

# Recent changes in MSME sector

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# About Us



- Vinod Kothari & Co.,
  - Based in Kolkata, Mumbai, Delhi
- We are a team of consultants, advisors & qualified professionals having over 30 years of practice.

***Our Organization's Credo:***

***Focus on capabilities; opportunities follow***

# Non Payment to MSME

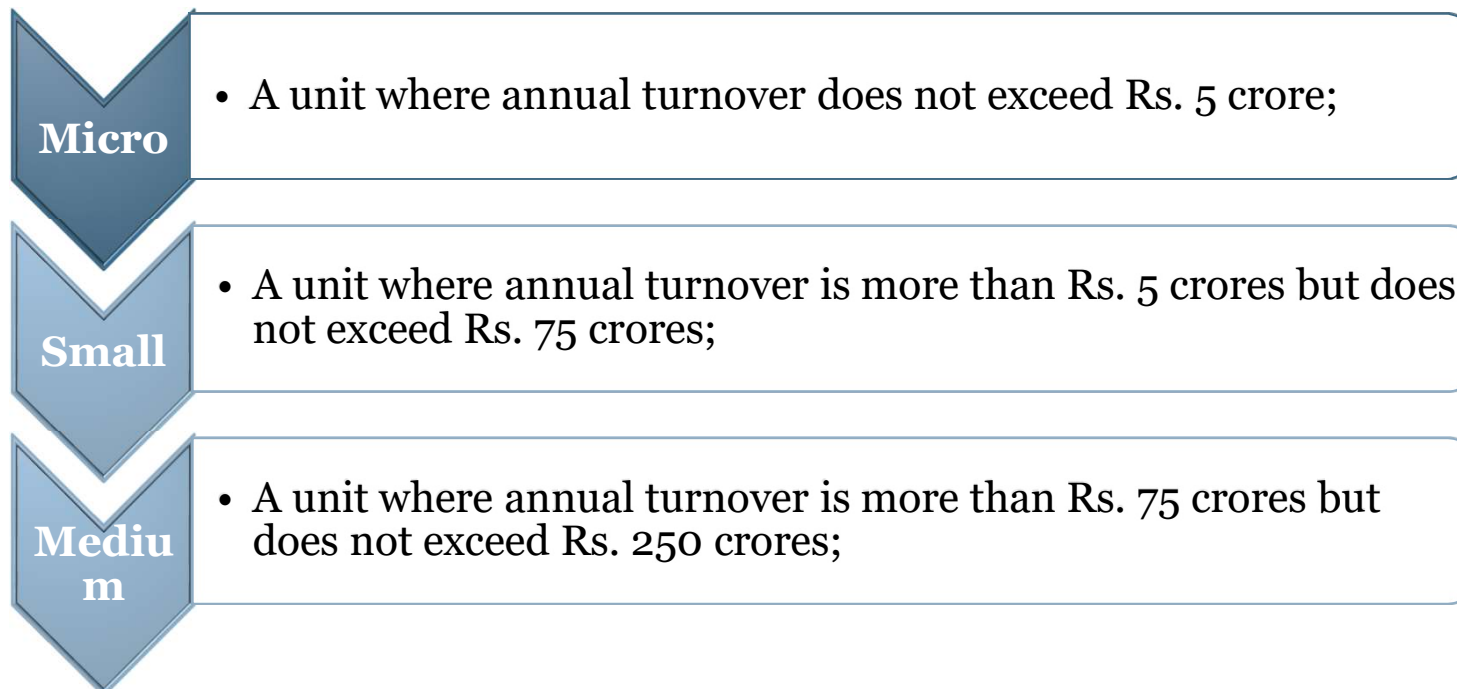
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# Definition of MSME

	<b>Manufacturing Sector</b>	<b>Service Sector</b>
	Investment in plant & machinery	Investment in equipment
<b>Micro</b>	Does not exceed Rs. 25 lakhs	Does not exceed Rs. 10 lakhs
<b>Small</b>	More than Rs. 25 lakhs but does not exceed Rs. 5 crores	More than Rs. 10 lakhs but does not exceed Rs. 2 crores
<b>Medium</b>	More than Rs. 5 crores but does not exceed Rs. 10 crores.	More than Rs. 2 crores but does not exceed Rs. 5 crores.

## Revised definition of MSME

- The basis of classifying MSMEs is proposed to change from ‘investment in plant and machinery/equipment’ to ‘annual turnover’



## Notifications (1/2)

By Ministry of MSME- Issued on November 2, 2018

All companies who purchase goods or avail services from Micro and Small enterprises

and whose payment to such suppliers have **exceeded 45 days**

shall submit a half yearly return to MCA stating the outstanding amount and the reasons for delay

## Notifications (2/2)

By MCA- Issued on January 22, 2019

- Specified Companies are required to report the outstanding dues to the Micro and Small enterprises in **Form MSME I\***.
- It is pertinent to note that only Micro and Small enterprises are covered under the aforesaid notifications.
  - Medium enterprises have been kept outside the purview of this notification.

