

# **Entrepreneurship, Skill Development and Governance in MSMEs**

***Referencer***



**THE INSTITUTE OF  
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## PREFACE

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The Make in India mission aims to facilitate investment, foster innovation, enhance skill development and build an Eco-system for manufacturing infrastructure in the country. The MSMEs of India would be the cradle for the “Make in India” vision.

MSMEs have the inherent characteristics of being innovative and quickly responsive to changing market conditions. And it is because of these qualities, MSMEs contribute substantially to an economy and are widely acknowledged as the engine of economic growth. Establishment and promotion of Micro, Small and Medium Industries is much required because of the fact that MSMEs cater to the vital needs of the economy in terms of economic growth, employment generation and enhancement of the entrepreneurial energy.

It has been witnessed all over the globe that procedural hurdles in the establishment of start-ups at basic and advanced level not only exterminate the drive of the entrepreneur but it also lowers down the business alliance in longer run. This is proved proportionally adverse to the growth of economy in any country. India being an emerging economy needs to remove procedural impediments to promote maximum self-reliance through MSMEs. It is in this backdrop mission Make in India, and to realize this mission, the initiatives taken by the Government for promotion of MSMEs would go a long way in making India a manufacturing hub of the world

I acknowledge with thanks all organizations, institutions and regulatory authorities whose materials were sought or consulted in the preparation of this Referencer.

I commend the dedicated efforts put in by Shri Chittaranjan Pal, Assistant Director, Directorate of Studies in the preparation of the Referencer under the guidance of CS Sonia Baijal, Director, Directorate of Studies, ICSI.

I am sure, this Referencer will facilitate the members, professionals and users in Entrepreneurship, Skill development and Governance in MSMEs.

**(CS Mamta Binani)**

Place : New Delhi  
Date : 16.03.2016

*President*  
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# Introduction

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

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

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

Startup means an entity, incorporated or registered in India not prior to five years, with annual turnover not exceeding INR 25 crore in any preceding financial year, working towards innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property.

In this context, entity means Private Limited Company (under The Companies Act, 2013) or a Registered Partnership Firm (under The Indian Partnership Act, 1932) or Limited Liability Partnership (under The Limited Liability Partnership Act, 2008)

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

Globally, Micro, Small and Medium Enterprises (MSMEs) play a vital role in the economic development of a nation. MSMEs are the nursery where small existing businesses have the potential to become Global Enterprises.

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# Parameters used by World Bank to Measure Ease of Doing Business

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The World Bank report considers three things while ranking countries- process, cost and time. The ten parameters which is being considered by the bank to prepare the report includes starting a business, construction permits, getting electricity and water connections ,enforcement contracts, registering property, resolving insolvency, paying taxes, getting credit, trading cross borders, protecting investors.

**(i) Starting a business**

It measures the number of procedures, time and cost for a small and medium-size limited liability company to start up and formally operate.

**(ii) Dealing with construction permits**

It tracks the procedures, time and cost to build a warehouse— including obtaining necessary the licenses and permits, submitting all required notifications, requesting and receiving all necessary inspections and obtaining utility connections.

**(iii) Getting electricity**

It tracks the procedures, time and cost required for a business to obtain a permanent electricity connection for a newly constructed warehouse.

**(iv) Registering property**

It examines the steps, time and cost involved in registering property, assuming a standardized case of an entrepreneur who wants to purchase land and a building that is already registered and free of title dispute.

**(v) Getting credit**

It explores two sets of issues—the strength of credit reporting systems and the effectiveness of collateral and bankruptcy laws in facilitating lending.

**(vi) Protecting investors**

It measures the strength of minority shareholder protections against misuse of corporate assets by directors for their personal gain as well as shareholder rights, governance safeguards and corporate transparency requirements that reduce the risk of abuse.

**(vii) Paying taxes**

It addresses the taxes and mandatory contributions that a medium-size company must pay or withhold in a given year, as well as measures the administrative burden in paying taxes.

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**(viii) Trading across borders**

It measures the time and cost (excluding tariffs) associated with exporting and importing a standardized cargo of goods by sea transport. The time and cost necessary to complete 4 predefined stages (document preparation; customs clearance and inspections; inland transport and handling; and port and terminal handling) for exporting and importing the goods are recorded; however, the time and cost for sea transport are not included. All documents needed by the trader to export or import the goods across the border are also recorded.

**(ix) Enforcing contracts**

The enforcing contracts topic assesses the efficiency of the judicial system by following the evolution of a commercial sale dispute over the quality of goods and tracking the time, cost and number of procedures involved from the moment the plaintiff files the lawsuit until payment is received.

**(x) Resolving insolvency**

It identifies weaknesses in existing bankruptcy law and the main procedural and administrative bottlenecks in the insolvency process.

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# Major Initiatives on Improving ‘Ease of Doing Business’ in India

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## **(i) Starting a Business Made Easy**

The most important changes in ensuring ease of doing business in India has been brought out by Ministry of Corporate Affairs (MCA) which has passed the Companies (Amendment) Act, 2015 to eliminate the requirement of minimum paid-up capital, common seal and declaration of commencement of business for companies. Further, MCA has introduced Form INC-29 providing option of selection of company name and obtaining Director’s Identification Number (DIN) at the time of incorporation of company. Therefore a company can now be created and made active with a single process of applying for incorporation. It also simplifies a number of other regulatory requirements.

Department of Industrial Policy and Promotioin (DIPP) has integrated applicants to obtain Permanent Account Number (PAN) and Tax Account Number (TAN) from CBDT and register with ESIC and EPFO at the time of incorporation of company. Now a company can obtain these five registrations through a single process. Employer’s registration with ESIC and EPFO has been made online and real-time with applicants getting registration number immediately. Registration under Shops and Establishment law has also been made online and is being done on the same day. In Mumbai, registration for VAT and Professional Tax has been integrated into a single ID eliminating the requirement of a separate registration for Professional Tax. While, Maharashtra is allotting TIN within a day, the process has been made real-time by Delhi.

## **(ii) eBiz Platform to Provide Government of India Services**

eBiz online portal has been established by DIPP to provide an online single window to businesses for availing various government services. 14 Central Government services have already been integrated with the portal and work on another 12 services is underway. In addition to these 26 Gol services the portal will initially integrate 24 services of the States of Andhra Pradesh, Punjab, Haryana, Orissa, Maharashtra, Delhi, Uttar Pradesh, Rajasthan, Tamil Nadu and West Bengal.

## **(iii) Revival and Rehabilitation Framework for MSMEs**

Ministry of MSME, through an Order dated 29th May, 2015, has created a framework for revival and rehabilitation of MSMEs. So far the existing mechanism was working for large industries through Lender’s Forum. An analogous arrangement has been created for MSMEs, wherein the enterprise or any of its creditors may apply to banker’s committee to consider revival or rehabilitation of the enterprise.



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**(iv) Documents for Export & Import**

The Doing Business Report, 2015 identifies 7 documents required for exports and 10 documents required for imports in India. There are a number of non-mandatory documents identified in the Report. DGFT has through Notification No. 114 (RE-2013)/2009-2014 dated 12th March, 2015 clarified that only three documents are required for export of goods from India namely : (i) Bill of Lading/ Airway Bill; (ii) Commercial Invoice cum Packing List; (iii) Shipping Bill/Bill of Export Similarly, three documents will be required for import of goods into India : (i) Bill of Lading/ Airway Bill; (ii) Commercial Invoice cum Packing List; (iii) Bill of Entry. Custom Clearance Facilitation Committees (CCFC) have been formed under the chairmanship of Chief Commissioner/ Commissioner of Customs (with representatives of all agencies involved in clearances as members) at all ports/ airports for expediting clearance of goods.

**(v) Enforcing Contracts**

India ranks 186th out of 189 countries in 'enforcing contracts indicator. India's judicial system takes on an average 1,420 days to resolve a commercial dispute. On the other hand, countries which have high ranking, takes only 4 to 6 months time. In order to expedite the dispute resolution process, Delhi and Mumbai High Courts have set up benches into commercial courts. These dedicated commercial benches will help faster disposal of commercial cases in Delhi and Mumbai.

**(vi) Increase of Industrial Licence Validity**

The initial validity period of Industrial License (IL) has been increased to three years from two years. This will give enough time to licensees to procure land and obtain the necessary clearances/approvals from authorities. And the Initial validity of IL for defence sector has been revised to seven years, extendable up to three years.

**(vii) FDI Policy Mapped with NIC Code 2008**

The NIC Code 2008 has been adopted, which is the advanced version of industrial classification. This code will allow Indian businesses to be part of globally recognized and accepted classification that facilitate smooth approvals/registration.

**(viii) Assessment Framework for Ranking of States**

A 98 point agenda has been shared with all the State Governments for reducing the regulatory burden on businesses and streamline the processes. States had been asked to implement these reforms within prescribed timelines. DIPP has decided that it will rank States on 'Ease of Doing Business' based on these action points and has engaged KPMG to assist it in developing the methodology for ranking the States. The World Bank Group will also assist DIPP in the process.

**(ix) SEZ Units Allowed on Self-attestation**

SEZ Units are allowed to remove goods for repair, replacement, testing, calibration, quality testing and research and development on self-attestation.

**(x) Simplifying and Rationalizing the Regulatory environment**

DIPP has requested all Secretaries of Government of India and Chief Secretaries of the

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States/UT to simplify and rationalize the regulatory environment. In order to improve the regulatory business environment they have been requested to take the following measures on priority:

- (a) All returns should be filed on-line through a unified form;
- (b) A check-list of required compliances should be placed on Department's web portal;
- (c) All registers required to be maintained by the business should be replaced with a single electronic register;
- (d) No inspection should be undertaken without the approval of the Head of the Department; and
- (e) For all non-risk, non-hazardous businesses a system of self-certification should be introduced.

**(xi) Checklist to Process Foreign Investor Applications**

A checklist with specific time-lines has been developed for processing all applications filed by foreign investors in cases relating to Retail/NRI/EoU foreign investments. This has been placed on the DIPP website.

**(xii) Streamlining Grant of Construction Permits**

India ranks at an extremely low 184th in 'dealing with construction permits' indicator. Grant of construction permits is primarily a function of the local municipal body. The Governments of Delhi and Maharashtra have made significant reforms in easing the procedure for grant of construction permits through online application. Government of Delhi has made available online application with Common Application Form for buildings approval. Now most of the applications are processed online. In case of plotted residential area, the program identifies shortcomings and indicates them immediately. A similar effort has been made by Municipal Corporation of Greater Mumbai. Further, there is no requirement for obtaining separate completion and occupancy certificates. Municipal Corporation of Greater Mumbai will issue single completion cum-occupancy certificate. These reforms will radically help reducing compliance burden on the applicant by reducing number of procedures and time taken in grant of construction permits.

**(xiii) Easy electricity Connections**

Government of Maharashtra has radically reformed the procedure of granting electric connection by reducing the number of procedures to three (from existing seven) and number of days required for connection to 21 (from existing 67). An applicant can now apply online for grant of connection. Further, Central Pollution Control Board has vide its letter No. B-29012/1/ESS/2014 dated 23rd December, 2014 clarified that there is no requirement for NOC or Consent to Establish from concerned State Pollution Control Board/Committee for new industrial electricity connections.

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## Performance of MSME Sector

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

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

The SME business market of India is large and bubbling with newer opportunities. Increased purchasing power and consumerism is what drives the business scenario in India. Thus, there is an opportunity for competitive advantage that can benefit investors and entrepreneurs to a large extent. An investment in any best small business opportunity promises lucrative returns and success in less time. There are various reasons due to which the small scale business in India has witnessed a spurt of growth. Some of these factors are:

- Less Capital Intensive
- Extensive Promotion & Support by Government
- Reservation for Exclusive Manufacture by small scale sector
- Project Profiles
- Funding - Finance & Subsidies
- Machinery Procurement
- Raw Material Procurement
- Manpower Training

- Technical & Managerial skills
- Tooling & Testing support
- Reservation for Exclusive Purchase by Government
- Export Promotion
- Growth in demand in the domestic market size due to overall economic growth
- Increasing Export Potential for Indian products
- Growth in Requirements for ancillary units due to the increase in number of greenfield units coming up in the large-scale sector.

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## Major Issues concerning the MSME Sector

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

- Lack of availability of adequate and timely credit. The major dependence for some sectors (eg. handicrafts) is for larger working capital requirement, which directly impacts their production cycle
- High cost of credit, with interest rates of 14-16%
- Collateral requirements being insisted upon by banks
- Limited access to equity capital for MSMEs
- Marketing is one of the critical areas where MSMEs face problems including product differentiation, brand building, customized tailor-made services, clientele building, after sales servicing etc. Many entrepreneurs are not entering in the field of exports due to lack of market knowledge, availability of a growing domestic market, and the complexities of international trade
- Limited scale of operations leads to low production capacity (and consequent low exportable surplus), which is related to the maximum limits for capital investment for definition of MSME
- Problems of designing, packaging and product display due to limited capacities
- Inadequate infrastructure facilities, including power, water, roads, etc.
- Low technology levels and lack of access to modern technology.
- Lack of skilled manpower
- Absence of a suitable mechanism which enables the quick revival of viable sick enterprises and allows unviable entities to close down speedily.
- Lack of coordination among the various organizations involved in the promotion of MSMEs, including organizations of the State Governments, and poor linkages with the institutional stakeholders in the private sector. There is also duplication of programmes run by various Ministries for the same target group
- Lack of reliable and updated data base to help in monitoring the development initiatives and formulation of appropriate schemes to meet the differential needs of the heterogeneous beneficiaries.

- Non availability of raw materials at a competitive cost, very often due to low volumes
- High transaction costs and procedural delays leading to high fixed costs.
- Policy and procedural issues.
- Governance Issues.

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

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## IPR Solutions vs. MSMEs

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In a knowledge driven society, technological innovation is regarded as an important factor that drives national competitiveness and corporate competitiveness alike. While innovation is the key word for every economy, India's challenge is to make innovation work for the masses and create sustainable businesses.

Innovative and creative ideas need to be developed, turned into innovative products or services and commercialized successfully so as to enable MSMEs to reap the benefits of innovation and creativity. Intellectual Property (IP), patents in particular, are crucial for turning innovative ideas and inventions into competitive products that can significantly increase profit margins.

IPR is being increasingly recognized as a powerful tool to create wealth through knowledge. MSMEs persistently face the challenge of extracting the latent value of their Intellectual Property (IP). It has always been difficult for them to use it effectively in their business strategy. Organisations that commit time and resources in protecting their intellectual property assets can increase their competitiveness in a variety of ways. Use of Intellectual Property Rights can generate an additional income for MSMEs through the licensing, sale, or commercialization of the IP-protected products or services that may significantly improve an enterprise's market share or raise its profit margins. IP also improves the worth of MSMEs in the eyes of potential, existing investors or financial institutions.

One major obstacle in the growth of MSMEs is the lack of proper marketing strategies. Intellectual Property is crucial for marketing of the products and services of small businesses if used efficiently. IP can build a strong image for the business as a whole in the minds of current and potential customers and in positioning their business in the market. IP rights, together with other marketing tools e.g. advertisements and other sales promotion activities are crucial for creating a differentiation for MSMEs products and services from other brands providing them their own identity and place in the market, diversifying the market strategy to various target groups, promotion of products and services and for giving that extra edge to their products & services to make them desirable in foreign markets.

Despite the need and benefits of IPR, MSMEs do not realize the significance of IPR to protect their ideas and innovation as they are more focussed on production and operation of their entity. There is need to facilitate better awareness on the strategic aspects of creating, managing, protecting and leveraging IP as a tool to further business opportunities and enable wealth creation.

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## Major Initiatives for MSME Sector

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### (i) MSME (Amendment) Bill, 2015

The Micro, Small and Medium Enterprises (Amendment) Bill, 2015 was introduced in the Lok Sabha on April 20, 2015, to amend the Micro, Small and Medium Enterprises Act, 2006.

*Highlight of the MSME (Amendment) Bill, 2015*

- The Bill seeks to increase the allowance for investment in plants and machinery in micro, small and medium enterprises are as under:

#### MSME in Manufacturing Sector

| <i>MSMEs</i> | <i>MSMED Act, 2006</i> | <i>MSMED Bill, 2015</i> |
|--------------|------------------------|-------------------------|
| Micro        | Rs.25 lakh             | Rs.50 lakh              |
| Small        | Rs.5 crore             | Rs.10 crore             |
| Medium       | Rs.10 crore            | Rs.30 crore             |

#### MSME in Services Sector

| <i>MSMEs</i> | <i>MSMED Act, 2006</i> | <i>MSMED Bill, 2015</i> |
|--------------|------------------------|-------------------------|
| Micro        | Rs.10 lakh             | Rs. 20lakh              |
| Small        | Rs.2 crore             | Rs.5 crore              |
| Medium       | Rs.5 crore             | Rs.15 crore             |

- The central government may change these investment limits, up to three times the specified limits, through a notification.
- The central government may classify micro, tiny or village enterprises as small enterprises. The Bill seeks to extend this to allow the classification of micro, tiny or village enterprises as small as well as medium enterprises.

### (ii) Economic Survey 2014-15

*Priority Sector Lending (PSL):*

A key component of equality of credit in India has been the so called “priority sector lending”.



All Indian banks are required to meet a 40 per cent target on priority sector lending. The law states that all domestic commercial banks, public or private, have to lend 40 per cent of their adjusted net bank credit (ANBC) or credit equivalent amount of their off balance sheet exposure— whichever is higher—to the priority sectors, and number for foreign banks (with more than 20 branches) is 32 per cent. Further, public sector banks have clearly defined rules they have to follow in the subcategories- agriculture, micro and small enterprises, education, housing, export credit and others. The most important amongst them is that 45 per cent of all priority sector lending must be made to agriculture.

*Labour- Sector Reforms:*

A Shram Suvidha portal has been launched for online registration of units, filing of self-certified, simplified, single online return by units, introduction of a transparent labour inspection scheme via computerized system as per risk-based criteria, uploading of inspection reports within seventy-two hours and timely redressal of grievances. A Universal Account Number has been launched facilitating portable, hassle-free, and universally accessible Provident Fund accounts for employees. The Apprentices Act, 1961 has been amended so as to make it flexible and attractive to youth and industry and an Apprentice Protsahan Yojana to support micro small and medium enterprises (MSME) in the manufacturing sector in engaging apprentices has been launched.

The schemes/programmes undertaken by the Ministry and its organizations seek to facilitate/provide:

- adequate flow of credit from financial institutions/banks;
- support for technology upgradation and modernization;
- integrated infrastructural facilities;
- modern testing facilities and quality certification;
- access to modern management practices;
- entrepreneurship development and skill upgradation through appropriate training facilities;
- support for product development, design intervention and packaging;
- welfare of artisans and workers;
- assistance for better access to domestic and export markets; and
- cluster-wise measures to promote capacity-building and empowerment of the units and their collectives.

**(iii) Economic Survey 2015-16**

With 3.6 crore units spread across the country, that employ 8.05 crore people, Micro, Small and Medium Enterprises (MSME) have a contribution of 37.5 per cent to the country's GDP. The sector has huge potential for helping address structural problems like unemployment, regional imbalances, unequal distribution of national income and wealth across the country. Due to comparatively low capital costs and their forward-backward linkages with other sectors, MSMEs will play a crucial role in the success of the Make in India initiative.

