



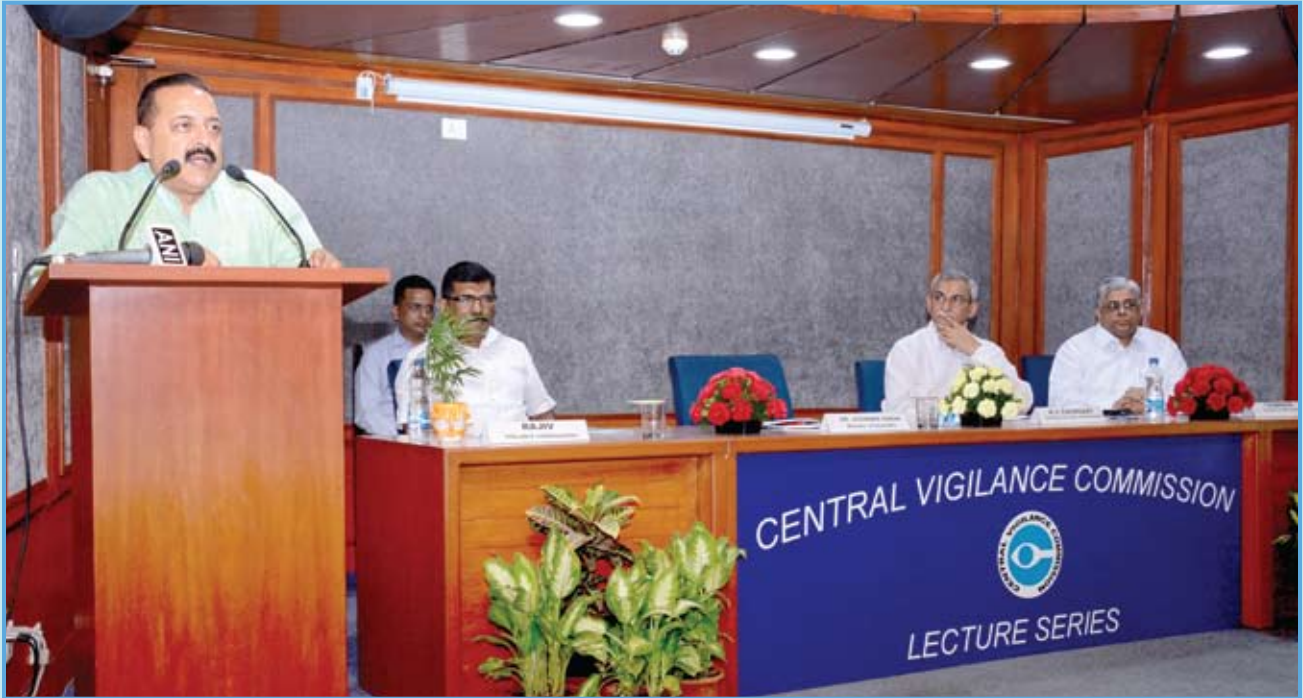
VIGEYE VANI

Quarterly Newsletter
Central Vigilance Commission

April - June 2017

INTERNATIONAL COOPERATION IN CURBING CORRUPTION





Dr. Jitendra Singh, Minister of State (PP) addressing the gathering on 09.05.2017

LATEST NEWS

IACA and India's Central Vigilance Commission to Strengthen Relations

27 June 2017



IACA and India's Central Vigilance Commission (CVC) have agreed to further intensify their working and service relations following a visit by the head of the CVC to the Academy last week.

During productive and wide-ranging discussions, Hon. Shri K.V. Chowdary, Central Vigilance Commissioner of the Republic of India, expressed his high appreciation for IACA's programmes and trainings.

These include multiple tailor-made trainings that IACA delivered at the request of the CVC for groups of senior Indian vigilance officers and officials from public sector companies, **most recently in March 2017.**

The two-week programmes covered topics such as organizational integrity, corruption prevention, fraud detection, and good governance. Feedback from participants was extremely positive, with an overall evaluation score of 4.9 out of 5 for IACA's services.

Last week's meeting followed previous discussions between IACA and Hon. Shri Chowdary in February **during an IACA mission to India.**

The CVC is an apex Indian governmental body created in 1964 to address governmental corruption. It has the status of an autonomous body, free of control from any executive authority, and is charged with monitoring all vigilance activity under the Central Government of India, and advising various authorities in Central Government organizations in planning, executing, reviewing, and reforming their vigilance work.

