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MSMEs and Start-ups – Benefits, Relaxations and Relief measures

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A brief introduction to MSMEs

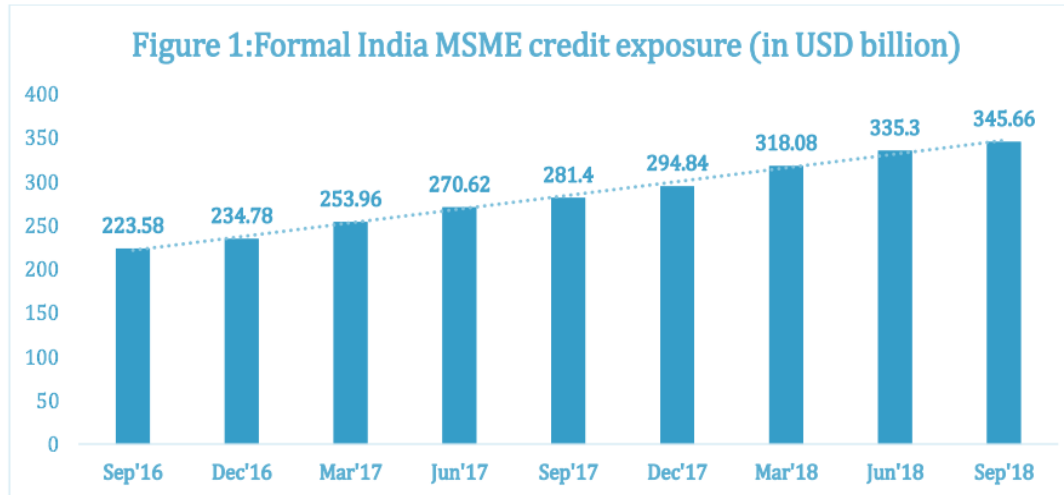
Background

The Micro, Small and Medium Enterprises (MSME) sector has emerged as a highly vibrant and dynamic sector of the Indian economy over the last few decades

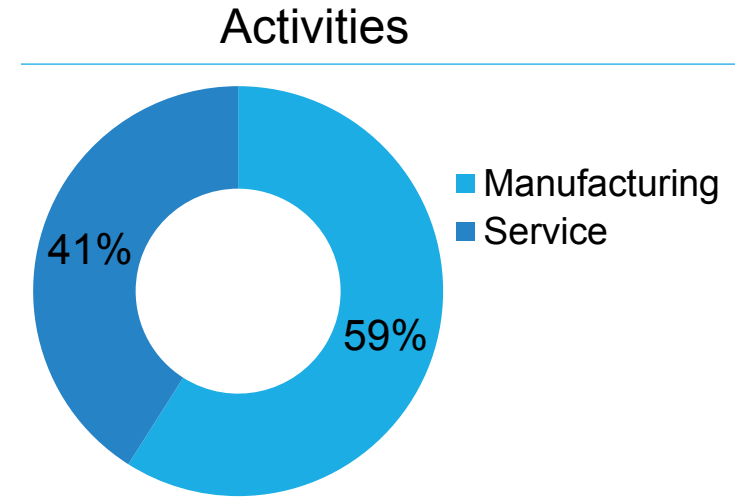
The Government of India has enacted the MSMED Act, 2006 providing various benefits to the registered entities. The MSME Scheme is broadly applicable on the following:

- a) Enterprises engaged in the manufacture or production of goods; or
- b) Enterprises engaged in providing or rendering of services;

