

THE SMALL AND MEDIUM ENTERPRISES DEVELOPMENT BILL, 2005

2 MAY 2005

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Bill No. 75 of 2005

THE SMALL AND MEDIUM ENTERPRISES DEVELOPMENT  
BILL, 2005

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BILL

*to provide for facilitating the promotion and development and enhancing the competitiveness of 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 small and medium enterprises and for matters connected therewith or incidental thereto;

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

5 1. (1) This Act may be called the Small and Medium Enterprises Development Act, 2005.

Short title and commencement.

(2) It shall come into force on such date 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. 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 thirty days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier. 5

*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 10

(b) where any objection is made in writing by the buyer regarding acceptance of goods or services within thirty 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 services within thirty days from the day of the delivery of goods or the rendering of services, the day of the actual delivery of goods or the rendering of services; 15

(c) "Board" means the National Small and Medium Enterprises Board established under section 3; 20

(d) "buyer" means whoever buys any goods or receives any services from a supplier for consideration;

(e) "enterprise" means an industrial undertaking or a business concern or any other establishment, by whatever name called, engaged in the manufacture or production of goods, in any manner, pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 or engaged in providing or rendering of any service or services in relation thereto; 25 65 of 1951.

(f) "goods" means every kind of movable property other than actionable claims and money;

(g) "medium enterprise" means an industrial enterprise classified as such under sub-clause (ii) of clause (a) or sub-clause (ii) of clause (b) of sub-section (1) of section 7; 30

(h) "National Bank" means the National Bank for Agriculture and Rural Development established under section 3 of the National Bank for Agriculture and Rural Development Act, 1981; 35 61 of 1981.

(i) "notification" means a notification published in the Official Gazette;

(j) "prescribed" means prescribed by rules made under this Act;

(k) "Reserve Bank" means the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934; 2 of 1934.

(l) "small enterprise" means an industrial enterprise classified as such under sub-clause (i) of clause (a) or sub-clause (i) of clause (b) of sub-section (1) of section 7; 40

(m) "supplier" means a small enterprise, which has filed a memorandum with the authority referred to in clause (a) of sub-section (1) of section 8, and includes,—

(i) the National Small Industries Corporation, being a company, registered under the Companies Act, 1956; 45 1 of 1956.

1 of 1956.

(ii) the Small Industries Development Corporation of a State or a Union territory, by whatever name called, being a company registered under the Companies Act, 1956;

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39 of 1989.

(n) "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;

(o) "State Government", in relation to a Union territory, means the Administrator thereof appointed under article 239 of the Constitution.

## CHAPTER II

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## NATIONAL SMALL AND MEDIUM ENTERPRISES BOARD

3. (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 Small and Medium Enterprises Board.

Establishment  
of Board.

(2) The head office of the Board shall be at Delhi.

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(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 small and medium enterprises who shall be the *ex officio* Chairperson of the Board;

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(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 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;

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(c) five Ministers of the State Governments having administrative control of the departments of small scale industries or, as the case may be, 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) the Administrator of a Union territory to be appointed by the Central Government, *ex officio*;

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(e) the Secretary to the Government of India in charge of the Ministry or Department of the Central Government having administrative control of the small and medium enterprises, *ex officio*;

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(f) 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*;

(g) the Chairman of the Board of Directors of the National Bank, *ex officio*;

(h) the chairman and managing director of the Board of Directors of the Small Industries Bank, *ex officio*;

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(i) the chairman, Indian Banks Association, *ex officio*;

(j) One officer of the Reserve Bank, not below the rank of an Executive Director; to be appointed by the Central Government to represent the Reserve Bank;

(k) ten persons to represent the associations of small enterprises and medium enterprises, at least three of whom shall be representatives of associations of women's enterprises, to be appointed by the Central Government;

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(l) two persons of eminence, one each from the fields of economics and industry, at least one of whom shall be a woman, to be appointed by the Central Government; and

(m) one officer not below the rank of Joint Secretary to the Government of India in the Ministry or Department of the Central Government having administrative control of the small and medium enterprises to be appointed by the Central Government, who shall be the Member-Secretary of the Board, *ex officio*.

(4) The term of office of the members of the Board, other than *ex officio* members of the Board, the manner of filling vacancies, and the procedure to be followed in the discharge of their functions by the members of the Board, shall be such as may be prescribed: 5

Provided that the term of office of an *ex officio* member of the Board shall continue so long as he holds the office by virtue of which he is such a member.

