

Ministry of Corporate Affairs

Statement of Reason

Decriminalisation of Compoundable Offences under the Limited Liability Partnership (LLP) Act, 2008, for Greater Ease of Doing Business for law abiding LLPs and Declogging of Criminal Justice system:

LLP is an alternative corporate business vehicle that provides the benefits of limited liability but allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. The Limited Liability Partnership Act, 2008 is intended to bridge the gap between a company governed by the Companies Act and a general partnership firm governed by the Partnership Act, 1932.

2. The Limited Liability Partnership Act (hereinafter referred to as “LLP Act/Act”) consists of 81 sections and 4 Schedules. Following two set of Rules have been prescribed under the Act.

(a) Limited Liability Partnership Rules, 2009; and

(b) Limited Liability Partnership (Windingup and Dissolution) Rules 2012.

3. The Act enjoins upon the LLP, partners and designated partners thereof to comply with the provisions of the Act and rules made there under. Contravention of provisions of the Act are punishable with fine (compoundable) or, in some cases, with imprisonment and fine (non-compoundable). Thus, the Act assigns criminal liability on the LLP, its partners, and designated partners and any other person (s) for non-compliance of certain provisions as the same are considered as offences under the Act.

4. At present, more than 1,45,000 LLPs are registered under the said Act and a bulk of them are small and medium enterprises. In order to provide greater ease of doing business in India to law abiding LLPs, it has been decided to review the penal provisions of the Act to decriminalize compoundable offences involving minor, procedural or technical violations of the Act, or offences which may not involve any harm to public interest. Criminalisation of minor violations acts as an avoidable deterrent and impinges upon the business sentiments.

5. The exercise to identify and decriminalize the provisions of Act is aimed at incentivizing compliance, de-clogging of criminal justice system and promoting congenial business climate.

6. Given the importance of this exercise as also its large-scale impact across society, the Government of India is conducting a stakeholder consultation exercise. As such, stakeholders are requested to submit their suggestions & comments on the

de-criminalization of the following compoundable offences under the Act to this Ministry.

7. The comments/ suggestions may kindly be submitted to the Ministry at the email address LLP.suggestions@mca.gov.in within 15 days, i.e., by 04.07.2020 in the following format:-.

Ministry / Department: Ministry of Corporate Affairs

Comments and Feedback:

1) Name of the Institution / Organization / Member of the Public:

2) Correspondence Address:

3) Category (Please indicate): State/ UT/ Civil Society/ NGO/ Academic/ Public Sector/ Private Sector/ Multilateral Institution/ Member of the public

Sl. No	Statue	Provisions of the Relevant Sections and Current Punishment	Suggestions for Decriminalization (if any) along with Rationale
1.	Limited Liability Partnership Act, 2008	<p>Section 7(1) read with Section 10(1) of the LLP Act, 2008: Designated Partners.-</p> <p>Section7 (1) - Every limited liability partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India:</p> <p>Provided that in case of a limited liability partnership in which all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such limited liability partnership or nominees of such bodies corporate shall act as designated partners.</p> <p>Explanation.—For the purposes of this section, the term "resident in India" means a person who has stayed in India for a period of not less than one hundred and eighty-two days during the immediately preceding one</p>	

		<p>year.</p> <p>Section10(1)-<i>If the limited liability partnership contravenes the provisions of sub-section (1) of section 7, the limited liability partnership and its every partner shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to five lakh rupees.</i></p>	
2.	Limited Liability Partnership Act, 2008	<p>Section 7(4)read with Section 10 (2) of the LLP Act, 2008: Designated Partners.-</p> <p>Section 7(4).- Every limited liability partnership shall file with the registrar the particulars of every individual who has given his consent to act as designated partner in such form and manner as may be prescribed within thirty days of his appointment.</p> <p>Section10 (2).-<i>If the limited liability partnership contravenes the provisions of sub-section (4) and sub-section (5) of section 7, section 8 or section 9, the limited liability partnership and its every partner shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.</i></p>	
3.	Limited Liability Partnership Act, 2008	<p>Section 7(5) read with Section 10 (2) of the LLP Act, 2008: Designated Partners.-</p> <p>Section 7(5).- An individual eligible to be a designated partner shall satisfy such conditions and requirements as may be prescribed.</p> <p>Section10 (2).-<i>If the limited liability partnership contravenes the provisions of sub-section (4) and sub-section (5) of section 7, section 8 or section 9, the limited liability partnership and its every partner shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.</i></p>	
4.	Limited Liability	Section 8 read with Section 10 (2) of the LLP Act, 2008:	

