



INDIAN LAWS VAGUE, SAY FOREIGN M&A LAWYERS

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Some lawyers pointed out that many successful Indian companies, especially those with political clout, had got used to, and even dependent on legal ambiguities.

The Satyam scandal may have stolen headlines, but going by global merger and acquisition (M&A) lawyers, it's the lack of clarity in Indian laws, exemplified by the Vodafone tax issue, that is having a more material impact on the country's attractiveness as a foreign investment destination.

Though the government has in the last few days released a series of clarifications, international legal practitioners say these clarifications themselves need explanations.

Most point to the Vodafone tax case under which the Union government is trying to tax a transaction that involves the acquisition of an overseas company, which has a subsidiary in India, by another overseas company.

"Sometimes people just can't understand the government policy," said Pratap Amin of London-based law firm Freshfields Bruckhaus Deringer.

"Even when they understand the policy, they can't understand the regulations and when they do, they are difficult to work with," he said.

Deringer said this sometimes leads to some of the prospective foreign investors simply moving off. "They feel it's just a headache. If we go off to another country, we don't have to deal with this headache," the lawyer said at a conference organised by the International Bar Association in Mumbai.

The three new press notes (legal clarifications issued by the government) brought out in February have not helped, most lawyers said.

Thomas Britt III, from the Hong Kong-based Debevoise & Plimpton said it was not clear if an Indian company would be considered a foreign one in case of substantial investments by foreign portfolio investors or overseas retail investors through a dual listing.

Other irritants pointed out by the lawyers, most of whom specialise in cross-border M&As, included the case-by-case approval by the Foreign Investment Promotion Board in the sector where foreign investment is capped. The inconsistent treatment of preference shares, sometimes as equity and sometimes as debt, also found mention.

Britt said poor workmanship in framing the laws opened up the possibility of future mischief. "Rules, on the face of it, do not provide sufficient clarity. The risk is that they would be interpreted inconsistently."

Some lawyers pointed out that many successful Indian companies, especially those with political clout, had got used to, and even dependent on, such legal ambiguities, but firms in developed markets prefer to have clear-cut laws.

"My advice has always been to try not to be too smart or to try to take advantage of it," said **Rajesh Begur, managing partner of Mumbai-based ARA Law**

Cees-Frans Greeven, tax specialist with The Hague-based Buren van Velzen Guelen, said consistency and clarity were an issue for his clients when it came to investing in emerging markets. "They want stability — financial, cultural and legal."