(5) No act or proceedings of the Board shall be invalid merely by reason of— 10

(a) any vacancy in, or any defect in the constitution of, the Board; or

(b) any defect in the appointment of a person acting as a member of the Board; or

(c) any irregularity in the procedure of the Board not affecting the merits of the case. 15

(6) The Board shall meet at least once in every three months in a year.

(7) The Board may associate with itself, in such manner and for such purposes as it may deem necessary, any person or persons whose assistance or advice it may desire in complying with any of the provisions of this Act and a person so associated shall have the right to take part in the discussions of the Board relevant to the purposes for which he has been associated but shall not have the right to vote. 20

(8) Without prejudice to sub-section (7) the Chairperson of the Board may, for not more than two of the meetings of the Board in a year, invite such Ministers of the State Governments having administrative control of the departments of small scale industries or, as the case may be, the small and medium enterprises, or the Administrators of Union territories and representatives of such other associations of small and medium enterprises, as he may deem necessary for carrying out the purposes of this Act. 25

Removal of member from Board.

4. (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 30

(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. 35

(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. 40

Functions of Board.

5. 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 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; 45

(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 small and medium enterprises; and

5 (c) advise the Central Government on the use of the Fund or Funds constituted under section 12.

6. 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.

Powers and functions of Member-Secretary of Board.

### CHAPTER III

#### 10 CLASSIFICATION OF ENTERPRISES, ADVISORY COMMITTEE AND MEMORANDUM OF SMALL AND MEDIUM ENTERPRISES

65 of 1951. 15 7. (1) Notwithstanding anything contained in section 11B of the Industries (Development and Regulation) Act, 1951, the Central Government may, for the purposes of this Act, by order, notified and having regard to the provisions of sub-sections (4) and (5), classify any class or classes of enterprises, whether proprietorship, Hindu undivided family, association of persons, co-operative society, partnership firm, company or undertaking, by whatever name called,—

Classification of enterprises.

20 (a) in the case of the enterprises 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, as—

(i) a small enterprise, where the investment in plant and machinery does not exceed five crore rupees; or

(ii) a medium enterprise, where the investment in plant and machinery is more than five crore rupees but does not exceed ten crore rupees;

25 65 of 1951. (b) in the case of the enterprises engaged in providing or rendering of services in relation to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951, as—

(i) a small enterprise, where the investment in equipment does not exceed two crore rupees; or

30 (ii) a medium enterprise, where the investment in equipment is more than two crore rupees but does not exceed five crore rupees.

35 *Explanation.*—For the removal of doubt it is hereby declared that the investment in land and building or equipment, as the case may be, shall not be taken into account while determining the investment in plant and machinery or, as the case may be, equipment for the purposes of this sub-section.

40 (2) The Central Government shall, by notification, constitute an Advisory Committee consisting of the Secretary to the Government of India in the Ministry or Department of the Central Government having administrative control of the small and medium enterprises, who shall be the Chairperson of the Advisory Committee, not more than five officers of the Central Government possessing necessary expertise in matters relating to small and medium enterprises and not more than two representatives of the State Governments to be appointed by the Central Government.

(3) The Member-Secretary of the Board shall also be the *ex officio* Member-Secretary of the Advisory Committee.

45 (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, after considering the following matters, communicate its recommendations to the Central Government, namely:—

- (a) the level of employment in a class or classes of enterprises;
- (b) the level of investments in plant and machinery or equipment, land and building, in a class or classes of enterprises; 5
- (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 small or medium enterprises; 10
- (e) the international standards for classification of small and medium enterprises; and
- (f) such other matters as the Advisory Committee may think fit.

(6) Notwithstanding anything contained in section 11B of the Industries (Development and Regulation) Act, 1951 and clause (h) of section 2 of the Khadi and Village Industries Commission Act, 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. 65 of 1951.  
61 of 1956.  
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Memorandum  
of small and  
medium  
enterprises.

8. (1) Any person who intends to establish,—

- (a) a small enterprise, may, at his discretion; or
- (b) a medium enterprise, shall,

file the memorandum of small enterprise or, as the case may be, medium enterprise with such authority as may be specified by the State Government under sub-section (4) or the Central Government under sub-section (3): 25

Provided that any person who, before the commencement of this Act, established—

(a) a small enterprise, whether he had or had not obtained a registration certificate, may after the commencement of this Act, at his discretion, file the memorandum; 30

(b) a medium enterprise, whether he had or had not, in pursuance of the notification of the Government of India in the erstwhile Ministry of Industry (Department of Industrial Development) No. S.O. 477 (E) dated the 25th July, 1991, filed an Industrial Entrepreneur's Memorandum shall, within ninety days from the commencement of this Act, file the memorandum, 35

in accordance with the provisions of this Act.

