



Confederation of
Indian Industry

MSMED Act 2006

"Enactment to Implementation"

In order to strengthen Indian Micro, Small and Medium Enterprises and help them remain competitive in the global market, The Government of India has enacted the Micro, Small and Medium Enterprises Development Act, 2006 in June 2006. The historical Act has come into force from 2 October 2006.

SALIENT PROVISIONS OF MSMED ACT 2006

Classification of Enterprises (Concept of Enterprises) as against "Industries":

Enterprises classified broadly into (i) Enterprises engaged in the manufacture / production of goods pertaining to any Industry & (ii) Enterprises engaged in providing / rendering of services.

Definitions

Manufacturing Enterprises : defined in terms of investment in plant and machinery (excluding land & buildings) and further classified into:-

Micro Enterprises– Investment up to Rs. 25 lakh
Small Enterprises–Investment above Rs. 25 lakh & upto Rs. 5 crore
Medium Enterprises–Investment above Rs. 5 crore & upto Rs. 10 crore.

Service Enterprises defined in terms of their investment in equipment (excluding land & buildings) and further classified into:-

Micro Enterprises– Investment upto Rs. 10 lakh.
Small Enterprises–Investment above Rs. 10 lakh & upto Rs. 2 crore.
Medium Enterprises – Investment above Rs. 2 crore & upto Rs. 5 crore.

Filing of Memoranda by MSMEs

Process of two-stage registration of Micro & Small Enterprises dispensed with & replaced by filing of memoranda.. Filing of memorandum optional for all Micro & small enterprises AND service sector medium enterprises. However, filing of memorandum mandatory for manufacturing sector Medium Enterprises.

Apex Consultative Body with Wide Representation of Stakeholders

National Board for Micro, Small and Medium Enterprise (MSME) headed by the Central Minister i/c of MSMEs and consisting of 46 members among - Members of Parliament, Representatives of Central Ministries State Governments, UT Administration, RBI, SIDBI, NABARD ,Associations of MSMEs including women,Persons of eminence and Central Trade Union Organisations.

National Board to be now statutory, as against non-statutory SSI Board. Quarterly meetings of National Board made mandatory.

Functions of the National Board

- Examine the factors affecting the promotion and development of MSMEs and review the policies and programmes of the Central Government; to make recommendations on matters referred to it by the Central Government ; to advise the Central Government on the use of Fund or Funds constituted under section 12.

Constitution of Advisory Committee

Headed by Central Government Secretary i/c of MSMEs & including not more than five officers of the Central Government; not more than three representatives of State Governments & one representative each of the Associations of Micro, Small and Medium Enterprises.

Functions of the Advisory Committee

Need for a New Law

- SSIs earlier dealt only in two sections of ID&R Act. 1951.
- Different Issues related to SSIs dealt by multiple laws.
- Need for a single legislation pointed out by different committees and voiced by Industry associations.
- Absence of any statutory consultative and recommendatory body.
- Most of the policies such as purchase preference policy, registration of SSI, etc., not having statutory basis.
- Need to strengthen laws to check delayed payments.
- Need to provide a statutory basis to credit availability for the sector.
- Simplification of registration process.
- Need to define the MSME concept.
- Need to promote the service sector.
- Need for facilitating closure.

- to examine the matters referred to it by the National Board; to advise Central Government & State Governments.

Promotional & Enabling Provisions

- Central Government to notify programmes, guidelines or instructions for facilitating the promotion and development and enhancing the competitiveness of MSMEs.
- Central Government to constitute, by notification, one or more Funds; to credit to the Fund or funds, such sums as the Government may provide after due appropriation made by Parliament by law in this behalf.
- Central Government to administer the Fund or Funds for purpose mentioned in section 9 & coordinate and ensure timely utilization and release of sums with such criteria, as may be prescribed.

Credit

The policies and practices in respect of credit to the MSMEs shall be progressive and such as may be specified in the guidelines or instructions issued by the RBI, with an aim to ensuring smooth credit flow to the MSMEs; minimizing sickness among them and; ensuring enhancement of their competitiveness.