Realizing the importance of the MSME sector, the government has undertaken a number of schemes/programmes like the Prime Minister's Employment Generation Programme (PMEGP), Credit Guarantee Trust Fund for Micro and Small Enterprises (CGTMSE), Credit Linked Capital Subsidy Scheme (CLCSS) for Technology Upgradation, Scheme of Fund for Regeneration of Traditional Industries (SFURTI), and Micro and Small Enterprises Cluster Development Programme (MSECDP) for the establishment of new enterprises and development of existing ones. Some of the new initiatives undertaken by the government for the promotion and development of MSMEs, are as follows:

- *Udyog Aadhar Memorandum (UAM)* : The UAM scheme, which was notified in September 2015 under section 8 of the MSME Development Act 2006, is a pathbreaking step to promote ease of doing business for MSMEs. Under the scheme, MSME entrepreneurs just need to file an online entrepreneurs' memorandum to instantly get a unique Udyog Aadhaar Number (UAN). The information sought is on self-certification basis and no supporting documents are required. This marks a significant improvement over the earlier complex and cumbersome procedure.
- *Employment Exchange for Industries*: To facilitate match making between prospective job seekers and employers an employment exchange for industries was launched on June 15, 2015 in line with Digital India. More than 3.42 lakh job seekers have been registered on the portal as on December 30, 2015.
- *Framework for Revival and Rehabilitation of MSMEs*: Under this framework, which was notified in May 2015, banks have to constitute a Committee for Distressed MSME enterprises at zonal or district level to prepare a Corrective Action Plan (CAP) for these units.
- *A scheme for Promoting Innovation and Rural Entrepreneurs (ASPIRE)*: ASPIRE was launched on March 16, 2015 with the objective of setting up a network of technology centres and incubation centres to accelerate entrepreneurship and promote start-ups for innovation and entrepreneurship in rural and agriculturebased industry

In addition, the government intends to provide more credit to MSME sectors, especially in the rural areas, focusing on skill development, encouraging entrepreneurial activities with optimistic mindset among rural youth and creating job opportunities among rural women, for high, inclusive and sustained industrial growth.

For supporting the financial needs of the small and medium enterprise sector and promote start-ups and entrepreneurship, the government has taken various steps through Make in India. The India Aspiration Fund has been set up under the Small Industries Development Bank of India (SIDBI) for venture capital financing of newly set-up or expanding units in the MSME sector. SIDBI Make in India Loan for Small Enterprises (SMILE) has been launched to offer quasi-equity and term-based short-term loans to Indian SMEs with less stringent rules and regulations and a special focus on 25 thrust sectors of Make in India. Further, a Micro Units Development Refinance Agency (MUDRA) Bank has been set up to provide development and refinance to commercial banks/ NBFCs/cooperative banks for loans given to micro-units. MUDRA Bank would follow a credit-plus approach by also providing financial literacy and addressing skill gaps, information gaps, etc.

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**(iv) The Finance Minister, Shri Arun Jaitley presenting the Union Budget 2016-17, said that:**

*“57. We are celebrating the 125th Birth Anniversary of Dr. B.R. Ambedkar. This must become the Year of Economic Empowerment for SC/ST entrepreneurs. We have extensively interacted with the Dalit India Chamber of Commerce and Industry on building an entrepreneurship eco- system. It is proposed to constitute a National Scheduled Caste and Scheduled Tribe Hub in the MSME Ministry in partnership with industry associations. This Hub will provide professional support to Scheduled Caste and Scheduled Tribe entrepreneurs to fulfil the obligations under the Central Government procurement policy 2012, adopt global best practices and leverage the Stand Up India initiative.”*

*“120. Presumptive taxation scheme under section 44AD of the Income Tax Act is available for small and medium enterprises i.e non corporate businesses with turnover or gross receipts not exceeding one crore rupees. At present about 33 lakh small business people avail of this benefit, which frees them from the burden of maintaining detailed books of account and getting audit done. I propose to increase the turnover limit under this scheme to Rupees two crores which will bring big relief to a large number of assesses in the MSME category.”*

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## **Schemes for MSME Sector by the Ministry of MSME**

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Ministry of Micro, Small and Medium Enterprises has been implementing a number of programmes and schemes in the areas of finance, technology, infrastructure, marketing and skill development to facilitate aims of the Make in India Policy.

*The schemes of the Ministry of MSME are as under:*

- Performance & Credit Rating Scheme (PCR)
- Marketing Assistance Scheme
- International Cooperation (IC) Scheme
- Assistance to Training Institutions Scheme
- MSME Talent/Job Melas
- Survey, Studies and Policy Research
- Prime Minister's Employment Generation Programme (PMEGP)
- Scheme of fund for Regeneration of Traditional Industries (SFURTI)
- Market Promotion and Development Assistance (MPDA)
- Interest Subsidy Eligibility Certificate for Khadi and Polyvastra(ISEC) Scheme
- Schemes for Coir Sector
- ASPIRE: A Scheme for Promoting Innovation and Rural Entrepreneurship
- Credit Guarantee Scheme (CGTMSE)
- Credit Linked Capital Subsidy Scheme (CLCSS)
- Udyog Aadhaar Memorandum (UAM)
- Micro and Small Enterprises Cluster Development Programme (MSE-CDP)
- Design Clinic Scheme

### **Performance & Credit Rating Scheme (PCR)**

The scheme is being implemented through National Small Industries Corporation (NSIC) Limited. The main objective of the scheme is to provide a trusted third party opinion on the capabilities and creditworthiness of the MSEs so as to create awareness amongst them about the strengths and

weakness of their existing operations. Rating under the scheme is being carried out through empanelled rating agencies i.e. CRISIL, CARE, ONICRA, SMERA, ICRA and Brickwork India Ratings.

### **Marketing Assistance Scheme**

The scheme is being implemented through National Small Industries Corporation (NSIC) Limited. The main objectives of the scheme is to enhance the marketing competitiveness of MSMEs; to provide them a platform for interaction with the individual/institutional buyers; to update them with prevalent market scenario and to provide them a form for redressing their problems. MSMEs are supported under the Scheme for capturing the new market opportunities through organising/ participating in various domestic & international exhibitions/ trade fairs, Buyer-Seller meets intensive campaigns and other marketing events.

### **International Cooperation (IC) Scheme**

Technology infusion and/or upgradation of Indian micro, small and medium enterprises (MSMEs), their modernisation and promotion of their exports are the principal objectives of assistance under the Scheme. The Scheme would cover the following activities:(a) Deputation of MSME business delegations to other countries for exploring new areas of technology infusion/upgradation, facilitating joint ventures, improving market of MSMEs products, foreign collaborations, etc; (b) Participation by Indian MSMEs in international exhibitions, trade fairs and buyer seller meets in foreign countries as well as in India, in which there is international participation; (c) Holding international conferences and seminars on topics and themes of interest to the MSME. IC Scheme provides financial assistance towards the airfare and space rent of entrepreneurs. State/Central Government Organisations, Industry/Enterprise Associations and Registered Societies/Trusts and Organisations associated with the promotion and development of MSMEs are eligible to apply.

### **Assistance to Training Institutions Scheme**

The Scheme envisages financial assistance for establishment of new institutions (EDIs), strengthening the infrastructure of the existing EDIs and for supporting entrepreneurship and skill development activities. The assistance shall be provided to these training institutions in the form of capital grant for creation/strengthening of infrastructure and programme support for conducting entrepreneurship development and skill development programmes.

### **MSME Talent/Job Melas**

A new initiative was taken up under the Assistance to Training Institutions (ATI) scheme in making available skilled persons for the MSMEs in the country. As part of this, ni-msme conducted MSME Talent/ Job Melas at different places across the country bringing employers and the skilled persons to a common platform. These melas are directly providing employment to the trained youth and indirectly encouraging the youth to participate in ESDPs, while also enhancing the success rate of the programmes.

### **Survey, Studies and Policy Research**

The main objectives of this Scheme are (i) to regularly/periodically collect relevant and reliable data on various aspects and features of MSMEs, (ii) to study and analyze, on the basis of empirical data or otherwise, the constraints and challenges faced by MSMEs as well as the opportunities available to them in the context of liberalization and globalization of the economy, and (iii) to use the results of these surveys and analytical studies for policy research and designing appropriate

strategies and measures of intervention by the Government. Several studies on the MSME sector and evaluation studies of various schemes implemented by the Ministry have been completed under this scheme.

### **Prime Minister's Employment Generation Programme (PMEGP)**

PMEGP is a credit linked subsidy scheme of the Ministry, implemented through KVIC, DICs and State KVI Boards with KVIC as the Nodal Agency at the national level for setting up new self-employment ventures/projects/micro enterprises to generate employment opportunities in rural as well as urban areas of the country. The other objective is to bring together widely dispersed traditional artisans/rural and urban unemployed youth and give them self employment opportunities to the extent possible, at their place so as to help arrest migration of rural youth to urban areas. Any individual, above 18 years of age can avail the benefit of this programme. However, assistance under the Scheme is available only for new projects sanctioned specifically under the PMEGP. Under this programme, financial assistance is provided for setting up of micro enterprises costing upto Rs.25 lakh in manufacturing sector and 10 lakh in service sector. The assistance is provided in the form of subsidy upto 25 percent (35 percent for special category) of the project cost in rural areas while it is 15 percent (25 percent for special category) for urban areas.

### **Scheme of fund for Regeneration of Traditional Industries (SFURTI)**

With a view to making the traditional industries more productive and competitive and facilitating their sustainable development, the Govt. of India announced setting up of a fund for regeneration of traditional industries. The objective is to organize the traditional industries and artisans into clusters to make them competitive and provide support for their long term sustainability and economy of scale, and provide sustained employment for traditional industry artisans and rural entrepreneurs to enhance marketability of products of such clusters by providing support for new products, design intervention and improved packaging and also the improvement of marketing infrastructure. The objective is also to equip traditional artisans of the associated clusters with the improved skills and capabilities through training and exposure visits and to make provision for common facilities and improved tools and equipments for artisans in order to strengthen the cluster governance systems with the active participation of the stakeholders, so that they are able to gauge the emerging challenges and opportunities and respond to them in a coherent manner. Funding for the cluster varies from Rs.1.5 Crore to Rs.8 Crore in view of the size and scale of the project. Funding pattern under the scheme has provision for soft interventions including skill training, capacity building, design development, etc. hard interventions including Common Facility Centres, Raw Material Banks(RMB), training centres, etc. and cross cutting thematic interventions which include brand building & promotion, news media marketing, e-commerce, innovation, R&D initiatives and developing linkages between clusters.

### **Market Promotion and Development Assistance (MPDA)**

MPDA scheme has been formulated as a unified scheme by merging different schemes /sub-schemes/components of different Heads implemented in the 11th Plan, namely: Market Development Assistance, Publicity, Marketing and Market promotion and adds a new component of Infrastructure (inclusive of new component of Marketing Complexes/Khadi Plaza).

### **Interest Subsidy Eligibility Certificate for Khadi and Polyvastra(ISEC) Scheme**

The ISEC scheme is applicable for all registered institutions under KVIC / State KVIBs. The quantum

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of subsidy shall be limited to the difference between the actual rate of interest charged by the financing institutions and 4 (four) per cent to be borne by the borrower. If at any stage interest rate charged by the KVIC is modified, the quantum of subsidy shall be limited to the difference between the rate of interest charged by the financial institutions and such modified rate of interest.

### **Schemes for Coir Sector**

Coir Board is implementing the Export Market Promotion Scheme for adoption of strategic and aggressive product specific and market specific promotional programmes for popularizing coir and coir products in markets abroad, supporting the export oriented industry on modernization programme and to attain overall and sustainable development of Indian Coir Industry by participating in international fairs / product promotion programmes/ seminars etc. and to assist the entrepreneurs to participate in such programmes through export market development assistance scheme.

### **ASPIRE: A Scheme for Promoting Innovation and Rural Entrepreneurship**

A Scheme for Promotion of Innovation, Rural Industry and Entrepreneurship was launched on 18.3.2015. The scheme was formulated to set up a network of technology centres and to set up incubation centers to accelerate entrepreneurship and also to promote start-ups for innovation and entrepreneurship in agro-industry.

### **Credit Guarantee Scheme (CGTMSE)**

To make available credit to Micro and Small Enterprises for loans up to Rs. 100 lakh without collateral/ third party guarantees. CGTMSE has been set up to strengthen credit delivery system and facilitate flow of credit to the MSE sector. The credit Guarantee under CGTMSE seeks to reassure the lender that, in the event of a MSE unit, which availed collateral free credit facilities, fails to discharge its liabilities to the lender; the CGTMSE would make good the loss incurred by the lender.

### **Credit Linked Capital Subsidy Scheme (CLCSS)**

To facilitate technological upgradation, the Government of India has been implementing the Credit Linked Capital Subsidy Scheme (CLCSS). The scheme is applicable to new and existing Micro & Small Enterprises(MSEs) engaged in manufacturing. Facilitating 15% upfront capital subsidy to a maximum limit of Rs.15.00 lakhs (investment in approved plant & machinery upto Rs.1.00 crore) for induction of well-established and improved technologies.

### **Udyog Aadhaar: Ease of Registration Process through Udyog Aadhaar Memorandum (UAM)**

The Government has notified a simple one-page registration Form 'Udyog Aadhaar Memorandum' on 18th September, 2015 in the Gazette of India Vide Notification Number S.O 2576 (E). The salient features of the Udyog Aadhaar Memorandum are as under:

- The one page simplified registration Form constitutes a self declaration format under which the MSME is to self certify its existence, bank account details, promoter/owner Aadhaar details, other minimum basic information required, etc.
- Creating a business friendly environment with easy entry and exit procedures to encourage entrepreneurial activity.

- Encouraging States to strengthen existing 'Single Window System' with a High Power Committee empowered to give all necessary clearances for setting up a business.
- There shall be no fee for filing the UAM.

**Micro and Small Enterprises Cluster Development Programme (MSE-CDP)**

- To support the sustainability and growth of MSEs by addressing common issues such as improvement of technology, skills and quality, market access, access to capital, etc.
- To build capacity of MSEs for common supportive action through formation of self help groups, consortia, upgradation of associations, etc.
- To create/upgrade infrastructural facilities in the new/existing industrial areas/ clusters of MSEs.
- To set up common facility centres (for testing, training centre, raw material depot, effluent treatment, complementing production processes, etc).

**Design Clinic Scheme (DC)**

The objectives of digital clinic are as under:

- To create a sustainable design eco system for the MSME sector through continuous learning and skill development;
- Bring the industrial design fraternity closer to the MSME Sector;
- Develop an institutional base for the industry's design requirement;
- Increase the awareness of the value of design and establish design learning in the MSME and Increase the competitiveness of local products and services through design.

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# Lending to Micro, Small & Medium Enterprises

## Schemes for MSME Sector - RBI Guidelines

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In terms of 'Priority Sector Lending - Targets and Classification', bank loans to Micro, Small and Medium Enterprises, for both Manufacturing and Service sectors are eligible to be classified under the Priority Sector as per the following norms:

1. *Manufacturing Enterprises*

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

2. *Service Enterprises*

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

3. *Khadi and Village Industries Sector (KVI)*

All loans to units in the KVI sector will be eligible for classification under the sub-target of 7 percent / 7.5 percent prescribed for Micro Enterprises under priority sector.

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

5. *Other Finance to MSMEs*

- Loans to entities involved in assisting the decentralized sector in the supply of inputs to and marketing of outputs of artisans, village and cottage industries.
- Loans to co-operatives of producers in the decentralized sector viz. artisans, village and cottage industries.
- Loans sanctioned by banks to MFIs for on-lending to MSME sector as per the conditions specified in the extant Master Circular on 'Priority Sector Lending - Targets and Classification'.
- Credit outstanding under General Credit Cards (including Artisan Credit Card, Laghu Udyami Card, Swarojgar Credit Card, and Weaver's Card etc. in existence and catering to the non-farm entrepreneurial credit needs of individuals).
- Outstanding deposits with SIDBI on account of priority sector shortfall.

6. To ensure that MSMEs do not remain small and medium units merely to remain eligible for priority sector status, the MSME units will continue to enjoy the priority sector lending status up to three years after they grow out of the MSME category concerned.
7. Since the MSMED Act, 2006 does not provide for clubbing of investments of different enterprises set up by same person / company for the purpose of classification as Micro, Small and Medium enterprises, the Gazette Notification No. S.O.2 (E) dated January 1, 1993 on clubbing of investments of two or more enterprises under the same ownership for the purpose of classification of industrial undertakings as SSI has been rescinded vide GOI Notification No. S.O. 563 (E) dated February 27, 2009.

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

1. Advances to Micro, Small and Medium Enterprises (MSME) sector shall be reckoned in computing achievement under the overall Priority Sector target of 40 percent of Adjusted Net Bank Credit (ANBC) or credit equivalent amount of Off-Balance Sheet Exposure, whichever is higher, as per the extant guidelines on priority sector lending.
2. Domestic Commercial Banks are required to achieve a sub-target of 7.5 percent of ANBC or Credit Equivalent Amount of Off-Balance Sheet Exposure, whichever is higher, for lending to Micro Enterprises in a phased manner i.e. 7 per cent by March 2016 and 7.5 per cent by March 2017. The sub-target for Micro Enterprises for foreign banks with 20 branches operating in India and above would be made applicable post 2018 after a review in 2017. However, this sub-target for lending to Micro Enterprises is not applicable to foreign banks with less than 20 branches operating in India.
3. Bank loans above Rs.5 crore per borrower / unit to Micro and Small Enterprises and Rs.10 crore to Medium Enterprises engaged in providing or rendering of services and defined in terms of investment in equipment under MSMED Act, 2006, shall not be reckoned in computing achievement under the overall Priority Sector targets as above. However, bank loans above Rs.5 crore per borrower / unit to Micro and Small Enterprises would be taken into account while assessing the performance of the banks with regard to their achievement of targets prescribed by the Prime Minister's Task Force on MSMEs for lending to MSE sector.
4. In terms of the recommendations of the Prime Minister's Task Force on MSMEs, banks are advised to achieve:
  - 20 per cent year-on-year growth in credit to micro and small enterprises,
  - 10 per cent annual growth in the number of micro enterprise accounts, and
  - 60% of total lending to MSE sector as on preceding March 31st to Micro enterprises.

**Common guidelines / instructions for lending to MSME sector**

1. *Issue of Acknowledgement of Loan Applications to MSME borrowers*

Banks have been advised to mandatorily acknowledge all loan applications, submitted manually or online, by their MSME borrowers and ensure that a running serial number is

recorded on the application form as well as on the acknowledgement receipt. Banks are further encouraged to start Central Registration of loan applications. The same technology may be used for online submission of loan applications as also for online tracking of loan applications.