*\* However, the form is not yet available on the MCA portal.*



# Applicability of the notification

- Micro and Small enterprises who are covered under the definition of “supplier” can avail the benefit of this notification.
- Definition of supplier:

***“supplier” means a micro or small enterprise, which has filed a memorandum with the authority referred to in sub-section (1) of section 8, and includes, —***

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

*(iii) any company, co-operative society, trust or a body, by whatever name called, registered or constituted under any law for the time being in force and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises;*

## Delhi High Court Ruling

- In the case of **M/S RAMKY INFRASTRUCTURE PRIVATE LIMITED vs. MEFC\***
- *“The contention that the entities falling under Section 2(n)(iii) of the Act are only those entities that source goods/services from other micro/small enterprises, is not persuasive as it is difficult to accept that an entity sourcing goods/services from a third party micro/small enterprise would be supplier but would cease to be one if it sources the same from its undertaking.”*

\* <https://barandbench.com/wp-content/uploads/2018/07/Delhi-HC-MSME-Judgment.pdf>

## Meaning of Specified Companies

- A company which satisfies **both these conditions:**

purchase goods or avail services from Micro and Small enterprises

**and**

whose payment cycle, while dealing with MSMEs, exceeds forty-five days from the date of acceptance or the date of deemed acceptance.

- The classification of Specified Companies is to be done every half year to ensure submission of half yearly return to the MCA stating the outstanding amount and the reasons for delay.

## Important concepts

- Day of acceptance means:
  - *the **day of the actual delivery** of goods or the rendering of services; or*
  - *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;*
- Day of deemed acceptance means:
  - *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.*

## Initial reporting requirement

- The initial reporting of all outstanding dues is to be done within **30 days** from the date the said e-form is deployed on MCA 21 portal.
- The **cut-off date for determining the initial reporting applicability** shall be the date of the notification i.e., as on **January 22, 2019**.

## Meaning of outstanding dues

- The Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019 issued by MCA does not define the term 'outstanding dues'.
- From the intent of the notifications, it can be inferred that dues outstanding to Micro and Small enterprises
  - for a period exceeding 45 days is defined as outstanding dues.
- Amount of GST outstanding also forms part of outstanding dues

## Half yearly reporting requirement

For April to  
September

Reporting  
date is 31<sup>st</sup>  
October

For October  
to March

Reporting  
date is 30<sup>th</sup>  
April

## Filing of NIL Return

- There is no requirement of filing a NIL return by any company.
- Therefore, in the following scenarios, the companies are not required to file the return:
  - If any company is not classified as a Specified Company;
  - If any company does not have any MSME supplier;
  - If the outstanding dues does not exceed 45 days at any time during the period of half year.




## Settling of dues before the reporting date

- In case a default has been made good, the fact that there was a default at any point of time during the half year, must be reported.
- In case a company has outstanding dues to MSMEs for a period exceeding 45 days at any point
  - during the half year April to September
  - and has settled the dues before October 31
  - the Specified Company shall file Form MSME I
    - On October 31 - YES
    - On subsequent April 30- NO

## Penalty provision

- MCA has not provided any fine/penalty to be imposed on Specified Companies for non-filing of the Form.
- If the information filed in the Form is incorrect or incomplete, in any material respect, then the Specified Company shall be penalized under section 405 (4) of the Companies Act, 2013.

# Trade Receivables e-Discounting System (TReDS)

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## Notification by Ministry of MSME

- The Ministry issued a Notification dated November 02, 2018

All companies with a **turnover** more than Rs. 500 crores

and all Central Public Sector Enterprises

Are **mandatorily** required to get themselves **registered** on the TReDS platform

## What is TreDS?

- It is an online electronic platform and an institutional mechanism for factoring of trade receivables of MSME sellers.
- It enables discounting of invoices through an auction mechanism to ensure prompt realisation of trade receivables.

## TReDS Platforms in India

- Currently, the following three platforms are registered with RBI for operating as a TReDS platform
  - Receivables Exchange of India (RXIL)
  - A. TReDS Ltd (Invoicemart)
  - Mynd Solutions (M1 Exchange)

## Who are required to register themselves?

<b>Participants</b>	<b>Eligibility</b>	<b>Whether registration mandatory or not?</b>
<b>Buyer</b>	Corporates including companies and other buyers including Government Departments and Public Sector Undertakings and such other entities as may be permitted by the RBI.	Mandatory for all companies with a turnover more than Rs. 500 crore and all Central Public Sector Enterprises vide Notification dated November 02, 2018.
<b>Seller</b>	MSME entities as per the definition of the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act).	Optional
<b>Financier</b>	Banks, NBFC Factors, Financial Institutions and such other Institutions as permitted by the RBI.	Optional

## Reporting requirements

- MCA has asked ICSI to seek a report on compliance with the Notification from the Company Secretaries of the companies on which the registration requirement applies.
- The Company Secretary, upon registration of the company on TReDS Platform must ensure the reporting of the compliance to ICSI in the prescribed format.



