

West Bengal Ease of Doing Business for MSME Sector



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GOVERNMENT OF INDIA
MINISTRY OF MICRO, SMALL AND MEDIUM ENTERPRISES
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FOREWORD

MSMEs play a crucial role in promoting equitable socio-economic development of the country by creating job, creating opportunities for poverty reduction and balanced economic growth. The performance of MSMEs in any particular region largely depends upon its business environment and commitment towards promotion of inclusive growth. The Government has taken number of initiatives in providing a business friendly and pro investment environment to encourage entrepreneurship.

West Bengal has the potential to become the leading state in terms of MSME productivity. With a vision to create a sustainable ecosystem in the MSME sector which can maximize the utilization of resource and widen the area of operation to make the state emerge as the MSME leader in the country in the next ten years, Government of West Bengal issued The MSME Policy.

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

I have been gone through this document and found the contents very informative written in simple language. The emphasizes on the ease of doing business in the State of West Bengal with special reference to MSMEs and insight into the registration process of MSMEs, raising of finances, as well as compliances with various regulatory obligations for MSMEs would help MSME Entrepreneurs in West Bengal in management and administration of their business in a sustainable manner.

I am confident that MSME Entrepreneurs in West Bengal will find this book quite informative and useful in ensuring Good Governance of their enterprises.

(K K JALAN)

PREFACE

In the entrepreneurial ecosystem the journey of an entrepreneur begins from conceiving an idea to developing it into a project proposal for starting a business. To promote self-employment as a means of job-creation and to promote entrepreneurship for further job creation, the Micro, Small and Medium Enterprises Development Act was enacted to facilitate the promotion, development and enhancing the competitiveness of micro, small and medium enterprises.

This publication of the Institute of Company Secretaries of India titled “West Bengal-Ease of Doing Business for MSME Sector” covers basics of Micro, Small and Medium Enterprises Act, Entrepreneurship Development and the MSME Sector in West Bengal, West Bengal MSME Policy 2013-18, West Bengal Incentive Scheme for Micro, Small and Medium Enterprises, Procedure for availing Incentive Scheme, Udyog Aadhaar Memorandum, Micro, Small And Medium Enterprises Development (Furnishing of Information) Rules, 2016, Corporatisation of MSME, and the Role of Company Secretaries in MSME Sector.

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 Saurabh Jain for finalizing the manuscript for printing.

I am confident that this publication will prove to be of immense benefit to MSMEs, professionals and students.

In any publication, there is always scope for further improvement. I would personally be grateful to users and readers for offering their suggestions for further refinement.

Place : New Delhi

CS (Dr.) Shyam Agrawal

Date : 09th June, 2017

President

The Institute of Company Secretaries of India

C O N T E N T S

Introduction	1
Entrepreneurship Development and the MSME Sector in West Bengal	5
West Bengal MSME Policy 2013-18	18
West Bengal Incentive Scheme for Micro, Small and Medium Enterprises	24
Procedure for Availing Incentive Scheme	42
Udyog Aadhaar Memorandum	45
Micro, Small And Medium Enterprises Development (Furnishing of Information) Rules, 2016	51
Corporatisation of MSME	55
Role of Company Secretaries	107

Introduction

Micro, Small and Medium Enterprises (MSMEs) Sector has emerged as a highly vibrant and dynamic sector of the Indian economy. 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 socio economic development of the country.

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.

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

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.

Legal Framework on 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 MSMED Act, 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 is known as "enterprise".

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

<i>Enterprises</i>	<i>Investment in Plant & Machinery</i>
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

<i>Enterprises</i>	<i>Investment in Equipments</i>
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 core rupees

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

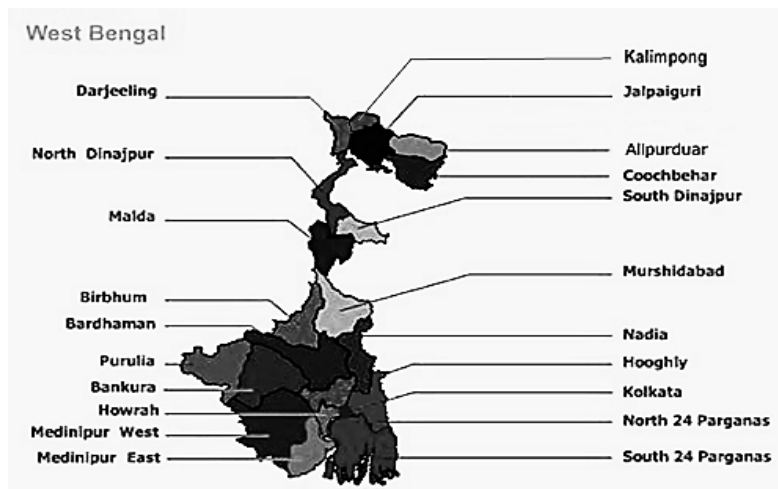
In exercise of the powers conferred by sub-section (1) of Section 7 of the MSMED Act, 2006, the Central Government vide notification S.O. 1722(E) dated 5th October, 2006, the cost of which shall be excluded while calculating the investment in plant and machinery in the case of the enterprises mentioned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

Entrepreneurship Development and the MSME Sector in West Bengal



Information Source

Department of Information & Cultural Affairs (I&CA), Government of West Bengal

West Bengal is situated on the eastern part of India stretching from the Himalayas in the north to the Bay of Bengal in the south. The state has a total area of 88,752 square kilo meters (34,267 sq. mile). It is bounded by Sikkim and Bhutan on the north, by Nepal on the northwest, by Bangladesh and Assam on the east, by Bihar, Jharkhand and Orissa on the west and southwest and by Bay of Bengal on the south. The northern part of the state has a hilly region. The narrow Terai region separates this region from the plains, which in turn transitions into the Ganges delta towards the south. The Rarh region intervenes between the Ganges delta in the east and the western plateau and high lands. A small coastal region is on the extreme south, while the Sundarbans mangrove forest form geographical area at the Ganges delta.

Because of its location, West Bengal offers definite advantage as the traditional domestic market in eastern India, the Northeast and the land-locked countries of Nepal and Bhutan, which are easily accessible. The state is also an entry point to markets in Southeast Asia, via the north eastern states. West Bengal offers excellent connectivity to the rest of India

in terms of railways, roadways, ports and airport. Major stretches of the golden quadrilateral (highway project connecting Chennai, Kolkata, Delhi and Mumbai) also pass through the northern districts of the state.

West Bengal has abundant natural resources of minerals and suitable agro-climatic conditions for agriculture, horticulture and fisheries. West Bengal also has a prosperous hinterland of some mineral rich states like Jharkhand, Bihar and Orissa.

A major agricultural producer, West Bengal is the sixth largest contributor to India's net domestic product. It is noted for its cultural activities and the presence of cultural and educational institutions; the state capital Kolkata is known as the "cultural capital of India". It is the main business, commercial and financial hub of eastern India and the North eastern states. The other prominent cities of West Bengal are Siliguri, Asansol, Durgapur, Raniganj, Haldia, Kharagpur, Darjeeling, Malda, Midnapore, Cooch Behar and Howrah. Siliguri the commercial nerve centre of North Bengal. It is also the transit point for air, road and rail traffic to the neighbouring countries of Nepal, Bhutan and Bangladesh. Asansol, coal mining and industrial metropolis and one of the busiest commercial centres in India, is the second largest city in West Bengal, after Kolkata. Durgapur is an industrial city and is West Bengal's third-largest city after Kolkata and Asansol. The city houses a number of power plants, chemical and engineering industries. Raniganj, located in the Bardhaman district is known for its coalfields. Darjeeling is internationally famous for its tea industry and the Darjeeling Himalayan Railway is a UNESCO world heritage site. Cooch Behar is a planned town in North Bengal region with remnants of royal heritage; it is a tourist destination.

Facts and Figures - West Bengal

<i>Title</i>	<i>Description</i>
Country	India
Region	East India
Capital	Kolkata
Largest city	Kolkata
Districts	23
Government	
Body	Government of West Bengal
Legislature	Unicameral

High Court	Calcutta High Court
Area	
Total	88,752 sq km (34,267 sq mi)
Area rank in India	14th
Population (2011)	
Total	91,347,736
Rank	4th
Density	1,000/sq km (2,700/sq mi)
Literacy	77.08%
Official languages	Bengali • English

*Information Source**Department of Information & Cultural Affairs (I&CA), Government of West Bengal***Establishment of MSME in West Bengal**

The process of setting up an enterprise often originates in the form of a business idea or perception of an entrepreneurial opportunity and a consideration of its desirability and feasibility. While it is not mandatory, the process invariably involves filing of entrepreneurship memorandum under the provisions of the Micro Small & Medium Enterprise Development Act (MSMEDA), 2006. Then there are a host of requirements placed under the State Industrial Development Corporations Act, State Finance Corporations Act, Municipalities, Utilities and the like. Should there be a need for enterprise's incorporation under the Partnership Act, Limited Partnership Act, the Companies Act, and the Co-operative Societies Act, there are additional formalities to be complied with.

The essence of Ease of Doing Business lies in provision of one stop shop or single window- and in today's context- a digital window- for knowing, fulfilling and obtaining the various regulatory approvals and clearances. The Department of Micro, Small and Medium Enterprises and Textiles, Government of West Bengal has developed an interactive portal (www.myenterprisewb.in) that serves this purpose (see Figure -1).

