

LAW & POLICY UPDATE

CORPORATE & COMMERCIAL



Clarifications on pertinent aspects of the June 2020 MSME composite update

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Earlier, in June 2020, Ministry of Micro, Small and Medium Enterprises (**Ministry**) had issued a composite notification introducing revised criterion for classifying enterprises as micro, small and medium enterprises (**MSME**) and forms and procedures for filing the memorandum (i.e. Udyam Registration), which became effective from July 1, 2020. This composite notification had also set out guidelines on calculation of investment in Plant & Machinery (**P&M**) and equipment and annual turnover and was also notified by Reserve Bank of India (**RBI**) along similar lines vide its circular dated July 2, 2020.

Recently, in August 2020, Ministry issued an office memorandum providing clarifications for representations received from stakeholders and enterprises on certain matters under composite notification (**OM**), which have been set out below. In alignment with OM, RBI has also notified below clarifications in August 2020.

Clarifications on existing Entrepreneurs Memorandum (EM) Part-II and Udyog Aadhar Memorandum (UAM)/ New Udyam Registration

Value of plant and machinery

The online form for Udyam Registration captures depreciation costs as on March 31 each year for relevant previous year. Accordingly, value of P&M for all enterprises will mean Written Down Value (**WDV**) at the end of Financial Year as defined in Income Tax Act and not the cost of acquisition or original price, which was applicable in context of erstwhile classification criteria for MSMEs.

Validity of existing EM Part-II and UAMs issued till June 30, 2020 and updation of existing registration details

All existing EM Part-II and UAMs obtained till June 30, 2020 will remain valid until March 31, 2021. Existing UAM holders are permitted to amend or update their existing details and obtain and update Udyam Registration Number (if Aadhar or PAN Number is not entered in the existing UAM Portal) till March 31, 2021. In light of foregoing, RBI has notified that lenders are required to obtain 'Udyam Registration Certificate' from entrepreneurs. Further, RBI has clarified that 'Udyam Registration Certificate' issued on self-declaration basis for enterprises exempted from filing GSTR/or ITR returns will also be valid for the time being, up to March 31, 2021.

Recommendations to entrepreneurs for actions to be taken prior to March 31, 2021:

Since all enterprises registered till June 30, 2021 will be reclassified as per composite notification, all MSMEs have to ensure that the latest details are entered therein and it is advised that all enterprises with EM Part II and/or UAMs file the new registration in the Udyam Registration Portal (www.udyamregistration.gov.in) well in advance before March 31, 2021.

This OM read with RBI notification clarifies many ambiguities arising from composite notification issued previously notifying new classification for MSMEs. Most importantly, now there is ample clarity on calculation of value of investment in P&M which forms the foundation for being eligible to be classified as an MSME. Further, Ministry and RBI seek to ease the registration process and has also provided existing entrepreneurs ample time for updating/amending/procuring new registration under composite notification. The new registration is free of cost and should be done only through Government portal.

Further, emphasizing the need for prompt payment to suppliers including MSMEs for all procurements, Government has stipulated that, with effect from October 1, 2020, any delay in payments by a buyer/buyer organization for more than 10 days from date of issue/auto generation of consignee receipt and acceptance certificate, will attract a penal interest of 1% per month till actual date of such payment. The amount so collected (i.e., penal interest) will be deposited in an account maintained by Government e-Marketplace and will be used to educate buyer or sellers or for purposes related to public procurement, with prior approval of Department of Expenditure.

