

**FURNISHING OF INFORMATION BY
SPECIFIED COMPANIES ABOUT
OUTSTANDING PAYMENT TO MICRO
AND SMALL ENTERPRISE SUPPLIERS**

130

{Section 405 of the Act read with Rules 2 and 3 of the Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019}.

Synopsis

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Relevant Sections, Rules and Forms at a Glance

Particulars	Section(s), Rule(s) and Name of e-Form(s)
The Companies Act, 2013	Sections 405
The Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019	Rules 2 and 3
The Companies (Registration Offices and Fees) Rules, 2014	Rules 7,8 and 12
e-Forms to be filed	MSME -1

Significant Relevant Approvals and Requirements

- ❖ Board resolution
- ❖ List of outstanding payments due to micro and small enterprises and whose payment exceeds 45 days from date of acceptance/deemed acceptance of goods or services.
- ❖ Reasons for non-payment to micro and small enterprises within 45 days from the date of acceptance/deemed acceptance of goods or services.

130.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	<p>Ensure that the company is a “Specified Company” as defined in the Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019 and the Company has outstanding dues to the micro and small enterprises suppliers exceeding 45 days from the date of acceptance or the date of deemed acceptance of the goods or services, whereas:</p> <ul style="list-style-type: none"> • a company is a Specified Company which get supplies of goods and services from micro and small enterprises and whose payment to micro and small enterprise suppliers exceed forty five days from the date of acceptance or the date of deemed acceptance of goods or services as per

S. No.	Particulars												
	<p>the provisions of section 9 of the Micro, Small and Medium Enterprises Development Act, 2006.</p> <ul style="list-style-type: none"> a company is a Micro and Small Enterprises as per the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006, if it is engaged in the manufacture or production, processing, services or preservation of goods as specified below:— <table border="1" data-bbox="488 527 1276 877"> <thead> <tr> <th data-bbox="488 527 683 699">ENTERPRISE TYPE</th> <th colspan="2" data-bbox="683 527 1276 569">SECTOR</th> </tr> <tr> <td data-bbox="488 569 683 699"></td> <th data-bbox="683 569 911 699">Manufacturing (Investment in plant & machinery) [₹]</th> <th data-bbox="911 569 1276 699">Service (Investment in equipments) [₹]</th> </tr> </thead> <tbody> <tr> <td data-bbox="488 699 683 772">A Micro Enterprise</td> <td data-bbox="683 699 911 772">Does not exceed 1 crore</td> <td data-bbox="911 699 1276 772">Does not exceed 5 crores</td> </tr> <tr> <td data-bbox="488 772 683 877">A Small Enterprise</td> <td data-bbox="683 772 911 877">More than 1 crore but does not exceed 10 crores</td> <td data-bbox="911 772 1276 877">More than 5 crores but does not exceed 50 crores</td> </tr> </tbody> </table> <ul style="list-style-type: none"> As per the provisions of section 2 of the Micro, Small and Medium Enterprises Development Act, 2006 <p>“THE DAY OF ACCEPTANCE” MEANS:-</p> <p>(a) the day of the actual delivery of goods or the rendering of services; or</p> <p>(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;</p> <p>“THE DAY OF DEEMED ACCEPTANCE” MEANS:-</p> <p>where no 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 of the actual delivery of goods or the rendering of services.</p>	ENTERPRISE TYPE	SECTOR			Manufacturing (Investment in plant & machinery) [₹]	Service (Investment in equipments) [₹]	A Micro Enterprise	Does not exceed 1 crore	Does not exceed 5 crores	A Small Enterprise	More than 1 crore but does not exceed 10 crores	More than 5 crores but does not exceed 50 crores
ENTERPRISE TYPE	SECTOR												
	Manufacturing (Investment in plant & machinery) [₹]	Service (Investment in equipments) [₹]											
A Micro Enterprise	Does not exceed 1 crore	Does not exceed 5 crores											
A Small Enterprise	More than 1 crore but does not exceed 10 crores	More than 5 crores but does not exceed 50 crores											
2.	Prepare complete details, relating to the payments to be made to Micro and Small enterprises whose payments exceed 45 days from the date of acceptance/ deemed acceptance of goods and services, such as name, address, PAN, amount due to them and date from which the amount is due and the reasons for the delay in outstanding payments.												
3.	<p>Complete formalities regarding calling of board meeting in the following manner:</p> <ul style="list-style-type: none"> Prepare notice of board meeting along with draft resolution(s) to be passed in the board meeting. Send notice of board meeting to all the directors <ul style="list-style-type: none"> - at least 7 days before the date of board meeting or - in such manner as prescribed under section 173(3) of the Companies Act, 2013 and clause 1 of the Secretarial Standard-1. 												

S. No.	Particulars
	<p>The subscribers, who are individuals in the Memorandum of Association (MOA) shall be deemed as first directors until the directors are duly appointed by the members in accordance with Section 152 of the Companies Act, 2013 and rules made thereunder (Section 152 of the Act).</p> <ul style="list-style-type: none"> • Not the person intended/proposed to be appointed a director of a company has a valid Director Identification Number (DIN) under section 174 or any other number as may be prescribed under section 174 of the Companies Act, 2013, however, in case of first directors of a new company, the DIN up to 3 (three) persons can be obtained through incorporation with integrated form SPICe-1 (INC-32) (Section 152 of the Act read with rule 152 of the Companies Incorporation Rules, 2014). • Not a total number of directors, at least one director has stayed in India for a total period of not less than 182 days during the financial year. Provided that in case of newly incorporated company, residential status shall be determined proportionately. However, it is not required in case the director is appointed by the Central Government or State Government (Section 152 of the Act). • A person, who is intended to be appointed, shall not be eligible for appointment, if he/she has any disqualification for appointment under section 164 of the Act (Section 164 of the Act read with companies provisions a government company and regulations in COA 2012 about COA 2012). • A person proposed to be appointed as a director in a company other than a company registered under Section 8 (non-profit company) of the Companies Act, 2013 (Section 152 of the Act) <ul style="list-style-type: none"> - shall not hold office as a director including any alternate directorship in more than 20 companies including directorship in dormant companies. - shall not hold office in more than 10 public companies including the private companies which are holding or subsidiary of public company.
2.	In case of one person company, an individual being sole member is deemed to be the first director of the company, if the articles of association has not mentioned the names of first directors (Section 152 of the Act).
3.	Forms created in writing, on or before appointment, from the appointed director to act as director in the company as Form 208-2 (Part 2 of the Companies Appointment and Qualification of Directors) Rule, 2014.
4.	Form as mentioned in writing, on or before appointment, from the appointed director as Form 208-2 regarding that he/she is not disqualified under Section 164 of Companies Act, 2013, to act as a Director (Section 164 of the Act read with rule 164 of the Companies Appointment and Qualification of <u>Directors</u>) Rule, 2014.
5.	The particulars of first directors to be integrated with Form SPICe-1 (INC-32) at the time of incorporation of company.

For the detailed procedure, please refer Company Law Procedures & Compliances by Dr. Sanjeev Gupta, 2nd edn, 2021. You can buy from your bookseller or online at www.bharatlaws.com

[COMPANY LAW Procedures & Compliances \(in 2 vols.\)](#)