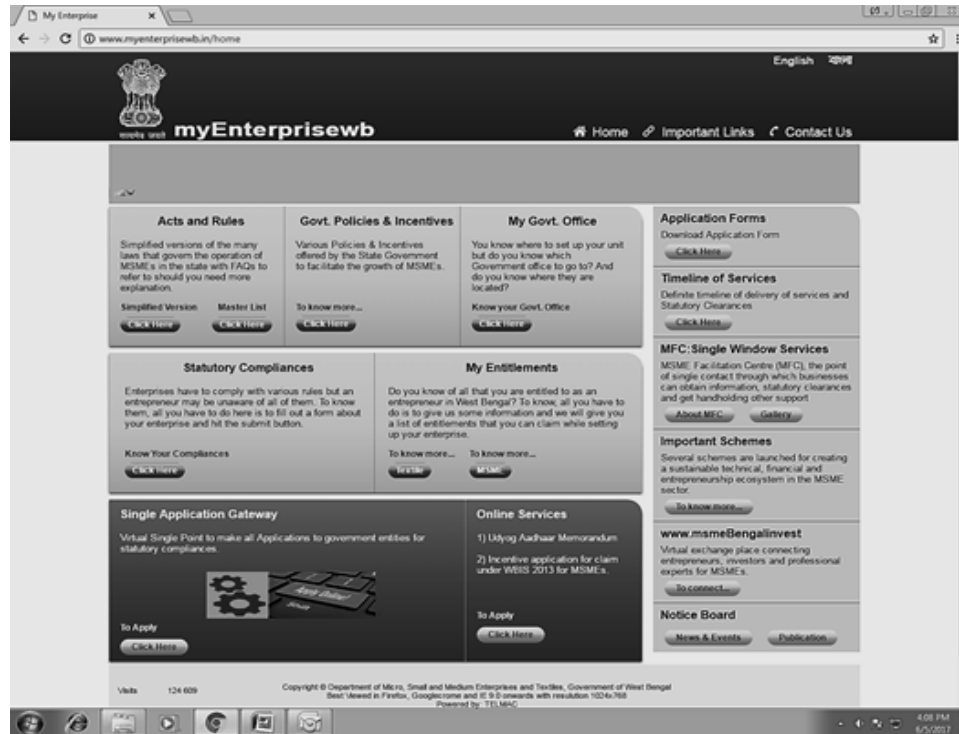


Figure- 1: Screen Shot of Government of West Bengal's Portal for MSMEs

Source: myEnterprise.wb (Government of West Bengal)

There is an online pro forma seeking answer to the compliance questions that the entrepreneur needs to fill in. Once the fully filled-in pro forma is submitted a checklist of statutory compliances required for that particular enterprise is provided.

Determining Statutory Compliances Expected of an Entrepreneur

Please select your enterprise location

District

Block/Municipality/Corporation

Indicate the constitution of your enterprise

Please select the sector where your enterprise will belong?

Manufacturing Sector

Service Sector

Did you obtain Trade License?

Yes

No

Do you want to know the category of your Enterprise Under Environment Clearance [Protection] Act?

Yes

No

Do you require Electrical Power Connection for your Enterprise?

Yes

No

Do you intend to install/operate Generator Sets for your Enterprise?

Yes

No

Did you obtain Fire Safety Certificate?

Yes

No

Did you obtain Fire License?

Yes

No

Find out & select the category of your enterprise under West Bengal Fire Safety Act, 1950?

For **Class A** : the building above 14.5 meters in height or more than 5000 Cu. Meters.

For **Class B** : High risk building for minimum height of 7 meters and maximum 14.5 meters with coverage area of maximum 5000- 2000 Cu. Meters.

For **Class C** : below 7 meters higher or below 2000 Cu.meters

Do you use Steam Boilers in your enterprises?

Yes

No

Do you engage in manufacturing, possession, use, sale, transport and import of explosive?

Yes

No

What is your expected employment?

Will Section 85 of Factories Act, 1948 be applicable to your Industrial Unit?

Section 85

In terms of Sec. 85 of Factories Act, 1948 read with no. 781-LW/1F-11/06 Dt. 03.10.2007, an enterprise cannot carry on the following manufacturing process with or without the aid of power irrespective of numbers of persons employed unless a license is issued by Directorate of Factories under Factories Act, 1948

1. Manufacture of rubber and plastic products,
2. Manufacturing process involving repair of Motor Vehicles and Motor Cycles,
3. Manufacturing process using or producing explosive or highly inflammable articles or substances,
4. Fire-works manufacturing and its packaging units,
5. Manufacturing of Leather goods,
6. Manufacturing of Ice using ammonia as refrigerant,
7. Pesticides formulation units,
8. Manufacturing, handling & processing of asbestos & its products.

Do you intend to perform your business with inter-state Sale and purchase under CST Act, 1956?

Yes

No

Do you intend to carry on your business within the state (both procurement and sale) and your gross annual turnover is above Rs. 5.00 Lakh (under VAT)?

Yes

No

Do you manufacture excisable goods?

Yes

No

Is your enterprise exempted under CENVAT exemption scheme?

Yes

No

Do you provide any taxable service as per clause 105 of section 65 in chapter V of Finance Act, 1994 applicable for service tax?

Yes

No

Do you manufacture/carry on business for import/export purpose?

Yes

No

Do your enterprise fall under ESI notified area?

Yes

No

Did you acquire land for your enterprise?

Yes

No

What is the classification of land in the name of your enterprise?

Do you use ground water for your enterprise?

Yes

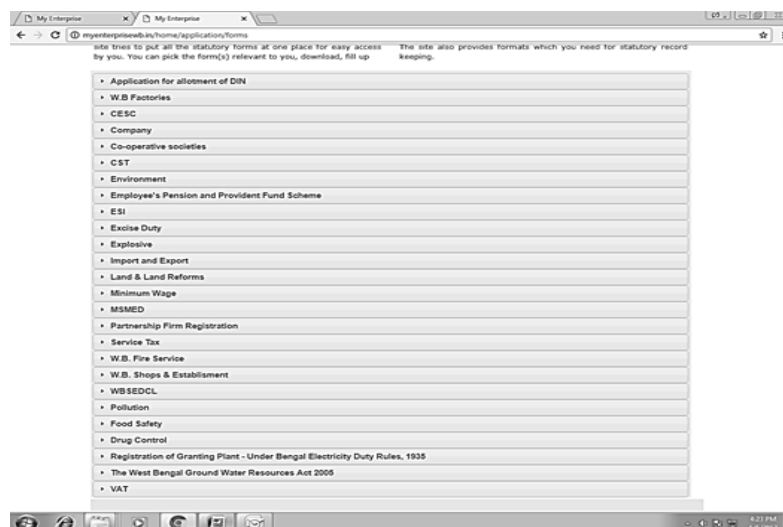
No

Source: (<http://www.myenterprisewb.in>)

Documentation

The portal inter alia also provides for the necessary documentation applicable to MSMEs as downloads (See Figure -2).

Figure-2 : Documentation Applicable to MSME



Source : <http://myenterprise.wb.gov.in/msseAppGateway/Credit facilities to MSMEs>

Credit facilities to MSMEs

Conventionally, in India state finance corporations provide term finance (Debt and Equity) and banks provide working capital finance to the MSME sector. In West Bengal it is the West Bengal State Finance Corporation (WBSFC) which lends to any individual, partnership firm, corporate body or registered co-operative society covered under the MSME sector for amounts up to Rs. 20 Crore (Figure -3). The WBSFC has its active presence through 14 Branch Offices located at the District Head Quarters. Its Regional Offices at Kolkata, Siliguri and Durgapur are duly equipped to coordinate the activities in the North Bengal and South Bengal. Figure -3: MSME Funding By WBSFC

DISTRICT WISE, SECTOR WISE CUMULATIVE POSITION OF DIFFERENT ASSISTANCE UP TO 31st MARCH 2014														
All amount in ` lakh														
Sl. No.	District	Loan sanctioned				From special share capital fund Underwriting				Deferred payment guarantee		Per cent share of the district		
		M & SSE + SRTIO	SRTIO	MSE	MSE	M & SSE + SRTIO	MSE	Subscription to Share Capital	Soft loan	M + SSE SRTIO	MSE		Total Amount	
1	24-Parganas (N)	1066	19438.42	38	6940.25							11.00	26389.67	8.69%
2	24-Parganas (S)	919	13019.73	75	5825.98		37.00	21.00	21.00		10.00		18934.71	6.23%
3	Bankura	1188	7420.81	49	12031.46		5.00		7.00				19464.27	6.41%
4	Bardhaman	1533	16746.58	142	37588.47		8.00		10.00				54353.05	17.89%
5	Birbhum	1353	4006.50	9	516.91			2.00	21.00				4546.41	1.50%
6	Coochbehar	1204	2400.69	3	69.59								2470.28	0.81%
7	Dakshin Dinajpur	114	228.65	0	0.00								228.65	0.08%
8	Darjeeling	1261	7455.15	34	3412.22		5.00	5.00	6.00				10883.37	3.58%
9	Hooghly	978	11221.48	90	11094.63		10.00	3.00	17.00				22346.11	7.36%
10	Howrah	793	24231.15	109	19377.70		7.00	7.00	13.00		7.00		43642.85	14.37%
11	Jalpaiguri	1260	7176.29	17	956.57				3.00				8135.86	2.68%
12	Kolkata	2021	21228.27	174	15114.02		10.00	17.00	18.00		1.00		36388.29	11.98%
13	Malda	1324	3951.78	14	349.03				34.00				4334.81	1.43%
14	Murshidabad	1823	5264.42	20	67.97				12.00				5344.39	1.76%
15	Nadia	1406	3542.81	41	1626.19				4.00				5172.20	1.70%
16	Pashchim Medinipur	27	4120.60	2	725.00								4845.60	1.60%
17	Purba Medinipur	2295	18559.29	75	6113.13			3.00	27.00				24702.42	8.13%
18	Purulia	1548	5089.64	25	3497.88				24.00				8611.52	2.83%
19	Uttar Dinajpur	1125	2505.61	13	457.49				1.00				2964.10	0.98%
TOTAL		23238	177607.07	930	125764.49		82.00	58.00	229.00		18.00		303758.56	100.00%

Source : (WBSFC, 2016)

The WBSFC has streamlined the process of availing loan right from the submission of loan application to disbursement (See Figure-4). It takes generally 30 days to approve the loan subject of course to receipt of comprehensive documentation and clarifications from the customer. In case of loans above Rs. 3 crore, it may take slightly longer, depending on the schedule of the board meeting.

