

CAs can help clients avoid courthouses



A stitch in time saves nine. Alarmed at the rising toll of litigation costs, more and more companies are taking steps to stop lawsuits before they begin. As part of risk management strategies, Companies are turning to an array of professionals to review policies to keep their companies out of courthouse.

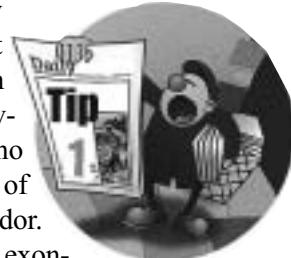
Five tips for Risk Managers

-- Ms Shahala

How does a business distance itself from legal problems? Here are some tips, particularly tried and tested by the professionals who work as litigation consultants and help their corporate clients and employers identify issues and implement strategies to manage risks and avoid legal conflicts.

Promote Ethical Behaviour

A consumer product company recently hired a CA consultant firm for a factfinding mission to help settle a dispute involving a disgruntled employee who had accused a senior manager of taking kickbacks from a vendor. Eventually, the manager was exonerated. But what the hired consultants saw at the company aroused concern. They found that the manager was indeed not taking kickbacks, but the company lacked ethics policies. They found that the salaried employees were working as consultants for other companies. They weren't doing anything wrong, per se, but they were exposing their employer to allegations of self-defeating and conflicts of interest.



Because the consultant firm alerted it to risks, the company took action. Its management instituted a code of ethics as part of its efforts to ensure good corporate governance. As per the adopted code of ethics, the hired employees were now required to shun improper relationships with vendors, such as accepting of gifts valued above a certain amount. Thus a stitch in time saved nine. Otherwise, the company may have remained prone to charges of restraint of trade, self-dealing, failure to use competitive bidding practices and even insider trading violations.

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What began as a nasty episode had a positive result. Not only was the manager absolved of any wrongdoing but the company too dodged potential legal and ethical bullets by tightening up its internal controls.

Once a company has code of conduct in place, how does management improve ethics awareness among employees? Chartered Accountants, who are accustomed to assessing controls, can recommend following “best practices” to their clients:

- Incorporate ethics policies into the company mission statement and publicise them among employees.
- Inform employees of their responsibilities through training, procedure manuals and other internal communications.
- Conduct periodic reviews of compliance programmes to keep them current.
- Put a senior executive in charge of compliance and regulatory matters to signal the importance of corporate integrity.

Encourage ADR

One way businesses reduce litigation costs is to avoid going to court far as possible. Chartered Accountants can encourage their clients to include arbitration clauses in their contractual agreements or to select alternatives to litigation when disagreements arise. Alternative Dispute Resolution (ADR) methods, such as arbitration and mediation, offer a variety of techniques for resolving conflicts with the aid of a neutral party and without

resorting to litigation. Arbitration and mediation provide timely and economical results and are widely used to settle business controversies without the delays and public exposure of lawsuits.

The CAs should advise clients or their employers to include a demand for alternative dispute resolution in contracts with suppliers and vendors. These agreements are commonly used in many industries to handle employment, labour and insurance issues.

Sometimes, the parties need ADR when other options fail. For example, business interruption insurance claims frequently require a loss appraisal prepared by both the insurer and the insured. If the valuers cannot agree on the amount of the loss of business income due to the suspension of operation, the parties may ask a professional to act as a mediator to settle the claim.

The insurance industry supports the use of ADR by its policy holders as an economical alternative to litigation. The insurance industry invests a lot of money in loss prevention and mitigation of damages.

Assess HR Procedures

In addition to helping the companies resolve economic disputes, the Chartered Accountants can assist in protecting them against problems involving discrimination in hiring and promotions, sexual harassment allegations and wrongful termination. Well-developed hiring practices can be key to blunting problems before they occur. While most large companies are likely to have a well-trained human resources department in place, the Chartered Accountants can add more pairs of eyes to monitor the existing system for any potential red flags. But it is at small and medium-sized companies where a Chartered Accountant can really play an important role. An experienced professional accustomed to detecting problems is able to spot issues throughout an organization before they arise, and shares insights and concerns with owners and top managers.

CAs are generally in constant touch with business people, more so during tax time. They can easily guide their clients about the hiring procedures and policies to be put in place to protect them from an unhappy employee bent upon moving court.

By instituting an effective screening process, companies can save themselves from hiring persons

If a business sees certain signs of weak controls, it may be time to call on a CA litigation consultant. But before a company chooses an outside expert to implement risk management processes, it needs to evaluate his or her credentials.

with the potential to engage in risky behaviour, including drug and alcohol abuse, fraud, theft and mismanagement. The professionals can work closely with the human resource department to make sure a company maintains a state-of-the-art employee manual governing employment policies and hiring procedures, including conducting background checks and checking employee references.

They can even recommend companies to undertake credit check process, particularly for persons working in sensitive positions where they are collecting money or writing checks. It may be necessary to insist that persons in such positions permit ongoing credit checks once they have been hired.

Another important precaution for companies is to have written policies specifying hours of employment, holidays, grievance procedures, and prohibitions against discrimination on the basis of race, sex or age, as well as detailed policies proscribing sexual harassment. The companies need be suggested to secure written statements showing that employees have been informed about such policies and understand the consequences involved. The importance of having written rules cannot be overstated. For example, a company was sued for damages when one of its staff had a three-martini lunch and caused a car accident on the way back to work. Because the company did not have a "no drinking" policy in writing, it was vulnerable in a civil lawsuit.

