

Decriminalize LLP Act, says MCA panel

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Offences involving minor and technical violations of the Limited Liability Partnership (LLP) Act must be decriminalized and LLPs should have more flexibility in their borrowing decisions, an expert committee headed by corporate affairs ministry secretary Rajesh Verma said.

The report released on Monday said 12 offences must be decriminalized and brought under an in-house adjudication mechanism instead of the National Company Law Tribunal (NCLT). However, one offence—non-compliance of tribunal orders—should be omitted to avoid duplication. The changes are expected to encourage compliance and promote a congenial business climate, it said.

If the proposals find their way into the statute book, it will benefit over 145,000 registered LLPs, the bulk of which are small and medium enterprises.

The move is part of the government's efforts to make the legislative framework more conducive for entrepreneurs. In two amendments in 2019 and 2020, the government had decriminalized 51 procedural and technical violations of the Companies Act of 2013. This exercise was meant to offer similar benefits to LLPs. No change was proposed for serious, non-compoundable offences.

A guiding principle will be to identify lapses where there is no intention on the part of the LLP or its partners to do wrong. Such procedural lapses will be dealt with by in-house adjudicators. "Criminalization of minor bona fide, omissions or commissions during the course of businesses impinges upon the business sentiments and results in an unnecessary burden on the criminal justice system," the report said.

The panel also proposed the concept of 'small LLPs', those with ₹20 lakh as contribution and ₹40 lakh as sales, or any specific higher threshold. Such entities will have to pay lower fees and will face smaller penalties for defaults to reduce the compliance cost on small businesses.

The panel said LLPs should be allowed to issue non-convertible debentures to entities regulated by the Securities and Exchange Board of India or the Reserve Bank of India.

At the moment, LLPs are allowed to borrow, but not issue debt securities.

The panel also recommended that a provision for prescribing accounting and auditing standards for LLPs should be incorporated in law. The idea is to improve governance for this class of businesses.

Verma said in the report that the recommendations will hopefully incentivize micro and small enterprises to convert into LLPs, which will create a congenial business climate based on trust and compliance.