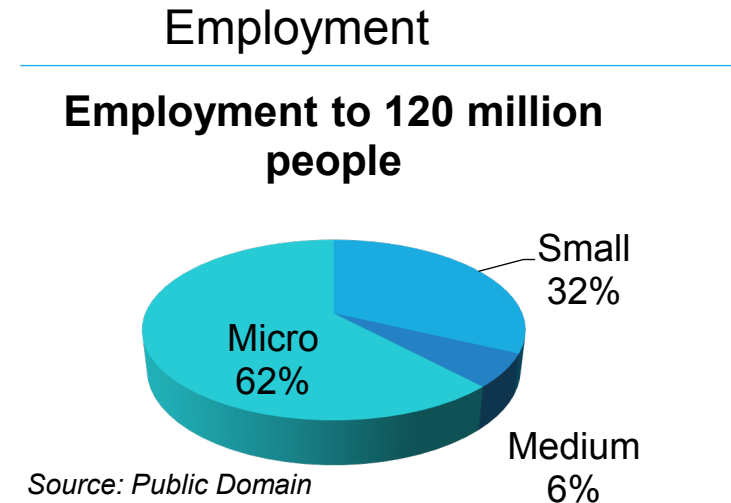
The MSMEs play a significant role in the economic growth of the country owing to their contribution to production, exports and employment. The sector contributes 8% to the country's GDP, 45% to the manufactured output and 40% to the country's exports. It provides employment to 60 million people through 28.5 million enterprises.



Source: SIDBI MSME Pulse Report, Dec 2018



Source: Public Domain



Source: Public Domain

Eligibility for MSME Registration

The distinction between the manufacturing and service enterprises has been removed by making the investment amount and annual turnover similar for enterprises engaged in both the sectors.

Existing MSME Classification			
Criteria : Investment in Plant & Machinery or Equipment			
Classification	Micro Enterprise	Small Enterprise	Medium Enterprise
Manufacturing Sector	Investment < INR 2.5 million	Investment < INR 50 million	Investment < INR 100 million
Service Sector	Investment < INR 1 million	Investment < INR 20 million	Investment < INR 50 million
Revised MSME Classification			
Composite Criteria : Investment and Annual Turnover			
Classification	Micro Enterprise	Small Enterprise	Medium Enterprise
Manufacturing or Service Sector	Investment < INR 10 million and Turnover < INR 50 million	Investment < INR 100 million and Turnover < INR 500 million	Investment < INR 200 million and Turnover < INR 1 billion

Aggregate turnover means the aggregate value of all taxable supplies, exempt supplies, exports and inter-state supplies of persons with same PAN - computed on all India basis but excludes GST and cess.

Calculations of investments in Plant and Machinery

Inclusions in calculations of investments in Plant and Machinery



Import Duty (excluding miscellaneous expenses such as transportation from the port to the site of the factory, demurrage paid at the port)



Shipping Charges



Customs Clearance Charges



Sales Tax or Value Added Tax

Calculations of investments in Plant and Machinery

Exclusions from calculations of investments in Plant and Machinery



- Tools, jigs, dyes, moulds and spare parts for maintenance and the cost of consumables stores
- Power generation set and extra transformer installed by the enterprise as per State Electricity Board



- Gas producers plants
- Transportation charges
- Charges paid for technical know-how for erection of plant and machinery
- Such storage tanks which store raw material and finished produces and are not linked with the manufacturing process
- Fire fighting equipment



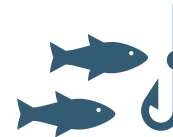
- Installation of plant and machinery
- Research and development equipment and pollution controlled equipment
- Bank charges and service charges paid to the National Small Industries Corporation or the State Small Industries Corporation
- Procurement or installation of cables, wiring, bus bars, electrical control panels (not mounded on individual machines), oil circuit breakers or miniature circuit breakers which are necessarily to be used for providing electrical power to the plant and machinery or for safety measures

Eligibility for MSME Registration

Business activities not eligible for MSME registration



Forestry and logging



Fishing and Aquaculture



Wholesale and retail trade except of motor vehicles and motor cycle



Activities of extraterritorial organization and bodies



Undifferentiated goods and services producing activities of private households for own use



