

DE-CRIMINALISATION OF COMPOUNDABLE OFFENCES AND INTRODUCTION OF NEW CONCEPTS UNDER LIMITED LIABILITY ACT, 2008 (“LLP Act”)

Introduction:

The Ministry of Corporate Affairs (“MCA”) on 3rd February 2021 has issued a press release (“**Press Release**”), to initiate process of de-criminalisation of compoundable offences under the LLP Act for ease of doing business for law abiding LLPs and introduction of new concepts of small LLP and non-convertible debentures under the LLP Act.

Overview of the Press Release:

A. De-criminalisation of certain compoundable offences

In light of ease of doing business and to de-criminalize various offences, MCA proposes to introduce following principles for LLPs:

- Offences that relate to minor/ less serious compliance issues, involving predominantly objective determinations, are proposed to be shifted to the In-house Adjudication Mechanism (“IAM”) framework instead of being treated as criminal offences;
- Offences that are more appropriate to be dealt with under other laws, are proposed to be omitted from the LLP Act; and
- For non-compoundable offences that are very serious violations entailing an element of fraud, intent to deceive and caused injury to public interest or non-compliance of order of statutory authorities impinging on effective regulation, status quo would be maintained.

In all, 12 (twelve) offences are proposed to be decriminalized and 1 (one) provision (i.e. Section 73) entailing criminal liability is proposed to be omitted. The 12 de-criminalized offences would then get shifted to IAM thereby de-clogging the criminal courts from routine cases.

The proposed amendments are a welcome move for existing LLPs who wishes to continue their business in a law-abiding nature by removing the fear of criminal prosecutions for non-substantive minor and procedural omissions and commissions in the normal course of their business transactions.

B. Introduction of new concepts of Small Company and NCDs

In addition to the above, MCA also proposes to introduce the concept of Small LLP which would be subject to lesser compliances, lesser fee or additional fee and lesser penalties in the event of default. Further, LLPs will be allowed to raise capital through the issuance of fully secured Non-Convertible Debentures (NCDs) from investors regulated by SEBI or the RBI. Also, Section 69 of the LLP Act which deals payment of additional fees in case of delay in filing of any document or return is proposed to be amended to reduce the additional fee of Rs. 100 per day.

Conclusion:

The said move seeks to simplify the compliance burden of the LLP by de-criminalising various offences and continue the business with lesser compliances and obligations in a structured umbrella. Further, this Press Release only outlines the initiation of the process for de-criminalising of various offences and the legislative process to bring about these amendments would need to be followed.

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