Procurement Policies

Central Government or a State Government to notify preference policies in respect of procurement of goods and services, produced and provided by MSEs, by its Ministries, departments or its aided institutions and public sector enterprises (non-statutory till now). This is valid only for Micro and Small Enterprises (services also covered) and not for Medium Enterprises.

Delayed Payments

Provisions related to delayed payments to micro & small enterprises (MSEs) strengthened.

- Period of payment to MSEs by the buyers reduced to forty five days. Rate of interest on outstanding amount increased to three times the prevailing bank rate of RBI compounded on monthly basis.
- Constitution of MSE Facilitation Council(s) mandatory for State Governments. Provision for inclusion of one or more representative of MSE Associations in the Facilitation Council.
- Jurisdiction of the Council in a State to cover wherever the buyer may be located.
- MSE Facilitation Council may utilise the services of any Institution or Centre for conciliation and alternate dispute resolution services.
- Reference made to the Council to be decided within ninety days from the date of reference.
- Declaration of payment outstanding to MSE supplier mandatory for buyers in their annual statement of accounts.
- Interest (paid or payable to supplier) disallowed for deduction for income tax purposes.
- No appeal against order of Facilitation Council to be entertained by any Court without deposit of 75% of the decreed amount payable by buyer. Appellate Court may order payment of a part of the deposit to the supplier MSE.

Facilitating Closure of Business

- Central Government may (within one year of the commencement of the Act) notify a scheme for facilitating closure of business by a micro, small or medium enterprise.