Wholesale and retail trade and repair of motor vehicle and motor cycles



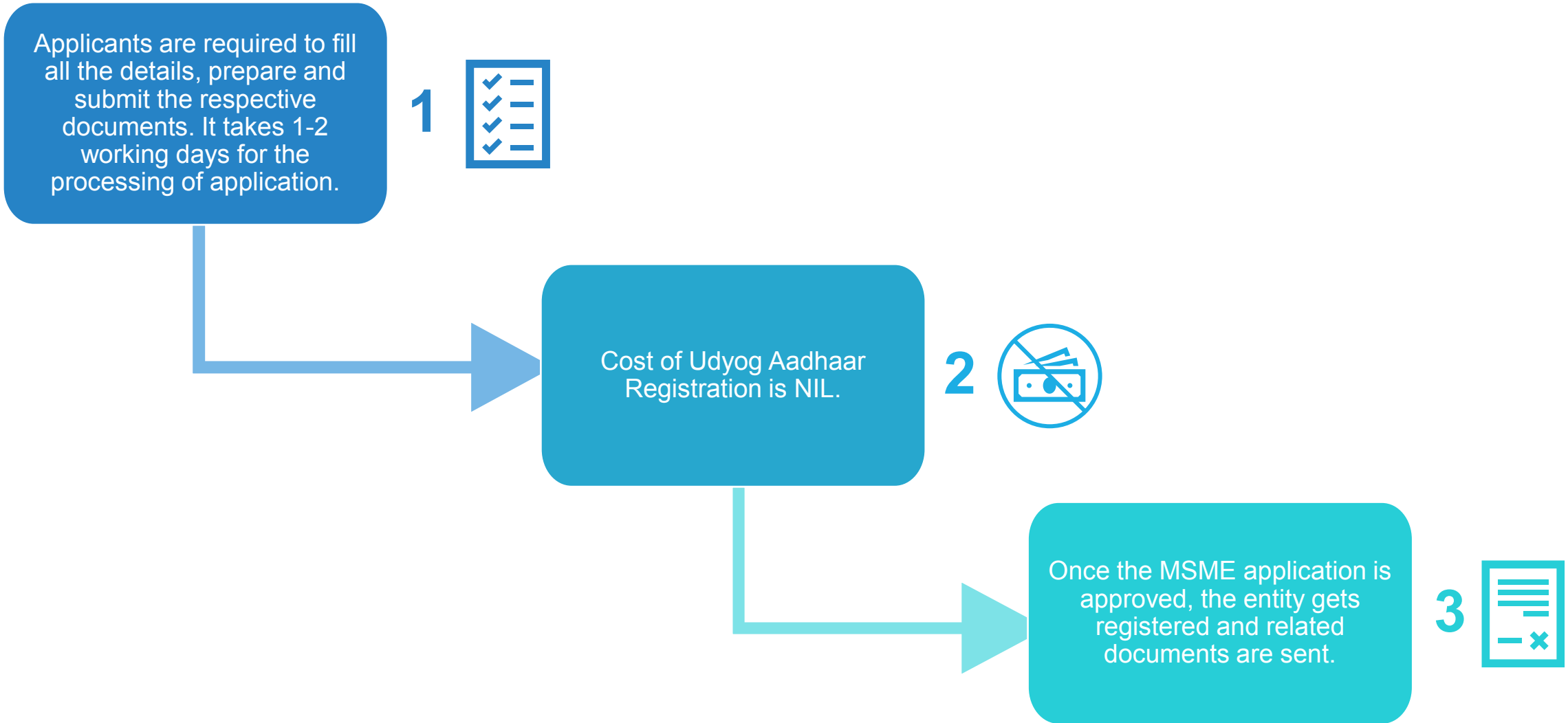
Activities of households as employees for domestic personnel



Crop, animal production, hunting and related activities (few exceptions)