Figure -4: Loan Process Flow



Source : (WBSFC, 2016)

Apart from normal project finance, referred to as Normal Loan Application by it, the WBSFC also provides funding under the Small Industries Bank of India (SIDBI)'s Equipment Refinance Scheme (ERS) and its own Loan Against Mortgaged Property (LAMP).

Bank Loans

In West Bengal, commercial banks are the main lending institutions. Regional rural banks and co-operative banks take the second place in providing credit. This has been possible due to various steps taken by both Central & State Governments to bring banking to the doorsteps of the people by expansion of branch network in the rural and semi-urban areas. After nationalization of major banks, expansion of branch network got momentum. At present, almost all the blocks have nationalized bank branches. There were 7427 bank branches as on 31st March 2015. Out of this, branches of Commercial Banks were 6084, Regional Rural Banks 913, West Bengal Co-operative Bank Branches 321 and West Bengal State Co-operative & Rural Development Bank 109. Commercial Banks had 1820 branches in rural areas and 771 branches in semi-urban areas, 1056 branches in urban areas and 1262 branches in metropolitan areas of West Bengal. The branches of Regional Rural Bank in rural, semi-urban and urban areas were 754, 125 and 32 respectively with 2 branches in metropolitan areas.

It would not be out of place to mention the continuing importance of Lead Bank Scheme in coordinating the activities of banks and other developmental agencies through various fora in order to achieve the objective of enhancing the flow of bank finance to priority sector/ MSMEs

in the state. It may be recalled that for coordinating the activities in the district, a particular bank is assigned the lead bank responsibility of the district. The lead bank is expected to assume leadership role for coordinating the efforts of the credit institutions and Government for promoting and supporting the MSMEs. Figure -5 lists the lead banks for the various districts of West Bengal.

Figure 5: District-wise Lead Banks in West Bengal

<i>Name of the Banks</i>	<i>District</i>
United Bank of India	Bankura, Dakshin Dinajpur, Uttar Dinajpur, Malda, Murshidabad, Nadia, Purulia, 24-Pargans (South), Purba Medinipur, Paschim Medinipur (10 Districts)
UCO Bank	Howrah, Hooghly, Birbhum, Burdwan (4 Districts)
Central Bank of India	Jalpaiguri, Darjeeling, Coochbehar Alipurduar (4 Districts)
Allahabad Bank	24-Parganas (North) (1 District)
State Bank of India	Kolkata (1 District)

The lead banks also facilitate consortium funding or loan syndication for relatively larger projects. The state government is committed to promote MSMEs in the state by creating a sustainable financial ecosystem for the sector. Considering the rapid growth of MSMEs in the state, the MSME & Textiles Department has already launched an Rs 200-crore Venture Capital Fund.

Loan Syndication / Consortium Financing

Whilst the funding requirements of the individual MSMEs may not be so large as to call for loan syndication/ consortium financing, the task of the industrial development of the state necessitates pooling of the financial resources across a host of institutions- both in public as well as private sectors. The mega projects such as those in industrial infrastructure and related sectors such as power, telecommunication, construction of airport, seaport, industrial park, Iron & Steel, Cement, etc. are usually funded through this mode. These projects may be promoted by corporates in public, private and joint sectors, private limited companies, trusts and societies etc. The emphasis has been on Public-Private-Partnership mode

for speeding up the infrastructure development for accelerated industrial, agricultural and economic growth.

Schemes for MSME

Directorate of MSME, Government of West Bengal is the state level apex agency for introducing and implementing the various schemes for MSME and entrepreneurship development.

Pre-investment Stage

Assistance in the form of

- Motivational programmes/seminars/campaigns to attract new entrepreneurs.
- Interaction with Officers/Field Level Officers
- Introduction to PMEGP and other self-employment generating programmes
- Consultancy for preparing Schemes
- For getting Pollution Clearance.
- To facilitate Inter-departmental linkages with WBSEB/CESC/Bank/WBFC/Telephone/PCB etc.
- Training support-EDP/Training to the Artisans.
- Sponsoring of loan cases to different financial institution.

Investment Stage

- Infrastructural support through WBSIDC; RURAL HAAT; URBAN HAAT; KARMATIRTHA etc.
- Other types of fiscal support like share capital support to Industrial./Handicrafts Co-opp. Society, managerial support etc. For venture capital support Visit www.msmebengalinvest.in

Post-investment Stage

- Application for Udyog Aadhaar Memorandum
- To provide subsidy
- Marketing support, participation in industrial fairs
- Counselling support – on delayed payment issues.
- Support for technology, modernization, R&D through Micro, Small & Medium Enterprises TFC. Visit www.msmetfc.in

- Support for Quality control facility
- Support for expansion/Ancillarisation
- Buyers sellers meet in collaboration with MSMEDI

District Level Set-up

At the grass root level, the District Industries Centres (DICs) assume the responsibility for attending to the needs of the entrepreneurs and providing assistance and escort services to them.

- Technical support for preparation of Project Report
- Information on sources of machinery and equipment
- Priority in Power supply/Telephone connection
- Assistance of getting Land/shed in Industrial Estates
- Promotion of New Industrial Estates/Growth centres
- Approval of Project Reports of Noble/Special types
- Promotion of Electronic Industries
- Training through Entrepreneurship Development Programmed
- Financial Assistance through Bank/WBFC
- Financial Assistance under Self Employment Schemes
- Assistance under Equipment Leasing Scheme and Hire Purchase of Machinery Scheme of the NSIC Ltd.
- Marketing linkage with Central Govt./State Govt. organisations/Undertakings
- Marketing Assistance through WBSIDC/NSIC Ltd./CEO
- Ancillary Industry tie-up with Government undertakings.
- Marketing Information
- Marketing Assistance through Participation in Exhibitions, Trade Fairs/Buyers-Sellers Meet etc.
- Marketing Assistance of Handicrafts artisans through participation in Handicrafts Expo/Exhibition both inside and outside the State
- Linkage with organisation like WBHDC/WB State Handicrafts Coop. Society Ltd./Development Commissioner (Handicrafts)
- Attending problems related to SSI Registration/Bank Loan/Marketing of Products etc.
- Linkage with Research Institute like CMERI/CGCRI/NML/CFTRI/JTRL/IJIRA etc. for Technology Up gradation and Innovation
- Financial Assistance for Modernisation through WBFC/SIDBI/Scheduled Bank

-
- Skill Development Training with the help of organisation like RTC etc.
 - Management qualities improvement through Training, Workshop, Seminars
 - Export Assistance
 - In- plant study of SSI units
 - Standardisation of products, implementation of ISO-9000 quality system and certification
 - Sick unit Revitalisation
 - National Level Awards for innovative products/outstanding growth/exports etc.
 - Promotion of products towards exploitation of Non-conventional Energy Sources
 - Assistance under Coir Development Schemes
 - Registration of Industrial Cooperative and extending Financial assistance to them
 - Pollution Control measures and Assistance for obtaining pollution clearances
 - Assistance under Schemes promoted by W.B. Minority Dev. Finance Corporation/KVI Board/other Govt. Department.
 - Design and Production Development for Handicrafts
 - Awards to Handicrafts artisans
 - Development of Lac Industries
 - Awards to SSI units for Export
 - Implementation of Households Electrical appliance (Quality Control) Order 1981
 - Assistance under West Bengal Incentive Scheme, 2013
 - Information/Assistance towards setting up of Downstream Petrochemical Units under SSI Sector
 - Old age Pension to Handicrafts Artisans
 - MMTRTC Training
 - Micro & Small Enterprises Cluster Development Programme
 - Setting up of Urban Haat for providing marketing assistance to Handicraft artisans
 - Handicrafts Museum at EZCC, Salt Lake
 - Participation in Foreign Trade Fairs
 - Conducting Market studies for handicrafts in foreign countries.

West Bengal MSME Policy 2013-18

Preamble

West Bengal has the potential to become the leading state in coming future in terms of MSME productivity within India. This is not only because of huge number of MSME units but also the diversified approach from production to services. The varied segments are food processing, agro industries, leather, gems and jewellery, mineral based, iron and steel, handicrafts, manufacturing industries and service sector. One of the largest employments can be created in this segment within next five years. The facilitative interventions will be in the areas of creating an enabling eco-system, skill development, technology intervention, and marketing.

Vision

To create a sustainable ecosystem in the MSME sector which can maximize the utilization of resource and widen the area of operation to make the state emerge as the MSME leader in the country in the next ten years.

