

**INTERNATIONAL
FRAMEWORKS AND LEGAL
MECHANISMS SUPPORTING
THE TRANSFORMATION FROM
SICK TO SKILLED SMES**



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INTRODUCTION

THE SMALL AND MEDIUM ENTERPRISES (SMEs) are highly vibrant and dynamic sector of the economy, as it not only plays a crucial role in providing large employment opportunities at comparatively lower capital cost than that of the large industries but also helps in industrialization of rural areas. Apart from SMEs being complementary to large industries it also contributes enormously to the socioeconomic development of any country. But, with growing industrialization, the incidence of industrial sickness has also been on the rise, especially in the small and medium enterprises. The term 'Industrial Sickness' has become a buzz-word at present in industrial sectors, which is one of the major socio-economic problems of many developed countries and particularly in the developing countries. It has become a matter of concern for the investors, shareholders, entrepreneurs, policy makers and the governments also. A sick industry is one whose financial viability is threatened by adverse factors. We can say that an industry is sick if it cannot continue its normal activities, suffers continuous losses or if gradual depletion of its capital starts. If industries become sick, it brings down adverse effect on the economy and as a result social and economic problem of various dimensions surfaces.

To combat this failure, it is necessary for countries and organizations to identify revival strategies. And one of the most effective revival strategies can be infusion of international investment with better international regulations and policies.¹

INTERNATIONAL INVESTMENT has been a major boon to the global integration process, by increasing the capital gain, with enhanced labor market, raising wages and increasing capital productivity both in the recipient as well as the investing countries. It has grown considerably in importance in countries like India and other emerging economies with both the home and the host country being the mutual beneficiaries.² But with fierce competition in the global market and the economic crisis still looming large, small, and medium enterprises are suffering globally and are not able to derive the benefits of international investment.³

In this research work, I'll try to find the methods and ways to integrate the two, while analyzing briefly all the possible aspects involved. So that a mechanism can be evolved to make a transformation from 'the disadvantage' to 'advantage', from 'losing to winning'⁴ and which can eventually result in a 'turnaround'.

¹ C Harvie and B.C. Lee, *Globalisation and SMEs in East Asia* (Edward Elgar, 2002).

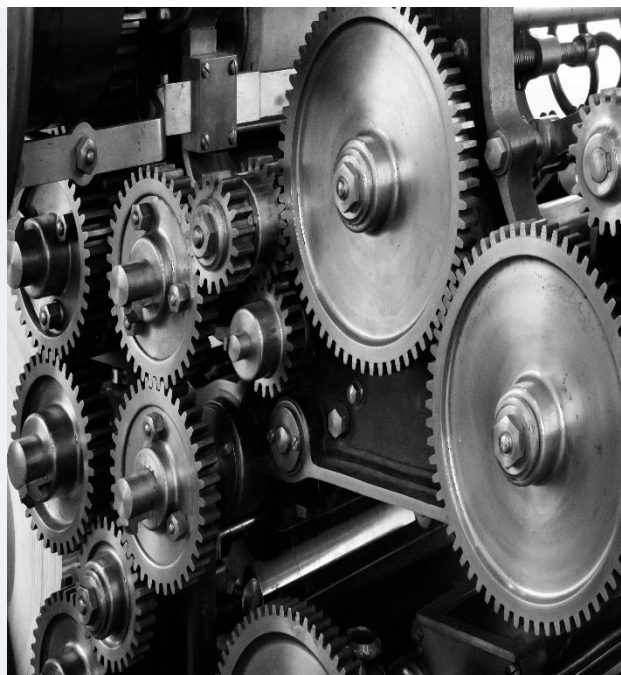
² See, B. Gentry, *Foreign Direct Investment and Environment* (OECD, 1999).

³ See eventually the G-20 OECD Global Forum on "International Investment". For more information about forum, See www.oecd.org/daf/inv and also, *Foreign Direct Investment and Small and Medium Enterprises: Productivity and Access to Finance* by Khee Giap Tan, Kong Yam Tan

⁴ Stanley J. Goodman, *How to manage a turnaround* (New York Free Press, 1982).

