

The Micro, Small and Medium Enterprises Development Act, 2006

This is an act for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto.

A) Entrepreneur's Memorandum for setting up Micro, Small and Medium Enterprises

Enterprises file EM (Part – I) at the proposed stage and EM (Part – II) after commencement of production with the General Manager, District Industries Centre.

As per section 8(1) of the Act, filing of Entrepreneur's Memorandum by a micro or small enterprise (both manufacturing & service sector) or a medium enterprise engaged in providing or rendering services is optional. However, a medium enterprise engaged in manufacture or production of goods pertaining to any industry specified in the First Schedule to the IDR Act, 1951 is required to file the memorandum with the General Manager, District Industries Centre.

B) Procedure for filing of Entrepreneur's Memorandum (EM)

Enterprises may file EM on line from this Website.

C) Classification of enterprises

An 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, (IDR Act, 1951) is said to be :

- (a) a micro enterprise, where the investment in Plant and Machinery does not exceed Rs.25 lakhs;
- (b) a small enterprise, where the investment in Plant and Machinery is more than Rs.25 lakhs but does not exceed Rs.5 crore;
- (c) a medium enterprise, where investment in Plant and Machinery is more than Rs.5 crore but does not exceed Rs.10 crores.

An enterprise, engaged in providing or rendering of services is said to be :

- (a) a micro enterprise, where the investment in equipment does not exceed Rs.10 lakhs;
- (b) a small enterprise, where the investment in equipment is more than Rs.10 lakhs but does not exceed Rs.2 crore;
- (c) a medium enterprise, where the investment in equipment is more than Rs.2 crore but does not exceed Rs.5 crore.

D) Payment to Micro and Small Enterprises.

The buyer shall make payment to the seller or supplier for any goods or any services on or before the date of agreed upon between him and the supplier in writing or where there is no agreement in this behalf, before the appointed day, the period of limitation for payment is no case shall exceed 45 days from the day of acceptance.

F.A.Q.

1. What are important clauses in MSMED Act.?

Sec. 15 talks about Liability of the buyer to make payment to Micro and Small Enterprise for goods supplied or services rendered by them to buyer. As per this section payment has to be made within such period as agreed between buyer and seller which should not exceed 45 days in any case.

Again as per Sec. 16 if a buyer fails to make payment as per Sec. 15 he is liable to pay interest which will be computed at monthly rate and compounded int. at the rates which will be three times of bank rate notified by RBI.

Further as per Sec. 23, interest paid or payable as per Sec. 16 will be disallowed as deduction while computing income under Income Tax Act, 1961. Sec. 23 is an overriding section.

2. How is the investment in Plant and machinery? Are there any exclusions in computing the investment in Plant & machinery?

The investment in Plant and Machinery should be the original value irrespective of whether the Plant and Machinery are new or second hand. In respect of imported machinery, the following is to be included in calculating the value:

- a. import duty (excluding miscellaneous expenses such as transportation from the port to the site of the factory, demurrage paid at the port);
- b. shipping charges;
- c. customs clearance charges and
- d. sales tax or value added tax.

The following are excluded while calculating the investment in Plant and Machinery:

- (i) equipments such as tools, jigs, dies, moulds and spare parts for maintenance and the cost of consumable stores;
- (ii) installation expenditure for Plant and Machinery;
- (iii) research and development equipment and pollution control equipment;
- (iv) power generation set and extra transformer installed by the enterprise as per the regulations of the State Electricity Board;
- (v) bank charges and service charges paid to the National Small Industries Corporation or the State Small Industries Corporation.
- (vi) Procurement or installation of cables, wiring, bus bars, electrical control panels (not mounted on individual machines), oil circuit breakers or miniature circuit breakers which are necessarily to be used for providing electrical power to the Plant and Machinery or for safety measures.
- (vii) gas producer plants;
- (viii) transportation charges (excluding sales-tax or value added tax and excise duty) for indigenous machinery from the place of their manufacture to the site of the enterprise.
- (ix) charges paid for technical know-how for erection of Plant and Machinery.
- (x) such storage tanks which store raw materials and finished products only and are not linked with the manufacturing process, and
- (xi) fire fighting equipment.

3. What is the advantage / benefit of filing / registering a micro or small enterprise with the state government?

Apart from getting other benefits, if a micro or small enterprise files a memorandum with District Industries Centre (DIC), then it is protected by this Act as to timely payment in respect of supply of goods or rendering of services to any buyer.

As per this Act, if the buyer has purchased goods or availed services from a micro or small enterprise, which has filed a memorandum with the authority, then the buyer shall make payment on or before the date agreed upon between him and the supplier in writing. The Act further stipulates that if the period between the buyer and supplier is agreed in writing, such period shall not exceed 45 days from the day of delivery of goods or rendering of services.

4. If the buyer fails to pay the amount to the supplier, what is buyer's liability?

If the buyer fails to make payment of the amount to the supplier as required under section 15, then the buyer is liable to pay compound interest with monthly rests on the amount at three times of the bank rate notified by the RBI.

5. What is the recourse to the supplier if buyer does not pay interest?



A reference may be made to the Micro and Small Enterprises Facilitation Council.

The Council shall first try for conciliation. If conciliation is not successful then the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 shall apply.

If any party does not accept the decree or award of the Council or of the arbitrator, no court shall entertain the application, unless 75% of the amount in terms of decree or award is deposited by the appellant.

6. Who is a buyer?

'Buyer' means whoever buys any goods or receives any services from a supplier.

7. Who is a supplier?

Sub-section (n) of section 2 of the Act, defines a supplier. As per the definition, a supplier means a micro or small enterprise, which has filed a memorandum with the District Industries Centre.

Further, "supplier" also includes:

- (i) the National Small Industries Corporation Ltd.;
- (ii) a company under the Small Industries Development Corporation of a state or a Union territory.
- (iii) any company, co-operative society, society, trust or body, engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises.

8. Are any disclosures required to be made in the audited financial statements, of the "buyer"?

As per section 22 of the MSMED ACT, 2006, a buyer in its audited annual statements is required to furnish the following additional information :

- (a) the principal amount and the interest due thereon (to be shown separately) remaining unpaid to any supplier as at the end of accounting year;
- (b) the amount of interest paid by the buyer in terms of section 16 along with the amount of the payment made to the supplier beyond the appointed day during each accounting year;
- (c) 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 the Act.
- (d) The amount of interest accrued and remaining unpaid at the end of each accounting year; and
- (e) The amount of further interest 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.

9. Are there any fines / penalties if any of the provisions contained in sub-section (1) of section 8 or sub-section (2) of section 26 or section 22 are not complied with?

Section 27, of the MSMED Act, 2006 deals with fines/ penalties:

Where a person intentionally contravenes or attempts to contravene or abets the contravention of the following:

- a. where a person fails, to file memorandum, as required under sub-section (1) of section 8 of the MSMED Act, 2006.
- b. fails to furnish such information as called by an officer appointed under section 26(1) of the MSMED Act, 2006.

In case of first conviction, the fine may extend up to Rs.1,000 and in case of second and subsequent conviction, fine shall not be less than Rs.1,000 and can extend up to Rs.10,000.

- c. where a buyer contravenes the provisions of section 22 of the Act, 2006 i.e. fails to furnish additional information in his annual statement of accounts, sub section(2) of section 27 states that the fine shall not be less than Rs.10,000/-