Mission

The MSME Policy of Government of West Bengal aims to increase the ancillarization and vendor linkage of MSME from the present about 2% to 10% over the next five years with government facilitating the process supported by a public procurement policy. This may lead to increase the volume of the market of the MSME products by atleast 25%. Supported by an enabling business environment and a synergistic approach facilitated by the government this will create scale up operation for the MSMEs in the state. Incentives for energy efficient and cutting edge technology coupled with thrust on skill development as provided by this Policy will accelerate the process making MSMEs of the state attain the desired standards of quality and cost.

Cluster development and regional innovation approach will be the thrust areas supported by additional flow of funds and other fiscal interventions. MSME sector would be able to create additional employment for about 10 million in next ten years in the state.

Enabling Business Environment

The state government shall:

1. Provide a better and more conducive business environment for MSME sector.
2. Keep simplifying the business regulatory environment in the state.
3. Develop web-enabled common application gateway.
4. Progressively make clearances by the state authorities web-enabled.
5. Introduce timelines defined in respect of all clearances.
6. Enhance the quality of human resource through training and skill development packages.
7. Promote pooling of common services and functions (common facility centre) under cluster approach for the benefit of smaller players.
8. Strengthen participation of and support to SHGs and cooperatives in the production and marketing in micro enterprise sector with special focus on handicrafts and village industries.
9. Encourage joint ventures with private sector in the entire value chain of the MSME sector.
10. Set up Technology Facilitation Centre involving technological institutions and experts for technology upgradation and transfer support to MSMEs in the state.
11. Set up a State level inter-departmental Task Force on MSME.
12. Set up adequate number of industrial estates for providing basic infrastructure to MSMEs.
13. Facilitate setting up MSE clusters in each district of the state.
14. Create marketing infrastructure and support through setting up haats/parks and facilitation participation of state's MSME sector in fairs/expo/exhibitions.
15. Create institutional arrangement for design support to handicraft sector.

Commencement and Duration

The West Bengal MSME Policy-2013-2018 will be in effect on and from the 1 April 2013 in the whole of West Bengal and remain valid for the period ending on 31st March, 2018.

FISCAL INCENTIVES

Capital Investment Subsidy

- For new Micro & Small Enterprise in Zone C & D
 - Micro enterprise in Zone C – 25%
 - Micro enterprise Zone D – 40%
 - Small enterprise in Zone C – 15%
 - Small enterprise in Zone D – 30%
- (a) Subject to a ceiling of Rs 50 Lakh for Small Enterprise.
- (b) 20% additional subsidy on admissible subsidy for all enterprises wholly owned by women, SC/ST and minority community entrepreneurs.
- (c) These entrepreneurs will also get incentive for setting up of units in Zone A & B as follows :
 - Micro Unit – 15%
 - Small Unit – 10%
- (d) This incentive would be in addition to what the units get from GoI under any other scheme.

Interest Subsidy on Term Loan

Micro & Small Enterprise

- Subvention of 6% for all units and 7.5 % for units set up in the C and D Zone districts for 5 years.

Medium Enterprise

- Zone B & C – 25% of total Term Loan Interest subject to ceiling of Rs. 175.00 Lakh per year for 5 years.
- Zone D – 25% of total Term Loan Interest subject to ceiling of Rs. 175.00 Lakh per year for 7 years.

Electricity Duty

Micro & Small Enterprise

- 50% waiver for 5 yrs for Zones A & B & 75% for Zones C & D.
- The units set up in any zone and wholly owned by women, SC/ST and minority community entrepreneurs will be eligible for 100% waiver for 5 years.

Medium Enterprise

- Zone B & C - 100% waiver of electricity on the electricity consumption for 5 years subject to maximum of Rs. 25.00 Lakh per year or Rs. 1.25 Crore for 5 years.
- Zone D – 100% waiver of electricity duty on the electricity consumption for 5 years and 75% waiver from the sixth year upto tenth year subject to maximum of Rs. 50.00 Lakh per year or Rs. 2.5 Crore in 5 years.

*Power Subsidy**Micro & Small Enterprise*

- Subsidy of Rs. 1.00 / Kwh for Zone A & B
- Subsidy of Rs. 1.50 / Kwh for units in Zone C & D

For 5 years; subject to a ceiling of Rs 20 Lakh per annum for small enterprises and Rs 30 Lakh for medium enterprises.

*Incentive for Energy Efficiency**Micro & Small Enterprise*

- 50% re-imburement of the cost of energy audit undertaken by an certified agency to be available after implementation of the recommendations.
- 25% reimbursement of the cost of installations for energy conservation as per energy audit subject to a ceiling of Rs 2 Lakh.

*Stamp Duty & Registration Fee**Micro & Small Enterprise*

- 100% for units in Zone D, 75% for Zone C, 50% for Zone B and 25% for Zone A.

Medium Enterprise

- B, C & D Zone refund @ 75% of Stamp Duty.

Entry Tax

- Reimbursement of ET on plant and machinery available after beginning of commercial production by the unit.
- Reimbursement of ET on procurement of raw materials for the initial 3 years.

VAT*Micro, Small & Medium Enterprises*

- Zone B & C – 80% VAT refund paid for 8 years or 75% of fixed Capital Investment whichever reached earlier
- Zone D – 90% VAT refund paid for 8 years or 75% of fixed Capital Investment whichever reached earlier.

CST

Total refund for 3 years from the date of commencement of commercial production.

Water Conservation/Environment Compliance*Micro & Small Enterprise*

- Assistance upto 50% or Rs. 2 Lakh maximum for water conservation/ pollution control measures.

Cluster Development

- Support upto Rs. 5 crore for common infrastructure such as road, power etc for each micro and small industrial cluster in Zone B and C.
- Support upto Rs. 10 crore for common infrastructure such as road, power etc for each micro and small industrial cluster in Zone D.

Skilled HR

- Undertake measures in collaboration with the industry to provide 10 million skilled HR over a period of 5 years.

Standard Quality Compliance*Micro & Small Enterprise*

- 50% of cost upto a maximum of Rs. 5 lakh for obtaining certification accreditation like ISO-9000, ISO-14000, ISO-18000, Social Accountability Standards, OEKO-TEX etc.

Work Force Welfare Assistance

- Reimbursement of 100% in 1st year & 75% in next remaining years expenditure incurred towards Employees State Insurance (ESI) and Employees Provident Fund (EPF) as follows : Zone B-5 yrs., Zone C-7 yrs., Zone D-9 yrs.

GI / Patent Registration

- State Government will provide consultancy and facilitation services for identification and registration of Geographical Indicators (GI) of items.
- Reimbursement of 50% of expenditure for obtaining patent registration subject to a maximum of Rs. 5 lakh.

GRADED SLABS OF INCENTIVES

The districts of the state have been divided into 4 Zones for differential treatment under this Policy. Considering the needs of inclusive growth, the policy provides additional incentives for investment in backward regions of the state.

Zone-A : Kolkata Municipal Corporation area, all Municipal areas of North 24 Parganas, all municipal areas of South 24 Parganas, all municipal areas of Howrah.

Zone-B : District of Hooghly, North 24 Parganas (excluding municipal areas and Sunderban areas, South 24 Parganas (excluding municipal areas and Sunderban areas), Howrah (excluding municipal areas), Siliguri Municipal Corporation, Municipal corporation/municipal areas of Paschim Medinipur, Purba Medinipur, Burdwan & Nadia.

Zone-C : District of Burdwan (excluding Municipal Corporation/municipal areas), Purba Medinipur (excluding Municipal corporation/municipal areas), Nadia (excluding Municipal Corporation/municipal areas), Murshidabad, Malda, Jalpaiguri and Darjeeling (excluding Siliguri Municipal Corporation)

Zone-D : District of Birbhum, Purulia, Bankura, Paschim Medinipur (excluding Municipal corporation/municipal areas), Uttar Dinajpur, Dakshin Dinajpur, Cooch Behar and Sunderban areas of South and North 24 Parganas districts.

Conditions/eligibility of the units for availing incentives /financial assistance under this policy

- Modern/Hi-tech plant & Machinery to be installed that conform to the standard productivity.
- Unit will have to strictly observe requisite pollution control compliances.
- Regular Energy Audit is to be conducted and standard energy efficiency to be ensured wherever applicable.
- Unit will have to follow/maintain labour laws.
- Unit will have to commit to remain in production for at least 5 years from the date of commercial production.
- A unit defaulting in payment of any government dues/FI dues will not be eligible for assistance under this policy.

West Bengal Incentive Scheme for Micro, Small and Medium Enterprises

WHEREAS, the Governor is of the opinion that it is necessary to modify certain provisions and procedural aspects of the West Bengal Incentive Scheme 2013 for Micro, Small and Medium Enterprises notified under No. 59-MSET(III)/15S-07/2011 Dated the 3rd February, 2014 of the Department of Micro, Small and Medium Enterprises and Textiles for further simplification in the context of ease of doing business in the State and for extending more fiscal incentives to the Micro, Small and Medium Enterprises set up in Cooch behar district.

AND WHEREAS, it is felt necessary to notify the modified Scheme in a single volume for ease of implementation and for the benefit of Micro, Small and Medium Enterprises.

Now, therefore, the Governor is pleased to modify the notification bearing No. 59-MSET(III)/15S-07/2011 Dated the 3rd February, 2014 of the Department of Micro, Small and Medium Enterprises and Textiles in terms of power conferred under para 22 of the said Scheme and to publish the modified Scheme in a single volume.