Background

The estimated population of the world, up to July 2013, is 7.3 billion and in the estimation of the United Nations,⁵ up to 2100, it will reach to 11.2 billion.⁶ Today the biggest challenge the countries are facing is to provide livelihood to their youth. The Small and Medium Enterprises (SMEs) are highly vibrant and dynamic sector playing an important role in economic growth and development, as well as contributing to poverty alleviation by creating employment and providing affordable goods and services. It contributed substantially to the world's economy in terms of income output and employment. The nature and extent of contribution of the SMEs varies from country to country and time to time in a particular country, reflecting differences in economic, social and institutional conditions and stages of development, depending ultimately on the competitiveness and health of the SME sector.⁷ The long term development of the SME sector requires continuous investment, access to market opportunities, as well as to new technology and management know-how.⁸ My research work is based on “Can International legal instruments and a complementary national regulatory and policy environment produce viable and profitable ‘turnaround’ mechanisms for Small and Medium ‘Sick Industrial Companies’ in order to turn them into ‘Skilled’ enterprises?”



⁵ United Nations, “World Population to 2300” available at: www.un.org/esa/population/publications/longrange2

⁶ Id.

⁷ G. Ceglie and M. Dini, SME Cluster and Network Development in developing countries: the experience of UNIDO (UNIDO, 1999).

⁸ J Abor and P. Quarty, “Issues in SME Development in South Africa and Ghana” *International Research Journal of Finance and Banking* (2010).



Specifically, the paper is concerned with the legal framework provided by the International Institutions and are agreed by the countries in order to produce a “viable and profitable turn around mechanism for SMEs”. In this context the potential role of Foreign Direct Investment (FDI)⁹ to maintain long term competitive development and internationalization of the SME sector in transition and developing countries would also be worthwhile. This research work is centered to analyze the viability and adequacy of existing international frameworks and legal mechanisms along with complementing national regulations and policies and to suggest for greater scopes for developing such linkages in the future, including new sources of FDI in developing and emerging economies for internationalizing the SMEs.

⁹ See, Supra note 1.

Definition of Small and Medium Enterprises

The definition of SMEs not only provides what does it means? Instead, it outlined the policies the particular country or institution does have and the commonness and differences of policies amongst them. To understand the policies a particular country or institution does have, it would be expedient to have a quick look of the same and to point out the commonness and basic differences between the same.

The abbreviation "SME" is used primarily in European Union and by some other international organizations such as the World Bank, the United Nations and the World Trade Organization (WTO). Small enterprises outnumber large companies by a wide margin and also employ many more people. SMEs are also said to be responsible for driving innovation and competition in many economic sectors. These are those small industries or enterprises which plays a vital role in the economy. Since they are small and medium, certain kinds of peculiarities are attached to it. But how to define SME is basically based on the size of the company or enterprise, and there, certain parameters define them as small or medium. Those parameters can be assets, annual turnover, number of employees and headcounts etc.

The term "SME" encompasses a broad spectrum of definitions.¹⁰ Different organizations and countries set their own guidelines for defining SMEs, often based on headcount, sales or assets¹¹ for example while Egypt defines SMEs as having more than 5 and fewer than 50 employees, Vietnam considers SMEs to have between 10 and 300 employees, the World Bank defines SMEs as those enterprises with a maximum of 300 employees, \$15 million in annual revenue, and \$15 million in assets. The Inter-American Development Bank, meanwhile, describes SMEs as having a maximum of 100 employees and less than \$3 million in revenue.

Now it becomes apparent that SMEs are non-subsidary, independent firms which employ less than a given number of employees.¹² This number varies across countries. The most frequent upper limit in terms of employees for designating an SME is 250, as in the European Union. However, some countries set the limit at 200 employees, while the United States considers SMEs to include firms with fewer than 500 employees.

¹⁰ For a great research and debate see, Tom Gibson and H.J. Varrt, "Defining SMEs: A Less Imperfect Way of Defining Small and Medium Enterprises in Developing Countries" (September, 2008 Brookings Global Economics and Development) *available at:*

http://www.brookings.edu/~media/research/files/papers/2008/9/development%20gibson/09_development_gibson.pdf

¹¹ SMEPoL contracted and funded a study entitled "The Definition of Micro, Small and Medium Enterprises", published in January 2004. This study identified a set of criteria defining and classifying M/SMEs, by number of employees, size of fixed assets, and annual sales.

¹² OECD, SME and Entrepreneurship Outlook (2005, OECD Paris) pg. 17. see also, OECD, "Glossary of Statistical Terms" available at: <https://stats.oecd.org/glossary/detail.asp?ID=3123>

Research Question:

Can International legal instruments and a complementary national regulatory and policy environment produce viable and profitable ‘turnaround’ mechanisms for Small and Medium ‘Sick Industrial Companies’ in order to turn them into ‘Skilled’ enterprises?



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