Can you hear the whistle blowing?

With more than 5,000 listed companies on Indian bourses, the newly passed Companies Bill is likely to bring about significant changes in corporate governance standards. This sentiment is shared by many, considering the challenges whistleblowers face. There have been many incidents in the past that discourage employees from sharing with senior management their concerns over wrongdoing. The question is: Is this a check-in-the-box, or is the management actually interested in knowing what is wrong and fixing it?

Fencing from all sides

The Bill aims to deter corporate crime and related offences. On the regulatory side, measures include giving more powers to the Serious Fraud Investigation Office (SFIO), establishing special courts and tribunal, and detailing a list of penalties. In terms of self-regulation, it defines liability of the board and senior management in the event of fraud. For investors, it introduces the concept of class action suits (clause 245), giving them a right to claim damages or compensation, or demand suitable action from, or against, the company or its directors for any fraudulent, unlawful or wrongful act. In a way, the Bill balances external and internal forces to improve corporate governance, and brings into its fold liabilities of parties responsible, and interests of stakeholders.

Keeping an ear to the ground

Under Clause 177 of the Bill, it is mandatory for every listed company to establish a vigil mechanism for directors and employees to report genuine concerns in the manner prescribed. But a company’s responsibility doesn’t end with providing a reporting channel — its success will depend on how the company safeguards against victimisation of the whistleblower. In addition, the clause mentions that the mechanism should be implemented across the company with an access to the chairperson of the audit committee.

What this means for companies

While a number of Indian companies have a whistle-blowing policy in place, they use it as a “good to comply with” measure under Clause 49 recommendations. But with the Bill, companies should include an effective whistle-blowing mechanism as part of their strategic agenda. However, the mechanism will be effective only if it is supplemented with policies and a practical fraud response plan. Moreover, it is important to have a cross-functional committee and sub-committees to evaluate complaints, decide on follow-up action, initiate disciplinary action and report incidents.

Providing a secure channel

Even before the law makes it mandatory to have a whistle-blowing mechanism in place, companies should proactively set up the right channels for employees and partners to raise concerns. It doesn’t take long for an aggrieved or disgruntled or harassed employee to voice his/ her concern on social media sites, or other online channels. A prescribed whistle-blowing hotline will ensure that the company gets the information first and, even in worst-case scenarios, has adequate lead time to take corrective action.
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