



# THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

## Corporate Laws & Corporate Governance Committee The Institute of Chartered Accountants of India

23<sup>rd</sup> August, 2021

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### ANNOUNCEMENT

**Sub: Highlights of the amendments passed in the Limited Liability Partnership Act, 2008 through the Limited Liability Partnership (Amendment) Act, 2021 by CL&CGC ICAI.**

The LLP (Amendment) Act, 2021 (herein after referred to as 'the Amendment Act') got the assent of Hon'ble President as on 13<sup>th</sup> August, 2021 and is thus operative since that date. It was introduced in the Rajya Sabha on July 30, 2021 and was passed by Rajya Sabha on 4<sup>th</sup> August, 2021 and by Lok Sabha on 09<sup>th</sup> August, 2021.

In view of the constant endeavour of the Central Government to facilitate greater ease of living to law abiding corporates and to decriminalise certain provisions of the Act, it became necessary to amend certain provisions of the Act. Hence the Act, namely, the Limited Liability Partnership (Amendment) Act, 2021 is enacted.

The Act has converted certain offences into civil defaults and has changed the nature of punishment for these offences. It has also defined small LLP, provides for appointment of certain adjudicating officers, and establishment of special courts.

There were 81 sections prescribed under the Limited Liability Partnership Act, 2008. As per the newly introduced Act in the Parliament named LLP (Amendment) Act, 2021, **7 new sections have been inserted, 5 Sections have been substituted, 3 sections have been omitted**. Accordingly, there are 85 sections in the LLP Act, 2008 as per the LLP (Amendment) Act, 2021.

**I. Objects of the Act include:**

- i. to introduce the concept of "small limited liability partnership" in line with the concept of "small company" under the Companies Act, 2013:
- ii. to amend certain sections of the Act so as to convert offences into civil defaults and to convert the nature of punishment provided in the said sections from fines to monetary penalties;
- iii. to insert a new section 34A so as to empower the Central Government to prescribe the "Accounting Standards" or "Auditing Standards" for a class or classes of limited liability partnerships;
- iv. to amend section 39 of the Act relating to "compounding of offences" so as to authorise the Regional Director to compound any offence under this Act which is punishable with fine only;
- v. to insert a new section 67A empowering the Central Government to establish or designate as many "Special Courts" as may be necessary for the purpose of providing speedy trial of offences under the Act;
- vi. to amend section 72 of the Act so as to provide more clarity in the provisions when any person aggrieved by an order of "Tribunal" prefers an appeal to the "Appellate Tribunal";
- vii. to insert a new section 76A so as to provide that the Central Government may appoint as many officers as Adjudicating Officers as it thinks necessary for the purpose of adjudicating penalties under the Act.

**II. Major provisions that have been passed are related to the followings:**

- Definition of Small LLP
- Recognition to Start-up LLP
- Prescription of Standards of Accounting and Standards of Auditing to be prescribed in consultation with NFRA and recommended by the Institute of Chartered Accountants of India.
- Some offences decriminalised
- Provisions related to direction to Change of name of LLP
- Punishment for fraud
- Compounding of offences
- Adjudicating Officers
- Establishment of Special Courts
- Appeals to Appellate Tribunal