(2) The form of the memorandum, the procedure of its filing and other matters incidental thereto shall be such as may be notified by the Central Government after obtaining the recommendations of the Advisory Committee in this behalf. 46

(3) The authority with which the memorandum shall be filed by a medium enterprise shall be such as may be specified by notification, by the Central Government.

(4) The State Government shall, by notification, specify the authority with which a small enterprise may file the memorandum.



(5) The authorities specified under sub-sections (3) and (4) shall follow, for the purposes of this section, the procedure notified by the Central Government under sub-section (2).

#### CHAPTER IV

##### MEASURES FOR PROMOTION, DEVELOPMENT AND ENHANCEMENT OF COMPETITIVENESS OF SMALL AND MEDIUM ENTERPRISES

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9. (1) The Central Government may, from time to time, for the purposes of facilitating the promotion and development and enhancing the competitiveness of small enterprises and medium enterprises, particularly of the former, by way of development of skill in the employees, management and entrepreneurs, provisioning for marketing assistance or infrastructure facilities and cluster development of such enterprises with a view to strengthening backward and forward linkages, specify, by notification, such programmes, guidelines or instructions, as it may deem fit.

Measures for promotion and development.

(2) Notwithstanding anything contained in the provisions of the Employers' Liability Act, 1938, the Weekly Holidays Act, 1942, the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 and the Apprentices Act, 1961, a State Government may, by notification, with a view to facilitating the graduation of small enterprises to medium enterprises provide that provisions of those Acts shall not apply to small and medium enterprises employing up to fifty employees in that State.

24 of 1938.  
18 of 1942.  
31 of 1959.  
52 of 1961.

10. The credit facilities to the 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.

Credit facilities.

11. For facilitating promotion and development of 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 small enterprises, by its Ministries or departments, as the case may be, or its aided institutions and public sector enterprises.

Procurement preference policy

12. 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.

Funds.

13. 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.

Grants by Central Government.

14. (1) The Central Government shall have the power to administer the Fund or Funds in such manner as may be prescribed.

Administration and utilisation of Fund or Funds.

(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 coordination and ensuring timely utilisation and release of sums in accordance with such criteria as may be prescribed.

#### CHAPTER V

##### INSPECTION OF SMALL AND MEDIUM ENTERPRISES AND RELATED MATTERS

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15. Notwithstanding anything in relation to inspection contained in the Payment of Wages Act, 1936, the Employees' State Insurance Act, 1948, the Factories Act, 1948, the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the Maternity Benefit Act, 1961, the Payment of Bonus Act, 1965 and the Payment of Gratuity Act, 1972, the inspection of small and medium enterprises shall be carried out in such manner and by such authority as may be prescribed:

Inspection of small and medium enterprises.

4 of 1936.  
34 of 1948.  
63 of 1948.  
19 of 1952.  
53 of 1961.  
21 of 1965.  
39 of 1972.

Provided that while prescribing the manner of inspection under this section, the Central Government shall have regard to the promotion of self-regulation or self-certification by the small enterprises and medium enterprises.

Maintenance of records and filing of returns by enterprises.

16. Notwithstanding anything contained in any enactment specified in section 15, every small and medium enterprise shall maintain such records, file such returns with such authority and in such forms as may be prescribed. 5

## CHAPTER VI

### DELAYED PAYMENTS TO SMALL ENTERPRISES

Liability of buyer to make payment.

17. 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: 10

Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed seventy-five days from the day of acceptance or the day of deemed acceptance.

Date from which and rate at which interest is payable.

18. Where any buyer fails to make payment of the amount to the supplier, as required under section 17, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay interest to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at nine per cent. plus the bank rate notified by the Reserve Bank. 15  
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Recovery of amount due.

19. The amount due from a buyer, together with the amount of interest calculated in accordance with the provisions of section 18, shall be recoverable by the supplier from the buyer by way of a suit or other proceeding under any law for the time being in force.

Reference to Industry Facilitation Council.

