its Board of Directors every year in such a manner that Minimum gap between both the Meetings, should be not less than 90 (Ninety) days	
4.	Appointment of auditor	
5.	File form ADT-1 of Auditor appointment	
6.	Annual Filing	

Annual Compliances for Small Company		
1.	Receipt of MBP-1	
2.	Receipt of DIR-8	
3.	Board Meeting	
4.	Holding AGM every year	
5.	Adoption of Financial Account & Board Report	
6.	Appointment of Auditor	
7.	File form ADT-1 of Auditor appointment	
8.	Annual Filing	
Annual Compliances for Private Company other than Small Company		
1.	Receipt of MBP-1	
2.	Receipt of DIR-8	
3.	Board Meeting:-Every Company shall hold a minimum number of FOUR Meetings of its Board of Directors every year in such a manner that maximum gap between two Meetings should not be more than 120 (One hundred Twenty) days. Company should hold at least 1 (one) Board Meeting every quarter of calendar year	
4.	Holding AGM every year	
5.	Adoption of Financial Account & Board Report	
6.	Appointment of Auditor	
7.	File form ADT-1 of Auditor appointment	
8.	Maintenance of Statutory Registers	
9.	Annual Filing	
Annual Compliances for Unlisted Public Company		
1.	Receipt of MBP-1	
2.	Receipt of DIR-8	

3.	Board Meeting:-Every Company shall hold a minimum number of FOUR Meetings of its Board of Directors every year in such a manner that maximum gap between two Meetings should not be more than 120 (One hundred Twenty) days. Company should hold at least 1 (one) Board Meeting every quarter of calendar year.	
4.	Holding AGM every year	
5.	Adoption of Financial Account & Board Report	
6.	Filing of Adoption of Financial Account & Board Report in Form MGT-14	
7.	Appointment of Auditor	
8.	File form ADT-1 of Auditor appointment	
9.	Maintenance of Statutory Registers	
10.	Annual Filing	
11.	Certification of Annual Return by PCS if paid up share capital of 10 Crore or more or turnover of Rs. 50 crore or more	
12.	E-Form filing for Acceptance of Deposit, Appointment of KMP, Appointment of independent director, Appointment of Women director, Appointment of internal auditor	
13.	Following Companies are required to get Secretarial Audit of the Company from the Practicing Company Secretary and report of PCS will be part of Directors' Report (MR-3).a) All Listed Companiesb) Every Public Company having; <ul style="list-style-type: none"> • Paid-Up Share Capital of Rs. 50 Crore (fifty crore rupees) or more; or • Every Public Company having a Turnover of Rs. 250 Crore (two hundred fifty crore rupees) or more 	
14.	Constitution of Audit Committee if applicable	
15.	Constitution of Nomination Committee	

Annual Compliances for Listed Company		
1.	Receipt of MBP-1	
2.	Receipt of DIR-8	
3.	Board Meeting:-Every Company shall hold a minimum number of FOUR Meetings of its Board of Directors every year in such a manner that maximum gap between two Meetings should not be more than 120 (One hundred Twenty) days. Company should hold at least 1 (one) Board Meeting every quarter of calendar year.	
4.	Providing E-Voting Facilities to shareholders	
5.	Holding AGM every year	
6.	Filing Report of AGM	
7.	Adoption of Financial Account & Board Report	
8.	Filing of Adoption of Financial Account & Board Report in Form MGT-14	
9.	Appointment of Auditor	
10.	File form ADT-1 of Auditor appointment	
	Filing return for change in Stake of Promoters	
11.	Maintenance of Statutory Registers	
12.	Filing of Annual accounts in XBRL Form	
13.	Certification of Annual Return by PCS if paid up share capital of 10 Crore or more or turnover of Rs. 50 crore or more	
14.	E-Form filing for Acceptance of Deposit, Appointment of KMP, Appointment of independent director, Appointment of Women director, Appointment of internal auditor, Appointment of Cost Auditor, Appointment of Secretarial auditor	
15.	Following Companies are required to get Secretarial Audit of the Company from the	

