

MSME

Micro Small & Medium Enterprises

The Micro, Small and Medium Enterprise (“**MSME**”) contribute significantly to India’s GDP and is promoting equitable development. It has emerged as a dynamic sector over the past decades and plays a crucial role in the overall industrial economic development of India. To attract business in this sector, the Government of India timely amends the regulations and provides various benefits and reliefs. The present FAQ’s deal with the constitution of MSME units and the procedure for dealing with the same in India.

1. Why was the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act) enacted?

The small-scale industries have emerged to be a significant sector contributing to our economic development and employing millions of workers. A single comprehensive act for development and regulation of small enterprises was needed to free this sector from a plethora of laws and enactments. Therefore in 2006, the Government of India enacted the MSMED Act for facilitating the promotion and development and enhancing the competitiveness of the micro, small and medium enterprises.

2. What is an enterprise under the MSMED Act 2006?

As per section 2(e) of the MSMED Act, an enterprise means an industrial undertaking or business concern or any other establishment engaged in manufacturing or production of goods pertaining to any industry as specified in the first schedule of the Industries (Development and Regulation) Act, 1951 or engaged in providing or rendering any services.

3. How are enterprises classified as micro, small and medium under the MSMED Act?

The micro, small and medium enterprises are broadly classified in the MSMED Act as:

- (i) Enterprises engaged in the manufacturing and production of goods pertaining to any industry;
- (ii) Enterprises engaged in providing or rendering services

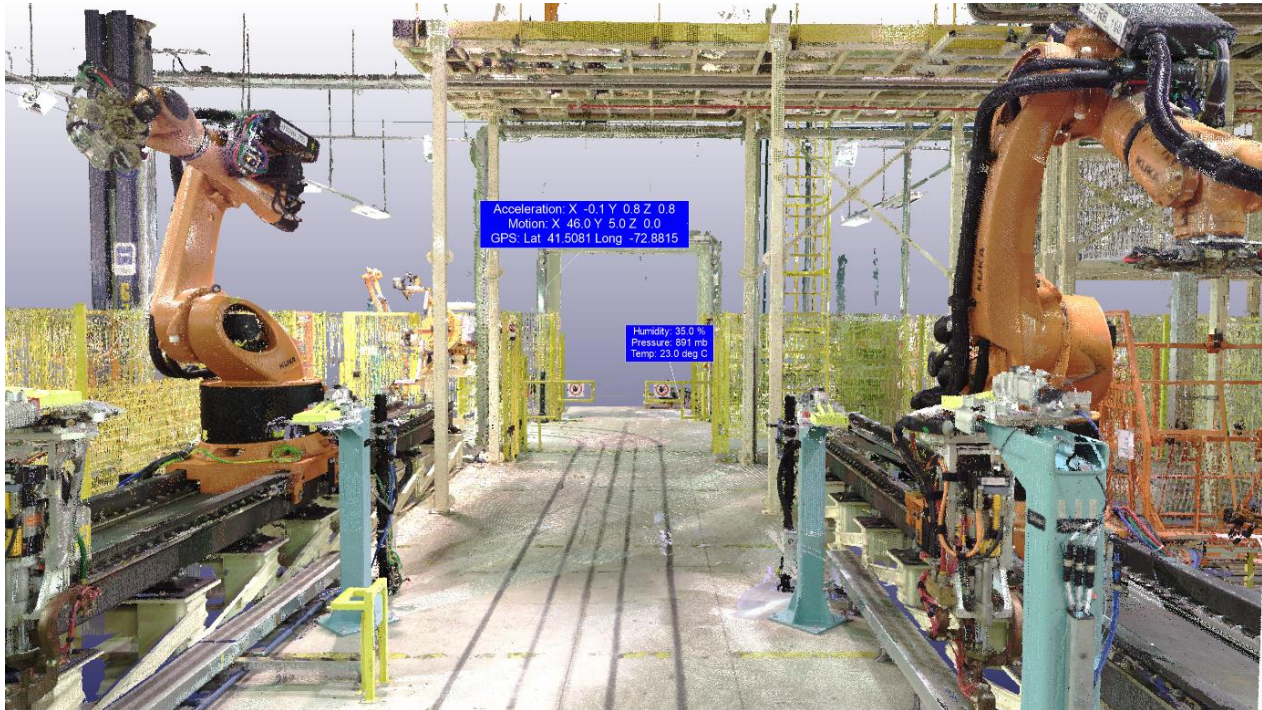
However, the Government of India in the Ministry of Micro, Small and Medium Enterprises has issued a notification dated 26 June 2020 under the Aatmanirbhar Bharat Package to change the criteria for classifying the enterprises as micro, small and medium enterprises. The broad distinction between manufacturing and production of goods and service sector has been eliminated. The ceiling on investment that forms the basis for classifying an enterprise as micro, small and medium enterprise is as follows:

Particulars	Micro	Small	Medium
Investment in plant & machinery or equipment	Does not exceed INR 10million	Does not exceed INR 100million	Does not exceed INR 500million
Turnover	Does not exceed INR 50million	Does not exceed INR 500million	Does not exceed INR 2.5billion

4. What does the term “plant and machinery” comprise of under the MSMED Act?

The expression “plant and machinery” of an enterprise has the same meaning as assigned to “plant and machinery” in the Income Tax Rules, 1962 framed under the Income Tax Act 1961. It includes all tangible assets of the enterprise other than land, building, furniture and fittings.





5. Which activities fall under the category of service rendering enterprise?

As per the clarification dated 12 June 2009 issued by the Ministry of Micro, Small and Medium Enterprise, the following are some of the activities that are considered as services under the MSMED Act:

- (a) consultancy service including management service;
- (b) renting of agricultural machinery;
- (c) composite broker service in risk and insurance management;
- (d) educational institution;
- (e) training institutes;
- (f) retail trade;
- (g) practice of law i.e. legal services etc.

6. How can a micro, small or medium enterprise be established?

Any person who intends to establish a micro, small or medium enterprise may file Udyam Registration online in the Udyam Registration portal, based on self-declaration with no requirement to upload documents, papers, certificates or proof. On registration, an enterprise will be assigned a permanent identity number to be known as 'Udyam Registration Number'. An e-certificate, namely, 'Udyam Registration Certificate' will be issued on completion of the registration process.

7. How is the investment limit in plants and machinery or equipment computed for the purpose of the MSMED Act ?

The calculation of the investment will be linked with the Income Tax Return (ITR) of the previous year. However, in case of a new enterprise where no prior ITR is available, the investment will be based on the self-declaration of the promoter of the enterprise and such relaxation shall end after 31 March of the financial year in which it files its first ITR. Further, the Written Down Value (WDV) at the end of the financial year as defined in the Income Tax Act should also be considered while calculating the investment.

8. How is the turnover limit computed?

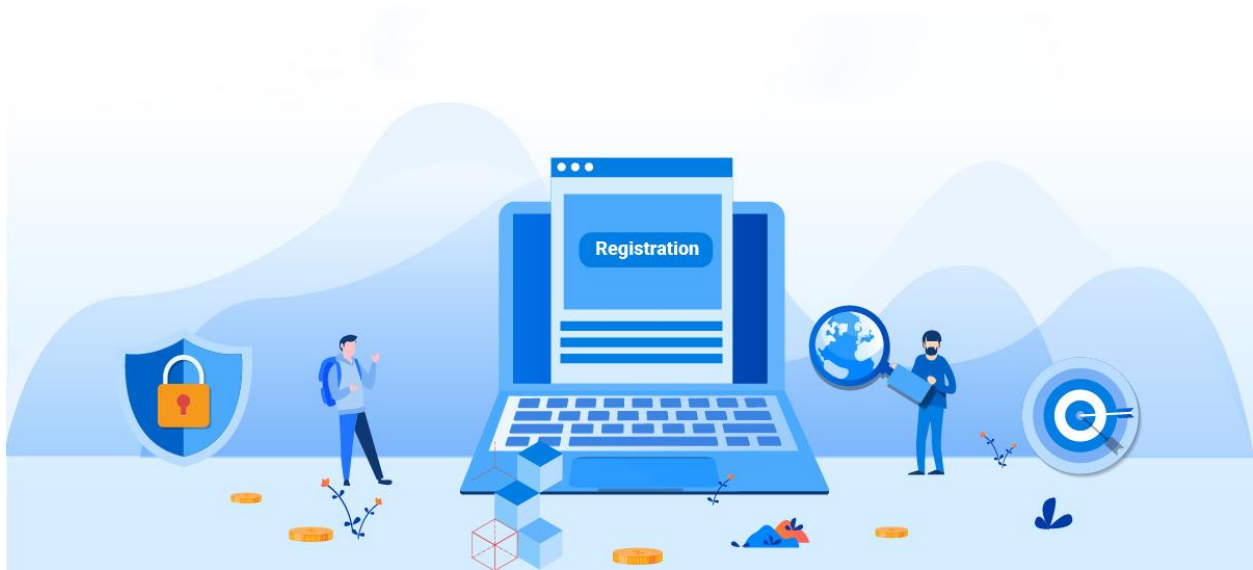
The export of goods and services, both, shall be excluded while calculating the turnover of an enterprise for the purpose of classification. The promoter will have to link the turnover and the export turnover with Income Tax Act or the Central Goods and Services Act and the Goods and Services Tax Identification Number (GSTIN). However, enterprises which do not have PAN will be considered on self-declaration basis for a period up to 31 March 2021 and thereafter, PAN and GSTIN will be mandatory.