20. Notwithstanding anything contained in section 19, any party to a dispute may make a reference to the Industry Facilitation Council for acting as an arbitrator or conciliator in respect of the matters referred to in that section and the provisions of the Arbitration and Conciliation Act, 1996 shall apply to such dispute as if the arbitration or conciliation were pursuant to an arbitration agreement referred to in sub-section (1) of section 7 of that Act. 25  
26 of 199

Appeal.

21. No appeal against any decree, award or other order shall be entertained by any court or other authority unless the appellant (not being a supplier) has deposited with it seventy-five per cent. of the amount in terms of the decree, award or, as the case may be, other order in the manner directed by such court or, as the case may be, such authority. 30

Establishment of Industry Facilitation Council.

22. The State Government shall, by notification, establish one or more Industry Facilitation Councils, at such places, exercising such jurisdiction and for such areas, as may be specified in the notification. 35

Composition of Industry Facilitation Council.

23. The Industry 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, small and medium enterprises; and 40

(ii) one or more office-bearers or representatives of small industry or enterprise associations in the State; or

(iii) one or more representatives of banks and financial institutions lending to small enterprises; or 45

(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 Industry Facilitation Council.

5 (3) The composition of the Industry 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.

24. 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:—

Requirement to specify unpaid amount with interest in the annual statement of accounts.

10 (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 18, along with the amounts of the payment made to the supplier beyond the appointed day during each accounting year;

15 (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

20 (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 25.

43 of 1961.

25 25. Notwithstanding anything contained in the Income-tax Act, 1961, the amount of interest payable or paid by any buyer, under or in accordance with the provisions of this Act, shall not, for the purposes of computation of income under the Income-tax Act, 1961, be allowed as deduction.

Interest not to be allowed as deduction from income.

26. The provisions of sections 17 to 25 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Over-riding effect.

## CHAPTER VII

### MISCELLANEOUS

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27. (1) The Central Government or the State Government may appoint such officers with such designations and such other employees as it thinks fit for the purposes of this Act and may entrust to them such of the powers and functions under this Act as it may deem fit.

Appointment of officers and other employees.

35 (2) The Officers appointed under sub-section (1) may, for the purposes of this Act, by order require any person to furnish such information, in such form, as may be prescribed.

28. (1) Whoever intentionally contravenes or attempts to contravene or abets the contravention of any of the provisions contained in sub-section (1) of section 8 or section 16 or sub-section (2) of section 27 shall be punishable —

Penalty for contravention of section 8 of section 16 or section 24 or section 27.

40 (a) in the case of the first conviction, with fine which may extend to rupees one thousand; and

(b) in the case of any second or subsequent conviction, with fine which shall not be less than rupees one thousand but may extend to rupees ten thousand.

(2) Where a buyer contravenes the provisions of section 24, he shall be punishable with a fine which shall not be less than rupees ten thousand.

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29. No court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.

Jurisdiction of courts.

Power to  
make rules.

30. (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; 5

(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; 10

(d) the criteria based on which sums may be released under sub-section (3) of section 14;

(e) the manner in which and the authority by which inspection shall be carried under section 15;

(f) the records which may be maintained and the form in which returns be filed, the method of filing of returns, and the authority with whom the returns be filed under section 16; 15

(g) the information to be furnished and the form in which it is to be furnished under sub-section (2) of section 27; and

(h) any other matter which is to be or may be prescribed under this Act. 20

(3) Every notification issued under sub-section (1) of 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. 25  
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Power to  
make rules by  
State  
Government.

31. (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 Industry 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 Industry Facilitation Council under sub-section (3) of section 23; 35

(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. 40

Power to  
remove  
difficulties.

32. (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. 45

Provided that no order shall be made under this section after the expiry of two years from the commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

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32 of 1993. 33. (1) The Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 is hereby repealed. Repeal of Act.

(2) Notwithstanding such repeal, anything done or any action taken under the Act so repealed under sub-section (1) shall be deemed to have been done or taken under the corresponding provisions of this Act.

## 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 and programmes for the development of small and medium enterprises.

(c) provide for classification of small and medium enterprises on the basis of investment in plant and machinery, or equipment and establishment of an Advisory Committee to recommend on the related matter.

(d) empower the Central Government to notify programmes, guidelines or instructions for facilitating the promotion and development and enhancing the competitiveness of small and medium enterprises.