**III. Brief description of the provisions that have been introduced**

- **Definition of Small LLP:** The Amendment Act has introduced the concept of small LLP in line with the concept of small companies as prescribed under the Companies Act, 2013. It has defined the small limited liability partnership as LLP having contribution up to Rs. 25 lakh (which could be increased by the Government upto maximum of Rs 5 Crores) and a turnover upto Rs. 40 lakhs in the immediately preceding financial year as per the Statement of Accounts and Solvency (the limit of which can be hiked upto Rs. 50 crores by the Govt.) or which meets such other requirements as may be prescribed, and fulfils such terms and conditions as may be prescribed. The concept has been introduced to create a class of LLP which is subject to lesser compliances, lesser fee or additional fee to promote ease of doing business in the Country particularly for micro and small enterprises.
- **Recognition to Start-Up LLP:** Start-up is one of the most popular forms of doing business these days. To facilitate the Ease of Doing Business and encourage startups across the country; the concept of start-up has been recognized under the LLP Act, 2008 as well, this will help in extending the benefit of simplified regulation and ease of practice under proprietorship to the start-up LLPs.
- **Prescription of Accounting and Auditing Standards as recommended by the Institute of Chartered Accountants of India:** It has inserted Sec 34A in the Act to empower the Central Government to prescribe the "Accounting Standards" or "Auditing Standards" for a class or classes of limited liability partnerships; the responsibility of formulation and recommendation of which has been assigned to the Institute of Chartered Accountants of India.
- **Provisions related to direction to Change of name of LLP:** In order to align the provisions relating to direction of the Central Government for change of name of LLP, with the amendment introduced in the Companies (Amendment) Act, 2020, the Amendment Act has provided to auto allot a new name to the LLP by the Central Government, in case of default in complying with the direction of the CG instead of imposing punishment for non-compliance for such default.
- **Special Courts to have jurisdiction to punish LLP in case of Unlimited Liability in case of fraud:** Where the business is carried on in order to defraud the stakeholders of the LLP, every person who was knowingly a party to the carrying on of the business in the manner aforesaid shall be punishable with imprisonment for a term which may extend to **Five Years (earlier it was two years)** and with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

- **Establishment of Special Courts has been introduced:** For the purpose of providing speedy trial of offences under the LLP Act, 2008, the Amendment Act has empowered the Central Government to establish or designate as many Special Courts, as it may deem necessary. Concomitant provisions relating to "Procedure and powers of Special Court" and "Appeal and Revision" have been introduced in Sec 67B and 67C of the Act respectively.
- **Provisions for adjudication of penalties introduced:** Under the LLP Act, 2008, 24 criminal provisions has been prescribed, 21 of which are compoundable and three of which are non-compoundable. With the enactment of LLP (Amendment) Act, 2021, the overall number of criminal provisions under the LLP Act has been reduced to 22, which are bifurcated as follows:
  - compoundable offences to be reduced to 7 (earlier which was 21 as per the Act),
  - non-compoundable offences to be remained to 3, and
  - the number of defaults to be dealt with via the In-House Adjudication Mechanism (IAM) increased to 12 (no concept of IAM was prescribed earlier in the Act).

Moreover, it has been provided to appoint as many officers as adjudicating officers to adjudicate penalties under the LLP Act, 2008.
- **Transfer of criminal cases pending before the court of Judicial Magistrate of first class or Metropolitan Magistrate to the Special Courts:** The Amendment Act has substituted the section 77 of the LLP Act, 2008 to enable speedy trials of the offences under the Act. Accordingly, all offences specified under sub-section (1) of 67A shall be triable only by the Special Court instead of the Judicial Magistrate of first class or Metropolitan Magistrate as was prescribed earlier in the Act.
- **Cognizance of offences by the Special Courts:** The Amendment Act has inserted a provision which states that "No court, other than the Special Courts referred to in section 67A, shall take cognizance of any offence punishable under this Act or the rules made thereunder save on a complaint in writing made by the Registrar or by any officer not below the rank of Registrar duly authorised by the Central Government for this purpose."
- **Appeals to Appellate Tribunal:** The Amendment Act provides that appeal cannot be made to Appellate Tribunal, i.e., NCLT against an order that has been passed with the consent of the parties. Appeals must be filed within 60 days (extendable by another 60 days) of the Order.
- **Residual Penalty reduced from 5 Lakhs to 1 Lakh:** As per the Amendment Act, any person who is not guilty of any offence for which no punishment is expressed

explicitly under this Act, such person shall be liable to pay fine which may extend to 1 lakh rupees (earlier which was prescribed as Rs 5 lakh)

**Detailed Analysis of the Amendments passed in the Limited Liability Partnership Act, 2008 through the Limited Liability Partnership (Amendment) Act, 2021 summarised by CL&CGC ICAI are available at the link <https://resource.cdn.icai.org/66142clcgc53397-dallp.pdf>**

Members may note the above.

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