

**ATHENA LEGAL UPDATE ON MICRO, SMALL AND MEDIUM
ENTERPRISES SECTOR**



ATHENA LEGAL

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The Micro, Small and Medium Enterprises Development Act, 2006 (Act) was enacted to extend policy support for MSMEs, so that they are able to grow, adopt better and higher levels of technology and achieve higher productivity to remain competitive in a fast globalization era. The government notified the “Udyam Registration” dated June 26, 2020 for a new criterion for classifying enterprises as MSMEs along with a new procedure for registration.

Definition of MSME

The new definition was announced earlier this year and now has been given legality through this notification. It has also provided for a new composite criterion which was not earlier announced. As per the notification, an enterprise shall be classified as a MSME on the basis of the following criteria:

- i. A micro enterprise, where the investment in plant and machinery or equipment does not exceed one crore rupees and turnover does not exceed five crore rupees;
- ii. A small enterprise, where the investment in plant and machinery or equipment does not exceed ten crore rupees and turnover does not exceed fifty crore rupees;
- iii. A medium enterprise, where the investment in plant and machinery or equipment does not exceed fifty crore rupees and turnover does not exceed two hundred and fifty crore rupees.

The notification further states that the criteria for investment and turnover shall be composite for the purpose of classification. One of the significant aspects of the notification are that only one of the criteria is considered for the purpose of placing in a higher category whereas, both are considered for being placed in the lower category. This essentially means that if a small enterprise gets either the investment or turnover higher than the ceiling given above, it will be classified as a medium enterprise but it will only be placed in micro enterprise classification if both the turnover or investment go lower than the ceiling of the lower category.

Another clarification that has been provided through the notification is that the exports of goods and services or both, will be excluded while calculating turnover of any enterprise for the purpose of classification. Calculation for investment shall be on the basis of the income tax returns and in case of new enterprises, self-declaration until the first income tax return is filed.

Registration Process

The registration process has been updated through this Udyam Registration notification as well. The form for registration has been provided on the Udyam Registration portal and same can be filled therein. The registration process is relatively the same as earlier. Submission of the online

forms require the applicant to have an Aadhaar Card (along with PAN and GST for entity other than HUF or proprietorship). If unable to register online, the applicant can do so by submitting the form through any District Industry Centre. There is no fee involved for registration.

The new classification makes it so that the existing registered enterprises will be required to register once again on the portal and all these enterprises will be re-classified in accordance with the notification. The notification also makes the registrations made till June 30, 2020 to become invalid after March 31, 2021.

For any change in the status of an enterprise in terms of its classification, a communication letter will be sent to the enterprise regarding the same. In case of graduation from a lower category to a higher category, as a result of change in investment or turnover, the enterprise will retain its prevailing status until the expiry of one year from close of its registration. And, in case of sliding down from a higher category to a lower category, as a result of change in investment or turnover, the effective benefit of such change shall only be available from the start of the following financial year (April 1st).

Grievance Redressal

In case of any discrepancy or complaint, the General Manager of the District Industries Centre will be the one to undertake enquiry for verification of details of the Udyam Registration submitted by the applicant enterprise. Thereafter, the same would be forwarded with necessary remarks to the Director or Commissioner or Industry Secretary concerned of the State Government who shall issue a notice to the enterprise. They may, after giving an opportunity to be heard and based on the findings, amend the details or recommend to the Ministry for cancellation of the Udyam Registration Certificate.

Benefits of MSME Registration

There are abundant benefits to being registered as an MSME and the Government has launched multiple schemes over the ages which provide the MSMEs with benefits, including but not limited to:

1. The Public Procurement Policy for MSMEs Order, 2012 insists on mandatory procurement from MSMEs. Every PSU has to set an annual goal of 20% procurement from MSME;
2. Priority lending is available for MSMEs as per the directions of the RBI which has earmarked funds to be given to MSMEs;
3. Reduced rate of interest from banks;
4. The government has set up a Credit Guarantee Fund Trust for Micro and Small Enterprises in order to provide collateral free loans to MSMEs;
5. The Government provides access to several exchange programs, craft fairs, exhibitions and trade related events internationally. The MSMEs also get incentives on export of goods and services by way of subsidies, tax exemptions and technical support; and

6. Technology and quality upgradation support to the MSMEs
7. Reimbursement on payment made for obtaining Trade Mark, Patent or any other intellectual property
8. Allowing for Minimum Alternate Tax to be carried forward for up to 15 years instead of 10 years.

There are multitudes of more benefits for the MSME and the recent initiative of the Government through Atma-nirbhar Bharat Abhiyan has brought forth even more lucrative schemes for MSMEs. The new portal set up under the notification provides for ease of doing business by bringing and reduce transaction time and costs. The organized single window system which is set up at champions control rooms and district industry centres, should prove to be successful for the facilitation as well.

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