(e) empower the State Governments to specify, by notification, that provisions of the labour laws specified in clause 9(2) will not apply to small and medium enterprises employing up to fifty employees with a view to facilitating the graduation of small enterprises to medium enterprises;

(f) make provisions for ensuring timely and smooth flow of credit to small and medium enterprises, to minimise the incidence of sickness among and enhancing the competitiveness of such enterprises, in accordance with the guidelines or instructions of the Reserve Bank of India.

(g) empower the Central and State Governments to notify preference policies in respect of procurement of goods and services, produced and provided by small enterprises, by the Ministries, departments and public sector enterprises.



(h) empowering the Central Government to create a Fund or Funds for facilitating promotion and development and enhancing the competitiveness of small enterprises and medium enterprises.

(i) empower to prescribe harmonised, simpler and streamlined procedures for inspection of small and medium enterprises under the labour laws enumerated in clause 15, having regard to the need to promote self-regulation or self-certification by such enterprises.

(j) prescribe for maintenance of records and filing of returns by small and medium enterprises with a view to reduce the multiplicity of often-overlapping types of returns to be filed;

(k) Make further improvements in the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 and making that enactment a part of the proposed legislation and to repeal that enactment.

3. The Bill seeks to achieve the above objects.

NEW DELHI;  
The 6th May, 2005.

MAHABIR PRASAD.

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**PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE  
CONSTITUTION OF INDIA**

[Copy of letter No. 2(3)/2005-SSI Bd. & Pol. Vol-II, dated the 10th May, 2005 from Shri Mahabir Prasad, Minister of Small Scale Industries and Agro & Rural Industries to the Secretary-General, Lok Sabha]

The President, having been informed of the subject matter of the Small and Medium Enterprises Development Bill, 2005, has recommended the introduction and consideration of the Bill in Lok Sabha under article 117(1) and (3) of the Constitution of India.



### Notes on Clauses

Clause 2 of the Bill seeks to define the various expressions used in the Bill.

Clause 3 seeks to provide for the establishment of the National Small and Medium Enterprises Board with its head office in Delhi. It further lays down that the Minister in charge of the Ministry or Department of the Central Government having administrative control of the small and medium enterprises shall be the *ex-officio* Chairperson. In addition, it lays down the composition of the Board consisting of the Vice-Chairperson, Member-Secretary, and 27 members representing various stakeholders. This clause, *inter alia*, also contains provisions regarding the term of office of the members of the Board, the manner of filling vacancies, frequency of meetings of the Board, association of other persons with the Board and invitation to Ministers of the State Governments to attend its meetings.

Clause 4 seeks to enumerate the grounds for removal of a member of the Board from it and also specifies the procedures to be followed in such cases.

Clause 5 seeks to specify the functions of the Board.

Clause 6 seeks to empower the Central Government to prescribe the powers and functions of Member-Secretary of the Board.

Clause 7 seeks to classify "small enterprises" and "medium enterprises", based on investment in plant and machinery, equipment. It also provides in detail for constitution of an Advisory Committee, its composition, role and matters to be considered by it while communicating its recommendations to the Central Government. It also empowers the Central Government, while classifying any class or classes of enterprises as small enterprise or medium enterprise, to vary the criterion of investment and to consider other criteria or standards specified in this clause and include in such classification the micro or tiny enterprises or the village enterprises, as part of small enterprises.

Clause 8 seeks to lay down the requirement for filing of memorandum of small enterprise or medium enterprise with the authority specified by the State Government or the Central Government under the provisions of this clause. It also empowers the Central Government, to notify, the procedure of filing of the memorandum and the authority with which the memorandum shall be filed by a medium enterprise. This clause also confers powers on the State Government to notify the authority with which a small enterprise may file the memorandum. It also enables the Central Government to notify the procedure to be followed by the above-mentioned authorities for the purposes of this clause.

Clause 9 seeks to enable the Central Government to notify programmes, guidelines or instructions for facilitating the promotion and development and enhancing the competitiveness of small enterprises and medium enterprises. It also empowers a State Government to provide, by notification, that the provisions of the Employers' Liability Act, 1938, the Weekly Holidays Act, 1942, the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 and the Apprentices Act, 1961 shall not apply to small and medium enterprises employing up to fifty employees in that State.

Clause 10 seeks to provide for the credit facilities to the small and medium enterprises as may be specified in the guidelines or instructions issued by the Reserve Bank of India.