Examine Contract Language

The Chartered Accountants analytical expertise always draws business entities when money losses are at stake. Thus, companies may summon them to guard against cases involving fraud and embezzlement and breach-



of-contract and Intellectual Property disputes. The professionals can help structure companies' royalty payment agreements, for example, to conform to the terms of the licensing deal in order to avoid intellectual property squabbles - an increasingly common area of contention in the technology and pharmaceutical fields.

Badly constructed royalty agreements result in misunderstanding among parties, and then lawsuits. Too often the companies use a sloppy and haphazard process to protect their intellectual capital. Very often we see people signing agreements based on the last one they had and they just change the names in the contract. We see smaller companies start without input from legal professional or advisors. The Chartered Accountants, with real-world experience in IP matters, can save businesses a lot of "suspicion and confusion" later.

One common area where lawsuits arise is in calculating royalties derived from licensing IP. The terms of the agreement can specify "10% of the profits" but in practice the parties can interpret the term profit differently. For example, an inventor of a software programme assumes it refers to gross profits, only to find herself with little or nothing because the licensee is paying 10% of 'after-tax' profits.

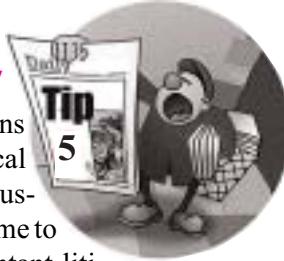
The parties can avoid a dispute simply by agreeing on a non-controversial payment formula that is easy to understand.

Work With 3rd Party

If a business sees certain signs such as missing funds or critical documents or troublesome customer complaints, it may be time to call on the Chartered Accountant litigation consultant. The professionals are trained to spot weak controls. Management may have blinders on. Sometimes, you need a third party to look around and show that bad decisions are being made.

Before a company chooses an outside expert to implement risk management processes, it needs to evaluate his or her credentials. The company risk managers must be sure that the litigation consultant has the right expertise, such as training in interview techniques and industry-specific experience, particularly if the parties anticipate the possibility of testifying in court.

For companies with foreign subsidiaries, the



Chartered Accountants can offer their expertise to unearth schemes to siphon off funds, launder money and even bribe government officials. Both business and government bodies engage Chartered Accountants to ferret out corruption and install competitive bidding systems, ensuring that goods and services under contract are needed, priced fairly and actually delivered - making it harder for bid-riddling, kickbacks and graft to occur.

Many CAs and CA firms that specialize in forensic accounting and litigation services are adding preventive work to their portfolio. There is an increased interest from companies that want to limit their exposure to potential fraud and manage their risk. More companies are taking preemptive steps to detect problems early rather than waiting for them to develop.

Professionals can help structure companies' royalty payment agreements, for example, to conform to the terms of the licensing deal in order to avoid intellectual property squabbles - an increasingly common area of contention in technology and pharmaceutical fields. CAs can help clients avoid disputes by offering them simple payment formula.

How does a company know it got its money's worth of risk reduction services? The litigation expert achieves success when the client doesn't get sued. ■



Release of Compendium of Accounting Standards – As on July 1, 2004, accompanied by a CD

The new edition of the Compendium of Accounting Standards – As on July 1, 2004, incorporates all the relevant developments up to July 1, 2004. Since the issuance of the last edition of Compendium of Accounting Standards in 2003, many developments in the area of accounting standards have taken place, which include issuance of Accounting Standard (AS) 29, Provisions, Contingent Liabilities and Contingent Assets; revision of the Preface to the Statements of Accounting Standards; issuance of 22 Accounting Standards and Interpretations; issuance of Announcement on Applicability of Accounting Standards in the context of Small and Medium Sized Enterprises (SMEs); issuance of Announcements on certain Accounting Standards; limited revisions to certain Accounting Standards. All these developments have been incorporated in this edition of the Compendium.

This edition of the Compendium of Accounting Standards – as on July 1, 2004, includes the following:

- Announcements of the Council regarding status of various documents issued by the Institute of Chartered Accountants of India
- Preface to the Statements of Accounting Standards (revised 2004)
- Framework for the Preparation and Presentation of Financial Statements
- Accounting Standards - AS 1 to AS 29
- Revised Accounting Standards (AS) 7, Construction Contracts
- Revised Accounting Standards (AS) 11, The Effects of Changes in Foreign Exchange Rates
- Accounting Standards Interpretations (ASIs) 1 to 28
- Comparative Statement of International Accounting Standards and Indian Accounting Standards (as on July 1, 2004)

The Compendium is accompanied by a CD containing its electronic copy.

The Compendium, including CD, is priced at Rs. 450 and can be obtained from the Institute's sales counters at New Delhi and the Regional Offices at Mumbai, Kolkata, Chennai and Kanpur.

Persons who desire to obtain above publication by post may send Demand Drafts in favour of the Secretary, ICAI, for the cost of the Compendium plus the postal charges (Rs. 57 if required by unregistered parcel; Rs. 74 if required by registered parcel).

The orders may be sent to Postal Sales Section, Institute of Chartered Accountants of India, Indraprastha Marg, New Delhi – 110 002.