	Partnership Act, 2008	<p>Liabilities of designated partners.-</p> <p>Section-8.-Unless expressly provided otherwise in this Act, a designated partner shall be—</p> <p>(a) responsible for the doing of all acts, matters and things as are required to be done by the limited liability partnership in respect of compliance of the provisions of this Act including filing of any document, return, statement and the like report pursuant to the provisions of this Act and as may be specified in the limited liability partnership agreement; and</p> <p>(b) liable to all penalties imposed on the limited liability partnership for any contravention of those provisions.</p> <p><i>Section 10 (2).</i>-If the limited liability partnership contravenes the provisions of sub-section (4) and sub-section (5) of section 7, section 8 or section 9, the limited liability partnership and its every partner shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.</p>	
5.	Limited Liability Partnership Act, 2008	<p>Section 9 read with Section 10 (2) of the LLP Act, 2008:</p> <p>Changes in designated partners.-</p> <p>Section 9- A limited liability partnership may appoint a designated partner within thirty days of a vacancy arising for any reason and provisions of sub-section (4) and sub-section (5) of section 7 shall apply in respect of such new designated partner:</p> <p>Provided that if no designated partner is appointed, or if at any time there is only one designated partner, each partner shall be deemed to be a designated partner.</p> <p><i>Section 10 (2)</i>- If the limited liability partnership contravenes the provisions of sub-section (4) and sub-section (5) of section</p>	

		<i>7, section 8 or section 9, the limited liability partnership and its every partner shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.</i>	
6.	Limited Liability Partnership Act, 2008	<p>Section 13 of the LLP Act, 2008: Registered office of limited liability partnership and change therein.</p> <p>Section13. - (1) Every limited liability partnership shall have a registered office to which all communications and notices may be addressed and where they shall be received.</p> <p>(2) A document may be served on a limited liability partnership or a partner or designated partner thereof by sending it by post under a certificate of posting or by registered post or by any other manner, as may be prescribed, at the registered office and any other address specifically declared by the limited liability partnership for the purpose in such form and manner as may be prescribed.</p> <p>(3) A limited liability partnership may change the place of its registered office and file the notice of such change with the Registrar in such form and manner and subject to such conditions as may be prescribed and any such change shall take effect only upon such filing.</p> <p><i>(4) If the limited liability partnership contravenes any provisions of this section, the limited liability partnership and its every partner shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees.</i></p>	
7.	Limited Liability Partnership Act, 2008	<p>Section 17 the LLP Act, 2008: Change of name of limited liability partnership.-</p> <p>Section 17(1).- Notwithstanding anything contained in sections 15 and 16, where the Central Government is satisfied that a limited liability partnership has been registered</p>	