## 2. *Collateral*

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

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

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

## 3. *Composite loan*

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

## 4. *Specialised MSME branches*

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

## 5. *Delayed Payment*

Under the Amendment Act, 1998 of Interest on Delayed Payment to Small Scale and Ancillary Industrial Undertakings, penal provisions have been incorporated to take care of delayed payments to MSME units. After the enactment of the Micro, Small and Medium Enterprises Development (MSMED), Act 2006, the existing provisions of the Interest on Delayed Payment Act, 1998 to Small Scale and Ancillary Industrial Undertakings, have been strengthened as under:

- The buyer has to make payment to the supplier on or before the date agreed upon between him and the supplier in writing or, in case of no agreement, before the appointed

day. The period agreed upon between the supplier and the buyer shall not exceed forty five days from the date of acceptance or the day of deemed acceptance.

- In case the buyer fails to make payment of the amount to the supplier, he shall be liable to pay compound interest with monthly rests to the supplier on the amount from the appointed day or, on the date agreed on, at three times of the Bank Rate notified by Reserve Bank.
- For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the interest as advised at (ii) above.
- In case of dispute with regard to any amount due, a reference shall be made to the Micro and Small Enterprises Facilitation Council, constituted by the respective State Government.

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

#### 6. *Revised Guidelines for Rehabilitation of Sick Micro and Small Enterprises*

The objective of the revised guidelines is to hasten the process of identification of a unit as sick, early detection of incipient sickness, and to lay down a procedure to be adopted by banks before declaring a unit as unviable.

As per the new guidelines, a Micro or Small Enterprise (as defined in the MSMED Act 2006) may be said to have become Sick, if (a) any of the borrowal account of the enterprise remains NPA for three months or more OR (b) there is erosion in the net worth due to accumulated losses to the extent of 50% of its net worth during the previous accounting year.

The revised guidelines also provide the procedures to be adopted by the banks before declaring any unit as unviable. Banks have been advised that the decision on viability of the unit should be taken at the earliest but not later than 3 months of becoming sick under any circumstances and the rehabilitation package should be fully implemented within six months from the date the unit is declared as 'potentially viable' / 'viable'.

#### 7. *Micro and Small Enterprises Sector – The imperative of Financial Literacy and consultancy support*

Keeping in view the high extent of financial exclusion in the MSME sector, it is imperative for banks that the excluded units are brought within the fold of the formal banking sector. The lack of financial literacy, operational skills, including accounting and finance, business planning etc. represent formidable challenge for MSE borrowers underscoring the need for facilitation by banks in these critical financial areas. Moreover, MSE enterprises are further handicapped in this regard by absence of scale and size. To effectively and decisively address these handicaps, Scheduled commercial banks have been advised that the banks could either separately set up special cells at their branches, or vertically integrate this function in the Financial Literacy Centres (FLCs) set up by them, as per their comparative advantage. The bank staff should also be trained through customised training programs to meet the specific needs of the sector.

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#### 8. *Structured Mechanism for monitoring the credit growth to the MSE sector*

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

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

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## Foreign Direct Investment in MSME

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FDI in MSEs (as defined under Micro, Small And Medium Enterprises Development Act, 2006 (MSMED, Act 2006)) will be subject to the sectoral caps, entry routes and other relevant sectoral regulations. Any industrial undertaking which is not a Micro or Small Scale Enterprise, but manufactures items reserved for the MSE sector would require Government route where foreign investment is more than 24% in the capital. Such an undertaking would also require an Industrial License under the Industries (Development & Regulation) Act, 1951, for such manufacture. The issue of Industrial License is subject to a few general conditions and the specific condition that the Industrial Undertaking shall undertake to export a minimum of 50% of the new or additional annual production of the MSE reserved items to be achieved within a maximum period of three years. The export obligation would be applicable from the date of commencement of commercial production and in accordance with the provisions of section 11 of the Industries (Development & Regulation) Act, 1951.

### **FDI in Single Brand product retail trading**

**% of Equity/ FDI Cap:** 100%

#### **Entry Route**

- Automatic up to 49%
- Government route beyond 49%

#### **Conditions of Investment**

- (1) Foreign Investment in Single Brand product retail trading is aimed at attracting investments in production and marketing, improving the availability of such goods for the consumer, encouraging increased sourcing of goods from India, and enhancing competitiveness of Indian enterprises through access to global designs, technologies and management practices.
- (2) FDI in Single Brand product retail trading would be subject to the following conditions:
  - (a) Products to be sold should be of a 'Single Brand' only.
  - (b) Products should be sold under the same brand internationally i.e. products should be sold under the same brand in one or more countries other than India.
  - (c) 'Single Brand' product-retail trading would cover only products which are branded during manufacturing.

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- (d) A non-resident entity or entities, whether owner of the brand or otherwise, shall be permitted to undertake 'single brand' product retail trading in the country for the specific brand, directly or through a legally tenable agreement with the brand owner for undertaking single brand product retail trading. The onus for ensuring compliance with this condition will rest with the Indian entity carrying out single-brand product retail trading in India. The investing entity shall provide evidence to this effect at the time of seeking approval, including a copy of the licensing/franchise/sub-licence agreement, specifically indicating compliance with the above condition. The requisite evidence should be filed with the RBI for the automatic route and SIA/FIPB for cases involving approval.
- (e) ***In respect of proposals involving FDI beyond 51%, sourcing of 30% of the value of goods purchased, will be done from India, preferably from MSMEs, village and cottage industries, artisans and craftsmen, in all sectors. The quantum of domestic sourcing will be self-certified by the company, to be subsequently checked, by statutory auditors, from the duly certified accounts which the company will be required to maintain. This procurement requirement would have to be met, in the first instance, as an average of five years' total value of the goods purchased, beginning 1st April of the year during which the first tranche of FDI is received. Thereafter, it would have to be met on an annual basis. For the purpose of ascertaining the sourcing requirement, the relevant entity would be the company, incorporated in India, which is the recipient of FDI for the purpose of carrying out single-brand product retail trading.***
- (f) Retail trading, in any form, by means of e-commerce, would not be permissible, for companies with FDI, engaged in the activity of single-brand retail trading.
- (3) Application seeking permission of the Government for FDI exceeding 49% in a company which proposes to undertake single brand retail trading in India would be made to the Secretariat for Industrial Assistance (SIA) in the Department of Industrial Policy & Promotion. The applications would specifically indicate the product/product categories which are proposed to be sold under a 'Single Brand'. Any addition to the product/product categories to be sold under 'Single Brand' would require a fresh approval of the Government. In case of FDI up to 49%, the list of products/product categories proposed to be sold except food products would be provided to the RBI.
- (4) Applications would be processed in the Department of Industrial Policy & Promotion, to determine whether the proposed investment satisfies the notified guidelines, before being considered by the FIPB for Government approval.

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# Udyog Aadhar Memorandum

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MSME Ministry vide its notification S.O.257(E) dated 18th September, 2015 specifies that every MSME shall file Udyog Aadhar Memorandum on self declaration basis either online or filing hard copy.

## Guidelines for Filing the Online Udyog Aadhaar Form:-

*Note:*

A. *EM-I has been abolished. Need not file through Udyog Aadhaar.*

B. *B. Udyog Aadhaar (UA) is for running units. No need to apply for upcoming units.*

- 1. Aadhaar Number** - 12 digit Aadhaar number issued to the applicant should be filled in the appropriate field.
- 2. Name of Owner** - The applicant should fill his/her name strictly as mentioned on the Aadhaar Card issued by UIDAI. E.g. if Raj Pal Singh has his name as Raj P. Singh, the same should accordingly be entered if the name does not match with the Aadhaar Number, the applicant will not be able to fill the form further.

## To Validate Aadhar:

- 1. Validate Aadhar** - The applicant must click on Validate Aadhaar button for verification of Aadhaar, after that only user can fill the form further.
- 2. Reset** - The applicant can click on reset button to clear the field of Aadhaar No and Name of the owner for different Aadhaar.
- 3. Social Category** - The Applicant may select the Social Category (General, Scheduled Caste, Scheduled Tribe or Other Backward Castes (OBC). The proof of belonging to SC, ST or OBC may be asked by appropriate authority, if and when required.
- 4. Name of Enterprise** - The Applicant must fill the name by which his/her Enterprise is known to the customers/public and is a legal entity to conduct business. One applicant can have more than one enterprises doing business and each one can be registered for a separate Udyog Aadhaar and with the same Aadhaar Number as Enterprise 1 and Enterprise 2 etc.
- 5. Type of Organization** - The Applicant may select from the given list the appropriate type of the organisation for his/her enterprise. The Applicant must ensure that he/she is authorised by the legal entity (i.e. enterprise being registered for Udyog Aadhaar) to fill this online form. Only one Udyog Aadhaar number shall be issued for each enterprise.



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6. **Postal Address** - The Applicant should fill in the appropriate field the complete postal address of the Enterprise including State, District, Pin code, Mobile No and Email.
  7. **Date of Commencement** - The date in the past on which the business entity commenced its operations may be filled in the appropriate field.
  8. **Previous Registration Details(if any)** - If the Applicant's enterprise, for which the Udyog Aadhaar is being applied, is already issued a valid EM-I/II by the concerned GM (DIC) as per the MSMED Act 2006 or the SSI registration prevailing prior to the said Act, such number may be mentioned in the appropriate place.
  9. **Bank Details** - The Applicant must provide his/her bank account number used for running the Enterprise in the appropriate place. The Applicant must also provide the IFS Code of the bank's branch where his/her mentioned account exists. The IFS code is now a days printed on the Cheque Books issued by the bank. Alternatively, if the Applicant knows the name of the Bank and the branch where his/her account is there, the IFSC code can be found from website of the respective Bank.
  10. **Major Activity** - The major activity i.e. either "Manufacturing" or "Service" may be chosen by the enterprise for Udyog Aadhaar.
  11. **NIC Code** - The Applicant may choose as appropriate National Industrial Classification-2008 (NIC) Code for the selected "Major Activity". The NIC codes are prepared by the Central Statistical Organisation (CSO) under the Ministry of Statistics and Program implementation, Government of India.
  12. **Person employed** - The total number of people who are directly been paid salary/ wages by the enterprise may be mentioned in the appropriate field.
  13. **Investment in Plant & Machinery / Equipment** - While computing the total investment , the original investment ( purchase value of items) is to be taken into account excluding tho cost of pollution control, research and development, industrial safety devices, and such other items as may be specified, by notification of RBI. If an enterprise started with a set of plant and machinery purchased in 2008 worth Rs. 70.00 lakh has procured additional plant and machinery in the year 2013 worth Rs. 65.00 lakh, then the total investment in Plant & Machinery may be treated as Rs. 135.00 lakh.
  14. **DIC** - The Applicant, based on the location of the Enterprise, has to fill in location of DIC. This Column will be active and show option only when there are more than one DIC in the district. In fact if there is only one DIC in the district system will automatically register you in the same DIC.
  15. **Submit** - The Applicant must click on Submit button to generate acknowledgment number.

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# How to Start MSME

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## Step by step guide to entrepreneur

1. Decision to be self employed
2. Selection of Product
3. Preparation of project Report
4. Registration of the MSME Unit
5. Corporatization of MSME Unit

MSME Unit may be incorporated as :

- Proprietorship
  - Partnership
  - One Person Company (OPC)
  - Limited Liability Partnership (LLP)
  - Private Limited Company
  - Public Limited Company
6. Obtaining Clearance from Statutory Bodies
    - Labour department
    - Industries Department
    - Revenue Department
    - Environment Clearance
  7. Arrangement of Finance
    - Term loan
    - Working capital
  8. Construction of Building
    - Connection of water supply
    - Electricity supply

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9. Procurement of Machinery
  10. Installation of Machinery
  11. Procurement of Raw Materials
  12. Recruitment of Personnel
  13. Production of Goods
    - With zero defects & zero effect
    - Standardization & Quality Control
  14. Providing Quality Services
  15. Marketing of Production/Services
  16. Profit
  17. Continuous Modernisation & Up gradation of Technology

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## Corporatisation of MSME

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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:

- Proprietorship
- Partnership
- One Person Company (OPC)
- Limited Liability Partnership (LLP)
- Private Limited Company
- Public Limited Company
- Producer Company

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 Startups:

| <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     |

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## 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 startup 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) mentioning the business name. Service tax registration takes 10 to 15 days, subject to Government processing time. | The identity of a Proprietorship can be established by MSME Registration (if applicable) mentioning the business name. MSME Registration can be completed in 10 to 15 days, subject to Government processing time. |

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## PARTNERSHIP

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>   |  |
|---|---|--|--|
| Incorporation 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. |

### **ONE PERSON COMPANY (OPC) OR PROPRIETORSHIP CONCERN! YOUR CHOICE**

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 vs. Sole Proprietorship**

##### ***One Person Company***

Separate Legal entity

Limited Liability

Perpetual succession

##### ***Sole Proprietorship***

Not a Separate Legal Entity

Unlimited liability



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 majority opinion etc., does not arise.

**COMPANY VS. OPC**

|   |                               |   |
|---|-------------------------------|---|
| <b>COMPANY</b>  | <b>Common Seal</b>            | <b>OPC</b>  |
|  | <b>Perpetual Succession</b>   |  |
|   | <b>Separate legal entity</b>  |   |
|   | <b>Limited Liability</b>      |   |
|   | <b>Separate Ownership</b>     |   |
|   | <b>Management and Control</b> |   |

**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.

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- 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 immediate preceding consecutive years.
  - 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 is 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.



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- 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.
  - 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 One Person Companies, atleast 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 needs to be filed with the Registrar, after they are duly adopted by the member, within 180 days of closure of financial year along with all necessary documents.
  - Board's report to be annexed to financial statements may only contain explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report.

### **Types of OPC**

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

### **Memorandum of OPC**

The memorandum of a company shall state—

- the name of the company with the last word "Private Limited"
- the State in which the registered office of the company is to be situated;

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

#### **Directors of OPC**

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

#### **Meetings of board of OPC**

- At least one meeting of the Board of Directors to be conducted in each half of a calendar year
- Gap between the two meetings should not be less than ninety days

#### **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 under Companies Act, 2013**

- 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

#### **PROCESS OF INCORPORATION OF ONE PERSON COMPANY (OPC)**



**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.

Where the articles contain the provisions for entrenchment, the company shall give notice to the Registrar of such provisions in Form No.INC.2 along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 at the time of incorporation of the company or in case of existing companies, the same shall be filed in Form No.MGT.14 within thirty days from the date of entrenchment of the articles, as the case may be, 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 Form No.INC.2 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 INC.2 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.

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### ***Declaration by professionals***

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

### **IMPORTANT INSTRUCTIONS - FILING OF EFORM FOR INCORPORATION OF OPC**

- For incorporation of One Person Company required filing eForm INC-2.
- It is suggested that eForm DIR-12 should be filed together at the time of filing of eForm INC-2 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 eForm INC-2, 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 eStamp duty payment is to be done online through MCA portal for all the states.
- Refund of stamp duty, if any, will be processed by the respective state or union territory government in accordance with the rules and procedures as per the state or union territory stamp Act.
- Scan the photograph of every subscriber with MOA and AOA.
- The company can have its registered office from the date of incorporation or on and from the 15th day of its incorporation. Till the same is established and intimated to the RoC, company can have its correspondence address capable of receiving and acknowledging all communications and notices as may be addressed to it.
- Details of registered office address of the company if the company is having its registered office from the date of its incorporation.
- Valid email id of the company. Ensure that this email ID is valid as intimation regarding processing of the eForms, important communication from RoC office shall also be communicated electronically at the email ID being mentioned here.
- Details of the address of the police station under whose jurisdiction the registered office of the company is to be situated.
- Details of authorized and subscribed share capital break up in case of a company having share capital.
- Minimum and maximum number of members for One Person Company is one only.
- The subscriber to the Memorandum shall ensure that the payment for the total amount of shares subscribed by him is made to the company upon incorporation.
- Enter the number of shares, total amount of shares and nominal amount per share for each type of share.

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- In case company has shares of multiple nominal amounts per share, then multiple nominal values per share separated by comma in the field Nominal amount per share.
  - Main division of industrial activity of the company.
  - Details of promoter.
  - User is required to file eForm DIR-12 in case promoter and director are not the same persons.
  - DIN or Income-tax PAN. In case DIN is entered it should be an approved DIN.
  - For cases of PAN, name and address of the promoter is required to be entered. System shall verify the name of the promoter based on PAN entered.
  - Surname or family name in the field Family Name.
  - Other relevant particulars of the promoter including duration of stay at present address. If duration of stay is less than a year at present address, enter the details of previous residence of the promoter. Ensure that Promoter to One Person company is always an Indian citizen and resident in India and promoter shall be eligible to incorporate only one OPC.
  - Every One Person Company is required to indicate the name of other person as nominee to the sole member in the memorandum and nominee for the subscriber should be an individual who is an Indian citizen and resident in India.
  - The name of such nominee.
  - Enter the details of nominee by entering approved DIN or valid Income-tax PAN. In case DIN is entered, the system shall automatically display the name, middle name, surname, father's name and gender of such person.
  - Provide details of stamp duty already paid.
  - Ensure the eForm is digitally signed by the same person whose designation is reflected in the declaration section of the eForm.
  - In case the person digitally signing the eForm is a Director - Enter the approved DIN. In case the person digitally signing the eForm is Company Secretary - Enter valid membership number. In case the person digitally signing the eForm 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.

## **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)] of the Companies Act, 2013:

- 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 ONLY)

### **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
  - Resident 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

There are two routes to Incorporate Companies:

- (a) Through various stagewise forms.
- (b) Through integrated e-form INC-29.

### **A. Through various stagewise 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 stands reserved for a period of 60 days from the date of application for reservation of name.(Section 4(5))

*Drafting of MOA & AOA*

- MOA & AOA shall be drafted in accordance with the formats prescribed in Schedule I as may be applicable. Both shall be signed by Subscribers. [MOA-Tables A,B,C,D,E; AOA-Tables F,G,H,I,J]
- The names of First Directors are mandatory to be given in AOA.  
It should be noted that the main objects should match with the objects shown in e-Form INC.1 i.e. Name Approval

*Filing of Forms*

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

*Issue of Certificate of Incorporation by Registrar*

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

*Allotment of Corporate Identification Number*

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

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

- Trademark or authorization to use trade mark, if the name of the company is based on trade mark or application for deed of assignment or a copy of application of registered trademark.
- In case the proposed name contains such word or expression for which the approval of Central Government is required, a copy of Central Government's approval.
- Proof of relation is required to be attached if the proposed name(s) include(s) the name of relatives.
- In principal approval from the concerned regulator wherever is applicable.
- NOC from sole proprietor/ partners/ other associates.
- NOC from existing company
- Copy of affidavit in case of proposed name includes phrase 'Electoral Trust'

- 
- NOC as required in Rule 8(4) if proposed name includes name of promoters or their closed relatives.