1. Short Title

The Scheme may be called the West Bengal Incentive Scheme 2013 for Micro, Small and Medium Enterprises as modified up to 22.05.2015 (hereinafter referred to as WBIS 2013 for MSMEs as modified up to 22.05.2015)

2. Object

The object of the Scheme is to extend fiscal incentives to encourage entrepreneurs to set up Micro, Small and Medium Enterprises with a view to focusing on development of MSMEs in the backward region of the State and creating a sustainable ecosystem in the MSME sector which can maximize the utilization of resource and widen the area of operation to make the State emerge as the MSME leader in the country.

3. Commencement and Duration

Unless specifically mentioned against the respective items of incentives sanctioned under the Scheme, it comes into effect on and from the 1st day of April, 2013 in the whole of West Bengal

and shall remain in force for a period of five years ending on 31st March 2018, if not withdrawn/ amended earlier by a Notification in the official Gazette to that effect.

4. Definitions

In the WBIS 2013 for MSMEs as modified up to 22.05.2015, unless the context otherwise requires

- (i) "Approved Location" means location mentioned in the approved project.
- (ii) "Approved Project" means the industrial project of a unit in the manufacturing sector which should be approved before implementation of the project by any Directorate under the Deptt. of Micro, Small & Medium Enterprises and Textiles, Govt. of West Bengal or concerned DIC or Micro, Small & Medium Enterprises Development Institute (MSMEDI), Govt. of India or Food Processing Industries & Horticulture Deptt., Govt. of West Bengal or Commercial Banks/ Financial Institution (Central and State)/ Cooperative Banks/ scheduled banks approved by RBI/ RRBs financing the project.
- (iii) "Central Government" means the Government of India.
- (iv) "DIC" means the District Industries Centre, which also includes the Sub-DIC, Durgapur/Siliguri.
- (v) "Eligible Unit/Enterprise" means a micro, small or medium enterprise which has filed Entrepreneurs Memorandum (Part-II) and subsequently been found eligible as per terms and conditions of WBIS-2013 for MSMEs as amended up to 22.05.2015.
- (vi) "Existing Industrial Unit" means a micro, small or medium enterprise which has started production before 1st April,2013 and filed EM (Part-II).
- (vii) "New Industrial Unit" means a micro, small or medium enterprise in the manufacturing sector which has started production on or after the 1st April, 2013 and filed EM(Part-II). If an existing industrial unit sets up a branch as second/ third unit etc. in different locations in the State and manufactures new items, its second/ third unit etc. will only be treated as a new industrial unit provided EM(Part-II) is filed for the same.
- (viii) "Factory " means any premises including the precincts thereof:
 - (a) Wherein ten or more workers are working or were working

in any part of which a manufacturing process is being carried out with the aid of power or is ordinarily so carried on, Or

- (b) Wherein twenty or more workers are working or were working on any of the preceding twelve months and in any of which a manufacturing process is being carried on without the aid of power or is ordinarily so carried on but does not include a mine, subject to the operation of the Mines Act, 1952 (35 of 1952) or a railways running shed.
- (c) "Factory Worker" means a person employed, directly or through any agency, whether for wages or not, in any manufacturing process for cleaning any part of the machinery or equipment or premises used for manufacturing process or in any other kind of work incidental to or connected with the manufacturing process or the subject of the manufacturing process.
- (ix) "Term Loan" means a loan secured from any Bank or Financial Institution for acquiring fixed capital assets in the form of land, building, plant and machinery, tools & implements, appliances etc.
- (x) "Working Capital" means capital required for running any industrial unit and includes cash credit and / or any other short term loan actually utilized as working capital.
- (xi) "Fixed Capital Investment" means investment made in plant and machinery in an approved project of the eligible unit/ enterprise on or after 1st April, 2012 subject to other conditions laid down in paragraph-7 of WBIS-2013 for MSMEs as modified up to 22.05.2015. .

Explanation – I

The "fixed capital investment" shall be calculated as follows:-

Plant and Machinery:

It shall be calculated as follows:-

The cost of plant and machinery as found installed at the approved location, excluding the cost of any second hand plant and machinery purchased and installed for the purpose of implementation of the project. The cost of the following items shall

be excluded while calculating the investment made in Plant & Machinery:

- a. Equipments such as tools, jigs, dies, moulds and spare parts for maintenance and the cost of consumable stores.
- b. Installation of Plant and Machinery.
- c. Research and development equipments and pollution control equipments.
- d. Power generation set and extra transformer installed by the enterprise as per the regulations of the State Electricity Board.
- e. Bank charges and service charges paid to the National Small Industries Corporations or the State Small Industries Corpn.
- f. 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.
- g. Gas producer plant.
- h. 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.
- i. Charges paid for technical knowhow for erection of Plant and Machinery.
- j. Such storage tanks which store raw materials and finished products only and are not linked with the manufacturing process
- k. Fire fighting equipments.

Explanation-II

Advances paid to suppliers of plant and machinery for the approved project of the eligible unit on or after 1st April 2012 will be taken into account in calculating the total fixed capital investment.

- (xii) "Micro Unit / Enterprise" in the manufacturing sector means a unit/enterprise classified as such in MSMED Act ,2006.

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- (xiii) "Small unit/enterprise" in the manufacturing sector means a unit/enterprise classified as such in MSMED Act ,2006.
 - (xiv) "Medium unit/enterprise" in the manufacturing sector means a unit/enterprise classified as such in MSMED Act ,2006.
 - (xv) "State Financial Institution" means the West Bengal Financial Corporation.
 - (xvi) "State Government" means the Government of West Bengal
 - (xvii) "Unit"/"Enterprise" means any industrial project in the micro, small and medium sector including industrial cooperatives and industrial self- help groups, which has filed Entrepreneurs Memorandum (Part-II).
 - (xviii) Wherever in the West Bengal Incentive Scheme 2013 for Micro Small & Medium Enterprises as amended up to 22.05.2015 , the words 'General Manager of District Industries Centre' appears they shall be synonymous with the words 'Deputy Director of Micro & Small Scale Enterprises(Anc.) of Sub-DIC, Durgapur' and 'Officer-in-Charge of Sub-DIC, Siliguri'.
 - (xix) "Year" means, unless otherwise specifically mentioned/stated and not repugnant to the context, the financial year commencing from the 1st April and ending on 31st March following.

5. Applicability of WBIS 2013 for MSMEs.

- 5.1 The WBIS 2013 for MSMEs as modified up to 22.05.2015 shall generally be applicable to all micro, small and medium enterprises in the manufacturing sector which have started production on or after 1st day of April 2013.
- 5.2 The units may be in the private sector, cooperative sector and joint sector undertaking as also companies/undertakings owned and managed by the State Government and the Industrial SHGs.

6. Non-applicability of WBIS 2013 for MSMEs.

The WBIS 2013 for MSMEs as modified up to 22.05.2015 shall not be applicable to the industrial units/enterprises;

- (i) That have been registered and for which eligibility certificates have been issued/incentives have been sanctioned and/ or disbursed under the respective Incentive Scheme of the State. This will continue to be governed by the respective Incentive Scheme of the State.

- (ii) That have been registered and for which eligibility certificate have been issued in terms of the respective Incentive Scheme of the State but no sanction or disbursement of incentive has been made. The claim will be governed by the respective Incentive Scheme of the State.
- (iii) That have been registered and for which eligibility certificates have been issued in terms of the respective Incentive Scheme of the State but no claim has been made. The claim will be governed by the respective Incentive Scheme of the State.
- (iv) That have commenced production before 01.04.2013 and applied for registration and EC under the respective Incentive Scheme of the State within the stipulated date. The claim will be governed by the respective Incentive Scheme of the State.
- (v) That are engaged in manufacture of textiles, apparel/garment, technical textile and enterprises in hosiery, textile, handloom and powerloom sector and have commenced production on or after 01.09.2013.

7. Eligibility criteria for incentives under WBIS 2013 for MSMEs as modified up to 22.05.2015.

7.1 Any micro, small or medium unit/enterprise in the manufacturing sector shall be eligible for incentives under WBIS-2013 for the MSMEs as modified up to 22.05.2015 excluding those mentioned in the negative list of industries at Annexure-IV subject to the fulfillment of the conditions specified below :

- (i) A micro, small or medium enterprise shall commence its commercial production within the period of the Scheme and shall submit its first incentive application in prescribed form to the General Manager, District Industries Centre within 12 (twelve) months from the date of commencement of commercial production.

Explanation

A micro, small or medium enterprise which will commence its production on 29.03.2018 shall submit its first incentive application in prescribed form within 28.03.2019 to the General Manager, District Industries Centre concerned.

- (ii) The unit/enterprise shall file Entrepreneurs Memorandum (Part - II).
- (iii) The project will be covered by a detailed feasibility report / project prepared for the purpose and approved in terms of Sub-para 7.1 (iv).