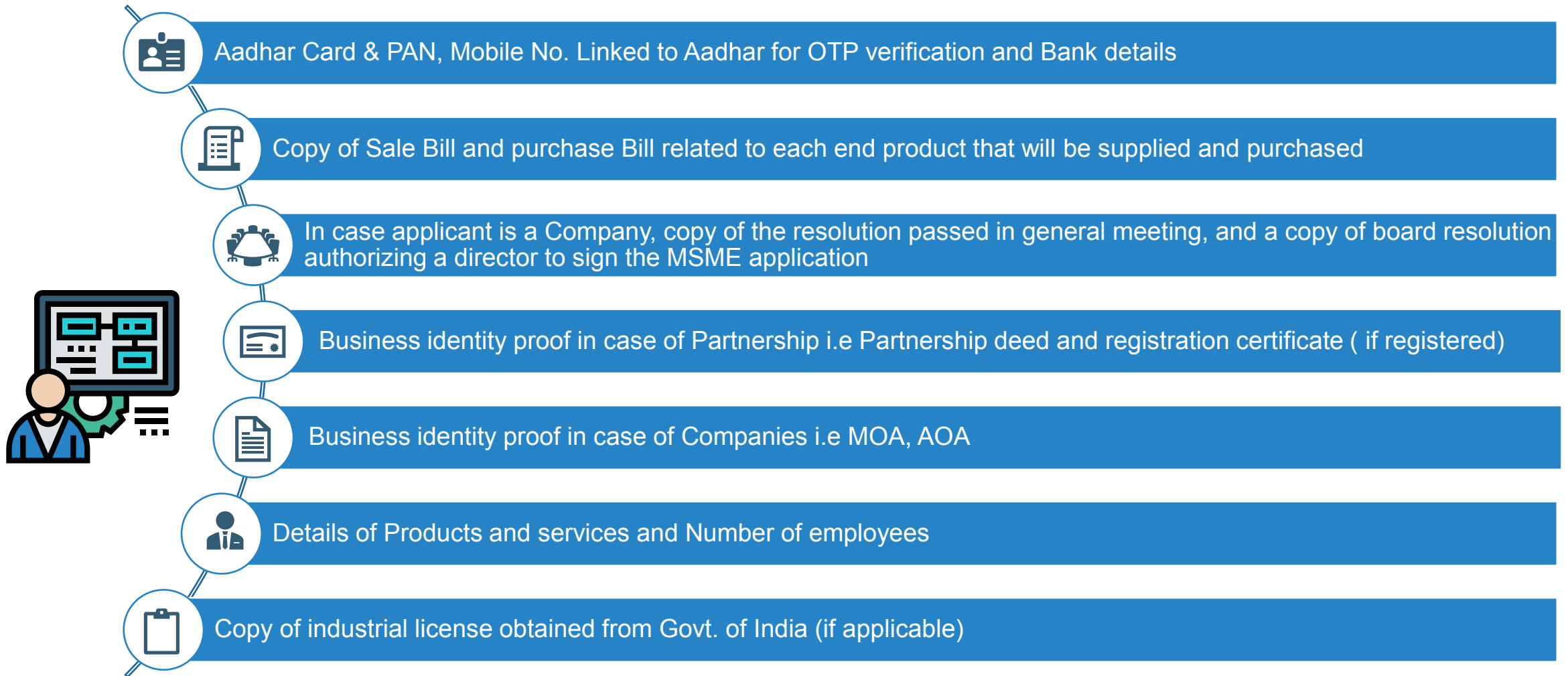
Registration

Registration Process



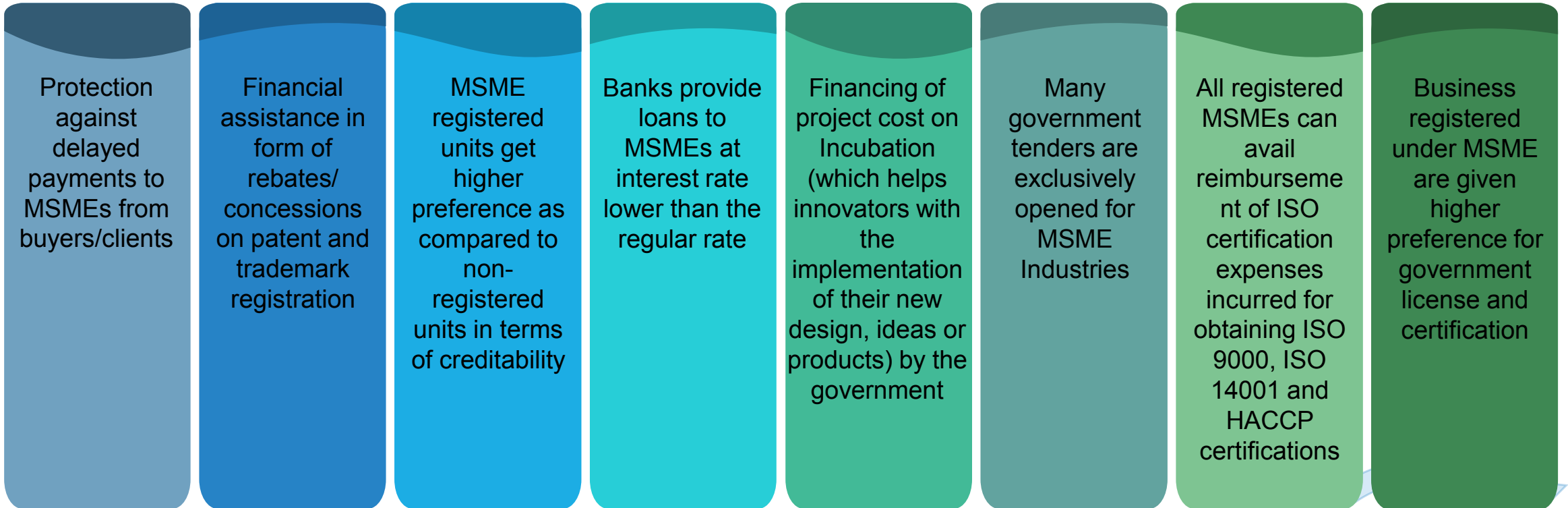
Registration

Information required for MSME registration



Benefits of MSME Registration

An enterprise that has MSME registration can avail the following benefits:

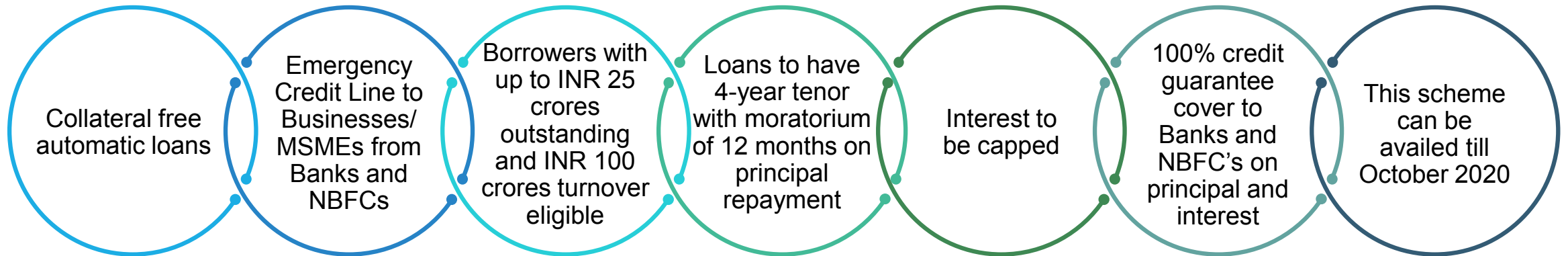


No additional filing/reporting compliances to be done by an entity registered as an MSME

COVID-19 Relief

Benefits under Atma Nirbhar Bharat Abhiyan

Recently, a revised definition of MSME was introduced which would allow a broad coverage and benefits to more number of entities. Some of the benefits are as follows:



Benefits under Atma Nirbhar Bharat Abhiyan

Registration and completion date of Real Estate Projects under RERA shall be extended

Global tender to be disallowed up to INR 200 crores to benefit the MSME's and other small institutions

INR 50,000 Crores liquidity to be given through reduction in TDS/TCS deductions

MSME receivables from Government and CPSEs shall be released in 45 days

The government will facilitate provision of INR 20,000 crores as subordinate debt for functioning MSMEs which are NPA or are stressed.

Fintech will be used to enhance transaction based lending using the data generated by the e-marketplace

Equity infusion of INR 50,000 crores through Fund of Funds ("FOF"). The FOF with corpus of INR 10,000 crores will be set up. The FOF will be operated through a Mother Fund and few daughter funds. The fund structure will help leverage INR 50,000 crore of funds at daughter funds level. It will help to expand MSME's size as well as capacity.