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

- Copy of Memorandum of Association and Articles of Association
- Declaration by Professionals (CA/CS/CWA) in form INC-8. [Section 7(1) (b) and rule 14 of the Companies (Incorporation) Rules, 2014]
- 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]
- Proof of residential address which should not be older than two months, and proof of identity of subscribers
- Specimen Signature in Form INC-10. [Rule16(1)(q) of Companies (Incorporation) Rules, 2014]
- Entrenched Articles of association if any of the articles are entrenched
- NOC in case there is change in the promoters (first subscribers to Memorandum of Association)
- Proof of nationality in case the subscriber is a foreign national
- PAN card (in case of Indian national)
- Copy of certificate of incorporation of the foreign body corporate and proof of registered office address
- Certified true copy of board resolution/consent by all the partners in case subscriber is Body Corporate
- Principal approval taken from RBI for carrying NBFC activity as the case may be.
  - Trademark or autohization to use trade mark, if the name of the company is based on trade mark or application for deed of assignment or a copy of application of registered trademark.
  - In case the proposed name contains such word or expression for which the approval of Central Government is required, a copy of Central Government's approval.
  - Proof of relation is required to be attached if the proposed name(s) include(s) the name of relatives.
  - In principal approval from the concerned regulator wherever is applicable.
  - NOC from sole proprietor/ partners/ other associates.
  - NOC from existing company
  - Copy of affidavit in case of proposed name includes phrase 'Electoral Trust'
  - NOC as required in Rule 8(4) if proposed name includes name of promoters or their closed relatives.

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*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. Through integrated e-form INC-29**

— Integrated Process of Incorporation of Company (INC-29)

- INC-29 is one Single form for incorporating a company pursuant to sections 4, 7, 12, 152 and 153 of the Companies Act, 2013 read with rule 36 of Companies (Incorporation) Rules, 2014.
- Optional process: Incorporation of the company through the integrated form for incorporation INC-29 is optional. Standalone e-forms are also available.
- Form - INC-29 would take care of three separate processes with this single form namely application for DIN, application for name approval and application for incorporation of companies.
- Resulting in doing away of filing of the following e-forms:
  - Form DIR-3 (Application for allotment of DIN in case proposed Directors have no DIN)
  - Form INC-1/INC-2 (Application for Reservation of name)
  - Form INC-7 (Application for incorporation of a company other than OPC)
  - Form DIR-12 (Details of Directors)
  - Form INC-22 (Details of registered office) (Optional at the time of incorporation)
- Filing Fees: Fee for the form is Rs. 2000/- plus registration fee as specified in Companies (Registration of offices and Fees) Rules, 2014
- Scope of E-form INC-29: The following types of companies can be registered:
  - One Person Company

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- Private Limited Company
  - Public Limited Company
  - Producer Company
  - Facility for using 'integrated form' is not available for incorporating Section 8 companies.
  - Only one name can be applied for approval in this e-form. Therefore, one is advised to duly check the proposed name and follow name availability guidelines, existing trade marks to avoid rejection.
  - Application for DIN is permissible upto 3 directors through this INC-29. Personal details in relation to the director or subscriber is not required in case director/subscriber already has DIN. Scanned copy of Memorandum and Articles of Association need to be attached with the form.

#### **Procedure for Fast Track Company Registration using Form INC-29:**

##### *Obtain Digital Signature*

To file Form INC29, the digital signature of one of the Directors will be required. Hence, Digital Signature must be obtained for one of the proposed Directors of the Company. Class 2 Digital Signature will be required for filing form INC29

##### *Preparation of Incorporation Documents to be attached with Form INC29*

In case there is any Director cum Subscriber who already possess DIN, then the DIN of the person can be entered in the appropriate field

Directors cum Subscribers NOT having DIN--In case there is any Director cum Subscriber who does not have DIN, then the DIN application can be made in the Form INC 29 itself by submitting the following information and documents:

- (a) Personal Details, Occupational Details and Educational Qualification
- (b) PAN – In case of Indian National
- (c) Passport Number – In case of Foreign National
- (d) Email Address of the Director
- (e) Address information of the Director
- (f) Proof of Identity – Voters ID Card / Drivers License / Passport / Aadhar Card
- (g) Proof of Address – Bank Statement / Electricity Bill / Telephone Bill / Mobile Bill

The following incorporation documents must be prepared, signed by the Directors/Subscribers and attached with Form INC29:

1. Memorandum of Association (MOA)
2. Articles of Association (AOA)
3. Affidavit and declaration by first Subscribers and Directors

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4. List of Promoters
  5. List Of Directors
  6. No Objection Certificate from Director in case any increase in promoters
  7. form INC- 8
  8. Form INC- 9
  9. Form INC-10
  10. Form DIR- 2
  11. Lease deed or Authentication to use property for use as Registered Office.

#### *After filing of INC-29*

Time available for Resubmission of E-Form INC-29 is 15 days from the date of additional information sought for or intimation of defect.

After Resubmission of the E-Form, if Registrar still sought for any additional information one more opportunity of 15 days available with the user for filing.

After Two Opportunities E-Form INC-29 of the proposed company shall be rejected.

#### *Certificate of Incorporation*

Registrar after being satisfied issue Certificate of Incorporation.

### **INCORPORATION OF A PRODUCER COMPANY UNDER COMPANIES ACT 1956**

The Companies (Amendment) Act 2002 vide notification no. S.O. 135 (E) inserted part IX – A of the Companies Act, 1956 and introduced the concept of Producer Company. In the year 2002 an expert committee led by noted economist Y.K Alagh framed legislation for incorporation of a producer company, and conversion of inter- state cooperative society into a producer company and its reconversion into cooperative society.

A producer company means a body corporate, having objects specified in section 581 B and registered as a Producer Company. The object of a producer company shall relate to all are any of the following namely:

1. production, harvesting, procurement, grading , pooling ,handling marketing, selling, export of primary produce of members or import of goods or services for their benefit: Provided that the producer company may carry on any of the activities specified in this clause either by itself or through other institution;
2. processing including preserving drying, distilling , brewing , venting canning and packing of produce of farmers;
3. manufacture, sale or supply of machinery, equipment or consumables mainly to its members;
4. providing education on mutual assistance principles to its members and others;
5. rendering technical services, consultancy services , training , research and development and all other activities for the promotion of interests of its members;

6. generation , transmission and distribution of power , revitalisation of land and water resources their use , conversion and communications relatable to primary produce;
7. insurance of producers on their primary producer;
8. promoting techniques of mutuality and mutual assistance ;
9. welfare measures or facilities for the benefit of members as may be decided by the board;
10. any other activity, ancillary or incidental to any of the activity referred to in clauses (a) to (i) which include extending of credit facilities or any other financial services to its members.

Any ten or more individuals, each of them being a producer or two or more producer institution or a combination of ten or more individual producer institution can form a producer company provided that if a person ceases to be a primary producer, the board of director is entitled to ask him to surrender his shares.

### **Steps for Incorporation**

1. Apply for name of the company: An application in form-1 –A of companies (Central Government's) General Rules and Forms 1956 shall be made to the registrar of companies in the state where the registered office of the proposed company will be situated. A fee of Rs. 500 will be also sent. The applicant shall give four alternative names. The name of the promoters should also be the subscribers to the memorandum. The last words of the company should be ".....producer company limited".
2. The registrar's confirmation of availability of name will be valid for six months and if a company with that name is not registered within six months, a fresh application will have to be made to the registrar with fees of Rs. 500
3. Within six months of confirmation from the registrar regarding availability of name, the promoters of a producer company shall produce to the registrar of the state in which the registered office will be located the following:
  - a) Memorandum of association duly signed by the subscribers and witnessed (2 copies).
  - b) Articles of association duly signed and witnessed as above (2 copies).
  - c) Declaration by an advocate of the supreme court or high court, an attorney or pleader entitled to appear before high court, or a secretary or a chartered accountant, in whole –time practice in India, who's is engaged in the formation of company or by a person named in the memorandum as director of the company, to the effect that all the requirements of the act and the rules there under have been complied with in respect of registration and matters precedent and incidental thereto.
  - d) List of persons named in the MOA as first directors and their consents in form -29 to act as directors.
  - e) Form - 32 in duplicate giving particulars of the said persons named as directors.
  - f) Form - 18 in respect of situation of registered office.

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- g) Power of attorney on non judicial stamp paper, if any, executed by any subscriber authorising a person to sign the moa and aoa on his behalf or executed by a producer institution as subscriber
  - h) Power of attorney on Non Judicial stamp paper signed by all subscribers authorising one of the subscribers or other person authorising him to make corrections on any of the document as may be required by the registered.
  - i) Evidence as to deposit of fees for incorporation of the company on the basis of the authorised capital as given in schedule X to the act.
  - j) The formalities for registration are identical for all companies as per Section 581 C (1) that for registration of a producer company under part IX –A, the provisions of the act in respect of registration have to be complied with.

The ROC if satisfied that all formalities relating to registration are duly compiled with, shall register one MOA, AOA and other necessary documents and issue a certificate of incorporation within 30 days of receipt of document for registration.

On registration, the producer company shall be deemed to be a private limited company limited by share without any limit on the number of member and its share capital is to be dividing only into equity shares.

### **PRODUCER COMPANY**

Producer Companies are very different genre of companies in India. Law governing Producer Companies contained in PART IX-A of the Companies Act, 1956.

However, for incorporation of Producer Company, applicant needs to follow same procedure as for any other company.

Salient feature governing Producer companies are given here:

- Objects as per Section 581B of the Companies Act, 1956
- Promoters may be minimum 10 individuals or 2 producer institutions
- Single vote of every member without any relation with shareholding or patronage, Except where all members are institutional members
- Name ends with “Producer Company Limited”
- Memorandum as per Section 581F of the Companies Act, 1956
- Articles as per Section 581G of the Companies Act, 1956
- Minimum 5 directors and maximum 15 Directors
- Ordinary Course of Business in Annual General Meeting as per Section 581S of the Companies Act, 1956
- A full time Chief Executive who will be ex – officio director and not liable to be retire by rotation [Please do not confuse with Chief Executive Officer under the Companies Act, 2013] as per Section 581W of the Companies Act, 1956.



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- A Whole time Company Secretary in case of an Average annual Turnover exceed five crore rupees [do not confuse with Paid up capital]
  - First Annual General Meeting within 90 days of its incorporation as per Section 581ZA of the Companies Act, 1956
  - Share Capital only in Equity Shares as per Section 581ZB of the Companies Act, 1956
  - Patronage and Patronage Bonus need special care in Drafting documents

Same Set of Forms like INC – 1 and INC – 7 or Integrated Form INC – 29 is required to be filed for incorporation of Producer Company. Due to differences in drafting, we will discuss Memorandum of Association and Articles of Association in detail.

### **Memorandum of Association of Producer Company**

Memorandum of Association is a document which contains certain information in accordance with provision of Section 4 of the Companies Act, 2013, however in case of Producer Companies Memorandum of Association shall contain certain information in accordance with provision of Section 581F of the Companies Act, 1956. Memorandum of Association of a Producer Company shall contain following clauses:

1. Name Clause: the name of company with “Producer Company Limited” as ;last words of the name,
2. Registered Office Clause: in which registered office of Producer is to Company situate,
3. Objects Clause: One or more Objects as specified in Section 581B. There are no main, Ancillary and other objects. Section 581 lists following Objects to select:
  - a. Production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary produce of members or import of goods or services for their benefits: Provided that the Producer Company may vary on any of the activities specified in this clause either or through other institution;
  - b. Processing including preserving, drying, distilling, brewing, venting, canning and packaging of produce of its Members;
  - c. Manufacture, sale or supply of machinery, equipment or consumables mainly to its Members;
  - d. Providing education on the mutual assistance principles to its Members and others;
  - e. Rendering technical services, consultancy services, training, research and development and all other activities for the promotion of the interests of its Members;
  - f. Generation, transmission and distribution of power, revitalisation of land and water resources, their use, conservation and communications relatable to primary produce;
  - g. Insurance of producers or their primary produce;
  - h. Promoting techniques of mutuality and mutual assistance;
  - i. Welfare measures or facilities for the benefit of Members as may be decided by the Board;

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- j. Any other activity, ancillary or incidental to any of the activities referred to in clauses (a) to (i) or other activities which may promote the principles of mutuality and mutual assistance amongst the Members in any other manner;
  - k. Financing of procurement, processing, marketing or other activities specified in clauses (a) to (j) which include extending of credit facilities or any other financial services to its Members.
4. Subscribers clause: Name and address of subscribers
  5. Capital Clause: Share Capital and division of Share [Only Equity shares permitted under Section 581ZB]
  6. First Directors Clause: name address and occupation of first directors under Section 581J(2);
  7. Liability Clause;
  8. Subscription Clause; and
  9. Other State of Operation Clause.

#### **ARTICLES OF ASSOCIATION OF PRODUCER COMPANIES**

Section 581G(2) of the Companies Act, 1956 contains the contents of the articles of Association of Producer Company.

#### *Agenda for the First Meeting of the Board of the Company*

1. To appoint the Chairman of the Meeting.
2. To note the Certificate of Incorporation of the company, issued by the Registrar of Companies.
3. To take note of the Memorandum and Articles of Association of the company, as registered.
4. To note the situation of the Registered Office of the company and ratify the registered document of the title of the premises of the registered office in the name of the company or a Notarised copy of lease / rent agreement in the name of the company.
5. To note the first Directors of the company.
6. To read and record the Notices of disclosure of interest given by the Directors.
7. To consider appointment of Additional Directors.
8. To consider appointment of the Chairman of the Board.
9. To consider appointment of the first Auditors.
10. To adopt the Common Seal of the company.
11. To appoint Bankers and to open bank accounts of the company.
12. To authorise printing of share certificates and correspondence with the depositories, if any.

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13. To authorise the issue of share certificates to the subscribers to the Memorandum and Articles of Association of the company.
  14. To approve and ratify preliminary expenses and preliminary agreements.
  15. To approve the appointment of the Key Managerial Personnel, if applicable and other senior officers.

### **Steps for Formation of a Company in India**

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#### *Nature of Procedure in India*

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Obtain Director Identification Number DIN for proposed Directors of the new Company

Obtain Digital Signature Certificate DSC for proposed Directors of the Company

Filing the proposed name of company for approval to the Registrar of Companies (ROC)

Get the Memorandum of Association and Articles of Association printed

Pay stamp duties online

File all incorporation forms and documents online, including the Memorandum of Association and the Articles of Association.

Obtain the certificate of incorporation

Request and obtain Certificate to Commence Operation, if required

#### **OTHER STEPS FOR SETTING UP BUSINESS IN INDIA**

Obtain a company seal of company, if any

Obtain a Permanent Account Number (PAN) from an authorized franchise or agent appointed by National Securities Depository Services Limited (NSDL) or Unit Trust of India (UTI)

Obtain a Tax Account Number (TAN) for income taxes deducted at source from the Assessing Office in the Income Tax Department

Register under Shops and Establishment Act

Register for value added tax (VAT) before the Sales Tax Officer of the ward in which the company is located

Register for Profession tax

Register with Employees' Provident Fund Organization

Register with ESIC (medical insurance)

Filing for Government Approval before RBI /FIPB for Foreigners and NRI's

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**A COMPANY INCORPORATED IN ANY STATE OF INDIA CAN DO BUSINESS IN ALL THE STATES OF INDIA. THE FOLLOWING ARE THE LOCATIONS OF REGISTRARS OF COMPANIES (ROC'S) IN INDIA :**

| <i>States &amp; U.T.'S Of India</i>  | <i>ROC Locations</i>   |
|--|--|
| Delhi & Haryana  | Registrar Of Companies Delhi & Haryana, NEW DELHI  |
| Karnataka Registrar Of Companies   | Karnataka BANGALORE  |
| Maharashtra, Dadra & Nagar Haveli  | Registrar Of Companies Maharashtra MUMBAI  |
| Pune, Kolhapur, Ratnagiri, Satara, Sindhudurga, Sangli, Sholapur & Ahmednagar Districts In Maharashtra | Registrar Of Companies Pune, PUNE  |
| Tamil Nadu   | Registrar Of Companies Tamil Nadu, CHENNAI   |
| Coimbatore, Nilgiris, Periyar Salem, Dharmapuri & Dindigul, Quaid-E-Milleth Districts In Tamil Nadu    | Registrar Of Companies Coimbatore, COIMBATORE  |
| Gujarat  | Registrar Of Companies Gujarat, AHMEDABAD  |
| Andhra Pradesh   | Registrar Of Companies Andhra Pradesh, HYDERABAD   |
| Assam, Tripura, Manipur, Nagaland, Meghalaya, Arunachal Pradesh, Mizoram & Shillong                    | Registrar Of Companies Assam, Tripura, Manipur, Nagaland, Meghalaya, Arunachal Pradesh, Mizoram & Shillong, SHILLONG |
| Bihar & Jharkhand  | Registrar Of Companies, PATNA  |
| Goa, Daman & Diu   | Registrar Of Companies Goa, Daman & Diu, GOA   |
| Jammu & Kashmir  | Registrar Of Companies Jammu & Kashmir, JAMMU & SRINAGAR   |
| Kerala, Amindivi, Minicoy & Lakshadweep Islands  | Registrar Of Companies Kerala, COCHIN  |
| Madhya Pradesh & Chhattisgarh  | Registrar Of Companies Madhya Pradesh, GWALIOR   |
| Orissa   | Registrar Of Companies Orissa, CUTTACK   |
| Pondicherry  | Registrar Of Companies, PONDICHERRY  |
| Punjab, Himachal Pradesh & Chandigarh  | Registrar Of Companies Punjab, Himachal Pradesh & Chandigarh, JALANDHAR  |
| Rajasthan  | Registrar Of Companies Rajasthan , JAIPUR  |
| Uttar Pradesh & Uttaranchal  | Registrar Of Companies Uttar Pradesh, KANPUR   |
| West Bengal  | Registrar Of Companies West Bengal, Kolkata  |
| Andaman  | The Registrar Of Companies Andaman, PORT BLAIR   |

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## LIMITED LIABILITY PARTNERSHIP (LLP)

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.

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.

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

### **LLP alternative to traditional form of Partnership**

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

An alternative is available under Indian law to register a partnership under the LLP Act 2008. LLP is a body corporate, separate from its partners. It shall have perpetual succession, meaning, partners may come and partners may go, but LLP continues. Any change in partners shall not affect the existence, rights and liabilities of the LLP. Where a partnership is registered under the LLP Act, then the provisions of the Partnership Act 1932 shall not apply to it.

### **Advantage of LLP over traditional form of Partnership**

In traditional partnerships, the partners are fully liable for the debts of the firm. Each partner's personal asset is at risk irrespective of culpability. Indian traditional partnerships are, therefore, restricted to persons who know each other closely. With the enactment of the LLP Act, such liability of partners will no longer be unlimited. Limited partners are liable only to the extent of their investment. Just like an incorporated company, LLP have a legal personality of its own and, therefore, partners are not liable for the debts of the LLP firm. LLP can sue in its own name and be sued by others. LLP can own property in its own name. Where a partner of LLP does any

wrongful act or omits to do an act, in the course of business of LLP or where such act or omission of a partner is in exercise of authority of LLP, then in such cases, liability if any, shall be that of LLP only and not of the partner who did or omitted any act. This is similar to a private limited company, where for any wrong done, generally the private limited company would be liable and not its directors.

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

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

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

### **Advantages of LLP form**

LLP form is a form of business model which:

- is organized and operates on the basis of an agreement.
- provides flexibility without imposing detailed legal and procedural requirements
- enables professional/technical expertise and initiative to combine with financial risk taking capacity in an innovative and efficient manner.