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- (iv) A new project should be approved before its implementation by any Directorate under the Department of Micro, Small & Medium Enterprises and Textiles, Government of West Bengal or concerned DIC or Micro Small and Medium Enterprises Development Institute (MSME-DI), Government of India or Food Processing Industries and Horticulture Department, Govt. of West Bengal or Commercial Banks / Financial Institution (Central and State) / Co-Operative Banks/Scheduled Banks approved by RBI/ RRBs financing the project. In case of projects with arrangement of finance from own resources. Eligibility of the unit / enterprise shall be considered provided the General Manager, District Industries Centre is satisfied about the arrangement of such finance.
- (v) An eligible enterprise which has availed of incentive/ subsidy in respect of any of the items specified under any other Incentive/Subsidy Scheme of Govt. of India / State Govt. shall also be eligible to get the benefits of other items only under WBIS-2013 for MSMEs as modified up to 22.05.2015 subject to fulfillment of terms and conditions of the Scheme.
- (vi) The enterprise will submit a 'self- declaration' affirming:
- (a) That the unit /enterprise has installed Modern/Hi-tech plant & machinery that conform to the standard productivity.
 - (b) That the unit/enterprise will strictly observe requisite pollution control compliances.
 - (c) That the unit/enterprise will conduct regular Energy Audit and ensure standard energy efficiency wherever applicable.
 - (d) That the unit /enterprise will follow/maintain labour laws.
 - (e) That the unit / enterprise will remain in production for at least five years from the date of commencement of commercial production.
 - (f) That the unit/enterprise has not defaulted in payment of any government dues /dues of Financial Institutions.\
 - (g) That the enterprise has not misrepresented or withheld any information and not suppressed any fact/ information related to the claim submitted.
 - (h) That all documents like approved project report, bills/ vouchers of the plant and machinery etc. submitted by the enterprise with the claim are genuine.

- (i) That the terms and conditions of WBIS -2013 for MSMEs as modified up to 22.05.2015 are binding on the enterprise.
- (j) That the enterprise will not divert/ utilize the loan amount disbursed by the bank / financial institution for carrying out any activity / project other than the implementation of the approved project.

7.2 The Unit/Enterprise will make application in prescribed form to the General Manger of District Industries Centre after commencement of commercial production for grant of incentives under the Scheme.

8. Classification of developed areas and backward areas.

8.1 For the purpose of determination of type and quantum of incentives available under this scheme for the approved projects, according to their locations, the State has been classified into the following zones:-

Zone-A : Kolkata Municipal Corporation Area, All municipal areas of North 24-Parganas, All municipal areas of South 24-Parganas, All municipal areas of Howrah.

Zone-B : Districts of Hooghly, North 24 Parganas (excluding municipal areas and Sundarban areas), South 24 Parganas (excluding municipal areas and Sundarban areas), Howrah (excluding municipal areas), Siliguri Municipal Corporation, Municipal Corporations/Municipal Areas of Paschim Medinipur, Purba Medinipur, Burdwan and Nadia .

Zone-C : Districts of Burdwan (excluding municipal corporation/ municipal areas), Purba Medinipur (excluding municipal corporation/municipal areas), Nadia (excluding municipal corporation/municipal areas), Malda, Jalpaiguri, Murshidabad and Darjeeling (excluding Siliguri Municipal Corporation).

Zone-D : Districts of Birbhum, Purulia, Bankura, Paschim Medinipur(excluding municipal corporation/ municipal areas), Uttar Dinajpur, Dakshin Dinajpur and Sundarban Areas of South and North 24 Parganas districts .

Zone-E : Cooch Behar District

9. State Capital Investment Subsidy

9.1 An eligible micro or small enterprise located in Zone C , D & E

area will be entitled to State Capital Investment Subsidy for its approved project as follows :-

Micro Enterprise

Zone C – 25% of the Fixed Capital Investment

Zone D – 40% of the Fixed Capital Investment

Zone E – 60% of the Fixed Capital Investment

Small Enterprise

Zone C – 15% of the Fixed Capital Investment

Zone D – 30% of the Fixed Capital Investment

Zone E – 40% of the Fixed Capital Investment

9.2 An additional subsidy of 20% on State Capital Investment Subsidy normally admissible will be provided to all eligible micro and small enterprises wholly owned by women, SC/ST, and minority community entrepreneurs.

9.3 An eligible micro or small enterprise wholly owned by women, SC/ST, and minority community entrepreneurs and set up in Zone-A and B area will be entitled to State Capital Investment Subsidy as follows:

Micro Enterprise :- 15% of the Fixed Capital Investment

Small Enterprise :- 10% of the Fixed Capital Investment

9.4 The subsidy normally admissible and additional subsidy taken together will not exceed Rs.50 Lakh for a Small Enterprise located in Zone C & D area and will not exceed Rs. 75 Lakh for a Small Enterprise located in Zone E area.

10. Interest Subsidy on Term Loan

10.1 An eligible micro, small or medium enterprise will be entitled to Interest Subsidy on annual interest liability on the Term Loan borrowed from a Commercial Bank/ Cooperative Bank/ Scheduled Banks approved by RBI/ RRBs/ Financial Institution (Central and State) for implementation of the approved project as follows .

Micro & Small Enterprise –

Zone A & B – Subvention of 6% for 5 years.

Zone C, D & E– Subvention of 7.5% for 5 years.

Explanation:

The interest subsidy admissible for an eligible micro or small enterprise in Zone – A & B area will be calculated in the following manner :-

Annual interest liability on Term Loan paid by the enterprise x 6

Rate of Interest charged by the Bank/ F.I.

Medium Enterprise

Zone – B & C - The interest subsidy will be 25% of total Term Loan interest paid by the enterprise subject to a ceiling of Rs. 175 lakh per year for 5 years.

Zone – D & E - The interest subsidy will be 25% of total Term Loan Interest paid by the enterprise subject to a ceiling of 175 lakh per year for 7 years.

Explanation

The Interest Subsidy admissible for an eligible medium enterprise will be calculated in the following manner :

Annual interest liability on Term Loan paid by the enterprise x 25

100

- 10.2 The interest subsidy will be payable annually subject to submission of a statement / certificate (in annexure-II) by the lending Bank / Financial Institution to substantiate that the unit has paid the due interest to the institution on the due dates and has not defaulted in payment of interest at any time during the period .

11. Waiver of Electricity Duty

An eligible micro, small or medium enterprise for its approved project will be entitled to waiver of electricity duty on the electricity consumed for the manufacturing activity as follows :

Micro & Small Enterprise

Zone A & B – 50% waiver of electricity duty on the electricity consumption for 5 years from the date of commencement of commercial production.

Zone C, D & E – 75% waiver of electricity duty on the electricity consumption for 5 years from the date of commencement of commercial production.

An eligible micro or small enterprise wholly owned by women, SC/ST and minority community entrepreneurs will be entitled to

100% waiver of electricity duty on the electricity consumed for 5 years from the date of commencement of commercial production of its approved project irrespective of location.

Medium Enterprise

Zone – B & C - 100% waiver of electricity duty on the electricity consumption for 5 years from the date of commencement of commercial production subject to a maximum of Rs.25.00 lakh per year or Rs.1.25 crore in 5 years.

Zone – D & E – 100% waiver of electricity duty on the electricity consumption for 5 years and 75% waiver from the 6th year upto 10th year from the date of commencement of commercial production subject to a maximum of Rs.50.00 lakh per year or Rs.2.50 crore in 5 years.

12. Power Subsidy

An eligible micro, small or medium enterprise for its approved project will be entitled to power subsidy on the electricity consumed for the manufacturing activity as follows:

Micro, Small and Medium Enterprise

Subsidy of Re.1.00 / Kwh for enterprises located in Zone – A & B area and Rs.1.50/ Kwh. for enterprises located in Zone – C, D & E area for five years from the date of commencement of commercial production.

The power subsidy will not exceed Rs.20 Lakh per year for a small enterprise and Rs.30 Lakh per year for a medium enterprise and will be payable annually.

13. Subsidy for Energy Efficiency

- 13.1 An eligible micro or small enterprise for its approved project will be entitled to a reimbursement of 50% of the cost of energy audit undertaken by a certified agency. The reimbursement will be made after implementation of the recommendations.
- 13.2 An eligible micro or small enterprise for its approved project will be entitled to a reimbursement of 25% of the cost of installations for energy conservation as per energy audit subject to a maximum Rs. 2 Lakh.

14. Subsidy on Stamp Duty and Registration Fee

- 14.1 An eligible micro or small enterprise will be entitled to a

reimbursement of stamp duty and registration fee paid by it for the purpose of registration of documents within the State relating to purchase of land and/ or buildings for setting up of the approved project at the following rates :-

Micro & Small Enterprise

Zone – A - 25%

Zone – B - 50%

Zone – C - 75%

Zone – D & E - 100%

- 14.2 An eligible medium enterprise located in Zone – B, C, D and E area will be entitled to a reimbursement of 75% of Stamp Duty paid by it for the purpose of registration of documents within the State relating to purchase of land and/ or buildings for setting up of the approved project.
- 14.3 The amount admissible will be calculated proportionately based on the percentage of land / buildings used for setting up of the unit / enterprise for implementation of the approved project.

15. Refund of Entry Tax

- 15.1 An eligible micro , small or medium enterprise will be entitled to refund of Entry Tax paid by it to the Govt. of West Bengal for procurement of plant and machinery for the approved project. The refund will be made available after commencement of commercial production by the enterprise.
- 15.2 An eligible micro , small or medium enterprise will be entitled to refund of Entry Tax paid by it to the Govt. of West Bengal for procurement of raw materials for the initial three years for implementation of the approved project. The refund will be made available after commencement of commercial production by the enterprise.

16. Refund of Value Added Tax (VAT)

An eligible micro, small or medium enterprise for its approved project will be entitled to refund of VAT paid to the Govt. of West Bengal as follows :-

Zone – B & C – 80% VAT refund paid for eight years from the date of commencement of commercial production or 75% of Fixed Capital Investment whichever reaches earlier.

Zone – D & E - 90% VAT refund paid for eight years from the date of commencement of commercial production or 75% of Fixed Capital Investment whichever reaches earlier.

17. Refund of Central Sales Tax (CST)

An eligible micro, small or medium enterprise for its approved project will be entitled to refund of CST paid by it for three years from the date of commencement of commercial production.

