Decriminalisation of Offences Under LLP Act

Why in News

Recently, the **Company Law Committee (CLC)** has recommended that 12 offences under the **Limited Liability Partnership (LLP) Act 2008** be decriminalised and that LLPs be allowed to issue **Non-Convertible Debentures (NCDs)** to raise funds with the aim of improving ease of doing business for LLP firms.

> The **Company Law Committee (CLC)** was **set up by the Ministry of Corporate Affairs** in September, 2019 to promote Ease of Living in the country by providing **Ease of Doing Business** to law-abiding corporates and fostering improved corporate compliance for stakeholders at large.

Key Points

- **Company Law Committees (CLC's) Recommendations:**
  - **Decriminalisation of Offences:**
    - Several offences related to **timely filings,** including **annual reports and filings on changes in partnership status of the LLP,** not related to fraud have been recommended for decriminalisation.
    - While **none of these provisions** recommended for decriminalisation currently **have prison terms** as a possible punishment, the committee has **recommended that companies be required to pay penalties for non-compliance, instead of fines which are imposed after a partner or the LLP is found guilty of misconduct by a court.**
  - **Risk Involved in Imposing Fines:**

    The Committee has noted that there is a **risk of a convicted person being disqualified or becoming ineligible for various posts** in the case of fines imposed by courts, which would not be the case for penalties imposed by an appropriate authority.
  - **Authority to Levy Penalties:**
    - The **Registrar of Companies (ROC)** would have the authority to levy penalties for any contravention of provisions of the LLP Act.
    - ROC **appointed under Section 609 of the Companies Act** covering the various States and Union Territories are **vested with the primary duty of registering companies and LLPs** floated in the respective states and the Union Territories.
  - **Permission to Issue NCDs:**

    LLPs which are currently not allowed to issue debt securities should be permitted to issue NCDs **to facilitate raising of capital and financing operations.**
- **Beneficiaries:**

  The move is likely to benefit **startups and small firms** in sectors which require heavy capital investment.

Limited Liability Partnership

- **About:**
  - It is a partnership in which some or all partners (depending on the jurisdiction) **have limited liabilities.**
  - In an LLP, **each partner is not responsible or liable for another partner's misconduct or negligence.**
  - The LLP can **continue its existence irrespective of changes in partners.** It is capable of entering into contracts and holding property in its own name.
  - The LLP is a **separate legal entity,** is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP.

- **LLP vs Traditional Partnership Firm:**
  - Under "traditional partnership firm", every partner is liable, jointly with all the other partners and also severally for all acts of the firm done while he is a partner.
  - Under LLP structure, liability of the partner is limited to his agreed contribution. Thus, individual partners are shielded from joint liability created by another partner's wrongful acts or misconduct.
- **LLP vs a Company:**
  - The internal governance structure of a company is regulated by statute (i.e. **Companies Act**, 2013) whereas for an LLP it would be by a contractual agreement between partners.
  - The **management-ownership divide** inherent in a company is not there in a limited liability partnership.
  - LLP will have more **flexibility** as compared to a company.
  - LLP will have lesser **compliance** requirements as compared to a company.

Non-Convertible Debentures

- Debentures are **long-term financial instruments** that are issued by companies to borrow money.
- Some debentures have a **feature of convertibility into shares** after a certain point of time at the discretion of the debenture holder.
- The **debentures which cannot be converted into shares** are called non-convertible debentures (or NCDs).
- There are two types of NCDs-secured and unsecured.
  - **Secured:** A secured NCD is backed by the assets of the company. If the company fails to pay the obligation, the investor holding the debenture can claim that through liquidation of those assets.
  - **Unsecured:** Contrary to secured NCD, there is no backing in unsecured NCDs if the company defaults.

Source:IE