

# Govt to decriminalise provisions of LLP Act in upcoming Winter Session

Updated at November 16, 2020 06:10 IST

After amending the Companies Act, the Ministry of Corporate Affairs is now looking to decriminalise provisions of the Limited Liability Partnership (LLP) Act in the upcoming Winter Session of Parliament. One of the changes being proposed is allowing LLPs to issue non-convertible debentures (NCDs), a senior government official told Business Standard.

“Many provisions in the Companies Act are also linked to the LLP Act. We want to ensure both are compatible and also do away with criminality when it comes to procedural offences,” the official said.

Around 20 clauses in the Act relating to procedural violations will be revised. “There are various legal provisions that are harsh and judicial custody in those cases will not serve any purpose. Both the government and the industry have been working together to decriminalise various statutory provisions,” said Abhishek A Rastogi, partner at Khaitan & Co.

The amendments will also address certain grey areas in the laws, such as whether LLPs can issue NCDs. According to the Companies Act 2013, while LLPs are considered body corporates, they cannot issue debentures to raise funds. Experts say only partners can contribute funds as LLPs have no rights to issue debt.

## OVERHAUL

- **Around 20 clauses** to be decriminalised
- **Procedural violations** to attract prison term
- **Penalties to be rationalised** and fixed
- **Recommendations sent** to Company Law Committee
- **MCA also working on setting up** e-adjudication platform next year

NCDs are debt instruments, generally long term, and acknowledge an obligation towards the issuing company. Such instruments allow a company to raise funds from the public. Since NCDs cannot be converted into shares or equities, these instruments always remain debts. This ensures that there is no dilution in ownership. “Instruments are much more secure than normal debt... It will increase the avenues for raising funds. It will also earn an investor much more interest,” said Ankit Singhi, partner at Corporate Professionals. Debentures earn fixed rates of interest and have less risk — they are rated by credit agencies. “Hypothetically, in case LLPs are statutorily allowed to issue NCDs, they will be able to raise funds from the market at a cheaper rate as debenture rates are always less than the borrowing rate from the bank,” Rastogi added.

The recommendations for these amendments have been sent to the Company Law Committee by the MCA. “In case of criminal provisions there are a range of minimum and maximum penalties. We go for the middle so as to ensure there is no discretion allowed,” the official said. For instance, according to experts of the LLP Act, any false statement in returns or other documents is punishable with

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Resource: Business Standard, 16 Nov 2020

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imprisonment for a term that may extend to two years, and a fine up to Rs.5 lakh and not less than Rs.1 lakh.

The MCA is also working towards setting up an e-adjudication platform next year.