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Analysing developments impacting business

EASE OF DOING BUSINESS GAINS MOMENTUM WITH THE LATEST AMENDMENTS TO THE LLP ACT

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Since it was made effective in 2009, the Limited Liability Partnership Act, 2008 (LLP Act) has proven to be a business vehicle of choice for partnerships, entrepreneurs, and body corporates alike. Its relevance, especially in the micro, small and medium enterprises sector may be attributed to two primary factors, namely, the benefits of limited liability (*versus a partnership*) and the flexibility in administration and reduced reporting norms (*versus a company incorporated under the Companies Act 2013*).

In line with the recent amendments made to the Companies Act 2013 (Companies Act) which decriminalised several offences under it; the LLP Act required a much-needed facelift to improve business sentiment amongst stakeholders. The Ministry of Corporate Affairs constituted the Company Law Committee in 2019 (Committee) with the mandate to (a) review offences under the LLP Act, (b) introduce mechanisms for effective disposal of cases, (c) improve functioning of authorities under the LLP Act, and (d) promote ease of doing business.¹

Following the recommendations of the Committee, the LLP Act has been amended by the Limited Liability Partnership (Amendment) Act, 2021 (Amendment Act) notified on 11 February 2022. In addition, the Limited Liability Partnership (Amendment) Rules, 2022 (Amendment Rules) have also been notified on 11 February 2022. The Amendment Act and the Amendment Rules are both, effective from 1 April 2022. Incidentally, this is the first amendment of the LLP Act since it came into force in 2009.

Overview of key amendments to the LLP Act

Taking ahead the themes identified by the Committee, the key amendments to the LLP Act (and rules made thereunder) are as follows:

A. Decriminalization of compoundable offences

▪ Modification of penalty

The Amendment Act has reduced the monetary penalty for several compoundable offences. Accordingly, minor, technical or compliance related offences have been moved to the 'IAM' or the 'In-house Adjudication Mechanism' framework with modified penal provisions. Key modifications include:

¹ Report of the Company Law Committee on Decriminalization of The Limited Liability Partnership Act, 2008 published by the Ministry of Corporate Affairs in January 2021.

| Offence | Erstwhile Provision | Amended Provision |
|---|---|---|
| Contravention of provisions of Section 17 of the LLP Act, on rectification of name of the limited liability partnership (LLP) | As per the previous provision, if an LLP is registered with an identical or undesirable name, the LLP would be required to change its name within 3 months, a contravention of which would be punishable with a fine of INR 10,000 to INR 5,00,000 for the LLP and INR 10,000 to INR 1,00,000 for the designated partner. | This penal provision has been done away with and the Central Government would now allot a new name in place of the old name and issue a fresh certificate of incorporation. |
| Contravention of Section 34(3) of the LLP Act regarding filing of Statement of Accounts and Solvency; and Failure to file annual return within the prescribed timeline under Section 35 of the LLP Act | A contravention of these provisions would be liable to a fine of INR 25,000, subject to a maximum fine of INR 5,00,000 for the LLP and INR 10,000 subject to a maximum fine of INR 1,00,000 for the designated partner. | The fine is INR 100 for each day of contravention subject to a maximum fine of INR 1,00,000 for the LLP and INR 50,000 for the designated partner. |
| General penalties under Section 74 of the LLP Act | Any offence under LLP Act for which no express punishment has been prescribed would be liable to a fine of INR 5,000 and INR 50 for each day of default subject to a maximum fine of INR 5,00,000. | The maximum fine is now reduced to INR 1,00,000. |

- Compounding of offence

As per the Amendment Act, regional directors appointed by the Central Government may compound any offence under the LLP Act which is punishable with fine only. The scope of the erstwhile section of the LLP Act has been considerably broadened to include the process for such compounding. While the maximum sum to be collected upon compounding may extend to the maximum fine provided for such offence under the LLP Act, it is clarified that such cap would not apply to any subsequent offence committed by the LLP/ partner/ designated partner within a period of 3 (three) years from the date of the first offence.