Clause 11 seeks to empower the Central Government or the State Government to notify preference policies in respect of procurement of goods and services, produced and provided by small enterprises, by its Ministries, departments or its aided institutions and public sector enterprises.

*Clause 12* seeks to enable the Central Government to constitute, by notification, one or more Funds and credit thereto any grants made to the Central Government under the provisions of clause 13.

*Clause 13* seeks to empower the Central Government to credit to the Fund or Funds, such sums of money as the Government may provide after due appropriation made by Parliament by law in this behalf.

*Clause 14* seeks to empower the Central Government to administer the Fund or Funds in such manner, and also entrusts that government with the responsibility for the coordination and ensuring timely utilization and release of sums with such criteria, as may be prescribed.

*Clause 15* seeks to provide that notwithstanding anything in relation to inspection contained in the Payment of Wages Act, 1936, the Employees' State Insurance Act, 1948, the Factories Act, 1948, the Employee's Provident Fund and Miscellaneous Provision Act, 1952, the Maternity Benefit Act, 1961, the Payment of Bonus Act, 1965 and the Payment of Gratuity Act, 1972, the inspection of a small and medium enterprises shall be carried out in such manner, with regard to the promotion of self-regulation or self-certification by the small and the medium enterprises, and by such authority, as may be prescribed.

*Clause 16* seeks to provide that every small and medium enterprise responsible for maintenance of such records, filing of such returns with such authority and in such forms, as may be prescribed.

*Clause 17* seeks to specify the liability of buyer of goods and services from a supplier to make payment therefor on or before the date agreed upon between the two parties in writing or, where there is no agreement in this behalf, before the appointed day. The proviso to this clause seeks to limit the period agreed upon between the supplier and the buyer in writing to seventy-five days from the day of acceptance or the day of deemed acceptance.

*Clause 18* seeks to specify the date from which and the rate at which interests will be payable by the buyer to the supplier in case of the former failing to make payments of the amount to the supplier, as required under section 17.

*Clause 19* seeks to make the amount due from a buyer, together with the amount of interest calculated in accordance with the provisions of section 18, recoverable by way of a suit or other proceeding under law.

*Clause 20* seeks to provide for the jurisdiction of the Industry Facilitation Council for acting as an arbitrator or conciliator in respect of the matters referred to in clause 19.

*Clause 21* seeks to debar any court or other authority from entertaining an appeal against any decree, award or any other order unless the appellant (not being a supplier) has deposited with it seventy-five per cent. of the amount in terms of the decree, award or other order.

*Clause 22* seeks to make it mandatory upon each State Government to establish one or more Industry Facilitation Councils for the purposes of this Bill.

*Clause 23* seeks to lay down in detail the structure of the Industry Facilitation Council consisting of not less than three but not more than five members. Further, it empowers the State Government to prescribe the composition of the Industry Facilitation Council, the manner of filling vacancies of its members and the procedure to be followed in the discharge of their functions.

*Clause 24* seeks to provide details of the information required to be submitted by any buyer in this annual statement of accounts, where such buyer is required to get his annual accounts audited under any law for the time being in force.

*Clause 25* seeks to provide to disallow, for the purposes of computation of income under the Income-tax Act, 1961, the amount of interest payable or paid by any buyer, under or in accordance with the provisions of the proposed legislation.

*Clause 26* seeks to give the provisions of clauses 17 to 25 an over-riding effect over anything inconsistent therewith in any other law for the time being in force.

*Clause 27* seeks to empower the Central Government or the State Government to appoint officers and other employees for the purposes of this Act and to entrust to them such of the powers and functions as it may deem fit. This clause further empowers the officers so appointed to require, by order, any persons to furnish such information, in such form, as may be prescribed.

*Clause 28* seeks to lay down penalty for contravention of clause 8 or clause 16 or clause 24 or clause 27.

*Clause 29* seeks to specify that no court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence punishable under this legislation.

*Clause 30* seeks to empower the Central Government to make rules for carrying out the provisions of this Act and also provide that every notification issued under sub-clause (1) of clause 9 and every rule made by the Central Government under this clause shall be laid before each House of Parliament.

*Clause 31* seeks to empowers the State Government to make rules for carrying out the provisions of this Act and also specifies that the rule made under this clause shall be laid before the State Legislature.

*Clause 32* seeks to empower the Central Government to remove difficulties which may arise in giving effect to the provisions of this Bill and also provide that every order made under this clause be laid before each House of Parliament.

