

THE MICRO, SMALL AND MEDIUM ENTERPRISES DEVELOPMENT ACT, 2006

(27 of 2006)

INTRODUCTION

The Act aims at facilitating the promotion and development of micro, small and medium enterprises as well as ensuring their competitiveness. It empowers the Central Government to notify programmes, guidelines and instructions for the promotion and growth of micro, small and medium enterprises. It also aims at ensuring timely and smooth flow of credit to such enterprises as well as minimising instances of sickness among them. Under the Act, the Central Government and the State Governments may construct preference policies in respect of procurement of goods and services provided by such enterprises. In brief, the basic objective is to ensure overall development of micro, small and medium enterprises.

STATEMENT OF OBJECTS AND REASONS

Small scale industry is at present defined by notification under section 11B of the Industries (Development and Regulation) Act, 1951. Section 29B of the Act provides for notifying reservation of items for exclusive manufacture in the small scale industry sector. Except for these two provisions, there exists no legal framework for this dynamic and vibrant sector of the country's economy. Many Expert Groups or Committees appointed by the Government from time to time as well as the small scale industry sector itself have emphasised the need for a comprehensive Central enactment to provide an appropriate legal framework for the sector to facilitate its growth and development. Emergence of a large services sector assisting the small scale industry in the last two decades also warrants a composite view of the sector, encompassing both industrial units and related service entities. The world over, the emphasis has now been shifted from "industries" to "enterprises". Added to this, a growing need is being felt to extend policy support for the small enterprises so that they are enabled to grow into medium ones, adopt better and higher levels of technology and achieve higher productivity to remain competitive in a fast globalisation area. Thus, as in most developed and many developing countries, it is necessary that in India too, the concerns of the entire small and medium enterprises sector are addressed and the sector is provided with a single legal framework. As of now, the medium industry or enterprise is not even defined in any law.

2. In view of the above-mentioned circumstances, the Bill aims at facilitating the promotion and development and enhancing the competitiveness of small and medium enterprises and seeks to—

- (a) provide for statutory definitions of "small enterprise" and "medium enterprise";
- (b) provide for the establishment of a National Small and Medium Enterprises Board, a high-level forum consisting of stakeholders for participative review of and making recommendations on the policies

THE MICRO, SMALL AND MEDIUM ENTERPRISES DEVELOPMENT ACT, 2006

(27 of 2006)

[16th June, 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 date¹ 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
 - (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

1. Came into force on 2-10-2006, vide S.O. 1154(E), dated 18th July, 2006.

- (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 (39 of 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*;
- (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*;

(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.

COMMENTS

The Central Government shall appoint a National Board for Micro, Small and Medium enterprises for the purpose of this Act.

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 Regulation) Act, 1951

(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.

(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 sections 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 (65 of 1951) and clause (h) of section 2 of the Khadi and Village Industries Commission Act, 1956 (61 of 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 (65 of 1951),

strengthening backward and forward linkages, specify, by notification, such programmes, guidelines or instructions, as it may deem fit.

COMMENTS

The Central Government may issue guidelines and instructions for the purpose of promoting and developing the competitiveness of micro, small and medium enterprises.

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 co-ordination 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 therefor 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

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
- (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.

29. Power to make rules.—(1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the term of office of the members of the Board, the manner of filling vacancies, and the procedure to be followed in the discharge of functions by the members of the Board under sub-section (4) of section 3;
- (b) the powers and functions of the Member-Secretary under section 6;
- (c) the manner in which the Fund may be administered under sub-section (1) of section 14;
- (d) the criteria based on which sums may be released under sub-section (3) of section 14;
- (e) the information to be furnished and the form in which it is to be furnished under sub-section (2) of section 26; and
- (f) any other matter which is to be or may be prescribed under this Act.

(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.

30. Power to make rules by State Government.—(1) The State Government may, by notification, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the composition of the Micro and Small Enterprises Facilitation Council, the manner of filling vacancies of the members and the procedure to be followed in the discharge of their functions by the members of the Micro and Small Enterprises Facilitation Council under sub-section (3) of section 23;
- (b) any other matter which is to be or may be, prescribed under this Act.

(3) The rule made under this section shall, as soon as may be after it is made, be laid before each House of the State Legislature where there are two Houses, and where there is one House of the State Legislature, before that House.

31. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

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Notification
Industries and Mines Department,
Sachivalaya, Gandhinagar.
Dated the _____, 2007.

31 JUL 2007

Micro,
Small and
Medium
Enterprises
Development
Act, 2006

No.GU-2007(19)-SSI-102006-2384-CH :- In exercise of the powers conferred by clause (a), sub-section (2) of section 30 read with sub-section (3) of section 21 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006), the Government of Gujarat, in its application to the State of Gujarat, hereby makes the following rules, namely :-

Preliminary

1. **Short title and commencement** : These rules may be called the Gujarat State Micro and Small Enterprises Facilitation Council Rules, 2007.

