Why Companies Must Keep Regulatory Licences In Mind For Newly Acquired Businesses

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When a business is being acquired, the transition of business from the seller to the buyer needs to be planned thoroughly at an early stage in the transaction.

In most cases, it is difficult to accomplish a complete business transfer on the day of acquisition itself. Several assets and liabilities need to be transferred from the seller to buyer which requires thorough planning and implementation.

One major difficulty that arises is in relation to the various regulatory licences in relation to the relevant business, particularly in the manufacturing sector. There are several laws and multiple regulatory authorities involved in relation to the same business.

As most Indian laws were enacted a few decades ago, when business transfer transactions may not have been usual, such laws did not contemplate and provide for such transactions. As most Indian laws are silent, there is a lack of clarity on the way licences should be dealt with on business transfers.

In certain sectors and under certain laws, the state government has the power and authority to issue licences for various activities and oversee implementation of the regulations. This may give rise to situations where different state governments may have different rules or interpretation of the law (in the case of any ambiguity, law being silent, etc).

In states where there is substantial business activity, authorities may be aware of business transfer transactions and would have developed practical solutions to give effect to business transfer transactions. However, in states where such business transfers are not common, the seller and buyer may find it difficult to implement a transaction in such state.

Identifying which licences can be transferred to the buyer, and which are required to be obtained afresh by the buyer, is essential to ensuring minimum disruption, business continuity and mitigating regulatory risks. Given the lack of clarity under law, the process of ensuring compliance with all licensing requirements may involve liaising with the regulatory authorities for practical solution, preferably, before consummating the transaction.

As the buyer may not have all the licences on the day of acquisition itself, the buyer could face challenges in compliance with the existing regulatory framework. For example, the buyer may not be able to manufacture until a valid licence is obtained by the buyer. Similarly, the products already manufactured by the seller would have the seller's details in labelling and packaging. However, such products may need to be sold by the buyer after the business is acquired. The labelling would need to reflect the change of name from the seller to the buyer. Such change of name also requires various compliances and this process may lead to various costs or losses due to business disruption.

Having said that, some laws explicitly contemplate business transfers. For example, subject to specific conditions in each case, the consent to operate issued by the state pollution control board is deemed transferred when the industry is sold, petroleum storage licences granted for manufacturing purposes can be legally transferred by the existing holder, and boiler licences are transferable in the event of a change in ownership.

that such licences are obtained. An important point to be considered is that in case of a manufacturing business, some of the transferring licences or fresh applications are dependent on the factory licence, which itself is dependent on land, building and plant and machinery being in the name of the buyer.

The timing and sequencing of applications for transfer of licences and obtaining fresh licences needs to be planned in advanced. Certain licences could require a long time to process, thereby threatening a potential disruption of business for the buyer. Therefore, at an early stage in a transaction, it would be important to conduct a thorough review of all regulatory requirements, and the status of existing licences as required for that industry, before the transaction is finalized.

India is focussed on improving the ease of doing business. Further, in recent times, manufacturing is receiving attention from the government. Given its ambition to become the world's preferred business destination and its efforts to enhance manufacturing capabilities, it is crucial that transactions like business transfers can be implemented in a proper legal and efficient manner. The government should review the various laws and the current regulatory framework to facilitate smooth and efficient implementation of transactions.

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