### **Comparative Analysis - Partnership vs. LLP**

| <i>Partnership</i>   | <i>Limited Liability Partnership</i>  |
|--|---|
| Partnership under Indian Partnership Act   | Limited Liability Partnership under LLP.  |
| 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.   |
| Not a legal entity separate from its partners. Firm cannot hold property in its own name (only in the names of the | Legal entity separate from its partners. The firm may hold property in its own name and sue or be sued in its own name.   |

partners); cannot sue or be sued in its own name.

Partnership deed is executed.

Minimum 2 partners

Documents are required to be filed with Registrar of firms (of respective states).

Partners are liable for statutory compliances.

Partner cannot enter into business with firm since the latter is not a separate legal entity.

Every partner of a firm is an agent of the firm and also of other partners.

No filing of Accounts or Solvency Statement or Annual Return with Registrar of Firms.

Partnership firm can be dissolved as per Act/Partnership Deed.

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; no maximum limit.

MCA/ROC LLP is the administrative ministry/ authority.

Only Designated Partners are liable for statutory compliances.

Partners may enter into contracts with their LLP including lending of money; they have rights and obligations therefor as in the case of third parties/outsideers.

Every partner of LLP is an agent only of the firm and not of the other partner(s).

Accounts, Solvency Statement and Annual Return are to be filed with RoC each year.

LLP to be wound up and dissolved as per LLP Act.

### Comparative Analysis - *Limited Company v. LLP*

#### *Partnership*

Memorandum & Articles of Association to be filed with RoC.

Name to end with 'Limited or 'Private Limited'.

Key Managerial Personnel vested with powers of day to day administration.

Certain restrictions on remuneration payable to the Directors, their relatives etc.

#### *Limited Liability Partnership*

Incorporation document and LLP Agreement to be filed. First Schedule applies in the absence of LLP Agreement.

Name to end with 'Limited Liability Partnership or 'LLP'.

Management rests with those Partners (including designated partners) who are authorised by LLP agreement (As Designated Partners they are responsible only for legal compliances).

No legal restriction on remuneration to partner. Partners will be eligible for remuneration as per LLP Agreement.



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|  |   |
|--|---|
| 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. |

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### 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 undischarged 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.

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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 undischarged 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 of LLP when changes occur in the partnership and/or designated partnership of a LLP.

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).

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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,
- dential 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.

### **When to use a limited liability partnership**

Of all the legislation of the last few years, the “creation” of limited liability partnerships is one of the most interesting. In India, businesses mainly operate as companies, sole proprietorships and general partnerships. Each of these business structures has its own advantages and shortcomings and is subject to different regulatory and tax regimes.

The private company form of business, by its articles of association, limits the number of its members to 200 (excluding the past and present employees of the company), restricts the right of its members to transfer its shares and prohibits an invitation to the public to subscribe to any shares in or the debentures of the company.

As an alternative, Limited Liability Partnership (LLP), addresses some of these concerns. 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.

### **Do you need a Limited Liability Partnership agreement?**

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

Where no LLP agreement has been executed between the partners of LLP or the agreement is silent on certain issues, the provisions of the First Schedule to the LLP Act 2008 shall apply. LLP Agreement is the most important document and execution of LLP agreement and any changes made therein should be filed with the Registrar in prescribed Form annexed to the LLP Rules, 2009 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.

### **Annual Filings**

Every year, LLP shall file with ROC, (i) statement of account and solvency of LLP, signed by designated partners and (ii) Annual Return. Failure to comply with annual filing requirements would result into monetary penalty on LLP. If the LLP has made a default in filing with the ROC the Statement of Account and Solvency or annual return for any five consecutive financial years, it may be wound up.

### **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.

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.

### **DETAILED PROCEDURE FOR REGISTERING LLP**

#### **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, atleast two shall be Designated Partners, of which atleast one must be an Indian Resident.

*Parameters for deciding the Partners and Designated Partners:*

- Atleast Two Partners; Individual or Body Corporate through individual nominees.
- Minimum of Two Individuals as Designated Partners, of total no. of Partners.
- Atleast 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.

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**2. To obtain Designated Partner Identification Number (DIN) & Digital Signature Certificate**

- All designated partners of the proposed LLP shall obtain "Designated Partner Identification Number" by filing an application individually online.
- Partner/Designated partner of LLP/proposed LLP, whose signatures are to be affixed on the e-forms has to obtain 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 DIPN 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.

**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.

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## Role of Company Secretary

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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.

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### **Company Secretaries - One Stop Professional Advisory Services to MSMEs**

Company Secretaries can offer One Stop Professional Advisory Services to MSMEs in the following areas:

- Legal Setting up of MSMEs - Getting Basic Registrations for startup- PAN-TAN-VAT-MSME etc.
- Selection of Organization Structure for MSME - Sole Proprietor, Partnership, LLP, Limited Liability Company (Private-Public), OPC
- Incentives available to MSMEs
- Financial Advisory Services for MSMEs
- Funding Options for MSMEs
- Labour Laws aspects for MSMEs
- Taxation aspects for MSMEs
- Listing of MSMEs
- Legal & Regulatory Compliances
- Corporate Governance for MSMEs

Thus, a Company Secretary can help MSMEs and its directors operate within the law.

### **Company Secretaries - Single Window Services to MSMEs**

Some other ways in which a company secretary can help the MSMEs include:

- Obtaining Project Financing and Term Loans.
- Co-ordinating the process of obtaining funds from Angel Investors / Venture Capital Funds/ Private Equity.
- Conducting Secretarial Audit / Due Diligence which will of great help before approaching for funds.
- Providing Compliance Certificate to ensure compliance of various regulatory prescriptions in case of listing in MSME 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.

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- 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 MSMEs as follows:

- Timely & adequate availability of finance
- Reasonable cost
- Simple delivery process
- Single window for all financing requirements
- Transparency in dealings
- Awareness of schemes of Banks
- Support and Handholding services

### **Company Secretaries - SME Exchange**

In order to provide better, focused and cost effective financing service to the SMEs, SEBI set up dedicated exchanges and/or dedicated platforms of the exchanges for listing and trading of securities issued by SMEs.

Certain relaxations are provided to the issuers whose securities are listed on SME exchange in comparison to the listing requirements in Main Board.

Some of the services that could be provided by Company Secretaries (both in employment and practice) with regard to SME Exchange include:

- Advisor/consultant for SMEs on listing at SME Exchange
- Advisor to Public Issue by SME
- Compliance Officer for SME
- Compliance Certificate for issue / listing of shares by SMEs. The purpose of this certification is to provide comfort and assurance to the Regulator and Stock Exchanges to the effect that the proposed listing of SMEs conforms to all regulatory prescriptions. This Compliance Certificate will enable the SMEs to seek the 'in-principle' approval for listing of shares in SME Exchange.

### **Company Secretary Guide in development of Business policies and implementation**

A Company Secretary can guide the MSMEs both at policy and operational level in formulation of various responsible Business policies, implementation of the principles enshrined, allocation of budgets and approval of the budgets allocated for these activities and reporting & disclosures.

Company Secretaries can also help MSMEs to comply with environmental regulations and assist in funding of compliance programs to meet the pollution standards and also avail of government sponsored incentives and training assistance.

# **‘Startup India’ Initiative and Role of Company Secretary**

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

## **What is a ‘Startup’?**

Startup (only for the purpose of Government schemes) means an entity, incorporated or registered in India not prior to five years, with annual turnover not exceeding INR 25 crore in any preceding financial year, working towards innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property.

Provided that such entity is not formed by splitting up, or reconstruction, of a business already in existence.

Provided also that an entity shall cease to be a Startup if its turnover for the previous financial years has exceeded INR 25 crore or it has completed 5 years from the date of incorporation/ registration.

Provided further that a Startup shall be eligible for tax benefits only after it has obtained certification from the Inter-Ministerial Board, setup for such purpose.

## **What is the Action Plan?**

Government of India, in order to accelerate the momentum, has recently announced its Action Plan covering all aspects of Startup ecosystem. The intent is to cover various sectors ranging from digital to agriculture, manufacturing to social etc. and also to extend the coverage to tier 2 and tier 3 cities.

The focus is mainly on three areas:

1. Simplification and Handholding
2. Funding Support and Incentives
3. Industry-Academia Partnership and Incubation

## **How Company Secretaries can contribute to Start up Action Plan for MSMEs**

### **1. SIMPLIFICATION AND HANDHOLDING**

#### **1.1. Compliance Regime based on Self-Certification**

Objective here is to reduce the regulatory burden on Startups thereby allowing them to focus on their core business and keep compliance cost low.

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**Prescription for Role of CS**

Since firms need to comply with various labour and environment laws at the time of setting up an enterprise, a large amount of time needs to be spent on complying with the laws in the absence of any previous knowledge. A Company Secretary can contribute their knowledge and understanding of compliance under various laws to these start-ups saving their time and making compliance more effective. The chances of new firms committing mistakes and redoing paper work also reduces when the work proceeds under the guidance of a CS as compliance officer.

Under the Action Plan, Startups are allowed to self-certify compliance and would only be inspected on receipt of credible and verifiable complaint of violation. In a self-regulatory and self-certification regime, the role CS professionals sees a lot of potential since new and small firms can simply make use of their professional advice in the rightful and timely compliance. For making it more convenient, a pool of registered professionals may be created with a legal backing of the government. This will also help in building-up the trust of Startups in professionals.

**1.2. Startup India Hub**

Objective here is to create a single point of contact for the entire Startup ecosystem and enable knowledge exchange and access to funding.

**Prescription for Role of CS**

The Action Plan of the government highlights the need to provide more guidance and access to Startups to make them reach their full potential. In this direction, besides other things, the government has proposed the involvement of educational institutions and academia in organising mentorship and guidance programs for Startups. The ICSI can participate in organising such awareness programs where its members can offer advisory services on business structuring, management evaluation etc. This can be done through government organising regular programs in collaboration with the institute where Startups can register themselves for short-run and long-run mentorship programs with the authorized members of the Institute.

**1.3. Rolling-out of Mobile App and Portal**

Objective here is to serve as the single platform for Startups for interacting with Government and Regulatory Institutions for all business needs and information exchange among various stakeholders.

**Prescription for Role of CS**

The Government intends to enable Startup registration process in an easy and timely manner to avoid delays in their establishment and operations. In order to remove uncertainty of Startups regarding the exact regulatory requirements to set up operations, a checklist of required licenses covering labour licensing, environmental clearances etc. is intended to be made available. Hereby, a pool of registered professionals can work as a core team member.

**1.4. Legal Support and Fast-tracking Patent Examination at Lower Costs**

Objective here is to promote awareness and adoption of IPRs by Startups and facilitate them in protecting and commercializing the IPRs by providing access to high quality Intellectual Property services and resources, including fast-track examination of patent applications and rebate in fees.

***Prescription for the Role of CS***

The government wants Controller General of Patents, Designs and Trademarks (CGPDTM) to empanel a Panel of Facilitators to assist Startups in filing of IP applications. Facilitators will be responsible for:

- providing general advisory on different IPRs,
- providing information on protecting and promoting IPRs in other countries,
- providing assistance in filing and disposal of the IP applications related to patents, trademarks and designs under relevant Acts.

CS Professionals are well versed in IPR related laws and can effectively perform assistance-cum-advisory duties required of a 'Facilitator' under Startup India initiative.

**1.5. Faster Exit for Startups**

Objective here is to make it easier for Startups to wind up operations.

***Prescription for the Role of CS***

For making it easy for Startups to exit from a failed activity, government prescribes appointment of an insolvency professional for the Startups in some cases. Insolvency professional shall be in charge of the company (the promoters and management shall no longer run the company) for liquidating its assets and paying its creditors within six months of such appointment. CS Professionals can efficiently work as insolvency professionals given their expertise in relevant laws and regulations.

**2. FUNDING SUPPORT AND INCENTIVES****2.1. Providing Funding Support through a Fund of Funds with a Corpus of INR 10,000 crore**

Objective here is to provide funding support for development and growth of innovation driven enterprises.

***Prescription for the Role of CS***

One of the key features of Fund of Funds is that Fund of Funds shall be managed by a Board with private professionals drawn from industry bodies, academia, and successful Startups. The ICSI as an academic body can be a professional on the Board. ICSI is also a registered entity with Investor Education and Protection Fund administered by Ministry of Corporate Affairs and is actively engaged in activities under IEPF.

**3. INDUSTRY-ACADEMIA PARTNERSHIP AND INCUBATION****3.1. Organizing Startup Fests for Showcasing Innovation and Providing a Collaboration Platform**

Objective here is to galvanize the Startup ecosystem and to provide national and international visibility to the Startup ecosystem in India.

***Prescription for the Role of CS***

To bolster the Startup ecosystem in India, the Government has proposed to introduce Startup fests

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at national and international stages. The fests shall have activities such as sessions to connect with investors, mentors, incubators and various other stakeholders. The ICSI can participate in these fests as an academic institute as well as a mentor.

### **3.2. Launch of Atal Innovation Mission (AIM) with Self-Employment and Talent Utilization (SETU) Program**

Objective is to serve as a platform for promotion of world-class Innovation Hubs, Grand Challenges, Startup businesses and other self-employment activities, particularly in technology driven areas.

#### ***Prescription for the Role of CS***

The two main components of AIM is to promote entrepreneurship and innovation. The ICSI may participate at various levels of the implementation of this program viz. pre-incubation training to potential entrepreneurs, organizing workshops/conferences etc.

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## FAQ on Micro, Small and Medium Enterprises\*

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### Q.1. What is the definition of MSME?

The Government of India has enacted the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 in terms of which the definition of micro, small and medium enterprises is as under:

- Enterprises engaged in the manufacture or production, processing or preservation of goods as specified below:
  - A micro enterprise is an enterprise where investment in plant and machinery does not exceed Rs. 25 lakh;
  - A small enterprise is an enterprise where the investment in plant and machinery is more than Rs. 25 lakh but does not exceed Rs. 5 crore;
  - A medium enterprise is an enterprise where the investment in plant and machinery is more than Rs.5 crore but does not exceed Rs.10 crore. In case of the above enterprises, investment in plant and machinery is the original cost excluding land and building and the items specified by the Ministry of Small Scale Industries vide its notification No.S.O.1722(E) dated October 5, 2006 .
- Enterprises engaged in providing or rendering of services and whose investment in equipment (original cost excluding land and building and furniture, fittings and other items not directly related to the service rendered or as may be notified under the MSMED Act, 2006 are specified below.
  - A micro enterprise is an enterprise where the investment in equipment does not exceed Rs. 10 lakh;
  - A small enterprise is an enterprise where the investment in equipment is more than Rs.10 lakh but does not exceed Rs. 2 crore;
  - A medium enterprise is an enterprise where the investment in equipment is more than Rs. 2 crore but does not exceed Rs. 5 crore.

### Q.2. What is the support available for collateral free borrowing?

The Ministry of MSME, Government of India and SIDBI set up the Credit Guarantee Fund

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\* <http://msme.gov.in/web/portal/FAQ.aspx>



Trust for Micro and Small Enterprises (CGTMSE) with a view to facilitate flow of credit to the MSE sector without the need for collaterals/ third party guarantees. The main objective of the scheme is that the lender should give importance to project viability and secure the credit facility purely on the primary security of the assets financed.

The Credit Guarantee scheme (CGS) seeks to reassure the lender that, in the event of an MSE unit, which availed collateral- free credit facilities, fails to discharge its liabilities to the lender, the Guarantee Trust would make good the loss incurred by the lender up to 85 per cent of the outstanding amount in default.

The CGTMSE would provide cover for credit facility up to Rs. 100 lakh which have been extended by lending institutions without any collateral security and /or third party guarantees. A guarantee and annual service fee is charged by the CGTMSE to avail of the guarantee cover. Presently the guarantee fee and annual service charges are to be borne by the borrower. For further details please visit [www.dcmsme.gov.in](http://www.dcmsme.gov.in).

**Q.3. What is the support available for technology upgradation?**

Ministry implements a scheme called Credit Linked Capital Subsidy Scheme (CLCSS) for technology upgradation of Micro and Small enterprises in the country. Under the scheme, 15 per cent capital subsidy, limited to maximum of Rs 15 lakh (12 per cent prior to 29.09.2005 limited to maximum of Rs 4.8 lakh) is provided to the eligible MSEs for upgrading their technology with the well-established and improved technology as approved under the scheme. 48 products/sub-sectors have been approved under the CLCSS till date. If you are an MSE manufacturing a product and want to upgrade the technology of manufacturing the product with the well established and improved technology as approved under the Scheme, then you may have to approach to the nodal agencies/eligible financial institution for sanction of term loan for purchase of eligible machinery. For further details please visit [www.dcmsme.gov.in](http://www.dcmsme.gov.in).

**Q.4. What is the support available for cluster development?**

The Ministry is implementing the Micro and Small Enterprises – Cluster Development Programme (MSE-CDP) wherein support is provided for Diagnostic Study; Soft Interventions like general awareness, counseling, motivation and trust building, exposure visits, market development including exports, participation in seminars, workshops and training programmes on technology upgradation etc; Hard Interventions ilike setting up of Common Facility Centers (Common Production/Processing Centre, Design Centre, Testing Centre etc.) and creation/upgradation of infrastructural facilities in the new/existing industrial areas/ clusters of MSEs. For further details please visit [www.dcmsme.gov.in](http://www.dcmsme.gov.in).

**Q.5. What is the support available for Skill Development?**

The Ministry conducts various types of training programme through its various organisations for self employment as well as wage employment. The training programmes are primarily focused to promote self employment in the country. Thus all type of programmes have input which provide necessary information and skills to a trainee to enable him to establish his own micro or a small enterprises. The programmes include two week Entrepreneurship Development Programme (EDP), Six Week Entrepreneurship Skill Development Programme

(ESDP). One weak Management Development Programme (MDP), One Day Industrial Motivation Campaign (IMC) etc. For Monitoring of the programme a web based system has been developed where coordinator of the programme is bound to feed all details of trainees including his photo and phone no. on the website. The same will be linked to the call centre of Ministry where real time feedback is obtained from trainees. For further details please visit [www.dcmsme.gov.in](http://www.dcmsme.gov.in).

**Q.6. What benefits do the Tool Rooms of Ministry of MSME provide to MSMEs?**

Tool Rooms are equipped with state-of-the-art machinery & equipment. They are engaged in designing and manufacturing of quality tools, which are necessary for producing quality products, and improve the competitiveness of MSMEs in national and international markets. They also conduct training programmes to provide skilled manpower to industries specially MSMEs. The placement of trainees trained in Tool Room is more than 90%. There are 18 Autonomous Bodies (10 MSME Tool Rooms and 8 Technology Development Centres) under DC (MSME), a list of Tool Rooms and Technology Development Centres is available in the website [www.dcmsme.gov.in](http://www.dcmsme.gov.in).

