

DECRIMINALISING COMPANY LAW

The unfinished agenda

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The government is in the process of introducing in Parliament a new Bill to further decriminalise the Companies Act, 2013. Through a similar exercise in 2018, 16 non-compliances in the Act were changed from criminal offences to civil.

The new Bill will be largely based on the recommendations of the Ministry of Corporate Affairs-constituted Companies Law Committee (CLC) that submitted its recommendations last month. The recommendations made in the report include categorising offences to fit in the in-house adjudication framework, increasing threshold for CSR compliances, adding exceptions to the definition of listed companies, and giving exemptions to non-banking financial companies. The committee has categorised offences under two lenses — where

an element of fraud exists, and where it doesn't. However, many experts believe that there is a lot more left to be done to decriminalise the company law and strike a balance between civil and criminal offences.

There seems to be a need to introduce provisions in the Companies Act which can allow for further decriminalisation of offences where criminal liability is already being harshly imposed by other Acts. "Commercial organisations are now directly liable under the Prevention of Corruption Act. Their directors and officers are subject to criminal liabilities and are also exposed to search and seizures by the police. It is important to provide a framework for voluntary disclosures of violations by commercial organisations and deferred prosecution agreements in line with international standards," says Bharat Anand,

TO-DO LIST



- **Setting up a framework** for voluntary disclosure of violations
- **Non-alignment of provisions** of the Companies Act with the LLP Act
- **Clarification over multiple laws** governing related-party transactions
- **Clarification on whether exemptions** to private firms in 2015 are still applicable

partner, Khaitan & Co.

Though the committee touched upon the issue, it failed to suggest a suitable regime, experts say.

There are some other deficiencies in the CLC's recommendations that legal experts are worried about. For instance, under the Companies Act, various provisions refer to 'firms'. Mostly, the term means a partnership firm under the Partnership Act. However, for some provisions, a firm can mean a limited liability partnership (LLP).

There is a need for further clarification over multiple laws governing related party transactions.

Some experts are concerned over the CLC's recommendation to decriminalise offences relating to misstatements in the prospectus and those pertaining to related-party transactions.

The proposal to make violation of the requirements under Section 8 (primarily for charitable and social purpose companies) punishable only with fines is also being widely debated. "The feasibility of introducing a settlement mechanism under the Companies Act and the existing framework needs to be covered," says Gaurav

Pingle, a company secretary,

Experts point out that there are several definitions and references to a single term in multiple Acts, leading to a new set of liabilities branching out of every law. "In the case of related-party transactions, the Accounting Standards, Sebi Rules, and the Companies Act all apply. Widening the net for every minor thing can make the system cumbersome," says Darshan Upadhyay, partner, Economic Laws Practice.

Experts also point out in 2015, the government had issued certain exemptions to private companies through a notification. However, in 2017, certain provisions related to these exemptions were amended, thereby causing confusion. The CLC is yet to clarify whether such exemptions shall prevail over the amendment or not. "Provisions relating to significant beneficial owners, easing compliances for private placements of securities, and disclosure of interest by directors are some of the aspects that require consideration," says Pingle.