



## The Limited Liability Partnership (Amendment) Act, 2021: Key takeaways

With a view to encourage start-up ecosystem and facilitate greater ease of doing business, the Limited Liability Partnership (Amendment) Bill was passed by both the houses and subsequently received the President's assent on August 13, 2021, thereby attaining the status of the Limited Liability Partnership (Amendment) Act, 2021 (Amendment Act).

The Amendment Act has for the first time amended the Limited Liability Partnership Act, 2008 (Principal Act) which regulates Limited Liability Partnerships (LLPs), after considering multiple reforms recommended in *The Report of the Company Law Committee on Decriminalization of the Limited Liability Partnership Act, 2008*<sup>1</sup> dated January 04, 2021 (Report). By way of the Amendment Act, 7 new sections have been inserted, 5 sections have been substituted and 3 sections have been omitted.

In this note, we attempt to summarize and analyze the key amendments introduced in the Act.

### 1. Decriminalization of offences

- The Amendment Act offsets criminal liability and decriminalizes the following offences as listed below by prescribing only civil liability in the form of monetary penalties:

Section of Principal Act	Description
<b>Section 10:</b> Punishment for contravention of Sections 7, 8 and 9	While completely omitting contravention under Section 8, the Amendment Act, decriminalizes punishments under Sections 7 and 9 which deal with general obligations of designated partners
<b>Section 13:</b> Registered office of LLP and change therein	Contravention pertaining to registered office of the LLP and change therein
<b>Section 17:</b> Change of name of LLP	Failure to comply with the directions of the Central Government in relation to change of name of LLP
<b>Section 21:</b> Publication of name and limited liability	Failure to display basic information regarding LLP on invoices, official correspondences, and publications
<b>Section 25 -</b> Registration of changes in partners	Failure to notify the Registrar regarding changes in the partners of the LLP within stipulated time
<b>Section 34 -</b> Maintenance of books of account, other records, and audit etc.	Failure of compliance with respect to maintenance of books of accounts as prescribed and filing of a Statement of Account and Solvency within a period of 6 months from the end of each financial year
<b>Section 35 -</b> Annual return	Non-filing of Annual Return with the Registrar within 60 days of closure of its financial year
<b>Section 60 -</b> Compromise, or arrangement of LLPs	Non-filing of the Order passed by the NCLT with the Registrar within the prescribed time

### HSA Viewpoint

The Amendment Act will encourage small partnerships to convert into an organized structure of an LLP. The Amendment Act has essentially brought the Principal Act almost at par with the framework of the existing Companies Act, 2013 and seeks to modernize the LLP regime as a whole by introducing ease of compliance for ethical entrepreneurs and opening gateways to promote domestic entrepreneurship. In our opinion, the introduction of Small LLPs and Start-up LLPs will make it more lucrative for investors, incentivize the start-up community particularly and promote a healthy business environment.

Additionally, the decriminalization drive and a comparatively relaxed penalty regime sought to be brought in by the Amendment Act will provide flexibility to compound minor contraventions thereby, encouraging compliance by the entrepreneurs and effective regularization of LLPs, catalyze speedy dispute resolution and foster the ease of doing business for law-abiding LLPs.

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<sup>1</sup><https://www.mca.gov.in/Ministry/pdf/Report%20of%20the%20Company%20Law%20Committee%20on%20Decriminalization%20of%20The%20Limited%20Liability%20Partnership%20Act,%202008.pdf>

<b>Section 62</b> - Provisions for facilitating reconstruction or amalgamation of LLPs	Non-filing of the Order passed by the NCLT with the Registrar within the prescribed time
<b>Section 74</b> - General penalties	General penal provision for instances where no penalty or punishment is provided for contravention under the Principal Act

- The aforesaid offences will fall under an in-house adjudication mechanism instead of being considered as a criminal offence with an intent to remove fear of criminal prosecutions for non-substantive, minor and procedural omissions.
- Further, the Amendment Act has omitted the following Sections of the Principal Act in its entirety:
  - Section 18: Related to an application for direction to change the name in certain circumstances
  - Section 73: Related to penalty on non-compliance of any Order passed by the NCLT
  - Section 81: Related to transitional provisions
- Furthermore, the Amendment Act has reduced the maximum penalty from INR 5,00,000 to INR 1,00,000 for LLPs and INR 50,000 for designated partners under Section 76A. It has also extended the term of imprisonment from 2-5 years in case of fraud by an LLP under Section 30 of the Principal Act. However, the Government has maintained the status quo for serious non-compliances which involves an element of fraud, deceit, injury to public interest and wrongful dealings in line with the extant provisions of the Principal Act.

## 2. Penalties and fees for Small LLPs and Start-up LLPs

- The Amendment Act has introduced Section 76A which stipulates that the penalty payable for non-compliance of the LLP Act by a Small LLP or a Start-Up LLP or by its partner or designated partner shall be one-half of the penalty specified, subject to a maximum of INR 1,00,000 for LLP and INR 50,000 for every partner or designated partner or any other person, as per the case.
- The Amendment Act substitutes Section 69 of the Act indicating that a different fee or additional fee may be prescribed for different classes of LLPs or for different documents or returns required to be filed under the Act or rules made thereunder.
- Pursuant to the Amendment Act, Small LLPs and Start-up LLPs will be subject to reduced fees and penal consequences in event of default, thereby resulting in reduction of cost of compliances and encourage small unorganized businesses to convert into an LLP.

## 3. Compounding of offences

- The Amendment Act has substituted Section 39 of the Principal Act entirely by authorizing the Regional Director or any other officer not below the rank of Regional Director recognized by the Central Government to compound any offence under the Principal Act which is punishable with only fine. This amendment will allow greater flexibility in imposing penalties under the Principal Act, thereby allowing for the newly inserted decriminalised provisions to be effectively implemented.
- Compounding will not be allowed for an offence committed by an LLP or its partner or its designated partner within 3 years from the date on which a similar offence committed by it or them was compounded.
- The Amendment Act clarifies that any second or subsequent offence committed after the expiry of the period of 3 years from the date on which the offence was previously compounded, shall be deemed to be the first offence.

## 4. Establishment of Special Courts

- The Amended Act has inserted Sections 67A, 67B and 67C to the Principal Act for a Special Courts to be set up to exclusively try and dispose of offences committed under the Principal Act. This will not only reduce the burden on the regular criminal courts but also will ensure faster disposal of cases under the Principal Act.
- The Special Court shall consist of:
  - A Single Judge holding office as Sessions Judge or Additional Sessions Judge, in case of offences punishable under the Principal Act with imprisonment of 3 years or more
  - A Metropolitan Magistrate or a Judicial Magistrate of the first class, in the case of other offences, who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court
- The procedure and powers of Special Courts along with appeals and revisions are further postulated under Sections 67B and 67C.

## 5. Other key changes

- The Amendment Act has recognized the concept of 'Start-up LLPs' and afforded the Central Government the power to recognize certain LLPs as Start-up LLPs by issuing notifications from time to time.
- The Amended Act has reduced the residency requirement from 180 to 120 days during a financial year under Section 7 of the Principal Act, which prescribes that every LLP shall have at least one resident Designated Partner.
- The Amendment Act has inserted Section 34A to the Principal Act granting power to the Central Government to prescribe accounting and auditing standards for different categories of LLPs in consultation with the National Financial Reporting Authority and the Institute of Chartered Accountants of India.
- The Amendment Act has introduced Section 68A to the Principal Act conferring power upon the Central Government to establish such number of registration offices at such places as it thinks fit and to specify the jurisdiction.