**Q.7. What support is provided by the Ministry for improving manufacturing competitiveness?**

The National Manufacturing Competitiveness Programme (NMCP) is the nodal programme of the Government to develop global competitiveness among Indian MSMEs. The Programme was initiated in 2007-08. This programme targets at enhancing the entire value chain of the MSME sector through the following schemes:

- (a) Lean Manufacturing Competitiveness Scheme for MSMEs;
- (b) Promotion of Information & Communication Tools (ICT) in MSME sector;
- (c) Technology and Quality Up gradation Support to MSMEs;
- (d) Design Clinics scheme for MSMEs;
- (e) Enabling Manufacturing Sector to be Competitive through Quality Management Standards (QMS) and Quality Technology Tools (QTT);
- (f) Marketing Assistance and Technology Up gradation Scheme for MSMEs;
- (g) Setting up of Mini Tool Room under PPP Mode;
- (h) National campaign for building awareness on Intellectual Property Rights (IPR);
- (i) Support for Entrepreneurial and Managerial Development of SMEs through Incubators.
- (j) Bar Code under Market Development Assistance (MDA) scheme.

For further details please visit [www.dcmsme.gov.in](http://www.dcmsme.gov.in).

**Q.8. What support is provided by the Ministry to promote energy conservation in the manufacturing process for SMEs?**

The Ministry implements the “Technology and Quality Upgradation Support to Micro, Small and Medium Enterprises (TEQUP)” which focuses on two important aspects, namely,

enhancing competitiveness of MSME sector through Energy Efficiency and Product Quality Certification. The basic objective of this scheme is to encourage MSMEs in adopting energy efficient technologies and to improve product quality of manufacturing in MSMEs. It is a well known fact that energy consumption is a significant component in the cost structure of almost any manufacturing/ production activity. Adopting energy efficient technologies curtails the cost of energy there by reducing production cost and increasing competitiveness. Under this scheme, a capital subsidy of 25% of the project cost subject to a maximum of Rs. 10.00 lakh shall be provided to the registered MSME units. While 25% of the project cost will be provided as subsidy by the Government of India, the balance amount is to be funded through loan from SIDBI/banks/financial institutions. The minimum contribution as required by the funding agency will have to be made by the MSME unit. For further details please visit [www.dcmsme.gov.in](http://www.dcmsme.gov.in).

**Q.9. What support is provided by the Ministry to improve quality of products produced in MSME sector?**

The TEQUP scheme envisages another activity, namely, Product Quality Certification. The main objective of this scheme is to encourage MSMEs to Acquire Product Certification Licenses from National / International Bodies , thereby improving their competitiveness. The primary objective of this activity is to provide subsidy to MSME units towards the expenditure incurred by them for obtaining product certification licenses from National / International standardization Bodies. Under this Activity, MSME manufacturing units will be provided subsidy to the extent of 75% of the actual expenditure, towards licensing of product to National/International Standards. The maximum GOI assistance allowed per MSME is Rs.1.5 lakh for obtaining product licensing /Marking to National Standards and Rs. 2.0 lakh for obtaining product licensing /Marking to International standards. One MSME unit can apply only once under the scheme period. For further details please visit [www.dcmsme.gov.in](http://www.dcmsme.gov.in).

**Q.10. What support is provided by the Ministry to improve design of products produced in MSME sector?**

The Ministry implements the Design Clinic Scheme for Design Expertise to Micro, Small and Medium Enterprises (MSME) Sector is to improve the design of the product to meet global challenges and compete with similar products domestically and internationally. It is launched to benefit MSMEs by creating a dynamic platform to provide expert solutions to real time Design problems and add value to existing products. The goal of this scheme is to help MSME manufacturing industries move up the value chain by switching the production mode from original equipment manufacturing to original design manufacturing and hence original brand manufacturing. In the Design Clinic scheme, the value additions to an idea or a concept are imparted through interaction at a lesser cost to a specific industry/sector. The expected outcome of such interventions is new product development by design improvement and value addition for existing products. For further details please visit [www.dcmsme.gov.in](http://www.dcmsme.gov.in).

**Q.11. What support is provided by the Ministry to adopt latest Quality Management Standards and Quality Technology Tools (QMS/QTT)?**

Under the National Manufacturing Competitiveness Programme (NMCP) Scheme, one

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component is “Enabling MSME manufacturing sector to be competitive through Quality Management Standards/Quality Technology Tools (QMS/QTT)” was initiated in the XIth Five year plan. The main objective of the scheme is to sensitize and encourage MSEs to adopt latest Quality Management Standards/Quality Technology Tools (QMS/QTT) and to keep a watch on sectoral developments by undertaking the stated activities. The major activities under the Scheme are as:

- (a) Introduction of appropriate course modules for technical institutions
- (b) Organizing awareness campaigns for micro & small enterprises.
- (c) Organising competition–watch (c-watch).
- (d) Implementation of quality management standards and quality technology tools in selected micro & small enterprises.
- (e) Monitoring international study missions.

**Q.12. What support is provided by the Ministry for promotion of Information & Communication Tools (ICT) in MSME Sector?**

The Ministry implements the Information and Communication Technology (ICT) scheme to encourage and assist Indian MSMEs to adopt ICT Tools and Applications in their production and business processes, and thereby improve their productivity and competitiveness in National and International Market. For further details please visit [www.dcmsme.gov.in](http://www.dcmsme.gov.in).

**Q.13. What support is provided by the Ministry for setting up Business Incubators?**

The Ministry implements the Support for Entrepreneurial and Managerial Development of SME’s Through Incubators”. The main purpose of the scheme is to nurture innovative business ideas (new/indigenous technology, processes, products, procedures, etc), which could be commercialized in a year. Under the Scheme, financial assistance between 75% to 85% of the project cost upto maximum of Rs. 8 lakh per idea/unit, provided to Business Incubators (BIs). The BIs are also eligible to avail Rs. 3.78 lakh for infrastructure and training expenses for incubating 10 ideas. Any individual or Micro and Small Industries (MSEs) that has innovative business idea at near commercialisation stage can approach the Business Incubators approved under the scheme. Under the scheme, various institutions like Engineering Colleges, Management Institutions, Research labs, etc. that have in-house incubation facilities and faculty for providing handholding support to new idea/entrepreneur can apply in the prescribed application form. For further details please visit [www.dcmsme.gov.in](http://www.dcmsme.gov.in).

**Q.14. What support is provided by the Ministry for setting up Business Incubators ?**

The Ministry implements the Support for Entrepreneurial and Managerial Development of SME’s Through Incubators”. The main purpose of the scheme is to nurture innovative business ideas (new/indigenous technology, processes, products, procedures, etc), which could be commercialized in a year. Under the Scheme, financial assistance between 75% to 85% of the project cost upto maximum of Rs. 8 lakh per idea/unit, provided to Business Incubators (BIs). The BIs are also eligible to avail Rs. 3.78 lakh for infrastructure and training expenses for incubating 10 ideas. Any individual or Micro and Small Industries (MSEs) that has

innovative business idea at near commercialisation stage can approach the Business Incubators approved under the scheme. Under the scheme, various institutions like Engineering Colleges, Management Institutions, Research labs, etc. that have in-house incubation facilities and faculty for providing handholding support to new idea/entrepreneur can apply in the prescribed application form. For further details please visit [www.dcmsme.gov.in](http://www.dcmsme.gov.in).

**Q.15. Whether there is any scheme for assisting MSMEs for Intellectual Property Rights ?**

Under the National Manufacturing Competitiveness Programme (NMCP) to enhance the competitiveness of the SMEs sector, O/o DC(MSME) is implementing a scheme “Building Awareness on Intellectual Property Rights (IPR)” for the MSME. The objective of the scheme is to enhance awareness of MSME about Intellectual Property Rights (IPRs) to take measure for the protecting their ideas and business strategies. Accordingly, to enable the MSME sector to face the present challenges of liberalisation, various activities on IPR are being implemented under this scheme. For further details please visit [www.dcmsme.gov.in](http://www.dcmsme.gov.in).

**Q.16. Is there support available for obtaining ISO certification?**

The Ministry is implementing the ISO: 9001/14001/HACCP Certification Reimbursement Scheme for Micro & Small Enterprises (MSEs) for reimbursement of certification expenses, only to those MSEs which have acquired Quality Management Systems (QMS)/ISO 9001 and /or Environment Management Systems (EMS)/ ISO14001and / or Food Safety Systems (HACCP) Certification. Under the scheme provides reimbursement of 75% of the certification expenses up to a maximum of Rs.75,000/- (Rupees seventy five thousand only) to each unit as one-time reimbursement only to those MSEs which have acquired Quality Management Systems (QMS)/ISO 9001 and /or Environment Management Systems (EMS)/ ISO14001 and / or Food Safety Systems (HACCP) Certification. For further details please visit [www.dcmsme.gov.in](http://www.dcmsme.gov.in).

**Q.17. What support is provided by the Ministry for enabling MSMEs to get credit rating?**

The Ministry is implementing the Performance & Credit Rating Scheme, the main objective of the which is to provide a trusted third party opinion on the capabilities and creditworthiness of the MSEs so as to create awareness amongst them about the strengths and weakness of their existing operations. This is to provide them an opportunity to improve and enhance their organizational strengths and credit worthiness, so that they can access credit at cheaper rates and on easy terms. NSIC was appointed as nodal agency to implement the scheme on behalf of the Government. Rating under the scheme is being carried out through empanelled rating agencies i.e. Credit Rating Information Services of India Limited (CRISIL), Credit Analysis & Research Limited (CARE), Onicra Credit Rating Agency of India Ltd. (ONICRA), Small and Medium Enterprises Rating Agency of India Ltd. (SMERA), ICRA limited and Brickwork India Ratings. Under this Scheme, rating fee payable by the micro and small enterprises is subsidized for the first year only and that is subject to maximum of 75% of the fee or Rs. 40000/-, whichever is less.

**Q.18. What support is provided by the Ministry for assisting training institutions?**

The Ministry is implementing the Assisting to Training Institutions Scheme which envisages financial assistance for establishment of new institutions (EDIs), strengthening the

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infrastructure of the existing EDIs and for supporting entrepreneurship and skill development activities. The main objectives of the scheme are development of indigenous entrepreneurship from all walks of life for developing new micro and small enterprises, enlarging the entrepreneurial base and encouraging self-employment in rural as well as urban areas, by providing training to first generation entrepreneurs and assisting them in setting up of enterprises. The assistance shall be provided to these training institutions in the form of capital grant for creation/strengthening of infrastructure and programme support for conducting entrepreneurship development and skill development programmes.

**Q.19. What support is provided by the Ministry for participation of MSMEs in international events?**

Under the International Cooperation Scheme, financial assistance is provided on reimbursement basis to the State/Central Government organizations, industries/enterprises Associations and registered societies/trusts and organizations associated with MSME for deputation of MSME business delegation to other countries for exploring new areas of MSMEs, participation by Indian MSMEs in international exhibitions, trade fairs, buyer seller meet and for holding international conference and seminars which are in the interest of MSME sectors. Eligible beneficiary organizations can apply to the Ministry directly to avail the assistance under IC Scheme as per Scheme Guidelines. For further details please visit [www.dcmsme.gov.in](http://www.dcmsme.gov.in).

**Q.20. What scheme does the Ministry have for providing marketing support to MSMEs?**

The Ministry implements the Marketing Assistance scheme through National Small Industries Corporation (NSIC) Limited for providing marketing support to MSMEs. The main objectives of the scheme is to enhance the marketing competitiveness of MSMEs; to provide them a platform for interaction with the individual/institutional buyers; to update them with prevalent market scenario and to provide them a form for redressing their problems. MSMEs are supported under the Scheme for capturing the new market opportunities through organising/ participating in various domestic & international exhibitions/ trade fairs, Buyer-Seller meets intensive-campaigns and other marketing events.

**Q.21. Does the Ministry have any scheme for providing handholding support and assistance to potential entrepreneurs?**

The Ministry implements the Rajiv Gandhi Udyami Mitra Yojana (RGUMY), objective of which is to provide handholding support and assistance to the potential first generation entrepreneurs, who have already successfully completed Entrepreneurship Development / Skill Development Training. Selected lead agencies i.e 'Udyami Mitras', provide information and guidance to first generation entrepreneurs regarding various promotional schemes of the Government, procedural formalities required for setting up and running of the enterprises and help them in accessing Bank credit etc. A 'Udyami Helpline' (a Call Centre for MSMEs) with a toll free No. 1800-180-6763 has also been set up to assist the entrepreneurs.

**Q.22. What is the status of lending by banks to this sector?**

Bank's lending to the Micro and Small enterprises engaged in the manufacture or production of goods specified in the first schedule to the Industries (Development and regulation) Act, 1951 and notified by the Government from time to time is reckoned for priority sector

advances. However, bank loans up to Rs.5 crore per borrower / unit to Micro and Small Enterprises engaged in providing or rendering of services and defined in terms of investment in equipment under MSMED Act, 2006 are eligible to be reckoned for priority sector advances. Lending to Medium enterprises is not eligible to be included for the purpose of computation of priority sector lending. Detailed guidelines on lending to the Micro, Small and Medium enterprises sector are available in our **Master Circular no. RPCD.MSME & NFS.BC.No.5/06.02.31/2013-14 dated July 1, 2013** . The Master circulars are issued by RBI, to banks, on various matters are available on RBI website [www.rbi.org.in](http://www.rbi.org.in) and updated in July each year.

**Q.23. What is meant by Priority Sector Lending?**

Priority sector lending include only those sectors, as part of the priority sector that impact large sections of the population, the weaker sections and the sectors which are employment-intensive such as agriculture, and Micro and Small enterprises. Detailed guidelines on Priority sector lending are available in RBI Master Circular on Priority sector lending no. **RPCD.CO.Plan.BC 9 / 04.09.01/ 2013-14 dated July 1, 2013** . The Master circulars issued by RBI, to banks, on various matters are available on its website [www.rbi.org.in](http://www.rbi.org.in) and updated in July each year.

**Q.24. Are there any targets prescribed for lending by banks to MSMEs?**

As per extant policy, certain targets have been prescribed for banks for lending to the Micro and Small enterprise (MSE) sector. In terms of the recommendations of the Prime Minister's Task Force on MSMEs banks have been advised to achieve a 20 per cent year-on-year growth in credit to micro and small enterprises, a 10 per cent annual growth in the number of micro enterprise accounts and 60% of total lending to MSE sector as on preceding March 31st to Micro enterprises.

In order to ensure that sufficient credit is available to micro enterprises within the MSE sector, banks should ensure that:

- 40 per cent of the total advances to MSE sector should go to micro (manufacturing) enterprises having investment in plant and machinery up to Rs. 10 lakh and micro (service) enterprises having investment in equipment up to Rs. 4 lakh ;
- 20 per cent of the total advances to MSE sector should go to micro (manufacturing) enterprises with investment in plant and machinery above Rs. 10 lakh and up to Rs. 25 lakh, and micro (service) enterprises with investment in equipment above Rs. 4 lakh and up to Rs. 10 lakh. Thus, 60 per cent of MSE advances should go to the micro enterprises. For details, the RBI Master Circular RPCD.MSME & FS.BC.No.5/06.02.31/2013-14 dated July 1, 2013 on 'Lending to Micro, Small and Medium Enterprises (MSME) Sector, may please be seen.

**Q.25. Are there specialized bank branches for lending to the MSMEs?**

Public sector banks have been advised to open at least one specialized branch in each district. The banks have been permitted to categorize their MSME general banking branches having 60% or more of their advances to MSME sector, as specialized MSME branches for providing better service to this sector as a whole.

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As per the policy package announced by the Government of India for stepping up credit to MSME sector, the public sector banks will ensure specialized MSME branches in identified clusters/centres with preponderance of small enterprises to enable the entrepreneurs to have easy access to the bank credit and to equip bank personnel to develop requisite expertise.

Though their core competence will be utilized for extending finance and other services to MSME sector, they will have operational flexibility to extend finance/render other services to other sectors/borrowers.

**Q.26. How many such specialized branches for lending to MSMEs are there?**

As on March 2013 there are 2032 specialized MSME branches.

**Q.27. How do banks assess the working capital requirements of borrowers?**

The banks have been advised by RBI to put in place loan policies governing extension of credit facilities for the MSE sector duly approved by their Board of Directors Vide RBI circular; **RPCD.SME & FS.BC.No.102/06.04.01/2008-09 dated May 4, 2009**). Banks have, however, been advised to sanction limits after proper appraisal of the genuine working capital requirements of the borrowers keeping in mind their business cycle and short term credit requirement. As per Nayak Committee Report, working capital limits to SSI units is computed on the basis of minimum 20% of their estimated turnover up to credit limit of Rs.5crore. For more details paragraph 4.12.2 of the RBI Master Circular on lending to the MSME sector dated July 1, 2010 may please be seen.

**Q.28. Is there any provision for grant of composite loans by banks?**

A composite loan limit of Rs.1crore can be sanctioned by banks to enable the MSME entrepreneurs to avail of their working capital and term loan requirement through Single Window in terms of RBI Master Circular on lending to the MSME sector dated July 1, 2010. All scheduled commercial banks have been advised by our circular RPCD.SME&NFS. BC.No.102/06.04.01/2008-09 on May 4, 2009 that the banks which have sanctioned term loan singly or jointly must also sanction working capital (WC) limit singly (or jointly, in the ratio of term loan) to avoid delay in commencement of commercial production thereby ensuring that there are no cases where term loan has been sanctioned and working capital facilities are yet to be sanctioned. These instructions have been reiterated to schedule commercial banks on March 11, 2010.

**Q.29. What is Cluster financing?**

Cluster based approach to lending is intended to provide a full-service approach to cater to the diverse needs of the MSE sector which may be achieved through extending banking services to recognized MSE clusters. A cluster based approach may be more beneficial (a)in dealing with well-defined and recognized groups (b) availability of appropriate information for risk assessment (c) monitoring by the lending institutions and (d) reduction in costs.

The banks have, therefore, been advised to treat it as a thrust area and increasingly adopt the same for SME financing. United Nations Industrial Development Organisation (UNIDO) has identified 388 clusters spread over 21 states in various parts of the country. The Ministry



of Micro, Small and Medium Enterprises has also approved a list of clusters under the Scheme of Fund for Regeneration of Traditional Industries (SFURTI) and Micro and Small Enterprises Cluster Development Programme (MSE-CDP) located in 121 Minority Concentration Districts. Accordingly, banks have been advised to take appropriate measures to improve the credit flow to the identified clusters. Banks have also been advised that they should open more MSE focused branch offices at different MSE clusters which can also act as counseling. Centres for MSEs. Each lead bank of the district may adopt at least one cluster (Refer circular **RPCD.SME & NFS.No.BC.90/06.02.31/2009-10 dated June 29, 2010**).

**Q.30. What are the RBI guidelines on interest rates for loans disbursed by the commercial banks?**

As part of the financial sector liberalization, all credit related matters of banks including charging of interest have been deregulated by RBI and are governed by the banks' own lending policies.

With a view to enhancing transparency in lending rates of banks and enabling better assessment of transmission of monetary policy, all scheduled commercial banks had been advised in terms of RBI circular; **DBOD.No.Dir.BC.88/13.03.00/2009-10 on April 9, 2010** to introduce the Base Rate system w.e.f. July 1, 2010. Accordingly, the Base Rate System has replaced the BPLR (Bank's prime Lending Rate) system with effect from July 1, 2010. All categories of loans should henceforth be priced only with reference to the Base Rate.

