Diversity and inclusion: an increasingly important factor in M&A

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"Today, if certain aspects don't go well, deals are delayed. For example, questions about employment benefits, ESG (environmental, social, governance) policies and whether the company has a D&I policy are now standard." A law firm said, adding that people are even asking about policies like POSH (Prevention of Sexual Harassment). "Just a few years ago, no one was asking these questions," said the expert, who requested anonymity.

Kunal Sharma, partner at Singhania & Co, said failure to meet diversity targets could raise red flags during due diligence that could hinder the approval of cross-border transactions. "While the direct impact may not be obvious, companies involved in cross-border mergers and acquisitions must comply with international D&I standards to attract and retain foreign investment," Sharma said.

To be sure, India lacks specific legal provisions requiring consideration of diversity in M&A transactions. But experts agree that it has become critical in the decision-making process.

The growing importance of D&I is closely related to the growing focus on ESG assessment, with many global private equity (PE) funds conducting additional due diligence on D&I standards. Aparna Mittal, founder of the Samana Center for Gender, Policy and Law, explains: "Many global private equity funds, in particular, conduct additional due diligence on the D&I parameters to understand what they are investing in. Corporate Social Impact and Governance Standards."

However, Debjani Aich, employment law partner at IndusLaw, points out that while D&I is gaining traction, it is still not a standard part of merger agreements. "There's been a significant increase in shareholders considering labor equity in merger decisions, but from a practical perspective, it's not a deal-breaker yet," Edge said.

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In a recent deal, a leading Indian law firm was involved in a deal in which a U.S. venture capital banking firm

These requirements include equitable employee ownership, a diverse employment separate bathrooms for female employees. The transaction was finalized, compliance measures were met, and the consultancy is now a listed entity.

In another deal, a British investor in an Indian venture capital firm that was pumping money into a local company insisted that the Indian company notify the investor of any complaints against its management. "Both of these deals were successful because obviously the companies needed money so they would agree to any conditions. But this just shows the undercurrent," the lawyer, who requested anonymity, said earlier.

Another senior partner at a law firm who spoke on condition of anonymity mentioned that the recent equity transfer involving multinational group "X" highlighted the growing importance of D&I. The acquirer's employee policies were male-centric, reflecting the male-dominated workforce.

While these policies include basic benefits for female employees that comply with labor laws, they lack provisions for a more female-friendly workplace, such as benefits such as separate restrooms with sanitary napkin vending machines, menstrual leave, and leadership training programs for women. By target company X.

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Therefore, some female employees of Company X expressed dissatisfaction with the equity transfer measures and refused to agree. To avoid delays, the acquirer ("Y") quickly revised its policies during the due diligence phase to ensure they were inclusive and consistent with the expectations of a more diverse workforce. Experts say this proactive response is key to a successful deal.

To avoid delays, the acquirer ("Y") quickly revised its policies during the due diligence phase to ensure they were inclusive and consistent with the expectations of a more diverse workforce. This proactive response was key to a successful deal, the lawyer said.

Although India lacks a specific legal framework to enforce D&I in M&A transactions, experts stress that these issues are becoming increasingly important in the corporate world.

Anshul Prakash, partner at Khaitan & Co., pointed out that although there is no law in India that specifically governs D&I in M&A transactions, it has become standard practice to adjust diversification policies in such transactions. He stressed that empowering employees regardless of gender, sexual orientation or identity is crucial.

Deepti Thakkar, head of human resources and employment law at **Nishith** Desai Associates, echoed the sentiment. "Ensuring diversity and inclusion can address issues of cross-cultural integration. Reviewing the policies and practices of the merging entities should be one of the key considerations in business mergers," she said, noting that some Indian businesses are legally required to implement equal opportunities policies, particularly Policies for disabled and transgender employees.

Experts also point out that while D&I may not directly impact Indian regulatory approval of mergers and acquisitions, its growing importance cannot be ignored. Kailash Lad, partner at Little & Co, noted that the growing focus on D&I has been driven by scrutiny from institutional investors and regulators, especially companies listed on stock exchanges.

As global standards evolve, experts predict that D&I considerations will increasingly become a core part of M&A transactions. Adil Ladha, partner at Saraf & Partners, said a successful M&A integration strategy requires careful planning to maintain and enhance diversity within the merged organization. "Teams and HR leaders can develop comprehensive integration plans outlining the steps each organization will take before, during and after the restructuring to maintain diversity and inclusion policies," he said.

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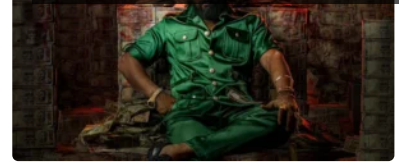
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