

Nangia Andersen LLP



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The Limited Liability Partnership
(Amendment) Bill, 2021

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Background

On the recommendations of Company Law Committee (CLC) headed by Mr. Rajesh Verma (Secretary, Ministry of Corporate Affairs) vide its report submitted to Ministry of Corporate Affairs on January 04, 2021, both Rajya Sabha and Lok Sabha have passed the LLP Amendment Bill, 2021 ('The Bill') on August 4, 2021, and August 09, 2021, respectively.

The purpose of the bill is to promote ease of doing business and ease of living for law abiding corporates in the country.

Key highlights of the Bill

- Introduction of concept of **"Small LLP" and "Start-up LLP"**. The concept of Small LLP has been borrowed from the definition of 'Small Company' under Companies Act, 2013. Under the Companies Act, a small company is a company having a paid-up share capital up to fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and turnover of up to two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees. The LLP Amendment Bill, on the other hand, defines Small LLP as an LLP having contribution up to twenty-five lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; and turnover of forty lakh rupees or such higher amount as may be prescribed which shall not be more than fifty crore rupees.

Start-up LLP has been defined as an LLP recognized as such in accordance with the notifications issued by the Central Government from time to time.

Similar to Small Companies, Small LLPs/ Start-up LLPs and their Partners shall now be liable to a penalty for non-compliance of any of the provisions of the LLP Act which shall be one-half of the penalty specified in such provisions subject to a maximum of one lakh rupees for LLP and fifty thousand rupees for every partner.

- The Bill **decriminalizes compoundable offences** by either omitting those provisions or by substituting the word fine with penalty. The maximum penalty under all these provisions is not more than one lakh rupees. Some of the key contraventions brought under this ambit relate to appointment/ change in designated partners, annual return, maintenance of books of accounts etc.

The objective behind changing the term fine with penalty is to rule out the criminal liability under these provisions. For an act to be punishable with fine, it must contain an element of *mens rea* i.e., criminal intent or a guilty mind. Where in an act, *mens rea* is not expressly stated, the penalty mechanism must be imposed through a civil framework. Accordingly, *bonafide omissions* resulting in a technical / minor breach should be subject to a civil liability through an **In-house Adjudication Mechanism (IAM)**. Under the IAM framework, power to adjudicate offences has now been adequately provided.

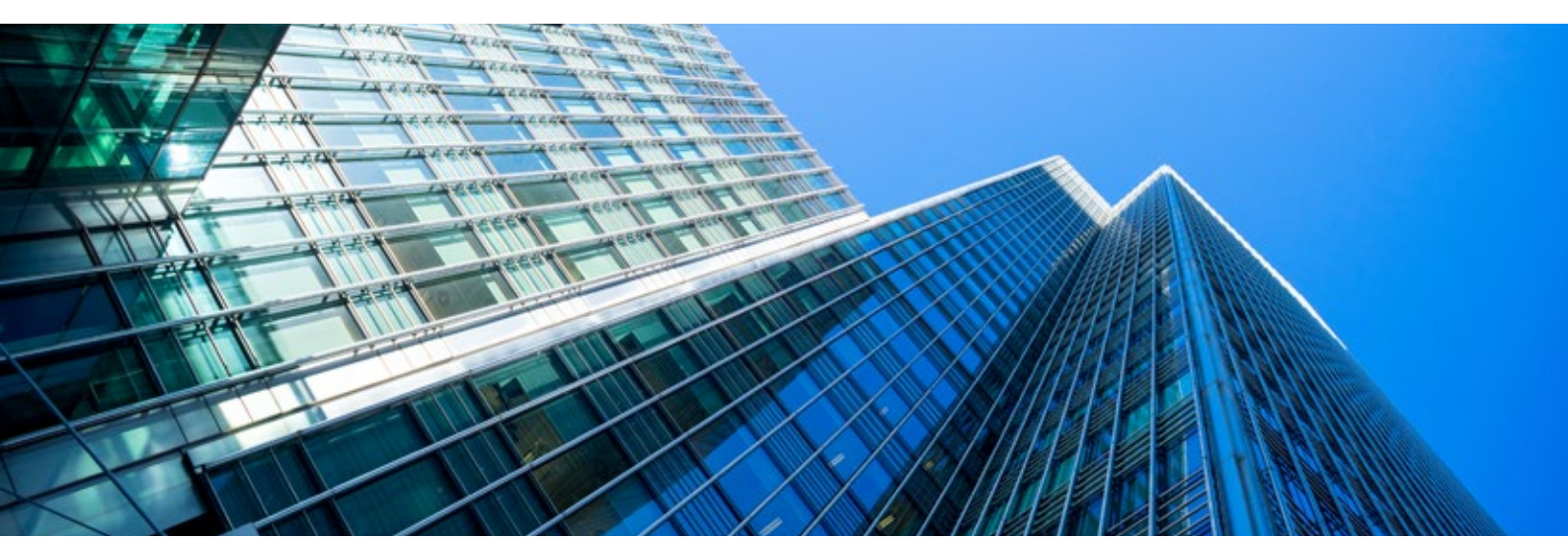
- The Bill amends the definition of **Resident in India** by reducing the period of stay from one hundred eighty-two days to one hundred twenty days. In terms of Section 7 of LLP Act, at least one designated partner in an LLP must be a person resident in India. This change is now at par with resident definition provided for one person company (OPC).

- The Bill amends Section 39 of the LLP Act, 2008 to provide a detailed procedure for filing the Compounding Applications. The Regional Director or any other officer not below the rank of Regional Director authorized by the Central Government shall have the power to compound any offence under the Act which is punishable only with a fine.
- The Bill introduces new Sections 67A, 67B and 67C where the Central Government may establish **special courts** for ensuring speedy trial of offences under the Act.
- The Bill amends Section 69 of the Act as per which the LLP is liable to pay additional fee of Rs. 100 per day for submission of belated returns. In terms of amendment, the additional fee shall now be prescribed by way of rules which will allow government to reduce the additional fee without requirement of amendment in the Act.
- The Central Government may additionally prescribe the **standards of accounting and auditing** for classes of LLPs, in consultation with the National Financial Reporting Authority as recommended by ICAI.

Nangia Andersen LLP's Take

The amendments introduced by the Bill relating to decriminalizing non-compliances of minor/ technical nature and additional reduction of penalties, shall facilitate and promote ease of doing business. The concept of small LLPs will further encourage small entrepreneurs to conduct their businesses through a legally set up entity instead of running them as proprietorship/ unregistered partnership.

However, the Amendment Bill as passed by both Houses have omitted a significant amendment relating to providing LLPs an option to raise funds through secured debentures. Historically, the Ministry of Corporate Affairs has been taking a flip-flop approach on eligible sectors/ activities for LLPs. While the services sector has been dominant in using LLPs as a means to undertake operations, currently, as such there is no prohibition on LLPs being used by corporate for undertaking other activities such as Manufacturing etc. 'Manufacturing' on the other hand, may require significant sums of borrowing as a means to fund its operations. In the backdrop of ECB Policy prohibiting use of ECB by LLPs in general, this amendment would have provided additional respite specially to Manufacturing LLPs.



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