B. Effective disposal of cases

- Adjudication of penalties

The Central Government may now appoint adjudicating officers for the purpose of adjudging penalties under the LLP Act. The Central Government by an order dated 11 February 2022 has appointed registrar of companies of various states as adjudicating officers for adjudging penalties under the LLP Act. This order is effective from 1 April 2022. Further, any person aggrieved by an order of an adjudicating officer may prefer an appeal within a period of 60 (sixty) days to the relevant regional director.

- Special courts

The Amendment Act recommends establishing special courts for speedy trial of criminal offences including fraud. It also lays down the procedures and powers of such special courts, including the power to conduct summary trials for offences punishable with imprisonment not exceeding 3 (three) years.

- Time bound appeals

As per the Amendment Act, any appeal preferred to the National Company Law Appellate Tribunal (NCLAT) must be filed within 60 (sixty) days, from the date of the order of the National Company Law Tribunal, provided that the NCLAT may, for sufficient cause, entertain an appeal after the expiry of the said period but provided the appeal is preferred within a further period of 60 (sixty) days. In other words, a maximum appeal time of 120 (one hundred and twenty) days has been prescribed under the Amendment Act.

C. Improved functioning

- Registration offices

The Amendment Act proposes establishment of registration offices by the Central Government at such places as it may deem fit for discharge of various functions under the LLP Act, including registration of new LLPs.

- Greater flexibility in case of filing lapses

As an additional relaxation, the erstwhile section prescribing a period of 300 (three hundred) days for late filing has been amended to remove the said time limit.

D. Ease of doing business

- Concept of small LLPs:

The concept of small LLPs, in line with the concept of 'small companies' under the Companies Act, has been introduced. Small LLPs will have significantly reduced cost of compliance and will benefit from fewer applicable penalties. To qualify as a small LLP, the contribution by the partners should be limited to a maximum of INR 5,00,00,000 (Indian Rupees Five crore) and the turnover (in the immediately preceding financial year) should be limited to INR 50,00,00,000 (Indian Rupees Fifty crore).

The relaxations available to small LLPs include reduction in (i) compliances like registering, or recording notice of appointment, cessation, change in name, address, designation of a partner or designated partner, and (ii) penalty amount by half of the penalty prescribed under the LLP Act subject to a maximum of INR 1,00,000 (Indian Rupees One lakh) for the LLP and INR 50,000 (Indian Rupees Fifty thousand) for a partner/ designated partner.

- Residency requirement for designated partners

The erstwhile provision required every LLP to have at least one designated partner who is a 'resident in India' (similar to the residency requirement for directors under the Companies Act). To meet this requirement, such designated partner had to stay in India for a period of not less than 182 (one hundred and eighty-two) days during the immediately preceding one year. This tenure has been relaxed and the resident designated partner is now required to stay not less than 120 (one hundred and twenty) days during the financial year.

E. Enhanced transparency

- Stringent compliance in the event of fraudulent activities

It is pertinent to note that for any act committed with fraudulent intention by an LLP or its partners, the defrauding partners shall be punishable with imprisonment of a term which may extend to 5 (five) years as opposed to 2 (two) years provided earlier.

- Accounting and auditing standards

The Amendment Act provides that the Central Government in consultation with the National Financial Reporting Authority may prescribe standards of accounting and auditing for LLPs. This will encourage transparency in reporting and avoid manipulations and fraud.

Comments

As per news reports, there are more than two lakh LLPs active in India. In the last financial year, there was a 17% growth in terms of the number of LLPs incorporated in the country.² The Amendment Act further cements initiatives such as the LLP Settlement Scheme introduced by the Ministry of Corporate Affairs at the start of the pandemic to ease filing woes of several defaulting LLPs. Measures such as those introduced under the Amendment Act is certainly a tailwind and should lead to greater adoption of LLPs for the ease and flexibility it offers.

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² *Press Trust of India, 'LLP Act amendments to help entities shift from unorganised to organised biz' Business Standard (New Delhi 16 August 2021),*