## Timeframe for registering themselves

- No timeframe specified in the Notification issued by Ministry of MSME
- Similarly, no timeframe specified in by ICSI for reporting the status of registration

Do the companies who have already onboarded themselves also have to report to ICSI?

- Yes, the companies who have onboarded themselves before the issuance of this Notification are also required to report to ICSI.

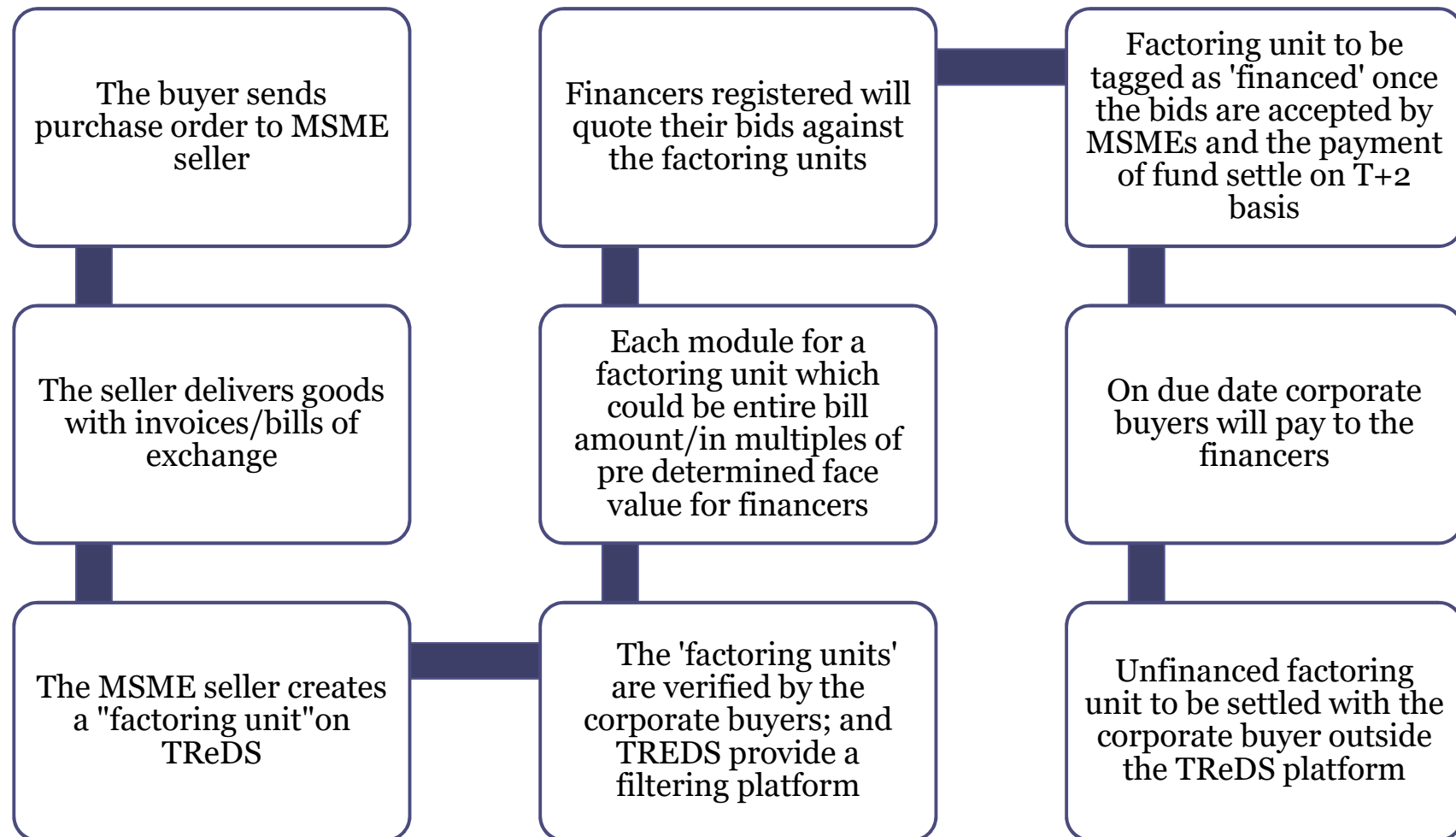
## Does the buyer have to register themselves on all platforms?

