



MCA MANDATES DISCLOSURE OF PAYMENTS DUE TO MSEs

February 2019

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Chapter V of the Micro, Small and Medium Enterprises Development Act, 2006 mandates buyers who procure goods or services from MSEs to make payments not later than 45 days from the date of acceptance of such goods or services. In case the buyer defaults in making payments within the prescribed timelines, then the buyer becomes liable to pay the outstanding amount with compound interest, on monthly basis, at thrice the rate notified by the Reserve Bank of India. MCA's notification dated January 22, 2018 is a step further in the direction of ensuring of timely payments. The notification mandates half yearly disclosure of outstanding payments towards goods or services procured from MSEs. The disclosure is to be done before the MCA in e-form MSME Form I. Due date for filing of this form for the period from April to September is October 31 and from October to March is April 30. As per the notification, the due date for filing first return is February 21, 2019, however, as the MCA has not issued the form yet, the due date should be extended. Form requires buyers to furnish reasons for delay in honoring payments. Non-filing of the form or providing incorrect information in the form calls for penalties. While the defaulting company will be liable to pay up to INR 25,000, the defaulting officer will be liable for imprisonment up to 6 months or fine up to INR 300,000 or both.

PSA view – Micro, small and medium enterprises sector has been one of the key catapults to Indian economy over the last five decades. They not only provide employment opportunities at comparatively lower capital cost than large industries but also help in industrialization of rural and backward areas, thereby, reducing regional imbalances and contributing immensely to socio-economic development of the country. It is for these reasons, their payments must be honoured in a timely manner and disclosures with respect to non payment will bring in a greater level of accountability on this matter.

MCA procuring Certificate of Incorporation upon incorporation

Section 10A of the Ordinance requires all companies incorporated after November 8, 2018 to procure Certificate of Commencement of Business within 180 days from the date of their incorporation. This is not the same as certificate of incorporation. Application for procuring the certificate has to be filed with the MCA in e-form 20A and any one of the directors of the company can file the application. In the application, the director has to declare that **(a)** the initial subscribers have paid the subscription amount fully and substantiate that with proof of remittance of such amount to company's bank account; **(b)** the company has filed the proofs of verification (such as lease deed, utility bills) of company's registered office; and **(c)** registration or approval

from sectoral regulator, if required, has been procured. Non compliance calls for a penalty is INR 50,000 on the company and INR 1,000 per day up to total of INR 100,000 on every director of the company. Section 10A gives power to the Registrar of Companies to conduct physical verification of registered offices of companies seeking the certificate and in case of any default, initiate the process for strike off of such company's name.

PSA view – The new provision under the Ordinance will check a common practice, mostly prevalent in small private companies, where promoters either delay or do not pay the subscription money. Also, sometimes incorporation application is made with a declaration that sectoral approval shall be taken post incorporation but upon incorporation, the requirement is endlessly deferred. In short, the new mandate will act as an added layer of compliance with respect to incorporation procedure.

By:

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