

Decriminalization of offences under LLP Act

February 3, 2021

In news

Recently, the Company Law Committee (CLC) has recommended that 12 offences under the LLP Act be decriminalised and that LLPs be allowed to issue NCDs to raise funds with the aim of improving ease of doing business for limited liability partnership (LLP) firms.

What is Limited Liability Partnership (LLP)?

LLP is a corporate business vehicle that enables professional expertise and entrepreneurial initiative to combine and operate in flexible, innovative and efficient manner, as a hybrid of companies & partnerships providing benefits of limited liability while allowing its members the flexibility for organizing their internal structure as a partnership

Which offence will be decriminalized?

As per the recommendations of the committee, following offences will be decriminalized under the LLP act

- A number of offences related to timely filings, including annual reports and filings on changes in partnership status of the LLP, which are unrelated to fraud have been recommended for decriminalisation
- The move is in line with decriminalisation of the Companies Act through an amendment in 2020 in which offences which do not involve fraud or impact public interest were decriminalised.
- While none of these provisions recommended for decriminalisation in the Company Law Committee (CLC) report currently have prison terms as a possible

punishment

- The panel has recommended that companies be required to pay penalties for non-compliance, instead of fines which are imposed after a partner or the LLP is found guilty of misconduct by a court.
- The CLC report notes that there is a risk of a convicted person being disqualified or becoming ineligible for various posts and designations in the case of fines imposed by courts, which would not be the case for penalties imposed by an appropriate authority.
- The Registrar of Companies would have the authority to levy penalties with prescribed minimum and maximum penalties for any contravention of provisions of the LLP Act.
- According to market experts, the move to impose penalties would reduce the time taken for LLPs to resolve non-compliance and moving to penalties would help unclog the judicial system from complaints not related to fraud or public interest
- The firms would take care to not violate the amended provisions as despite decriminalisation the committee had recommended higher monetary penalties for violations in a number of provisions.

Benefits

Following will be benefited from the permission for LLPs to issue Non-convertible debentures(NCDs):

- The CLC has also recommended that LLPs which are currently not allowed to issue debt securities be permitted to issue non-convertible debentures (NCDs) to facilitate raising of capital and financing operations.
- The move is likely to benefit startups and small firms in the real estate and infrastructure sector which require heavy capital investment.
- It would give more flexibility to alternative investment

funds (AIFs) seeking to invest in such firms.

The Limited Liability Partnership(LLP) Act, 2008

- LLP act was enacted by the Parliament of India to introduce and legally sanction the concept of LLP in India.
- Unlike the general partnerships in India, LLP is a body corporate and legal entity separate from its partners, have Perpetual succession and any change in the partners of a LLP shall not affect the existence, rights or liabilities of the LLP

Non-convertible debentures(NCDs)

Non-convertible debentures(NCDs) are a financial instrument that is used by companies to raise long-term capital. This is done through a public issue. NCDs are a debt instrument with a fixed tenure and people who invest in these receive regular interest at a certain rate.