Relaxations as per COVID-19 Package

Extension of due dates for income tax compliances (such as filing tax returns, tax audits, assessments, etc.) by 1-4 months

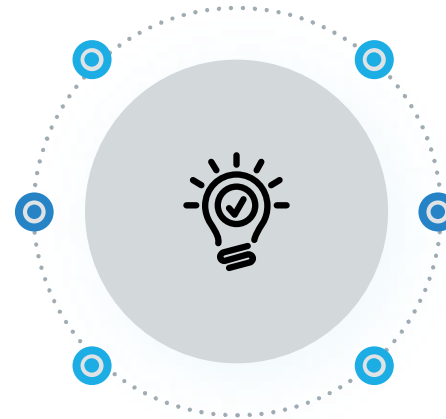
TDS/TCS rates on resident payments (other than payroll payments) reduced by 25% for the period 14 May 2020 to 31 March 2021 to promote liquidity (CBDT Press Release dated 13 May 2020)

Extension of validity of lower/Nil TDS certificate for FY 2019-20 to 30 June 2020 and new applications facilitated online (e-mail mode)

Extension of period for making payment without additional fee to 31 December 2020 under amnesty scheme **Vivad Se Vishwas**

Reduced interest rates at 0.75% per month (or part of month) for delayed payment of taxes until 30 June 2020 (advance tax, withholding tax and other such taxes). Provision for penalty and prosecution eased for delayed payments

All **pending refunds** to non-corporate businesses including proprietorship, partnership and LLP to be issued immediately



Relaxations as per COVID-19 Package

- **Bankruptcy trigger** threshold increased to **INR 10 million**
- Suspension of fresh initiation of **insolvency proceedings** up to 1 year
- Special insolvency resolution framework for MSMEs to be notified soon

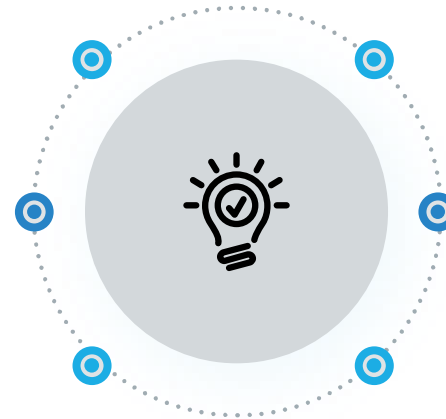
- **Import payables** for imports made before 31 July 2020 can be settled within 12 months (instead of 6 months)
- **Export proceeds** for exports made up to 31 July 2020 to be realized within 15 months (instead of 9 months)

- Various compliance requirements extended for companies including few **relaxations to conduct board meetings and general meetings**
- **Lower penalties** for all defaults for Small Companies, OPC, Producer Companies & Start Ups

- Extension of **due dates for GST** compliances until 30 June 2020 (such as annual return filing, availing composition scheme, etc.) to last week of June 2020 and other relaxations such as late fee waiver, availing ITC, filing LUT, etc.

- All pending **customs refund and drawback claims** to be expeditiously processed in order to provide immediate relief to business entities, especially MSMEs

- **Statutory PF contribution** of employer & employee reduced to 10 percent for all establishments covered by EPFO for May, June and July 2020. Detailed FAQs issued on May 20, 2020. Available on EPFO website



Pradhan Mantri Garib Kalyan Yojana

In order to manage the detrimental effects of the COVID-19 pandemic in India, Finance Minister announced an INR 1.70 lakh crore (USD 24 billion) relief package under Pradhan Mantri Garib Kalyan Yojana for the poor to help them fight the battle against Corona virus

20 crore women Jan-Dhan account holders to get INR 500 per month for next 3 months

5 crore workers registered under EPF to get non-refundable advance of 75% of the amount or three months of the wages, whichever is lower, from their accounts

Ex-gratia of INR 1000 to 3 crore poor senior citizens, poor widows and poor Divyang

24% of monthly wages to be credited into their PF accounts for next three months for wage-earners below INR 15,000 p.m. in businesses having less than 100 workers

Poor people have been given benefit of **5 kg wheat or rice per person** for next 3 months

1 kg pulses for each household for free every month for the next 3 months

Insurance cover of INR 50 lakh per health worker

Gas cylinders, free of cost, provided to 8 crore poor families for the next 3 months



Other Measures

EPFO has announced that employees who contribute to EPF can withdraw up to 75% of the account balance or 3 months basic salary plus dearness allowance, whichever is lower



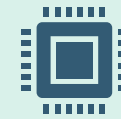
Foreign nationals who are stranded in India during COVID-19 crisis and whose Visa expired were given an automatic extension of their Visa.