*Clause 33* seeks to repeals the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 as the provisions of that Act have been suitably incorporated in the Bill.

## FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for the establishment of National Small and Medium Enterprises Board. The Bill further provides that the Board shall meet at least once in every three months in a year. In addition, sub-clause (7) of the Bill provides that Board may associate itself with any person or persons whose assistance or advice it may desire. This Board will replace the currently existing non-statutory small scale industries (SSI) Board consisting of one hundred and one persons, including forty-seven non-official members which normally meets once or twice in a year. The expenditure usually incurred on holding a meeting of this Board is about four to five lakh rupees. In view of the reduced size of the Board under the Bill, coupled with the increased frequency of its meetings, it is expected that the total recurring expenditure on the Board will be about fifteen lakh rupees in a year. Since the functions of the Board consist of review and advice through its meetings only, no other recurring or non-recurring expenditure is likely to be incurred on the Board. In any case, the expenses of the Board will be borne out of the usual budget grants of the Ministry of Small Scale Industries.

Clause 9 of the Bill empowers the Central Government to notify programmes, guidelines or instructions as it may deem fit for facilitating the promotion and development and enhancing the competitiveness of small and medium enterprises. Even now, Government has been implementing a large number of programmes for the development of small scale sector for which adequate budget provision is made every year. However, it is not possible at this juncture to give an exact estimate of the likely requirement of funds for the following years, as the amount required will depend on such programmes, guidelines or instructions as might be taken up or issued from time to time in pursuance of this provision. All such programmes, etc., will be finalised following the procedures laid down by the Government, including consultation with the Integrated Finance Wing or the Ministry of Finance, as necessary.

Clauses 12 and 13 contain provisions to enable the Central Government to constitute one or more Funds and, 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 legislation, such sums of money as the Government may consider necessary to provide. Again, it cannot be estimated in advance as to how much money will be required to create such Fund or Funds. In fact, the size of the Fund will be determined by its purpose and the quantum and the mode of disbursement required from it so as to meet the objects for which it will be created. However, the concerns of availability of budgetary resources, interest outgo, etc., can be adequately addressed as and when such a Fund is set up by the Central Government after due consultations with Ministry of Finance and after due appropriation made by Parliament by law in this behalf.

Clause 22 makes the State Governments responsible to establish Industry Facilitation Council in each State. This clause is actually based on clause 7A of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (32 of 1993) which is sought to be amalgamated in the Bill. Therefore, this clause is not likely to entail any additional financial expenditure for this purpose over and above what is being already incurred.

Clause 27 empowers the Central Government or State Government to appoint such officers and other employees as it thinks fit for the purposes of this Act. At present, both the Central and State Governments have Ministries, Departments, Directorates, etc., dealing with promotion of small scale industries which can discharge the duties and functions provided under this Act. Therefore, there would be no necessity to appoint any additional officers and staff due to enactment of this Bill. Hence, this provision is also not likely to lead to any additional financial burden to the Government.

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 30 of the Bill empowers the Central Government to make rules to carry out the provisions of the Bill. The matters in respect of which rules may be made relate, among others, to the term of office of the members of the Board, the manner of filling vacancies, the procedures to be followed in discharge of functions by the members of the Board and the powers and functions of the Member-Secretary under the provisions in clauses 3 and 6. Rules will also be required to be framed under clause 14 for administration of the Fund and the criteria based on which sums may be released from it. The manner in which and the authority by which inspection will be carried out under section 15 and the records which may be maintained and the form in which the returns will have to be filed and other related matters under clause 16 are also proposed to be prescribed through rules. Rules will also have to be framed on the information to be furnished and the form in which it is to be furnished under sub-clause (2) of clause 27.

Clause 31 seeks to empower the State Government to make rules to carry out the provisions of the Bill and in particular, such rules may provide for the composition of the Industry Facilitation Council, the manner of filling vacancies of the members and the procedures to be followed in the discharge of their function by the members of the Industry Facilitation Council under sub-clause (3) of clause 23.

The matter in respect of which rules may be made are matters of procedure and administrative details and it is not practicable to provide for all the matters in the Bill. The delegation of legislative power is, therefore, of a normal character.

LOK SABHA

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to provide for facilitating the promotion and development and enhancing the competitiveness of small and medium enterprises and for matters connected therewith or incidental thereto.

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*(Shri Mahabir Prasad, Minister of Small Scale Industries and Agro and Rural Industries)*