

IL&FS Law Firms Get SFIO Notices

Digging Deep

Notices sent under Section 217(1) of the Companies Act

Info sought on advice provided by law firms, consultants to IL&FS & its group cos



Cos may face action for not sharing info

Attorney-client privilege is protected under various laws

But holding back details may be construed as non-cooperation in probe



Law firms need IL&FS consent to make such disclosures

Agency demands info for past 10 years from consultants as well; law firms seek co's consent

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Mumbai: The Serious Fraud Investigation Office (SFIO) has asked India's top law firms and consultants to disclose all information they have on IL&FS, the country's largest shadow bank which collapsed a year ago.

The central agency under the Ministry of Corporate Affairs (MCA)

has sought information for the past 10 years when the firms had advised and represented IL&FS or its subsidiaries and group companies. The SFIO notices, served under various Sections of the Companies Act, were received 10 days ago, sources told **ET**. Information has been sought on the nature of advice provided by them and fee charged, among other things.

Some law firms have reached out to their ex-client IL&FS for its consent. Professional communication between attorney and clients is protected under various laws such as the Indian Evidence Act, 1872, the Advocates Act, 1962, and the Bar Council of India Rules.

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"Law firms were rarely approached by law enforcement or statutory agencies to obtain information in the course of investigation... This is a recent trend. We will cooperate, but given the obligations under law we have approached IL&FS," said a partner of one of the largest law firms.

The attorney-client privilege continues even after the employment has ceased. However, the privilege is waived if the disclosures are made with the client's express consent. Similar letters from SFIO have been received by accountants and consultants including an MNC arm offering turnaround management solutions.

In all likelihood, SFIO may focus on the role played by the consultants and law firms engaged by the erstwhile IL&FS board. The agen-

cy may probe whether there were any 'shortcomings' or 'issues of malpractices'. According to sources, the notices have been sent under section 217(1) of the Companies Act that empowers the investigating officer to seek information from officers, other employees and agents of a company including those who had an association with it in the past.

CLIENT CONFIDENTIALITY

Professionals, auditors and consultants often find themselves in a spot when faced with queries from government agencies. While sharing information could amount to a breach of client confidentiality, holding back details could be construed as unwillingness to cooperate. "For multinational entities bound by their home country law, such a breach could be perceived as a serious vio-

lation," said a senior consultant. "The agency will check whether there was any failure to raise red flags despite being aware of the irregularities particularly on matters concerning compliance issues," said a person privy to the development. "The aim is to probe whether there was wilful negligence or was it a case of sheer negligence," added the source.

According to sources, the notices also state that if they fail to provide the information sought then why shouldn't action be taken against them under section 217(8) of the Companies Act. The agency can recommend penal action against a person failing to cooperate in the probe without reasonable cause.

The section states, "If any person fails without reasonable cause or refuses... he shall be punishable with imprisonment for a term which may extend to six months and with fine which shall not be less than Rs 25,000 but which may extend to Rs 1 lakh,

and also with a further fine which may extend to Rs 2,000 for every day after the first during which the failure or refusal continues".

The queries to consultants and auditors also relate to ITNL, the largest company in the IL&FS group. "In many cases, the agency could go through the engagement letters, advices and opinions given, invoices raised and even bank statements of the consultants to verify whether the transactions were genuine or used to divert funds," said another lawyer.

On September 30, 2018, the MCA had authorised SFIO to investigate into the affairs of IL&FS and its subsidiaries. On October 1, 2018, the ministry moved the National Company Law Tribunal (NCLT) seeking the replacement of IL&FS' board of directors on various grounds such as compromise in corporate governance, camouflaging financial statements, financial defaults, and inability to continue as a 'going concern' among others.