18. Subsidy for Water Conservation/Environment Compliance

An eligible micro or small enterprise for its approved project will be entitled to a reimbursement of 50% of expenditure incurred by it towards cost of captive Effluent Water Treatment Plant for wastewater recycling and cost of pollution control devices subject to a maximum of Rs.2 Lakh.

19. Subsidy for Standard Quality Compliance

An eligible micro or small enterprise shall be reimbursed 50% of the expenditure incurred subject to a maximum of Rs.5 Lakh for obtaining ISI / BIS certification / ISO 9000/ ISO 14000 / ISO 14001/ ISO 18000 certification from approved Institutions / Research Laboratories.

20. Work Force Welfare Assistance

- 20.1 An eligible micro, small or medium enterprise for its approved project will be entitled to a reimbursement of 100% in first year and 75% in the remaining years of expenditure incurred by it for paying its contribution towards Employees State Insurance (ESI) and Employees Provident Fund (EPF) if at least 50% of the employees in the enterprise are recruited from amongst the persons registered with Employment Bank of the State. The period of assistance will be as follows :-

Zone – B - 5 years.

Zone – C - 7 years.

Zone – D & E - 9 years.

- 20.2 The reimbursement of expenditure specified in sub-para 20.1 above will be payable annually based on minimum statutory limit subject to the condition that the enterprise has paid its contribution towards ESI and EPF on due dates.

- 20.3 'Employee' will have the same meaning as defined under

“Employees’ Provident Fund Act,1952” and “Employees’ State Insurance Act, 1948”.

21. Subsidy for Patent Registration

An eligible micro, small or medium enterprise for its approved project will be entitled to a reimbursement of 50% of expenditure incurred by it for obtaining Patent Registration for its products subject to a maximum of Rs.5 Lakh.

22. Power to amend and/or relax

Notwithstanding anything contained in any of the provisions of WBIS 2013 for MSMEs as modified up to 22.05.2015 , the State Government may at any time-

- (i) modify, vary, alter, amend or withdraw any of the provisions made here in above in this Scheme and such modifications, variations, alterations, amendments and withdrawal shall be effective from the date specified in the order so made in this behalf.
- (ii) make any relaxation in applying the provisions of this Scheme but such relaxation shall be made on merits of the approved project in each case, as the State Government may consider necessary and appropriate.
- (iii) may issue instructions and guidelines to facilitate implementation, to remove anomalies and to clarify the interpretations of the provisions of this Scheme.

23. Repeal and Saving

- 23.1 The West Bengal Incentive Scheme, 2007 for Micro & Small Scale Enterprises shall stand repealed except in respect of para 6 of the present Scheme.
- 23.2 The benefits extended to the units/enterprises under any previous Incentive Scheme shall continue to be governed under the respective Scheme.
- 23.3 If an enterprise falling under any of the three categories of enterprises as defined in the MSMED Act, 2006, graduates to a higher category or beyond the purview of the act from its original category shall only continue to avail of Non-Tax benefits of its original category for a period of three (3) years from the date of such graduation to the higher category or original eligible years which ends earlier
- 23.4 In the event of WBST Act, 1956/WBVAT Act, 2003/CST Act,

1956/W.B. Entry Tax Act 2012 being replaced by any other Act, the provision of the Scheme will apply mutatis mutandis even after the new Act comes into force.

The West Bengal Incentive Scheme 2013 for Micro, Small and Medium Enterprises issued with the concurrence of the Finance Department vide their U.O.No 408 dated 20-01-2014 and notified under No. 59-MSET(III)/15S-07/2011 Dated the 3rd February, 2014 of the Department of Micro, Small and Medium Enterprises and Textiles is modified on approval of the Standing Committee of the Cabinet on Industry, Infrastructure and Employment in its 45th meeting held on 07.05.2015 and with the concurrence of the Finance Department vide their U.O.No Group C/2014-2015/0323 dated 23.03.2015 with regard to creation of Zone E relevant to Coochbehar district.

By Order of the Governor

RAJIVA SINHA

Principal Secretary to the Government of West Bengal

OPERATIONAL PROCEDURES OF WEST BENGAL INCENTIVE SCHEME 2013 FOR MICRO, SMALL AND MEDIUM ENTERPRISES AS MODIFIED UPTO 22.05.2015

1. A micro, small or medium enterprise claiming to be eligible for incentive under WBIS2013 for MSMEs as modified up to 22.05.2015 shall duly apply to the General Manager, District Industries Centre concerned in Form-A except for Waiver of Electricity Duty for which it shall apply to the Director, Directorate of Electricity Duty in Form-C.

The industrial units/enterprises which have already applied for Eligibility cum Registration Certificate in Form-I or which have been issued Eligibility cum Registration Certificate under WBIS 2013 for MSMEs shall also apply to the General Manager, District Industries Centre concerned in Form-A for incentive.

2. On receipt of application for incentive from an enterprise the General Manager, District Industries Centre shall make, as expeditiously as possible, scrutiny of/enquiry into particulars furnished by the enterprise and cause physical inspection of the enterprise to ascertain the actual date of commencement of commercial production and Fixed Capital Investment made in Plant and Machinery by it and on being satisfied that the same is

in order in terms of the provisions of the Scheme, the General Manager, District Industries Centre concerned (i) shall issue a Certificate in Form-B for date of commencement of commercial production and fixed capital investment in favour of the enterprise and (ii) shall also recommend the case to the Director, Directorate of Electricity Duty in Form-F when the enterprise expresses its intention to apply for Waiver of Electricity Duty to the Director, Directorate of Electricity Duty. The General Manager, District Industries Centre concerned shall also approve admissible amount of incentive as early as possible and inform the applicant on quantum of admissible amount of incentive. If any application is found to be not eligible for incentives under the WBIS 2013 for MSMEs as modified up to 22.05.2015 the General Manager, District Industries Centre will issue a letter of rejection to the applicant enterprise.

- 3(a) An eligible enterprise shall apply to the Commissioner of Commercial Taxes, West Bengal in Form-D at the close of each year requesting him to certify the total amount of Entry Tax paid by it in respect of procurement of plant & machinery as well as raw materials for implementation of the approved project during the year in respect of which the application has been made.
- (b) On receipt of the application, the Commissioner of Commercial Taxes, West Bengal, would verify the payments of Entry Tax and other particulars as contained in the application and issue a certificate to the General Manager, District Industries Centre/Dy. Director of M&SSE(Anc)/Officer-in-Charge, Sub District Industries Centre concerned certifying amount of Entry Tax paid by the enterprise during the year under consideration alongwith details of plant and machinery/raw materials.
- (c) The enterprise shall maintain the accounts in such a manner that at any time as may be necessary it can show clearly the amount of Entry Tax paid in respect of procurement of plant & machinery as well as raw materials to which it is entitled to refund of Entry Tax under WBIS-2013 for MSMEs as modified up to 22.05.2015.
- 4(a) An eligible enterprise shall apply to the Commissioner of Commercial Taxes, West Bengal in Form-E at the close of each year requesting him to certify the total amount of VAT & CST paid by it in respect of goods manufactured and sold during the year in respect of which the application has been made.

On receipt of the application, the Commissioner of Commercial Taxes, West Bengal, would verify the payments of VAT & CST

and other particulars as contained in the application and issue a certificate to the General Manager, District Industries Centre/ Dy. Director of M&SSE(Anc.)/Officer-in-Charge, Sub District Industries Centre concerned certifying the amount of VAT & CST paid by the enterprise during the year under consideration along with production details .

- (c) The enterprise shall maintain the accounts in such a manner that at any time as may be necessary it can show clearly the amount of VAT & CST paid in respect of sales made by it of the item(s) manufactured as per approved project to which it is entitled to refund of VAT & CST under WBIS-2013 for MSMEs as modified up to 22.05.2015 .
- 5. The General Manager, District Industries Centres shall work out the admissibility of the enterprise for refund of Entry Tax, VAT & CST after receiving the certificates from the Commissioner of Commercial Taxes, West Bengal in the manner specified in 3 & 4 above.
- 6. The General Manager, District Industries Centre will place the requisition of funds to the Director, MSME, West Bengal, for approved amount of incentives.
- 7(a) On receiving the allotment of funds for the purpose of disbursement of approved incentive to an enterprise, the General Manager, District Industries Centre shall require the enterprise concerned to submit a 'self- declaration' to the effect that the enterprise shall be liable to refund the entire amount of incentive and in case of failure to refund, the entire amount shall be recoverable under the Public Demands Recovery (PDR) Act if
 - (i) the incentive has been claimed by misrepresentation as to an essential factor by furnishing false information,
 - (ii) the enterprise shifts itself from Zone-D & E area to anywhere in the State or from this State to outside the State,
 - (iii) the enterprise discontinues production in respect of its approved project within 5 (five) years from the date of commencement of commercial production,
 - (iv) the enterprise is sold out,
 - (v) the loan amount disbursed by Bank/Financial Institution for the approved project is found to be diverted/utilized for some other activities/projects

AND

If any amount of subsidy/ incentive is paid in excess of the entitlement of the enterprise detected afterwards, the enterprise will be liable to refund the same failing which the amount shall be recoverable under the PDR Act.