A moratorium of 3 months was announced by RBI for paying EMIs falling b/w March'20 to May'20.



Production Linked Incentive Scheme was announced for electronics sector. The targeted segment would get an incentive of 4 to 6% over incremental sales of base year for next 5 years. The above scheme has been launched to boost up manufacturing of mobile phones and other specified electronic components



24*7 custom clearance till 30 June 2020



Relaxation for 3 months for debit cardholders to withdraw cash free from any ATMs, etc.



No late filing fees to be charged for late filing during the period 1 April 2020 to 30 September 2020 in respect of any return statements required to be filed with MCA



A brief introduction to Start-ups

Start-up as per Income Tax Act, 1961



Private limited company/LLP



Considered as a Start-up in India for up to 10 years from the date of its incorporation



Annual turnover should not exceed INR 1 billion for any of the financial years since inception



Engaged in a business involved in innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property **OR**

Scalable Business Model with a high potential of employment generation or wealth creation.



Entity should not have been formed by splitting up or reconstruction of a business in existence.

Entity shall cease to be Start-up on completion of 10 years or exceeding turnover criteria

Key benefits and differences in a Start-up and MSME



Start-ups

- Only **private companies, LLPs, and registered partnership firms** recognized as Start-up
- Should have a **innovative and scalable** business model
- Turnover less than INR 1 billion but no requirement for investment in plant and machinery/equipment

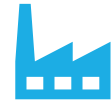
- Tax holiday for 3 years out of first 10 years
- Tax saving schemes for start-up investors
- Rebate on patent costs
- Single window clearance for all clearances, approvals and registrations on self-declaration

Start-up or MSME or Both?

Key
differences

Key
benefits

MSMEs



- Any entity including proprietorship, HUF, AOP, co-operative society can register as an MSME
- Relatively smaller entity designed for profit and sells/ renders 'known' products/services
- Turnover less than INR 1 billion and investment in plant and machinery/equipment does not exceed INR 200 million

- Protection against delayed payments
- Easy access to credit and collateral free loans
- Lower interest rates on borrowings
- Various benefits under Central and State Government schemes

Start-ups and MSMEs are exclusively recognized based on business ideas and scale of operations, respectively. Organizations fulfilling the prescribed criteria could be registered as a start-up or as a MSME or even both and can avail a plethora of tax and regulatory benefits and relaxations available to such registered entities

Government Schemes and Benefits to a Start-up



Self Certification and No Inspection

- Self-certify with 9 Labour Laws and Environment Law.
- For 3 years under Labour Laws



Patent Application, IPR Protection

Fast Track and up to 80% rebate in fee for filing patents and 50% discount on Trade Mark Registration Fees



Income Tax Exemption

Income Tax Exemption for 3 consecutive years. If the company incorporated on or after 1 April 2016



SIDBI Fund of Funds

Funds for investment through alternate investment funds of INR 10,000 crore



Easy Winding Up of Company

Within 90 days under Insolvency and Bankruptcy Code 2016



Public Procurement Policy

- Exemption on Earnest Money Deposit (EMD)
- No Minimum Eligibility Requirement

Income Tax Benefits for Start-ups in India

For Start-up Companies

Section 80-IAC

100 percent tax holiday for 3 years consecutively out of 10 years only for "eligible" Start-ups Conditions:

- A. Start-up shall be approved by DIPP and be incorporated between April 1, 2016 –April 1, 2021
- B. Certification from IMB

Section 79

Carry forward & set off losses provided:

- A. All the shareholders shall continue to hold shares on the last day of the FY
- B. Such losses incurred during the period of 7 years starting from the year of incorporation