- The Notification is silent on whether the buyer has to register itself on one single platform or it has to onboard on all the platforms.
- For the purpose of compliance, the buyer can register itself on any one of the aforesaid platforms.
- Operationally, a TReDS transaction will be possible only when all the three parties are registered with the same platform.
  - Therefore, the buyer can convince the seller to get itself registered in the platform in which it has got itself registered

## Penalty for non-compliance

- Neither the Notification nor the communication by ICSI has provided any penalty for non-compliance.

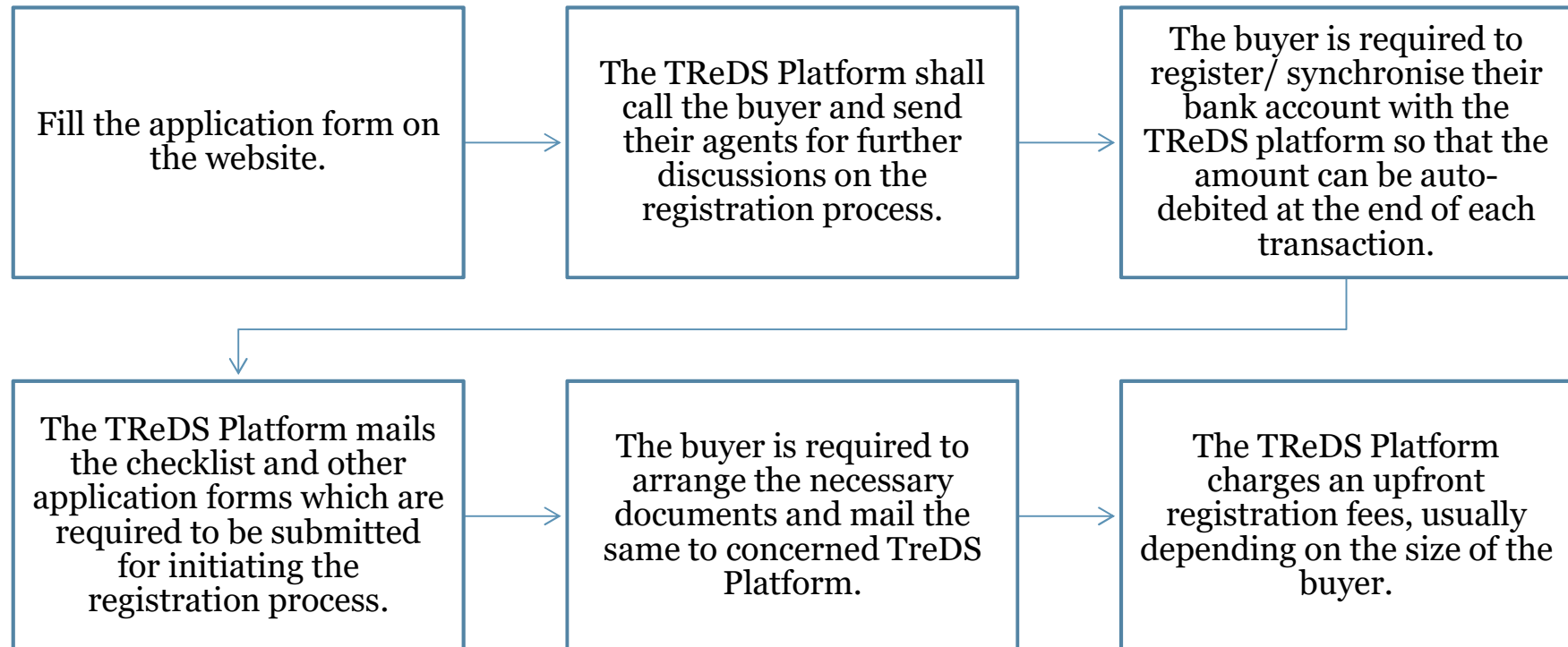
# What is the TReDS' process flow?



## Meaning of Factoring Unit

- The invoices/bills of exchange uploaded by the MSME sellers are required to be verified by the buyers.
- Once, the buyers accept the invoice, it becomes a 'factoring unit'.
- Factoring unit can generally be of an entire bill/invoice amount or in multiples of pre-defined face value.

# Procedural requirements of registration with TReDS



## Payment mechanism for factored invoice

- After the acceptance of the bid by the financier, the account of the financier is auto-debited on T+1/T+2 basis.
- On the due date, the designated bank account of the buyer will be auto-debited.
- This infer that there is an online payment mechanism.



## Default in repayment

- In case there is a default in repayment as on the due date, the transaction shall be marked as 'Failed' on the TReDS platform.
- This tantamount to breach of contract and therefore, the buyer needs to settle it directly with the financier, outside the TReDS platform.