9. What are the benefits available to MSME?

The key benefit behind MSME registration are as under:

- (i) financial support from banks
- (ii) protection against delay in payment
- (iii) preference in government tender
- (iv) tax benefits
- (v) subsidised rate of interest (etc.)





10. Can an existing unit apply for MSME registrations?

Yes. A pre-existing unit can apply for MSME registration provided the unit is functioning and is meeting the ceiling investment required for the registration. As per RBI master circular on 26 June 2020, all existing enterprises will have to register again on the Udyam Portal on or after 1 July 2020. All enterprises registered till 30 June 2020, shall be re-classified accordingly. The existing enterprises registered prior to 30 June 2020, shall continue to be valid only for a period up to the 31 March 2021.

11. What happens if the enterprise crosses the ceiling limit?

If an enterprise crosses the ceiling limits specified for its present category in either of the two criteria of investment or turnover, it will cease to exist in that category and be placed in the next higher category, but no enterprise shall be placed in the lower category unless it goes below the ceiling limits specified for its present category in both the criteria of investment as well as turnover.

12. What are the compliances with respect to delayed payments under the MSMED Act?

In the MSMED Act, the provisions for delayed payments have been strengthened as under:

- (i) The buyer must 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 in writing shall not exceed 45 days from the date of acceptance or the day of deemed acceptance.
- (ii) In case the buyer fails to make payment of the amount to the supplier within the credit period, he shall be liable to pay compound interest with monthly rests to the supplier on the amount from the appointed day or, on the date agreed on, at three times of the bank rate notified by Reserve Bank
- (iii) MSME 1 form must be duly filed in case of delay in payment by the buyer.

(iv) An application can be made in MSME SAMADHAAN by the enterprise.

13. Which companies are required to fill MSME 1 form?

Companies which have purchased goods or availed services from micro and small enterprise and whose payments to micro and small enterprise suppliers exceed 45 days from the date of acceptance or the date of deemed acceptance of the goods or services shall file MSME 1 form.

