

Government of India
Ministry of Finance
Department of Economic Affairs

12 June, 2020

Statement of Reasons:

**Decriminalisation of Minor Offences For Improving Business Sentiment And
Unclogging Court Processes**

Decriminalisation of minor offences is one of the thrust areas of the Government. The risk of imprisonment for actions or omissions that aren't necessarily fraudulent or the outcome of *malafide* intent is a big hurdle in attracting investments. The ensuing uncertainty in legal processes and the time taken for resolution in the courts hurts ease of doing business. Criminal penalties including imprisonment for minor offences act as deterrents, and this is perceived as one of the major reasons impacting business sentiment and hindering investments both from domestic and foreign investors. This becomes even more pertinent in the post COVID19 response strategy to help revive the economic growth and improve the justice system.

Given the nature of pendency in all tiers of the courts and the time taken for disputes to be resolved, legislative measures have been considered to help restore trust in doing business. In this pursuit, it is also important that a balance be found so that *malafide* intent is punished while other less serious offences are compounded. Accordingly, a framework is required such that a penalty levied is sufficient to act as a deterrent. Actions taken for decriminalisation of minor offences are expected to go a long way in improving ease of doing business and helping unclog the court system and prisons. It would also be a significant step in the Government of India's objective of achieving 'Sabka Saath, Sabka Vikas and Sabka Vishwas' .

Criminalizing procedural lapses and minor non-compliances increases burden on businesses and it is essential that one should re-look at provisions which are merely procedural in nature and do not impact national security or public interest at large. The following principles should be kept in mind when deciding on reclassification of criminal offences to compoundable offences: (i) Decrease the burden on businesses and inspire confidence amongst investors; (ii) Focus on economic growth, public interest and national security should remain paramount; (iii) *Mens rea (malafide)* criminal intent) plays an important role in imposition of criminal liability, therefore, it is critical to evaluate nature of non-compliance, i.e. fraud as compared to negligence or inadvertent omission; and (iv) The habitual nature of non-compliance.

Given the importance of this exercise as also its large-scale impact across society, Government of India is conducting a stakeholder consultation exercise. In order to develop consensus, the Department of Economic Affairs, which administers the Acts indicated at ANNEX, invites the comments of State Governments/ UT Administrations, Civil Society/ Non-Government Organisations, Academicians, Public and Private Sector Entities, Multilateral Institutions and members of the public to submit their suggestions to the Department. The relevant Acts administered by the Department and their specific Sections containing criminal provisions are provided in ANNEX.

Stakeholders may kindly propose and submit their comments/ suggestions regarding decriminalisation of a particular Act or particular Sections of an Act, along with the rationale for the same. The comments/ suggestions may kindly be submitted to the Department at the email address deepak.ranjan@nic.in within 15 days, i.e., by 27 June, 2020.

Ministry / Department: Department of Economic Affairs (DEA)**Comments and Feedback:**

1) Name of the Institution / Organization / Member of the Public:

2) Correspondence Address:

3) Category (Please indicate): State/ UT/ Civil Society/ NGO/ Academic/ Public Sector/ Private Sector/ Multilateral Institution/ Member of the public

Sl. No.	Act/Section/ description	Current Provision /punishment	Your suggestion	Your Proposed Amendments	Rationale for proposed amendments /suggestions	Remarks, if any
1	Securities and Exchange Board of India Act, 1992	<p>Section 11C [Investigation] Sub-section (6): If any person fails without reasonable cause or refuses—</p> <p>(a) to produce to the Investigating Authority or any person authorised by it in this behalf any book, register, other document and record which is his duty under sub-section (2) or sub-section (3) to produce; or</p> <p>(b) to furnish any information which is his duty under sub-section (3) to furnish; or</p> <p>(c) to appear before the Investigating Authority personally when required to do so under sub-section (5) or to answer any question which is put to him by the Investigating Authority in pursuance of that sub-section; or</p> <p>(d) to sign the notes of any examination referred to in sub-section (7),</p>				

		<p>he shall be punishable with imprisonment for a term which may extend to one year, or with fine, which may extend to one crore rupees, or with both, and also with a further fine which may extend to five lakh rupees for every day after the first during which the failure or refusal continues.</p>				
		<p>Section 24. [Offences.]</p> <p>Sub-section (2):</p> <p>If any person fails to pay the penalty imposed by the adjudicating officer or the Board or fails to comply with any directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both.</p>				
2.	The Securities Contract Regulation, Act, 1956	<p>Section 23 [Penalties].</p> <p>Sub-section (1): Any person who-</p> <p>(a) without reasonable excuse (the burden of proving which shall be on him) fails to comply with any requisition made under sub-section (4) of section 6; or</p> <p>(b) enters into any contract in contravention of any of the provisions contained in section 13 or section 16; or</p> <p>(e) owns or keeps a place other than that of a</p>				

		<p>recognised stock exchange which is used for the purpose of entering into or performing any contracts in contravention of any of the provisions of this Act and knowingly permits such place to be used for such purposes; or</p> <p>(g) not being a member of a recognised stock exchange or his agent authorised as such under the rules or bye-laws of such stock exchange or not being a dealer in securities licensed under section 17 wilfully represents to or induces any person to believe that contracts can be entered into or performed under this Act through him; or</p> <p>(i) joins, gathers or assists in gathering at any place other than the place of business specified in the bye-laws of a recognised stock exchange any person or persons for making bids or offers or for entering into or performing any contracts in contravention of any of the provisions of this Act;</p> <p>shall, without prejudice to any award of penalty by the Adjudicating Officer or the Securities and Exchange Board of India under this Act, on conviction, be punishable with imprisonment for a term which may extend to ten years or with fine, which may extend to twenty-five crore rupees, or with both.</p>				
		<p>Section 23M [Offences]</p>				

		<p>Sub-section (2): If any person fails to pay the penalty imposed by the adjudicating officer or the Securities and Exchange Board of India or fails to comply with the directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to ten years, or with fine, which may extend to twenty-five crore rupees, or with both.</p>				
3.	The Depositories Act, 1996	<p>Section 20 [Offences]</p> <p>Sub-section (2): If any person fails to pay the penalty imposed by the adjudicating officer or the Board or fails to comply with any directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to ten years, or with fine, which may extend to twenty-five crore rupees, or with both.</p>				