		<p>(whether through inadvertence or otherwise and whether originally or by a change of name) under a name which—</p> <p>(a) is a name referred to in sub-section (2) of section 15; or</p> <p>(b) is identical with or too nearly resembles the name of any other limited liability partnership or body corporate or other name as to be likely to be mistaken for it,</p> <p>the Central Government may direct such limited liability partnership to change its name, and the limited liability partnership shall comply with the said direction within three months after the date of the direction or such longer period as the Central Government may allow.</p> <p><i>(2) Any limited liability partnership which fails to comply with a direction given under sub-section (1) shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to five lakh rupees and the designated partner of such limited liability partnership shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.</i></p>	
8.	Limited Liability Partnership Act, 2008	<p>Section 20 LLP Act, 2008: Penalty for improper use of words ‘limited liability partnership’ or ‘LLP’</p> <p><i>Section 20.-If any person or persons carry on business under any name or title of which the words "Limited Liability Partnership" or "LLP" or any contraction or imitation thereof is or are the last word or words, that person or each of those persons shall, unless duly incorporated as limited liability partnership, be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.</i></p>	
9.	Limited Liability Partnership	<p>Section 21 of LLP Act, 2008: Publication of name and limited liability.</p>	

	Act, 2008	<p>Section 21(1).- Every limited liability partnership shall ensure that its invoices, official correspondence and publications bear the following, namely:—</p> <p>(a) the name, address of its registered office and registration number of the limited liability partnership; and</p> <p>(b) a statement that it is registered with limited liability.</p> <p><i>(2) Any limited liability partnership which contravenes the provisions of sub-section (1) shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees.</i></p>	
10	Limited Liability Partnership Act, 2008	<p>Section 25 of the LLP Act, 2008: Registration of changes in partners.-</p> <p>Section 25(1). - Every partner shall inform the limited liability partnership of any change in his name or address within a period of fifteen days of such change.</p> <p>(2) A limited liability partnership shall—</p> <p>(a) where a person becomes or ceases to be a partner, file a notice with the Registrar within thirty days from the date he becomes or ceases to be a partner; and</p> <p>(b) where there is any change in the name or address of a partner, file a notice with the Registrar within thirty days of such change.</p> <p>(3) A notice filed with the Registrar under sub-section (2) —</p> <p>(a) shall be in such form and accompanied by such fees as may be prescribed;</p> <p>(b) shall be signed by the designated partner of the limited liability partnership and authenticated in a manner as may be prescribed; and</p> <p>(c) if it relates to an incoming partner, shall contain a statement by such partner that he</p>	

		<p>consents to becoming a partner, signed by him and authenticated in the manner as may be prescribed.</p> <p><i>(4) If the limited liability partnership contravenes the provisions of sub-section (2), the limited liability partnership and every designated partner of the limited liability partnership shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees.</i></p> <p><i>(5) If any partner contravenes the provisions of sub-section (1), such partner shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees.</i></p>	
11.	Limited Liability Partnership Act, 2008	<p>Section 34 of the LLP Act, 2008: Maintenance of books of account, other records and audit, etc.-</p> <p>Section 34(1).- The limited liability partnership shall maintain such proper books of account as may be prescribed relating to its affairs for each year of its existence on cash basis or accrual basis and according to double entry system of accounting and shall maintain the same at its registered office for such period as may be prescribed.</p> <p>(2) Every limited liability partnership shall, within a period of six months from the end of each financial year, prepare a Statement of Account and Solvency for the said financial year as at the last day of the said financial year in such form as may be prescribed, and such statement shall be signed by the designated partners of the limited liability partnership.</p> <p>(3) Every limited liability partnership shall file within the prescribed time, the Statement of Account and Solvency prepared pursuant to sub-section (2) with the Registrar every year in such form and manner and accompanied by such fees as may be prescribed.</p> <p>(4) The accounts of limited liability</p>	

		<p>partnerships shall be audited in accordance with such rules as may be prescribed:</p> <p>Provided that the Central Government may, by notification in the Official Gazette, exempt any class or classes of limited liability partnerships from the requirements of this sub-section.</p> <p><i>(5) Any limited liability partnership which fails to comply with the provisions of this section shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every designated partner of such limited liability partnership shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.</i></p>	
12.	Limited Liability Partnership Act, 2008	<p>Section 35 of the LLP Act, 2008: Annual return.</p> <p>Section 35(1).- Every limited liability partnership shall file an annual return duly authenticated with the Registrar within sixty days of closure of its financial year in such form and manner and accompanied by such fee as may be prescribed.</p> <p>(2) Any limited liability partnership which fails to comply with the provisions of this section shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.</p> <p><i>(3) If the limited liability partnership contravenes the provisions of this section, the designated partner of such limited liability partnership shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.</i></p>	
13.	Limited Liability Partnership Act, 2008	<p>Section 38 of the LLP Act, 2008: power of Registrar to obtain information.-</p> <p>Section 38(1). In order to obtain such information as the Registrar may consider necessary for the purposes of carrying out</p>	