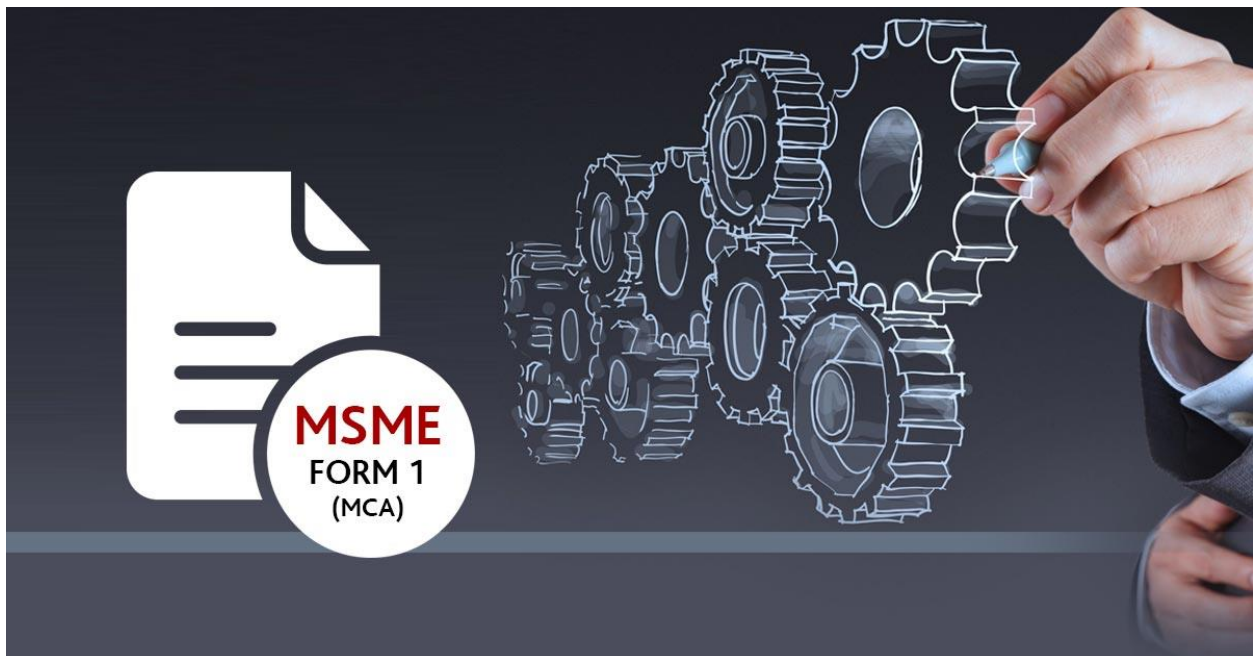
It is noteworthy that **MSME-1** is not applicable to **Medium Enterprises**

14. What is the appointed date, date of acceptance or deemed acceptance?

As per section 2(b) of the MSMED Act, 'appointed day' means the day immediately after the expiry of 15 days from the day of acceptance or the day of deemed acceptance. The day of actual delivery of goods or rendering of services or where any objection is made in writing by the buyer regarding the acceptance of goods or services within 15 days since the delivery, the date on which such objection is removed by the supplier will be considered as date of acceptance. Further, the day of deemed acceptance means where no objection is made in writing by the buyer regarding acceptance of goods or services within 15 days from the day of the delivery.

15. What is the maximum credit period allowed to the buyer?

- (i) The payment of the amount shall be made before the appointment date where there is no agreement between the buyer and seller.
- (ii) Payment will be made on or before the date agreed in writing where the credit period in writing is 45 days or less.
- (iii) Payment shall be made with 45 days where the credit period in writing is more than 45 days.



16. What is MSME SAMADHAAN portal?

MSME SAMADHAAN is a portal created by Office of DC(MSME), Ministry of Micro, Small and Medium Enterprises where Micro and Small Enterprises (MSEs) can file their applications online regarding delayed payments. MSME SAMADHAAN online portal is developed only to facilitate MSE's filing of applications regarding delay in payments. The applications once filed is forwarded automatically to the concerned **Micro and Small Enterprise Facilitation Council (MSEFC)** for suitable action. Action on the applications regarding delayed payment is taken by the concerned MSEFC only.

17. What procedure is undertaken by the MSEFC on receipt of reference?

On receipt of a reference to the MSEFC with regards to any amount due, the concerned MSEFC will either itself conduct a conciliation in the matter or seek assistance of any institution for conducting such conciliation. Further, if the conciliation process fails and does not result into a settlement between the parties, the MSEFC will either itself take up the dispute for arbitration or refer it to an institution that provides alternate dispute resolution services for such arbitration. The MSEFC or the institution conducting this process will have the jurisdiction to act as an arbitrator or conciliator between the supplier located within its jurisdiction and a buyer located anywhere in India. The reference shall be decided within 90days from the date of making such reference.



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