**Q.31. Why is credit rating of the micro small borrowers important?**

With a view to facilitating credit flow to the MSME sector and enhancing the comfort-level of the lending institutions, the credit rating of MSME units done by reputed credit rating agencies and it should be encouraged. Banks are advised to consider these ratings as per availability and wherever appropriate structure their rates of interest depending on the ratings assigned to the borrowing SME units.

**Q.32. Is credit rating mandatory for the MSE borrowers?**

Credit rating is not mandatory but it is in the interest of the MSE borrowers to get their credit rating done as it would help in credit pricing that is cost of funds (interest and other charges etc.) of the loans taken by them from banks.

**Q.33. What are the guidelines for delayed payment of dues to the MSE borrowers?**

With the enactment of the Micro, Small and Medium Enterprises Development (MSMED), Act 2006, for the goods and services supplied by the MSEM units, payments have to be made by the buyers as under:

- The buyer is to make payment on or before the date agreed on between him and the supplier in writing or, in case of no agreement, before the appointed day. The agreement between seller and buyer shall not exceed more than 45 days.
- If the buyer fails to make payment of the amount to the supplier, he shall be liable to pay compound interest with monthly rests to the supplier on the amount from the appointed day or, on the date agreed on, at three times of the Bank Rate notified by Reserve Bank.

- For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the interest as advised at above.
- In case of dispute with regard to any amount due, a reference shall be made to the Micro and Small Enterprises Facilitation Council, constituted by the respective State Government.

To take care of the payment obligations of large corporate borrowers to MSEs, banks have been advised that while sanctioning/renewing credit limits to their large corporate borrowers (i.e. borrowers enjoying working capital limits of Rs. 10 crore and above from the banking system), to fix separate sub-limits, within the overall limits, specifically for meeting payment obligations in respect of purchases from MSEs either on cash basis or on bill basis.

Banks are also advised by RBI to closely monitor the operations in the sub-limits, particularly with reference to their corporate borrowers' dues to MSE units by ascertaining periodically from their corporate borrowers, the extent of their dues to MSE suppliers and ensuring that the corporate pay off such dues before the 'appointed day' /agreed date by using the balance available in the sub-limit so created. In this regard the relevant RBI circular; **IECD/5/08.12.01/2000-01 dated October 16, 2000** (reiterated on May 30, 2003, vide **circular No. IECD.No.20/08.12.01/2002-03**) available on RBI website.

**Q.34. What is debt restructuring of advances?**

A viable/potentially viable unit may apply for a debt restructuring if it shows early stage of stickiness. In such cases the banks may consider to reschedule the debt for repayment, consider additional funds etc. A debt restructuring mechanism for units in MSME sector has been formulated and advised to all commercial banks. The detailed guidelines have been issued to ensure restructuring of debt of all eligible small and medium enterprises. Prudential guidelines on restructuring of advances have also been issued which harmony the prudential norms over all categories of debt restructuring mechanisms (other than those restructured on account of natural calamities). The relevant circulars in this regard are circular **DBOD.BP.BC.No.34/21.04.132/2005-06 dated September 8, 2005** and circular **DBOD.No.BP.BC.37/21.04.132/2008-09 dated August 27, 2008** which are available on our website [www.rbi.org.in](http://www.rbi.org.in).

**Q.35. What is the definition of a sick unit?**

As per the extant guidelines, a Micro or Small Enterprise (as defined in the MSMED Act 2006) may be said to have become Sick, if

- Any of the borrower account of the enterprise remains NPA for three months or more.

OR

- There is erosion in the net worth due to accumulated losses to the extent of 50% of its net worth during the previous accounting year. This criterion enables banks to detect sickness at an early stage and facilitate corrective action for revival of the unit.

**Q.36. Are all sick units put under rehabilitation by banks?**

No. If a sick unit is found potentially viable it can be rehabilitated by the banks. The viability

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of the unit is decided by banks. A unit should be declared unviable only if such a status is evidenced by a viability study.

**Q.37. Is there a time frame within which the banks are required to implement the rehabilitation package?**

Viable / potentially viable MSE units/enterprises, which turn sick in spite of debt restructuring, would need to be rehabilitated and put under nursing. It will be for the banks/ financial institutions to decide whether a sick MSE unit is potentially viable or not. The rehabilitation package should be fully implemented by banks within six months from the date the unit is declared as potentially viable/viable. During this six months period of identifying and implementing rehabilitation package banks/FIs are required to do “holding operation” which will allow the sick unit to draw funds from the cash credit account at least to the extent of deposit of sale proceeds. The relevant circular on rehabilitation of sick units is **RPCD.CO.MSME & NFS.BC.40/06.02.31/2012-2013 dated November 1, 2012** is available on our website.

**Q.38. What is the procedure and time frame for conducting the viability study?**

The decision on viability of the unit should be taken at the earliest but not later than 3 months of the unit becoming sick under any circumstances. The following procedure should be adopted by the banks before declaring any unit as unviable:

- A unit should be declared unviable only if the viability status is evidenced by a viability study. However, it may not be feasible to conduct viability study in very small units and will only increase paperwork. As such for micro (manufacturing) enterprises, having investment in plant and machinery up to Rs. 5 lakh and micro (service) enterprises having investment in equipment up to Rs. 2 lakh, the Branch Manager may take a decision on viability and record the same, along with the justification.
- The declaration of the unit as unviable, as evidenced by the viability study, should have the approval of the next higher authority/ present sanctioning authority for both micro and small units. In case such a unit is declared unviable, an opportunity should be given to the unit to present the case before the next higher authority. The modalities for presenting the case to the next higher authority may be worked out by the banks in terms of their Board approved policies in this regard.
- The next higher authority should take such decision only after giving an opportunity to the promoters of the unit to present their case.
- For sick units declared unviable, with credit facilities of Rs. 1 crore and above, a Committee approach may be adopted. A Committee comprising of senior officials of the bank may examine such proposals. This is expected to improve the quality of decisions as collective wisdom of the members shall be utilized, especially while taking decision on rehabilitation proposals.
- The final decision should be communicated to the promoters in writing. The above process should be completed in a time bound manner and should not take more than 3 months.

**Q.39. What are the RBI guidelines on One Time Settlement scheme(OTS) for MSEs for settlement of their NPAs?**

Scheduled commercial banks have been advised in terms of our circular RPCD.SME&NFS. BC.No.102/06.04.01/2008-09 dated May 4, 2009 to put in place a non -discretionary One time Settlement scheme duly approved by their Boards. The banks have also been advised to give adequate publicity to their OTS policies. (Refer circular RPCD.SME&NFS. BC.No.102/06.04.01/2008-09 dated May 4, 2009)

**Q.40. Apart from the loans and other banking facilities, do the banks provide any guidance to MSE entrepreneurs?**

Banks provide following services to the MSE entrepreneurs:

Rural Self Employment Training Institutes (RSETIs)

At the initiative of the Ministry of Rural Development (MoRD), Rural Self Employment Training Institutes (RSETIs) have been set up by various banks all over the country. These RSETIs are managed by banks with active co-operation from the Government of India and State Governments. RSETIs conduct various short duration (ranging preferably from 1 to 6 weeks) skill upgradation programmes to help the existing entrepreneurs compete in this ever-changing global market. RSETIs ensure that a list of candidates trained by them is sent to all bank branches of the area and co-ordinate with them for grant of financial assistance under any Govt. sponsored scheme or direct lending.

Financial Literacy and consultancy support:

Banks have been advised to either separately set up special cells at their branches, or vertically integrate this function in the Financial Literacy Centres (FLCs) set up by them, as per their comparative advantage. Through these FLCs, banks provide assistance to the MSE entrepreneurs in regard to financial literacy, operational skills, including accounting and finance, business planning etc. (Refer circular **RPCD.MSME & NFS.BC.No.20/06.02.31/2012-13 dated August 1, 2012**)

Further, with a view to providing a guide for the new entrepreneurs in this sector, a booklet titled "Nurturing Dreams, Empowering Enterprises – Financing needs of Micro and Small Enterprises – A guide" has been launched on August 6, 2013 by the Reserve Bank. The booklet has been placed on our website [www.rbi.org.in](http://www.rbi.org.in) under the following path & URL:

RBI main page – Financial Education – Downloads – For Entrepreneurs (<http://rbi.org.in/financialeducation/FinancialEntrepreneur.aspx>)

**Q.41. Can the MSE borrowers get collateral free loans from banks?**

In terms of RBI circular **RPCD.SME&NFS.BC.No.79/06.02.31/2009-10** dated May 6, 2010 , banks are mandated not to accept collateral security in the case of loans upto Rs 10 lakh extended to units in the MSE sector. Further, in terms of RBI circular **RPCD/PLNFS/BC.No.39/06.02.80/2002-04** dated November 3, 2003 , banks may, on the basis of good track record and financial position of MSE units, increase the limit of dispensation of collateral requirement for loans up to Rs.25 lakh with the approval of the appropriate authority.

All scheduled commercial banks that are public/private sector banks and RRbs/NSIC/SIDBI/NETFI are the member lending institutions. (MLI) List of banks offering loans is mentioned below;

#### **List of Bank's MSME Care Centres**

- |                                   |                           |
|-----------------------------------|---------------------------|
| 1. Allahabad Bank                 | 15. P.N.B.                |
| 2. Bank of Baroda                 | 16. Syndicate Bank        |
| 3. O.B.C.                         | 17. UCO Bank              |
| 4. Andhra Bank                    | 18. Union Bank of India   |
| 5. State Bank of Bikaner & Jaipur | 19. United Bank of India  |
| 6. State Bank of Hyderabad        | 20. Vijaya Bank           |
| 7. Bank of India                  | 21. State Bank of Mysore  |
| 8. Bank of Maharashtra            | 22. Corporation Bank      |
| 9. State Bank of Travancore       | 23. I.D.B.I.              |
| 10. Canara Bank                   | 24. State Bank of Patiala |
| 11. Dena Bank                     | 25. State Bank of India   |
| 12. Indian Bank                   | 26. Central Bank of India |
| 13. I.O.B.                        | 27. State Bank of Indore  |
| 14. Punjab & Sind Bank            |                           |

#### **Links of State Level Bankers' Committees contact address**

- |                        |                           |
|------------------------|---------------------------|
| 1. SLBC Rajasthan      | 7. SLBC Gujarat           |
| 2. SLBC Bihar          | 8. SLBC West Bengal       |
| 3. SLBC U.P.           | 9. SLBC Kerala            |
| 4. SLBC Orissa         | 10. SLBC Jharkhand        |
| 5. SLBC Andhra Pradesh | 11. SLBC Himachal Pradesh |
| 6. SLBC J&K            |                           |

#### **Fee for Guarantee**

The fee payable to the Trust under the scheme is one-time guarantee fee of 1.5% and annual service fee of 0.75% on the credit facilities sanctioned. For loans up to Rs.5 lakh, the one-time guarantee fee and annual service fee is 1% and 0.5% respectively. Further, for loans in the North-East Region, the one-time guarantee fee is only 0.75%.

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# Appendix I

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## **The Micro, Small and Medium Enterprises Development Act, 2006 [27 of 2006]**

An Act to provide for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto.

WHEREAS a declaration as to expediency of control of certain industries by the Union was made under section 2 of the Industries (Development and Regulation) Act, 1951;

AND WHEREAS it is expedient to provide for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto;

BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:

### **Chapter I**

#### **Preliminary**

#### **1. Short title and commencement**

1. This Act may be called the Micro, Small and Medium Enterprises Development Act, 2006.
2. It shall come into force on such date as the Central Government may, by notification, appoint; and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

#### **2. Definitions**

In this Act, unless the context otherwise requires,-

- (a) "Advisory Committee" means the committee constituted by the Central Government under sub-section (2) of section 7;
- (b) "appointed day" means the day following immediately after the expiry of the period of fifteen days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier.

*Explanation* : For the purposes of this clause,

- (i) "the day of acceptance" means,-
  - a. the day of the actual delivery of goods or the rendering of services; or

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- b. where any objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day on which such objection is removed by the supplier;
  - (ii) “the day of deemed acceptance” means, where no objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day of the actual delivery of goods or the rendering of services;
  - c. “Board” means the National Board for Micro, Small and Medium Enterprises established under section 3;
  - d. “buyer” means whoever buys any goods or receives any services from a supplier for consideration;
  - e. “enterprise” means an industrial undertaking or a business concern or any other establishment, by whatever name called, engaged in the manufacture or production of goods, in any manner, pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 or engaged in providing or rendering of any service or services;
  - f. “goods” means every kind of movable property other than actionable claims and money;
  - g. “medium enterprise” means an enterprise classified as such under sub-clause (iii) of clause (a) or sub-clause (iii) of clause (b) of sub-section (1) of section 7;
  - h. “micro enterprise” means an enterprise classified as such under sub-clause (i) of clause (a) or sub-clause (i) of clause (b) of sub-section (1) of section 7;
  - i. “National Bank” means the National Bank for Agriculture and Rural Development established under section 3 of the National Bank for Agriculture and Rural Development Act, 1981;
  - j. “notification” means a notification published in the Official Gazette;
  - k. “prescribed” means prescribed by rules made under this Act;
  - l. “Reserve Bank” means the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934;
  - m. “small enterprise means an enterprise classified as such under sub-clause (ii) of clause (a) or sub-clause (ii) of clause (b) of sub-section (1) of section 7;
  - n. “supplier” means a micro or small enterprise, which has filed a memorandum with the authority referred to in sub-section (1) of section 8, and includes,
    - i. the National Small Industries Corporation, being a company, registered under the Companies Act, 1956;
    - ii the Small Industries Development Corporation of a State or a Union territory, by whatever name called, being a company registered under the Companies Act, 1956;

- iii. any company, co-operative society, trust or a body, by whatever name called, registered or constituted under any law for the time being in force and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises;
- o. “Small Industries Bank” means the Small Industries Development Bank of India established under sub-section (1) of section 3 of the Small Industries Development Bank of India Act, 1989;
- p. “State Government”, in relation to a Union territory, means the Administrator thereof appointed under article 239 of the Constitution.

## **Chapter II**

### **National Board for Micro, Small and Medium Enterprises**

#### **3. Establishment of Board**

1. With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Act, a Board to be known as the National Board for Micro, Small and Medium Enterprises.
2. The head office of the Board shall be at Delhi.
3. The Board shall consist of the following members, namely:
  - a. the Minister in charge of the Ministry or Department of the Central Government having administrative control of the micro, small and medium enterprises who shall be the ex officio Chairperson of the Board;
  - b. the Minister of State or a Deputy Minister, if any, in the Ministry or Department of the Central Government having administrative control of the micro, small and medium enterprises who shall be ex officio Vice-Chairperson of the Board, and where there is no such Minister of State or Deputy Minister, such person as may be appointed by the Central Government to be the Vice-Chairperson of the Board;
  - c. six Ministers of the State Governments having administrative control of the departments of small scale industries or, as the case may be, micro, small and medium enterprises, to be appointed by the Central Government to represent such regions of the country as may be notified by the Central Government in this behalf, ex officio;
  - d. three Members of Parliament of whom two shall be elected by the House of the People and one by the Council of States;
  - e. the Administrator of a Union territory to be appointed by the Central Government, ex officio;
  - f. the Secretary to the Government of India in charge of the Ministry or Department of the Central Government having administrative control of the micro, small and medium enterprises, ex officio;
  - g. four Secretaries to the Government of India, to represent the Ministries of the Central Government dealing with commerce and industry, finance, food processing industries, labour and planning to be appointed by the Central Government, ex officio;



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- h. the Chairman of the Board of Directors of the National Bank, ex officio;
  - i. the chairman and managing director of the Board of Directors of the Small Industries Bank, ex officio;
  - j. the chairman, Indian Banks Association, ex officio;
  - k. one officer of the Reserve Bank, not below the rank of an Executive Director; to be appointed by the Central Government to represent the Reserve Bank;
  - l. twenty persons to represent the associations of micro, small and medium enterprises, including not less than three persons representing associations of women's enterprises and not less than three persons representing associations of micro enterprises, to be appointed by the Central Government;
  - m. three persons of eminence, one each from the fields of economics, industry and science and technology, not less than one of whom shall be a woman, to be appointed by the Central Government; and
  - n. two representatives of Central Trade Union Organisations, to be appointed by the Central Government; and
  - o. one officer not below the rank of Joint Secretary to the Government of India in the Ministry or Department of the Central Government having administrative control of the micro, small and medium enterprises to be appointed by the Central Government, who shall be the Member-Secretary of the Board, ex officio.
4. The term of office of the members of the Board, other than ex officio members of the Board, the manner of filling vacancies, and the procedure to be followed in the discharge of their functions by the members of the Board, shall be such as may be prescribed:  
Provided that the term of office of an ex officio member of the Board shall continue so long as he holds the office by virtue of which he is such a member.
  5. No act or proceedings of the Board shall be invalid merely by reason of
    - a. any vacancy in, or any defect in the constitution of, the Board; or
    - b. any defect in the appointment of a person acting as a member of the Board; or
    - c. any irregularity in the procedure of the Board not affecting the merits of the case.
  6. The Board shall meet at least once in every three months in a year.
  7. The Board may associate with itself, in such manner and for such purposes as it may deem necessary, any person or persons whose assistance or advice it may desire in complying with any of the provisions of this Act and a person so associated shall have the right to take part in the discussions of the Board relevant to the purposes for which he has been associated but shall not have the right to vote.
  8. Without prejudice to sub-section (7) the Chairperson of the Board shall, for not less than two of the meetings of the Board in a year, invite such Ministers of the State Governments having administrative control of the departments of small scale industries or, as the case may be, the micro, small and medium enterprises, or the Administrators of Union territories and representatives of such other associations of micro, small and medium enterprises, as he may deem necessary for carrying out the purposes of this Act.

9. It is hereby declared that the office of member of the Board shall not disqualify its holder for being chosen as, or for being, a member of either House of Parliament.

#### **4. Removal of member from Board**

1. The Central Government may remove a member of the Board from it, if he
  - a. is, or at any time has been, adjudged as insolvent; or
  - b. is, or becomes, of unsound mind and stands so declared by a competent court; or
  - c. refuses to act or becomes incapable of acting as a member of the Board; or
  - d. has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
  - e. has so abused, in the opinion of the Central Government, his position as a member of the Board as to render his continuance in the Board detrimental to the interests of the general public.
2. Notwithstanding anything contained in sub-section (1), no member shall be removed from his office on the grounds specified in clauses (c) to (e) of that sub-section unless he has been given a reasonable opportunity of being heard in the matter.

#### **5. Functions of Board**

The Board shall, subject to the general directions of the Central Government, perform all or any of the following functions, namely:

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

#### **6. Powers and functions of member-secretary of board**

Subject to other provisions of this Act, the Member-Secretary of the Board shall exercise such powers and perform such functions as may be prescribed.