2. **Definitions** – In these rules, unless the context otherwise requires -

- (a) "Act" means the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006)-;
- (b) "Section" means a section of the Act;
- (c) "Arbitration and Conciliation Act" means the Arbitration and Conciliation Act, 1996 (26 of 1996);
- (d) "Council" means the Micro and Small Enterprises Facilitation Council, established by the Government of Gujarat under section 20 of the Act;
- (e) "Institute" means any institution or centre providing alternate dispute resolution services referred to in sub-section (2) and (3) of section 18 of the Act;
- (f) "Chairperson" means the Chairperson of the Council appointed under clause (i) of sub-section (1) of section 21 of the Act;
- (g) "Member" means a member of the Council;
- (h) "Government" means the Government of Gujarat;
- (i) The words and expressions used and not defined, but defined in the Act shall have the meanings assigned to them in the Act.

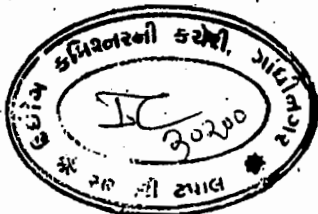
3. **Manner of appointment, etc.-**

- (a) The Government shall appoint the representatives, specified in clauses (ii), (iii) or (iv) of sub-section (1) of section 21, as member of the Council.

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with necessary court fee stamp affixed thereon. The Chairperson of the Council may require any petitioner to provide further particulars of the claim or any relevant documents in support of the claim as he may consider necessary for the purpose of the proceedings. If the petitioner fails or omits to do so within twenty days of receipt of such communication or within such further time as the Chairperson may, for sufficient cause, allow, the Council may terminate the proceedings without prejudice to the right of the petitioner to make fresh reference if he is otherwise entitled so to do.

The petitioner shall also simultaneously send a copy of the reference to the buyers against whom the reference is directed, and produce the proof of the same before the Council.

- (vi) The reference/application shall be acknowledged forthwith if it is delivered at the office of the Council. Where the reference/application is received by Registered Post, its receipt shall be acknowledged on the same day. The Council shall cause the buyer to furnish his detailed response to the reference within fifteen days of receipt of the reference by the buyer or within such further time not exceeding fifteen days, as he may, for sufficient cause, allow.
- (vii) On receipt of a reference under section 18 of the Act, the Council shall cause the reference and the buyers response thereto be examined and, on being satisfied with the reference making a prima facie case of delayed payment, cause the reference to be placed before the Council at its next immediate meeting for consideration. The Chairperson shall also ensure that each reference received within two weeks of the date of the last preceding meeting of the Council be examined and, if found in order, be placed for consideration of the Council at its next immediate meeting.
- (viii) The Council shall either itself conduct conciliation in each reference placed before it, or seek the assistance of any Institute providing alternate dispute resolution services by making a reference to such an institution, for conducting conciliation. The provisions of section 65 to 81 of the Arbitration and Conciliation Act, 1996 shall apply to such a reference as if the conciliation was initiated under Part III of that Act.
- (ix) The Council or the institute to which it has been referred for conciliation shall require the supplier and the buyer concerned to appear before it by issuing notices to both parties in this behalf. On the appearance of both parties, the Council or the Institute shall first make efforts to bring about conciliation between the buyer and the supplier. The Institute shall submit its report to the Council

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Notification
Industries and Mines Department,
Sachivalaya, Gandhinagar,
Dated the

31 JUL 2007

Micro,
Small
and Medium
Enterprises
Development
Act, 2006.

No.GU-2006(9) SSI-10-2006-2384-CH:- In exercise of the powers conferred by section 20 read with sub-section (3) of section 21 of the Micro, Small and Medium Enterprises Development Act, 2006. (27 of 2006), the Government of Gujarat hereby establishes the State Level Industry Facilitation Council as follows, namely:-

- | | | |
|----|---|---------------------|
| 1. | Industries Commissioner,
Gujarat State. | Chairperson |
| 2. | General Manager,
Reserve Bank of India. | Member |
| 3. | General Manager,
State Level Bankers
Committee,
Dena Bank. | Member. |
| 4. | President,
Gujarat State Small Industries
Federation, | Member. |
| 5. | Joint Commissioner of
Industries (SSI) | Member
Secretary |

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2. The Council shall act as as an Arbitrator and Conciliator for setting disputes regarding the provisions of the Arbitration and Conciliation Act, 1996. In addition, Council shall also act as Conciliator in respect of cases referred to it by the Gujarat Board for Industrial and Financial Reconstruction constituted by the State Government for revival of Sick Small Scale Industries and non Board of Industrial and Financial Reconstruction units.

By order and in the name of the Governor of Gujarat,

B. S. Mehta
(B.S.Mehta)
Under Secretary to Government.

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