MSMED ACT 2006: PRE ENACTMENT V/S POST ENACTMENT: A COMPARATIVE ANALYSIS

Sl. No	BASIS OF COMPARISON	SCENARIO: PRE ENACTMENT OF MSMED ACT	SCENARIO: POST ENACTMENT OF MSMED ACT
1.	Apex statutory body	Small Scale Industries (SSI) Board SSI Board is the apex non-statutory advisory body constituted by the Government of India to render advice on all issues pertaining to the SSI sector. More than 100 Members on Board, with no specific representation for women.	National Small and Medium Enterprises Board Clause 3 of the MSMED Act provides for the establishment of National MSME Board, HENCE, it is now a statutory body that will mandatorily have Quarterly Meetings. This Board will replace the currently existing non-statutory Small Scale Industries (SSI) Board. 46 Members on Board, with specific representation for women.
2.	As an 'entity'	Existing concept of only the 'Industries'. i.e. the Small Scale Industries (SSI)	Clause 7(1) introduces the concept of 'Enterprises' as against 'Industries'. Broadly classified into enterprises engaged in manufacture/production of goods those engaged in providing/ rendering services.
3.	Classification of Enterprises	A definition existed only for tiny and small units, however medium sized enterprises are not defined either technically or legally. According to the Industries (Development and Regulation) Act, 1951, Small Scale Industrial Undertaking is one in which the investment in fixed assets in plant and machinery, excluding land and building, whether held on ownership terms or on lease or on hire purchase, does not exceed Rs. 1 Crore (One crore). No further classification as per the definition for Manufacturing & the Services sector, however the status of a Small Scale Industrial Undertaking might be that of a Ancillary, Tiny, Export oriented, Small Scale Service Business Enterprises (SSSBE) or a certain types of industries/activities wherein investment on plant and machinery can go upto Rs. 5 crores	As per the Clause 7(1) a definition exists for Micro, Small and Medium units. As per the MSMED Act 2006, that a Micro enterprise engaged in the manufacture or production of goods will be the one, where the investment in Plant & Machinery does not exceed Rs 25 lakh, a Small enterprise engaged in the manufacture or production of goods will be the one, where the investment in Plant & Machinery is more than Rs 25 lakh but does not exceed Rs 5 crore, while a medium enterprise will be the one, where the investment is more than Rs 5 crores but does not exceed Rs 10 crore. As per the new Act, Micro enterprise engaged in providing or rendering of services will be the one, where the investment in Plant & Machinery does not exceed Rs 10 lakh, a small enterprise engaged in providing or rendering of services will be the one, where the investment in Plant & Machinery is more than Rs 10 lakh but does not exceed Rs 2 crore, while a medium enterprise will be the one, where the investment is more than Rs 2 crores but does not exceed Rs 5 crore.
4.	Establishment procedure	Two -stage registration process of Micro & Small industry in place.	Two-stage registration process of Micro & Small industry is dispensed with & replaced by filing of memoranda, as per Clause 8. Filing of memoranda optional for Micro & Small enterprises in manufacturing & services sector, for Medium enterprises in services sector but mandatory for Medium enterprises in manufacturing sector.
5.	Procurement Policies	Non statutory	Clause 11 provides for the notification of preference policies, by the Central or a State Govt. in respect of procurement of goods & services, produced and provided by the MSEs, by its Ministries, departments or its aided institutions and public sector companies.
6.	Delayed Payments – Payment, Penalty	Period of Payment by the supplier – 120 days. Penal interest rate is 150% (or 2 ½ times) of the PLR.	Clause 15 Period of Payment by the supplier – 45 days. Clause 16 Penal interest rate is 200% (or three times) of the Prime Lending Rate (PLR).
7.	Delayed Payments – Dispute Resolution	No stipulated time period for a decision on a reference made to a Industry Facilitation Council.	Reference made to the MSE Facilitation council to be decided within 90 days from the date of reference, as per the Clause 18(5)
8.	Delayed Payments - Deduction under the Income Tax Act, 1961	Amount of interest payable or paid by any buyer is allowable for the purposes of computation of income under the Income Tax Act, 1961.	Clause 23 Provides to disallow, for the purposes of computation of income under 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.
9.	Closure of Business	Non existent as a statutory requirement	Clause 25 provides that the Central Govt. may (within 1 year of the commencement of the Act) notify a scheme for facilitating closure of business by a micro, small and medium enterprise.
10.	Promotional & Enabling provisions	Non existent as a statutory requirement	Clause 9 provides for notification of programmes, guidelines or instructions for facilitating the promotion and development and enhancing the competitiveness of MSMEs, by the Central Govt. Clause 12 provides for constitution, by notification, one or more funds, by the Central Govt.. Clause 13 provides to credit (by the Central Government) to the fund or funds, such sums as the Govt. may provide after due appropriation made by Parliament by law in this behalf. Clause 14 provides to administer (by the Central Govt.) the fund or funds for purpose mentioned in Clause 9 & coordinate and ensure timely utilization and release of sums with such criteria, as may be prescribed.
11.	Provisions for facilitating Credit	Non existent as a statutory requirement	Clause 10 provides that the policies & practices in respect of credit to the MSMEs shall be progressive and such as may be specified in the guidelines or instructions issued by the RBI.

IMPLEMENTATION OF MSMED ACT 2006 : LIST OF NOTIFICATIONS ISSUED TILL JANUARY 2007

1. Principal Notification No. S.O. 1154 (E) dated 18 July, 2006 that MSMED Act 2006 becomes operational from 2nd October, 2006
2. Notification No. S.O. 1622 (E) dated 27 September, 2006 for the constitution of the Advisory Committee
3. Notification No. S.O. 1642 (E) dated 29 September 2006 for classifying the Classes of Enterprises
4. Notification No. S.O. 1636 (E) dated 29 September 2006 for the Authority for filing of Entrepreneurs Memorandum
5. Notification No. S.O. No. 1643 (E) dated 30/9/2006 for filling of Entrepreneur's Memorandum
6. Notification G.S.R. 596 (E) dated 26 September, 2006 for the Rules for National Board for Micro, Small and Medium Enterprises (NMBSME)
7. Draft Rules of Micro & Small Enterprises Facilitation Council (MSEFC) under the MSMED Act 2006 as approved by Union Minister (SSI & ARI) to be notified by States / Union Territories as per the power conferred by section 30 read with sub-section (3) of section 21 as per the Act.