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# Scams scare companies into carrying out 'sanity' checks

Enactment of a UK bribery law and stricter enforcement of a US law have made multinational firms re-examine legal liabilities

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Mumbai: Concerned over potential legal and tax liabilities arising out of scams, companies are calling on law firms to do a so-called sanity check on the mergers and acquisitions (M&As) or investments they've made in the country.

At least six law firms told *Mint* they are carrying out legal due diligence exercises to detect any loopholes that could result in liabilities on behalf of their clients to avoid litigation possibilities arising out of deals done in the past.

"We are getting many requests from our existing clients to conduct legal checks on the past deals to gauge the possible liabilities arising out of scams like 2G and illegal mining," said Dina Wadia, a partner with Mumbai-based law firm J Sagar Associates. Companies want to be legally equipped before any such situation comes knocking at the door, Wadia said.



Photo: Bloomberg

India has seen many allegations of fraudulent activities in the recent past, including the ongoing second-generation (2G) radio spectrum scam involving the government and some officials of well-known companies and industrial groups.

In the past two years, Indian authorities have been investigating irregularities around the 2010 Commonwealth Games in New Delhi, illegal mining in Karnataka and overstatement of accounts at technology firm Satyam Computer

Services Ltd, India's largest corporate fraud.

Besides, Vodafone International Holdings BV is fighting a case in the courts against a \$2.5 billion (Rs12,875 crore today) tax notice over its acquisition of a wireless operator in India.

These instances have spooked multinational firms.

According to a senior partner at a leading law firm in India, a transnational company requested a check to be done on a deal agreement it had with a telecom company embroiled in the 2G scam. The company, the lawyer said, re-examined its options in the partnership and sought legal guidance on it. The lawyer declined to be named and divulge case details, citing client confidentiality.

While some companies are scrutinizing domestic deals they've done in the past, say law experts, a few multinational companies are also doing a legal check on whether the Indian subsidiaries and companies they invest (or have invested) in are complying

with the Foreign Corrupt Practices Act (FCPA) of the US and the UK Bribery Act.

Apart from the uncertainty arising from such scams, say lawyers, enactment of the UK bribery law and stricter enforcement of the FCPA have made multinational companies—operating in India through subsidiaries and companies they invest in—take a relook at the legal liabilities.

“Given the extra-territorial reach of the UK Bribery Act, 2010, the cost of compliance for multinational companies has obviously increased. In terms of the UK Bribery Act, a UK-based company or a company which carries on business in the UK may be held liable for the failure to prevent bribery even if such bribery takes place outside the UK,” said Cyril Shroff, managing partner, Amarchand and Mangaldas and Suresh A Shroff and Co. “The introduction of these provisions, therefore, has naturally resulted in a number of corporations revisiting their anti-bribery policies and has also focused attention on the activities of subsidiaries in susceptible regions.”

**LIABILITY CHECKS**

**THE NEWS**  
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**THE BACKGROUND**  
Indian authorities are investigating irregularities around the 2G spectrum case, the 2010 Commonwealth Games, illegal mining in Karnataka and overstatement of accounts at Satyam Computer Services.

**THE IMPLICATIONS**  
The recent cases have added impetus to the need for corporate governance and legal compliance practices.

Under the UK law, a commercial organization is liable for the activities of associated third parties as well as those of its own staff. It would be guilty of an offence when one of them bribes another person intending to obtain or retain business, or a business advantage, for the organization.

The norms offer no protection from prosecution for corporate ignorance. The only defence is that it had in place adequate procedures designed to prevent a person associated with it from undertaking such conduct.

Although the FCPA has been in force since 1977, it has gained momentum now with whatever is happening around the world

and a layer has been added to it by the stringent UK law, said Neeta Sanghavi, a partner with Wakhariya and Wakhariya.

Recent cases have added impetus to the need for corporate governance and legal compliance practices, she added. These include the controversy over accounts at Lilliput Kidswear Ltd, defaults on foreign currency convertible bonds (FCCBs) by Zenith Computers Ltd and the fraud at Satyam Computer.

“Even in fresh deals, interested investors are now asking whether the companies they invest in are FCPA-compliant or not,” Sanghavi said.

Meanwhile, these sanity checks add to the kitty of law firms.

“Since legal diligence is to be done afresh for such past deals, these assignments are as good as fresh ones, and we charge accordingly,” said Nishith Desai, founder and managing partner of law firm Nishith Desai Associates. He, however, declined to specify the fees because they varied from case to case.

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