	<p>Practicing Company Secretary and report of PCS will be part of Directors' Report (MR-3).</p> <p>a) All Listed Companies b) Every Public Company having;</p> <ul style="list-style-type: none"> • Paid-Up Share Capital of Rs. 50 Crore (fifty crore rupees) or more; or • Every Public Company having a Turnover of Rs. 250 Crore (two hundred fifty crore rupees) or more 	
16.	Constitution of Audit Committee if applicable	
17.	Constitution of Nomination Committee	
18.	Compliances prescribed in SEBI (LODR) Regulation, 2015 are also required to be comply by the listed companies	
Annual Compliances for LLP		
1.	Maintenance of Minute Book	
2.	File E-Form 4 for any change of Partner and designated Partner	
3.	Supplementary LLP agreement require to file in E-form 3	
4.	Holding General Meeting every year	
5.	Statement of Account and solvency is required to be filed annually in E-form 8	
6.	Annual return should be filed with ROC in E-form 11	
7.	<p>File Income tax Return:-</p> <ul style="list-style-type: none"> – LLP whose accounts are not required to be audited under any Law:- 31st July of every year – LLP whose accounts are subject to Audit under any Law: - 30th September of every year or such other date as may be notified by the Income Tax authorities. 	

Annual Compliances for Sole Proprietorship		
1.	Proprietorship will have to file their annual tax return with the Income Tax Department. Other tax filings like service tax filing or VAT/CST filing may be necessary from time to time, based on the business activity performed. However, annual report or accounts need not be filed with the Ministry or Corporate Affairs, which is required for Limited Liability Partnerships and Companies.	
Annual Compliances for Partnership		
1.	Intimation of Change in Principal Place/ nature of business / firm name in Form B	
2.	Intimation of Change in the name (person/limited company and address of the partner) in Form D	
3.	Intimation of Change in Constitution-Admission/ Retirement/Dissolution/ Death of Partner/minor partner in Form E	

ENVIRONMENTAL LAW COMPLIANCES CHECK LIST

S.No.	Compliance	Action
WASTE MANAGEMENT		
1.	Are appropriate Waste Management practises being followed?	
2.	Is the full Duty of Care being Completed?	
3.	Has the legal compliance of waste carriers been checked?	
4.	Are waste transfer notes being retained?	
5.	Is hazardous waste being disposed of according to legislative rule?	
6.	Are all waste streams being segregated effectively?	
7.	Does the organization need to register as a	

	producer of hazardous waste?	
8.	Are good housekeeping and recycling measures being followed to prevent waste being needlessly sent to landfill?	
WATER		
1.	Are only authorised discharges to surface water or controlled waters being made?	
2.	Are good housekeeping procedures being followed to avoid unnecessary consumption of water?	
AIR EMISSIONS		
1.	Is there any waste being burnt on site?	
2.	Has all equipment been checked to ensure there are no unnecessary emissions to air?	
CONTAMINATION		
1.	Are all chemical substances and fuel being stored appropriately?	
2.	Is all pollution control equipment working effectively?	
3.	Are spill kits present and accessible?	
4.	Are all hazardous or contaminated materials being disposed of correctly?	
5.	Is there any evidence of past unreported spills?	
6.	Are all necessary employees aware and knowledgeable of spill procedures?	
7.	Are all chemicals being stored and handled in accordance with the product data sheets and/or guidance information?	
NOISE		
1.	Have noise mitigation measures been followed?	
2.	Are there ear plugs available in workshops?	

REGISTER MAINTAIN UNDER LABOUR LAWS

The Employees State Insurance Act, 1949

- Accident Register
- Register of Employees
- Register of Employees engaged by immediate employer

**THE CONTRACT LABOUR (REGULATION & ABOLITION) ACT, 1970
AND CENTRAL RULES 1971**

- Register of Contractors
- Register of Workman employed by Contractor
- Muster Roll
- Register of Wages
- Register of Deductions for damage or loss
- Register of Fines
- Register of Advances
- Register of Overtime

THE EQUAL REMUNERATION ACT, 1976

Registers under Rule 6

THE MATERNITY BENEFIT ACT, 1961

Muster- Roll

THE MINIMUM WAGES ACT, 1948 AND CENTRAL RULES 1950

- Register of wages
- Muster-roll
- Register of Overtime
- Register of Deductions

- Register of fines
- Wage Slip

THE PAYMENT OF BONUS ACT, 1965 AND CENTRAL RULES 1975

- Register Showing the Computation of the Allocable surplus referred to in clause (4) of Section 2 [R-4(b)]
- Register Showing the set-on-and set-off of the allocable surplus under section 15 [R-4(b)]
- Register Showing the details of the amount of bonus due to each of the employees the deductions under section 17 and 18 and the amount actually disbursed [R-4(c)]

THE FACTORIES ACT, 1948

1. Register of Adult Workers (S-6)
2. Register of Child Workers (S-73)