		<p>the provisions of this Act, the Registrar may require any person including any present or former partner or designated partner or employee of a limited liability partnership to answer any question or make any declaration or supply any details or particulars in writing to him within a reasonable period.</p> <p>(2) In case any person referred to in sub-section (1) does not answer such question or make such declaration or supply such details or particulars asked for by the Registrar within a reasonable time or time given by the Registrar or when the Registrar is not satisfied with the reply or declaration or details or particulars provided by such person, the Registrar shall have power to summon that person to appear before him or an inspector or any other public officer whom the Registrar may designate, to answer any such question or make such declaration or supply such details, as the case may be.</p> <p><i>(3) Any person who, without lawful excuse, fails to comply with any summons or requisition of the Registrar under this section shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees.</i></p>	
14	Limited Liability Partnership Act, 2008	<p>Section 47 of the LLP Act, 2008: Production of documents and evidence.</p> <p>Section 47(1).- It shall be the duty of the designated partner and partners of the limited liability partnership—</p> <p>(a) to preserve and to produce before an inspector or any person authorized by him in this behalf with the previous approval of the Central Government, all books and papers of, or relating to, the limited liability partnership or, as the case may be, the other entity, which are in their custody or power; and</p> <p>(b) otherwise to give to the inspector all assistance in connection with the investigation which they are reasonably able to give.</p>	

	<p>(2) The inspector may, with the previous approval of the Central Government, require any entity other than an entity referred to in sub-section (1) to furnish such information to, or produce such books and papers before him or any person authorised by him in this behalf, with the previous approval of that Government, as he may consider necessary, if the furnishing of such information or the production of such books and papers is relevant or necessary for the purposes of his investigation.</p> <p>(3) The inspector may keep in his custody any books and papers produced under sub-section (1) or sub-section (2) for thirty days and thereafter shall return the same to the limited liability partnership, other entity or individual by whom or on whose behalf the books and papers are produced:</p> <p>Provided that the inspector may call for the books and papers if they are needed again:</p> <p>Provided further that if certified copies of the books and papers produced under sub-section (2) are furnished to the inspector, he shall return those books and papers to the entity or person concerned.</p> <p>(4) An inspector may examine on oath—</p> <p>(a) any of the persons referred to in sub-section (1);</p> <p>(b) with the previous approval of the Central Government, any other person in relation to the affairs of the limited liability partnership or any other entity, as the case may be; and;</p> <p>(c) may administer an oath accordingly and for that purpose may require any of those persons to appear before him personally.</p> <p><i>(5) If any person fails without reasonable cause or refuses—</i></p> <p><i>(a) to produce before an inspector or any person authorized by him in this behalf with the previous approval of the Central</i></p>	
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		<p><i>Government any book or paper which it is his duty under sub-section (1) or sub-section (2) to produce; or</i></p> <p><i>(b) to furnish any information which is his duty under sub-section (2) to furnish; or</i></p> <p><i>(c) to appear before the inspector personally when required to do so under sub-section (4) or to answer any question which is put to him by the inspector in pursuance of that sub-section; or</i></p> <p><i>(d) to sign the notes of any examination,</i></p> <p><i>he shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees and with a further fine which shall not be less than fifty rupees but which may extend to five hundred rupees for every day after the first day after which the default continues.</i></p>	
15.	Limited Liability Partnership Act, 2008	<p>Section 60 of the LLP Act, 2008: Compromise or arrangement of limited liability partnerships.-</p> <p>Section 60(3) -An order made by the Tribunal under sub-section (2) of section 60 shall be filed by the limited liability partnership with the Registrar within thirty days after making such an order and shall have effect only after it is so filed.</p> <p><i>(4) If default is made in complying with sub-section (3), the limited liability partnership, and every designated partner of the limited liability partnership shall be punishable with fine which may extend to one lakh rupees.</i></p>	
16.	Limited Liability Partnership Act, 2008	<p>Section 62 of the LLP Act, 2008: Provisions for facilitating reconstruction or amalgamation of limited liability partnerships.-</p> <p>Section 62 (3). Within thirty days after the making of an order under this section (Section-62), every limited liability partnership in relation to which the order is made shall cause a certified copy thereof to</p>	