For Employees of Eligible Start-ups

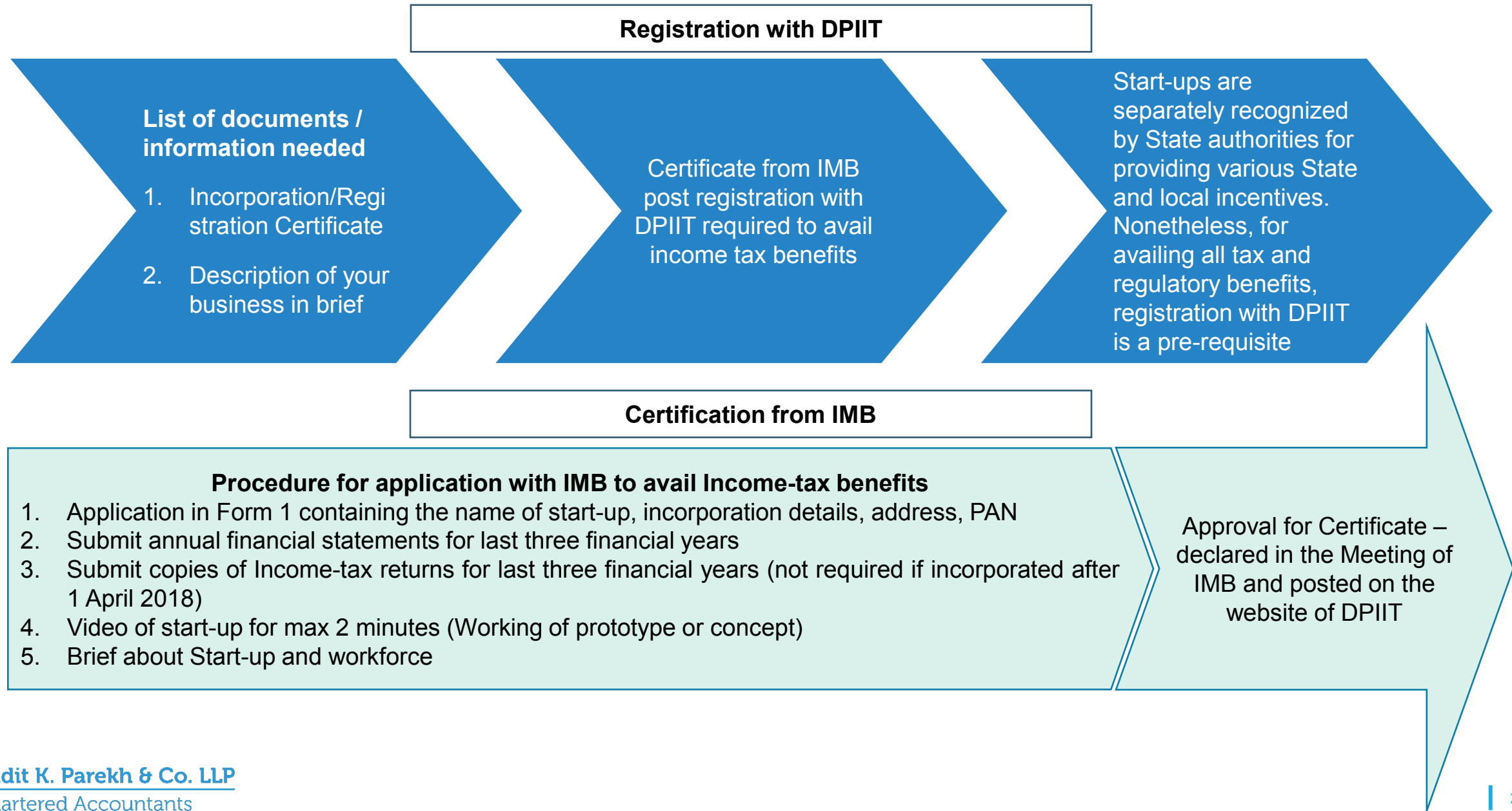
ESOP tax on perquisite value (i.e. tax on difference between FMV and exercise price) deferred to the earliest of following dates:

- a) Expiry of 5 years from relevant AY
- b) Date of sale of such securities, or
- c) Date of termination of employment

Start-ups employers would withhold tax under Section 192 on such perquisites only on the above deferred dates, and not in the year of exercising ESOPs by the employees

Mismatch—10 years vs 7 years

Registration with DPIIT/ Certification from IMB



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