- (b) After satisfaction as to submission of 'self-declaration' as stated hereinabove the General Manager, District Industries Centre shall formally issue sanction order in favour of the enterprise with endorsement to the Drawing and Disbursing Officer of the District Industries Centre.
- 8. The Drawing and Disbursing Officer in the District Industries Centre shall in turn draw the amount of incentive sanctioned by the General Manager, District Industries Centre, obtain an advance stamped receipt for the amount to be disbursed and disburse the same to the enterprise concerned through its Bank/ Financial Institution under an intimation to the enterprise.
- 9. The General Manager, District Industries Centre will maintain a separate register for the purpose of diarising and recording all applications received under WBIS 2013 for MSMEs as modified up to 22.05.2015.
- 10. The General Manager, District Industries Centre will also maintain a disbursement register for the purpose of keeping enterprise wise records of all disbursement made under WBIS 2013 for MSMEs as modified up to 22.05.2015.

Procedure for Availing Incentive Scheme

Application for incentives (Form A) under the West Bengal Incentive Scheme-2013 for Micro, Small & Medium Enterprises as modified up to 22.05.2015 (to be submitted in duplicate) along with following documents to be enclosed with the Application:

1. A copy of the Memorandum of Association and Articles of Association authenticated by the Registrar of Companies/ partnership deed (wherever applicable).
2. A statement on the name and address of the Directors/Partners/ Owners of the enterprise/Members of Co-operative or Self Help Groups, as applicable.
3. Copy of approved project report.
4. A copy of loan sanctions letter and disbursement letter issued by financial institutions/banks.
5. A copy of audited balance sheet for last 2 years wherever applicable.
6. A list of plant and machinery with original value along with copies of the bills, money receipts.
7. Existing manufacturing activities in West Bengal stating items, annual approved capacity, annual production during last three years (in quantity and value in Rs. Lakh), if applicable.
8. Copy of the land deed (wherever applicable). In case of rented/ leasehold land/buildings, copy of rent agreement and receipt / lease agreement.
9. Copy of mutation & conversion certificate of land/ buildings, wherever applicable.
10. Copy of valid consent to operate certificate from the WBPCB.
11. Copy of VAT, CST, Entry Tax registration certificate.
12. Copy of trade licence.
13. Copies of other statutory licenses (wherever applicable).
14. Copy of first electricity bill (wherever applicable).
15. Copy of acknowledgement of EM Part-II.
16. Copy of SC/ST certificate wherever applicable.

17. Any other documents, if necessary.
18. Self –declaration.

Additional documents to be enclosed

1. State Capital Investment Subsidy
 - (i) Self certification on fixed assets as per Annexure-I
2. Interest Subsidy on Term Loan
 - (i) A certificate from Bank/FI as per Annexure-II
3. Power Subsidy
 - (i) Copy of documents regarding supply of electricity to the unit/enterprise
 - (ii) Copies of all Electricity Bills and corresponding money receipts for which the claim is made
4. Subsidy for Energy Efficiency
 - (i) Copies of relevant bills, money receipts for expenditure incurred towards cost of Energy Audit and installations for energy conservation
 - (ii) Copy of Energy Audit Report/Recommendations of the Certified Agency related to the claim in question.
 - (iii) Details of installations for energy conservation
5. Subsidy on Stamp Duty and Registration Fees
 - (i) Scheduled of the land
 - (ii) Sketch map of the land/building purchased
 - (iii) Documents showing payment of Stamp Duty and Registration Fee
6. Refund of Entry Tax
 - (i) A receipted copy of the application submitted to the Commissioner, Commercial Tax, West Bengal in Form-D
7. Refund of VAT & CST
 - (i) A receipted copy of the application submitted to the Commissioner, Commercial Tax, West Bengal in Form-E
8. Subsidy for Water Conservation/Environment Compliance
 - (i) Copies of relevant bills, money receipts for expenditure incurred towards cost of Captive Effluent Water Treatment Plant and Pollution Control Devices
 - (ii) Details of Captive Effluent Water Treatment Plant and Pollution Control Devices

9. Subsidy for Standard Quality Compliance

- (i) Copies of ISI/BIS/ISO9000/ISO14000/ISO 14001/ISO 18000 Certificate
- (ii) Copies of relevant bills, money receipts for expenditure incurred for obtaining ISI/BIS/ISO9000/ISO14000/ISO 14001/ISO 18000 Certificate

10. Work Force Welfare Assistance

- (i) Copies of documents regarding contributions made to ESI/EPF
- (ii) A statement showing the names of workers, their age, date of appointment, nature of appointment and nature of work
- (iii) Certificate from the Regional Provident Fund Commissioner
- (iv) Certificate from the Director, ESI as per Annexure-III
- (v) Documents showing the recruitment from Employment Bank of the State

11. Subsidy for Patent Registration

- (i) Copy of documents on fees paid for Patent registration
- (ii) Copy of Patent Registration Certificate.

Udyog Aadhaar Memorandum

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 21 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 Acknowledgement 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 (D[C) 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-OI 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-If (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-541112014-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 Handi-capped	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 Road/Street/ Lane Pin Code City State	Area/Locality District	
10.	Official Address of Enterprise	District	State	Pin
	Please enter mobile number as in aadhaar for which OTP to be sent	Mobile No:		Email:
11.	Date of commencement			
12.	Previous Registration Number-if any	SSI		
		EM-I		
		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		
<p>Declaration</p> <p>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.</p> <p>Submit</p> <p>* In case of a company or a limited liability partnership or a cooperative society or a society or a trust.</p> <p>** (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</p>			

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 Commence- ment			
Major Activity	Manufacturing		Service
Enterprise Type	Micro	Small	Medium
National Industry Classification Code(s)			
Previous Registration Number-if any	SSI EM-I EM-2		
Acknowledgement	Date of Filing		Date of Printing

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

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* : _____
- Udyog Aadhaar 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 DetailsTaken From _____ Scheme Name _____ on
date _____ (Add)**Add Association Details**

Association Name _____ Since date -----(Add)

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?

Corporatisation 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
Regulations	Sole Proprietorship	Company
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.

<i>Registration of Proprietorship Firm</i>	<i>Service Tax Registration</i>	<i>MSME Registration</i>
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)	The identity of a Proprietorship can be established by MSME Registration (if applicable) mentioning

<i>Registration of Proprietorship Firm</i>	<i>Service Tax Registration</i>	<i>MSME Registration</i>
	mentioning the business name. Service tax registration takes 10 to 15 days, subject to Government processing time.	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.

<i>Registration of Partnership firm</i>	<i>Partnership Deed</i>	<i>Partnership Deed Registration</i>	<i>Tax Registration</i>
Registration of a Partnership firm Can be done start-up 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.

S.No.	Subject	Section
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

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

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 msajority opinion etc., does not arise.

COMPANY V/S OPC

COMPANY		OPC
	Common Seal	
	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;

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- 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 contact.
- 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

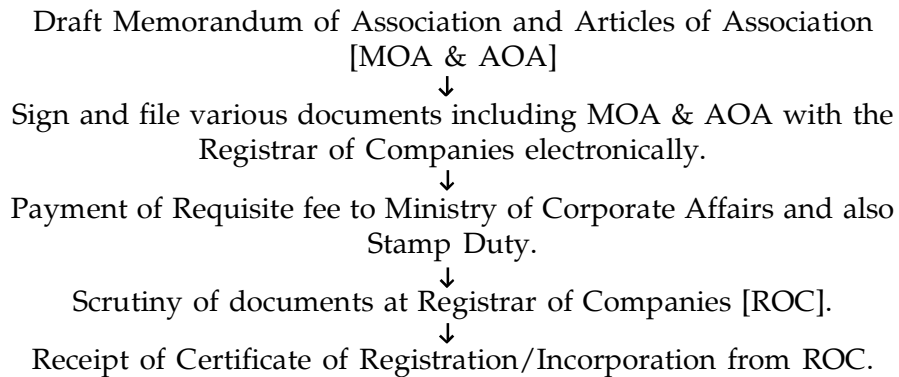
Obtain Digital Signature Certificate [DSC] for the proposed Director(s)



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.



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.

The model articles as prescribed in Table F, G, H, I and J of Schedule I may be adopted by a company as may be applicable to the case of the company, either in totality or otherwise.

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 No. 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 e-Form for Incorporation of OPC

- For incorporation of One Person Company required filing the prescribed form
- It is suggested that e-Form DIR-12 should be filed if the member is not the sole director of the company.
- 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 on incorporation form, 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

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- 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 e-Form 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.

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- 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.

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- 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.

Or

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.

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- *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

<i>Partnership</i>	<i>Limited Liability Partnership</i>
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 acts, fraud and negligence of partner(s) when the delinquent partner will be personally liable.
Registration of partnership is not mandatory	Incorporation of partnership as LLP is mandatory.

<i>Partnership</i>	<i>Limited Liability Partnership</i>
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 inter se and between the partners and the LLP.
Minimum 2 partners	Minimum 2 partners
Documents are required to be filed with Registrar of firms	Documents are required to be MCA/ ROC LLP is the administrative 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 therefore as in the case of third parties/outsideers.
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

<i>Limited Company</i>	<i>Limited Liability Partnership</i>
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 are exempted).	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.

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.

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- 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 encashed 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 ever 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.

A 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	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.

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

<i>Sr. No.</i>	<i>Nature of Meeting</i>	<i>Number of meetings</i>	<i>Period</i>
1.	First General Meeting	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**

<i>Private Limited Company</i>	<i>Public Limited Company</i>
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 demate- rialization of securities	In case of public offer of securities, the securities have to be in Dematerialized Form
Listing of securities on Stock exchange	Securities offered in Public Offer, to be listed in Recognized Stock Exchanges
Not Applicable	
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.

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- 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.

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- 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

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- 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 (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

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- 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 **form ADT-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)**

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- 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.

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-GST-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.

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- 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

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- 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.