### **Chapter III**

#### **Classification of Enterprises, Advisory Committee and Memorandum of Micro, Small and Medium Enterprises**

#### **7. Classification of enterprises**

1. Notwithstanding anything contained in section 11B of the Industries (Development and

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Regulation) Act, 1951, the Central Government may, for the purposes of this Act, by notification and having regard to the provisions of sub-sections (4) and (5), classify any class or classes of enterprises, whether proprietorship, Hindu undivided family, association of persons, co-operative society, partnership firm, company or undertaking, by whatever name called,

- a. in the case of 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, as
  - i. a micro enterprise, where the investment in plant and machinery does not exceed twenty-five lakh rupees;
  - ii. a small enterprise, where the investment in plant and machinery is more than twenty-five lakh rupees but does not exceed five crore rupees; or
  - iii. a medium enterprise, where the investment in plant and machinery is more than five crore rupees but does not exceed ten crore rupees;
- b. in the case of the enterprises engaged in providing or rendering of services, as
  - i. a micro enterprise, where the investment in equipment does not exceed ten lakh rupees;
  - ii. a small enterprise, where the investment in equipment is more than ten lakh rupees but does not exceed two crore rupees; or
  - iii. a medium enterprise, where the investment in equipment is more than two crore rupees but does not exceed five crore rupees.

*Explanation 1.* For the removal of doubts, it is hereby clarified that in calculating the investment in plant and machinery, the cost of pollution control, research and development, industrial safety devices and such other items as may be specified, by notification, shall be excluded.

*Explanation 2.* It is clarified that the provisions of section 29B of the Industries (Development and Regulation) Act, 1951, shall be applicable to the enterprises specified in sub-clauses (i) and (ii) of clause (a) of sub-section (1) of this section.

2. The Central Government shall, by notification, constitute an Advisory Committee consisting of the following members, namely:
  - a. the Secretary to the Government of India in the Ministry or Department of the Central Government having administrative control of the small and medium enterprises who shall be the Chairperson, ex officio;
  - b. not more than five officers of the Central Government possessing necessary expertise in matters relating to micro, small and medium enterprises, members, ex officio;
  - c. not more than three representatives of the State Governments, members, ex officio; and
  - d. one representative each of the associations of micro, small and medium enterprises, members, ex officio.
3. The Member-Secretary of the Board shall also be the ex officio Member-Secretary of the Advisory Committee.
4. The Central Government shall, prior to classifying any class or classes of enterprises under sub-section (1), obtain the recommendations of the Advisory Committee.

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5. The Advisory Committee shall examine the matters referred to it by the Board in connection with any subject referred to in section 5 and furnish its recommendations to the Board.
  6. The Central Government may also seek the advice of the Advisory Committee on any of the matters specified in section 9, 10, 11, 12 or 14 of Chapter IV.
  7. The State Government may seek advice of the Advisory Committee on any of the matters specified in the rules made under section 30.
  8. The Advisory Committee shall, after considering the following matters, communicate its recommendations or advice to the Central Government or, as the case may be, State Government or the Board, namely:
    - a. the level of employment in a class or classes of enterprises;
    - b. the level of investments in plant and machinery or equipment in a class or classes of enterprises;
    - c. the need of higher investment in plant and machinery or equipment for technological upgradation, employment generation and enhanced competitiveness of the class or classes of enterprises;
    - d. the possibility of promoting and diffusing entrepreneurship in a micro, small or medium enterprises; and
    - e. the international standards for classification of small and medium enterprises.
  9. Notwithstanding anything contained in section 11B of the Industries (Development and Regulation) Act, 1951 and clause (h) of section 2 of the Khadi and Village Industries Commission Act, 1956, the Central Government may, while classifying any class or classes of enterprises under sub-section (1), vary, from time to time, the criterion of investment and also consider criteria or standards in respect of employment or turnover of the enterprises and include in such classification the micro or tiny enterprises or the village enterprises, as part of small enterprises.
- 8. Memorandum of micro, small and medium enterprises.-**
1. Any person who intends to establish,
    - a. a micro or small enterprise, may, at his discretion, or
    - b. a medium enterprise engaged in providing or rendering of services may, at his discretion; or
    - c. a medium enterprise engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951, shall file the memorandum of micro, small or, as the case may be, of medium enterprise with such authority as may be specified by the State Government under sub-section (4) or the Central Government under sub-section (3):

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

    - a. a small scale industry and obtained a registration certificate, may, at his discretion; and

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- b. an industry engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951, having investment in plant and machinery of more than one crore rupees but not exceeding ten crore rupees and, in pursuance of the notification of the Government of India in the erstwhile Ministry of Industry (Department of Industrial Development) number S.O. 477(E) dated the 25th July, 1991 filed an Industrial Entrepreneur's Memorandum shall within one hundred and eighty days from the commencement of this Act, file the memorandum, in accordance with the provisions of this Act.
  2. The form of the memorandum, the procedure of its filing and other matters incidental thereto shall be such as may be notified by the Central Government after obtaining the recommendations of the Advisory Committee in this behalf.
  3. The authority with which the memorandum shall be filed by a medium enterprise shall be such as may be specified by notification, by the Central Government.
  4. The State Government shall, by notification, specify the authority with which a micro or small enterprise may file the memorandum.
  5. The authorities specified under sub-sections (3) and (4) shall follow, for the purposes of this section, the procedure notified by the Central Government under sub-section (2).

#### **Chapter IV**

#### **Measures for Promotion, Development and Enhancement of Competitiveness of Micro, Small and Medium Enterprises**

##### **9. Measures for promotion and development**

The Central Government may, from time to time, for the purposes of facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises, particularly of the micro and small enterprises, by way of development of skill in the employees, management and entrepreneurs, provisioning for technological upgradation marketing assistance or infrastructure facilities and cluster development of such enterprises with a view to strengthening backward and forward linkages, specify, by notification, such programmes, guidelines or instructions, as it may deem fit.

##### **10. Credit facilities**

The policies and practices in respect of credit to the micro, small and medium enterprises shall be progressive and such as may be specified in the guidelines or instructions issued by the Reserve Bank, from time to time, to ensure timely and smooth flow of credit to such enterprises, minimise the incidence of sickness among and enhance the competitiveness of such enterprises.

##### **11. Procurement preference policy**

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

**12. Funds**

There shall be constituted, by notification, one or more Funds to be called by such name as may be specified in the notification and there shall be credited thereto any grants made by the Central Government under section 13.

**13. Grants by Central Government**

The Central Government may, after due appropriation made by Parliament by law in this behalf, credit to the Fund or Funds by way of grants for the purposes of this Act, such sums of money as that Government may consider necessary to provide.

**14. Administration and utilisation of Fund or Funds**

1. The Central Government shall have the power to administer the Fund or Funds in such manner as may be prescribed.
2. The Fund or Funds shall be utilised exclusively for the measures specified in sub-section (1) of section 9.
3. The Central Government shall be responsible for the coordination and ensuring timely utilisation and release of sums in accordance with such criteria as may be prescribed.

**Chapter V****Delayed Payments to Micro and Small Enterprises****15. Liability of buyer to make payment**

Where any supplier, supplies any goods or renders any services to any buyer, the buyer shall make payment therefore on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day: Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance.

**16. Date from which and rate at which interest is payable**

Where any buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.

**17. Recovery of amount due**

For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided under section 16.

**18. Reference to micro and small enterprises facilitation council**

1. Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.

2. On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.
3. Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer to it any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of that Act.
4. Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.
5. Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference.

**19. Application for setting aside decree, award or order**

No application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate dispute resolution services to which a reference is made by the Council, shall be entertained by any court unless the appellant (not being a supplier) has deposited with it seventy-five per cent of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such court: Provided that pending disposal of the application to set aside the decree, award or order, the court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable under the circumstances of the case subject to such conditions as it deems necessary to impose.

**20. Establishment of micro and small enterprises facilitation council**

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

**21. Composition of micro and small enterprises facilitation council**

1. The Micro and Small Enterprise Facilitation Council shall consist of not less than three but not more than five members to be appointed from among the following categories, namely:
  - i. Director of Industries, by whatever name called, or any other officer not below the rank of such Director, in the Department of the State Government having administrative control of the small scale industries or, as the case may be, micro, small and medium enterprises; and

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- ii. one or more office-bearers or representatives of associations of micro or small industry or enterprises in the State; and
  - iii. one or more representatives of banks and financial institutions lending to micro or small enterprises; or
  - iv. one or more persons having special knowledge in the field of industry, finance, law, trade or commerce.
2. The person appointed under clause (i) of sub-section (1) shall be the Chairperson of the Micro and Small Enterprises Facilitation Council.
  3. The composition of the Micro and Small Enterprises Facilitation Council, the manner of filling vacancies of its members and the procedure to be followed in the discharge of their functions by the members shall be such as may be prescribed by the State Government.

**22. Requirement to specify unpaid amount with interest in the annual statement of accounts**

Where any buyer is required to get his annual accounts audited under any law for the time being in force, such buyer shall furnish the following additional information in his annual statement of accounts, namely:

- i. the principal amount and the interest due thereon (to be shown separately) remaining unpaid to any supplier as at the end of each accounting year;
- ii. the amount of interest paid by the buyer in terms of section 16, along with the amounts of the payment made to the supplier beyond the appointed day during each accounting year;
- iii. the amount of interest due and payable for the period of delay in making payment (which have been paid but beyond the appointed day during the year) but without adding the interest specified under this Act;
- iv. the amount of interest accrued and remaining unpaid at the end of each accounting year; and
- v. the amount of further interest remaining due and payable even in the succeeding years, until such date when the interest dues as above are actually paid to the small enterprise, for the purpose of disallowance as a deductible expenditure under section 23.

**23. Interest not to be allowed as deduction from income**

Notwithstanding anything contained in the Income-tax Act, 1961, the amount of interest payable or paid by any buyer, under or in accordance with the provisions of this Act, shall not, for the purposes of computation of income under the Income-tax Act, 1961, be allowed as deduction.

**24. Overriding effect**

The provisions of sections 15 to 23 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

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

Notwithstanding anything contained in any law for the time being in force, the Central



Government may, with a view to facilitating closure of business by a micro, small or medium enterprise, not being a company registered under the Companies Act, 1956, notify a Scheme within one year from the date of commencement of this Act.

## Chapter VI

### Miscellaneous

#### 26. Appointment of officers and other employees

1. The Central Government or the State Government may appoint such officers with such designations and such other employees as it thinks fit for the purposes of this Act and may entrust to them such of the powers and functions under this Act as it may deem fit.
2. The Officers appointed under sub-section (1) may, for the purposes of this Act, by order require any person to furnish such information, in such form, as may be prescribed.

#### 27. Penalty for contravention of section 8 or section 22 or section 26

The SME business market of India is large and bubbling with newer opportunities. Increased purchasing power and consumerism is what drives the business scenario in India. Thus, there is an opportunity for competitive advantage that can benefit investors and entrepreneurs to a large extent. An investment in any best small business opportunity promises lucrative returns and success in less time. There are various reasons due to which the small scale business in India has witnessed a spurt of growth. Some of these factors are:

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

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  - Raw Material Procurement
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  - Technical & Managerial skills
  - Tooling & Testing support
  - Reservation for Exclusive Purchase by Government
  - Export Promotion
  - Growth in demand in the domestic market size due to overall economic growth
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- The SME business market of India is large and bubbling with newer opportunities. Increased purchasing power and consumerism is what drives the business scenario in India. Thus, there is an opportunity for competitive advantage that can benefit investors and entrepreneurs to a large extent. An investment in any best small business opportunity promises lucrative returns and success in less time. There are various reasons due to which the small scale business in India has witnessed a spurt of growth. Some of these factors are:
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  - Reservation for Exclusive Manufacture by small scale sector
  - Project Profiles
  - Funding - Finance & Subsidies
  - Machinery Procurement
  - Raw Material Procurement
  - Manpower Training

## Appendix II

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### THE MICRO, SMALL AND MEDIUM ENTERPRISES DEVELOPMENT (AMENDMENT) BILL, 2015

A BILL to amend the Micro, Small and Medium Enterprises Development Act, 2006.

BE it enacted by Parliament in the Sixty-sixth Year of the Republic of India as follows:—

#### Short title and commencement

1. (1) This Act may be called the Micro, Small and Medium Enterprises Development (Amendment) Act, 2015.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

#### Amendment of section 7

2. In the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as the principal Act), in section 7,—
  - (a) in sub-section (1),—
    - (i) in clause (a),—
      - (A) in sub-clause (i), for the words “twenty-five lakh rupees”, the words “fifty lakh rupees” shall be substituted;
      - (B) for sub-clauses (ii) and (iii), the following sub-clauses shall be substituted, namely:—

“(ii) a small enterprise, where the investment in plant and machinery is more than fifty lakh rupees but does not exceed ten crore rupees;

(iii) a medium enterprise, where the investment in plant and machinery is more than ten crore rupees but does not exceed thirty crore rupees;”;
    - (ii) in clause (b),—
      - (A) in sub-clause (i), for the words “ten lakh rupees”, the words “twenty lakh rupees” shall be substituted;
      - (B) for sub-clauses (ii) and (iii), the following sub-clauses shall be substituted, namely:—

“(ii) a small enterprise, where the investment in equipment is more than twenty lakh rupees but does not exceed five crore rupees;

- (iii) a medium enterprise, where the investment in equipment is more than five crore rupees but does not exceed fifteen crore rupees;”;
- (b) after sub-section (1), the following sub-section shall be inserted, namely:—
- “(1A) The Central Government may, by notification, vary the investment limits, which shall not exceed thrice the limits, specified in clauses (a) and (b) of sub-section (1) for the purposes of development of micro, small and medium enterprises.”;
- (c) in sub-section (9),—
- (i) for the words “criterion of investment”, the words “criterion of higher investment” shall be substituted;
- (ii) for the words “as part of small enterprises”, the words “as part of small and medium enterprises” shall be substituted.

### **Amendment of section 29**

3. In the principal Act, in section 29, in sub-section (3), for the words and figure “under section 9”, the words, brackets, figures and letter “under sub-section (1A) of section 7, section 9” shall be substituted.

### **STATEMENT OF OBJECTS AND REASONS**

The Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 was enacted to address policy issues affecting MSMEs as well as to classify the enterprises as micro, small or medium based on their investments in plant and machinery/equipments. The existing limits under the MSMED Act were fixed in 2006. Since then, there has been a significant increase in the price index and cost of inputs. There has also been a change in the business environment with many MSMEs becoming part of the domestic and global value chains. Hence, it is proposed to amend the MSMED Act to enhance the existing limit for investment in plant and machinery considering changes in price index and cost of inputs consistent with the emerging role of the MSMEs in various global value chains.

2. The MSMED Act, at present, states that the Central Government may, while classifying any class or classes of enterprises, vary, from time to time, the criterion of investment and also consider criteria or standards in respect of employment or turnover of the enterprises. These provisions enable the Central Government to classify micro or tiny enterprises or the village enterprises as part of small enterprises. The current proposal is to enable Central Government to classify micro or tiny enterprises or the village enterprises not only as small enterprises but also as medium enterprises. This may also be based on criteria of higher investment and also on consideration of criteria or standard in respect of employment or turnover of the enterprises. It will open the doors of growth to MSMEs and will enable them to go to next level of value chain.
3. Since the MSMEs are defined in the Act, any variation could be done only by way of an amendment. Considering the inflation and dynamic market situation, there is a need to periodically revise the criterion of investment. Revising the investment limits by way of notification will facilitate timely action. Hence, it is proposed to amend the MSMED Act to empower Central Government to vary by way of a notification, the investment

limits, which shall not exceed thrice the limits, specified in clauses (a) and (b) of sub-section (1) of section 7 for the purposes of development of micro, small and medium enterprises.

4. The Bill seeks to achieve the above objects.

NEW DELHI;

KALRAJ MISHRA

The 18th March, 2015.

#### **MEMORANDUM REGARDING DELEGATED LEGISLATION**

Sub-clause (b) of clause 2 of the Bill seeks to insert sub-section (1A) in section 7 of the Micro, Small and Medium Enterprises Development Act, 2006, so as to empower the Central Government to vary the investment limits relating to the classification of micro, small and medium enterprises by way of notification.

2. The matters in respect of which rules may be made under the proposed legislature are matters of procedure or administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

#### **ANNEXURE**

#### **EXTRACTS FROM THE MICRO, SMALL AND MEDIUM ENTERPRISES DEVELOPMENT ACT, 2006 (27 OF 2006)**

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#### **CHAPTER III**

#### **CLASSIFICATION OF ENTERPRISES, ADVISORY COMMITTEE AND MEMORANDUM OF MICRO, SMALL AND MEDIUM ENTERPRISES**

##### **Classification of enterprises 7**

- (1) Notwithstanding anything contained in section 11B of the Industries (Development and Regulation) Act, 1951, the Central Government may, for the purposes of this Act, by notification and having regard to the provisions of sub-sections (4) and (5), classify any class or classes of enterprises, whether proprietorship, Hindu undivided family, association of persons, co-operative society, partnership firm, company or undertaking, by whatever name called,—
- (a) in the case of 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, as—
- (i) a micro enterprise, where the investment in plant and machinery does not exceed twenty-five lakh rupees;
  - (ii) a small enterprise, where the investment in plant and machinery is more than twenty-five lakh rupees but does not exceed five crore rupees; or
  - (iii) a medium enterprise, where the investment in plant and machinery is more than five crore rupees but does not exceed ten crore rupees;

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- (b) in the case of the enterprises engaged in providing or rendering of services, as—
- (i) a micro enterprise, where the investment in equipment does not exceed ten lakh rupees;
  - (ii) a small enterprise, where the investment in equipment is more than ten lakh rupees but does not exceed two crore rupees; or
  - (iii) a medium enterprise, where the investment in equipment is more than two crore rupees but does not exceed five crore rupees.

*Explanation 1.*— For the removal of doubts, it is hereby clarified that in calculating the investment in plant and machinery, the cost of pollution control, research and development, industrial safety devices and such other items as may be specified, by notification, shall be excluded.

*Explanation 2.*— It is clarified that the provisions of section 29B of the Industries (Development and Regulation) Act, 1951, shall be applicable to the enterprises specified in sub-clauses (i) and (ii) of clause (a) of sub-section (1) of this section.

- (9) Notwithstanding anything contained in section 11B of the Industries (Development and Regulation) Act, 1951 and clause (h) of section 2 of the Khadi and Village Industries Commission Act, 1956, the Central Government may, while classifying any class or classes of enterprises under sub-section (1), vary, from time to time, the criterion of investment and also consider criteria or standards in respect of employment or turnover of the enterprises and include in such classification the micro or tiny enterprises or the village enterprises, as part of small enterprises.

#### **Power to make rules**

##### **29.(1)**

- (3) Every notification issued under section 9 and every rule made by the Central Government under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or rule or both Houses agree that the notification or rule should not be made, the notification or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule.

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**LOK SABHA**  
**CORRIGENDUM**  
**to**  
**THE MICRO, SMALL AND MEDIUM ENTERPRISES DEVELOPMENT (AMENDMENT) BILL, 2015**  
**[To be/As introduced in Lok Sabha]**

1. Page 3, in line 4 of paragraph No. 2,-  
for “enable the Central Government”  
read “enable Central Government”.

**NEW DELHI;**

April 13, 2015

Chaitra 23, 1937 (Saka)

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