		<p>be filed with the Registrar for registration.</p> <p><i>(4) If default is made in complying with the provisions of sub-section (3), the limited liability partnership, every designated partner of the limited liability partnership shall be punishable with fine which may extend to fifty thousand rupees.</i></p> <p>Explanation.—In this section “property” includes property, rights and powers of every description; and “liabilities” includes duties of every description.</p>	
17	Limited Liability Partnership Act, 2008	<p>Section 74 of the LLP Act, 2008: General penalties.-</p> <p><i>Any person guilty of an offence under this Act for which no punishment is expressly provided shall be liable to a fine which may extend to five lakh rupees but which shall not be less than five thousand rupees and with a further fine which may extend to fifty rupees for every day after the first day after which the default continues.</i></p>	
18	Limited Liability Partnership Act, 2008	<p>Para 17 of the Second Schedule of the LLP Act, 2008: Notice of conversion in correspondence.-</p> <p>Para17 (1) The limited liability partnership shall ensure that for a period of twelve months commencing not later than fourteen days after the date of registration, every official correspondence of the limited liability partnership bears the following:</p> <p>(a) a statement that it was, as from the date of registration, converted from a firm into a limited liability partnership; and</p> <p>(b) the name and registration number, if applicable, of the firm from which it was converted.</p> <p><i>(2) Any limited liability partnership which contravenes the provisions of sub-paragraph (1) shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees and</i></p>	

		<i>with a further fine which shall not be less than fifty rupees but which may extend to five hundred rupees for every day after the first day after which the default continues.</i>	
19.	Limited Liability Partnership Act, 2008	<p>Para 15 of the Third Schedule of the LLP Act, 2008: Notice of conversion in correspondence.-</p> <p>Para15(1).- The limited liability partnership shall ensure that for a period of twelve months commencing not later than fourteen days after the date of registration, every official correspondence of the limited liability partnership bears the following, namely:—</p> <p>(a) a statement that it was, as from the date of registration, converted from a company into a limited liability partnership; and</p> <p>(b) the name and registration number of the company from which it was converted.</p> <p><i>(2) Any limited liability partnership which contravenes the provisions of sub-paragraph (1) shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees and with a further fine which shall not be less than fifty rupees but which may extend to five hundred rupees for every day after the first day after which the default continues.</i></p>	
20.	Limited Liability Partnership Act, 2008	<p>Para 16 of the Fourth Schedule of the LLP Act, 2008): Notice of conversion in correspondence.-</p> <p>Para16(1) The limited liability partnership shall ensure that for a period of twelve months commencing not later than fourteen days after the date of registration, every official correspondence of the limited liability partnership bears the following, namely:—</p> <p>(a) a statement that it was, as from the date of registration, converted from a company into a limited liability partnership; and</p> <p>(b) the name and registration number of the company from which it was converted.</p>	

		<p><i>(2) Any limited liability partnership which contravenes the provisions of sub-paragraph (1) shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees and with a further fine which shall not be less than fifty rupees but which may extend to five hundred rupees for every day after the first day after which the default continues.</i></p>	
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