Screen shot of the web story published by IACA

(Source: <https://www.iaca.int/898-iaca-and-india%E2%80%99s-central-vigilance-commission-to-strengthen-relations.html>)

From the Editor's Desk



Sonali Singh
Chief Editor

In this edition Dr. T.M. Bhasin, Vigilance Commissioner shares with us his views on a host of important issues including anti corruption and vigilance mechanism in Banking and Insurance Sectors, measures to tackle the problem of NPAs, amendments to the Banking Regulation Act etc. He gives invaluable advice not only to the CVOs but to all bankers and public officials. The EB is grateful to Dr. Bhasin for the open and frank discussion.

This issue of Vigeye Vani also focuses on some important international anti corruption initiatives. Corruption is a global phenomenon and remains a serious global concern. Sustained international cooperation is required to eradicate its corrosive effects. The United Nations Convention Against Corruption (UNCAC) offers a strong framework for the participating States to engage in international cooperation at both the informal and formal levels. The Implementation Review Group of UNCAC recently held its eighth session at Vienna from 19-23 June 2017. The Central Vigilance Commissioner Shri K.V. Chowdary represented India at this meeting. Through his Statement and intervention, the CVC highlighted India's robust and time tested institutional and legislative framework and also explained how India is assisting other countries in the sub continent in their anti corruption efforts.

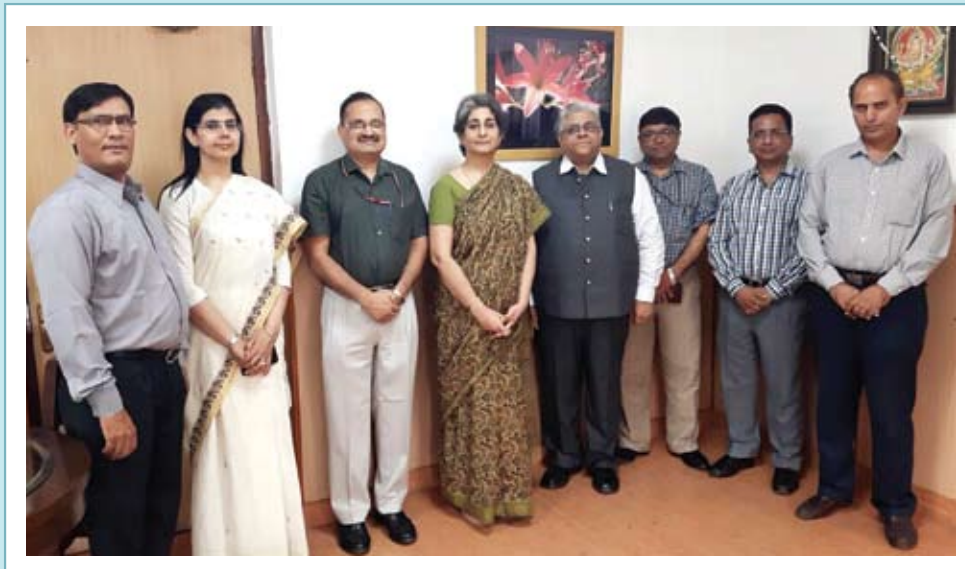
The importance of international cooperation in the fight against corruption can hardly be over emphasized. Renowned global expert on anti corruption Prof. Robert Klitgaard argues that international cooperation can help individual countries to develop the necessary will and capacities to combat corruption (<http://www.imf.org/external/Pubs/FT/fandd/1998/03/pdf/klitgaar.pdf>).. "... international action can convey the useful truth that we are all involved in the problem of corruption—and that we must find solutions together".

As always, the EB is thankful to those who have contributed articles for this issue and we invite our readers to share their views, experiences and feedback so that this publication may become a more effective platform for outreach, experience sharing and dissemination.

Justice delayed, is justice denied.

– William Gladstone

Excerpts from an interaction the Editorial Board, Vigeye had with Dr. T.M. Bhasin, Vigilance Commissioner, CVC on the eve of his completing 2 years in the Commission. Dr. Bhasin was Chairman, Indian Banks Association (IBA), [a representative body of all Bank Chairmen/MDs] during 2014-15 and also the Chairman & Managing Director of a leading PSB “Indian Bank” w.e.f. 1st April, 2010 to 10th June, 2015.



Q.1 : Sir, you have completed around 2 years in office. In your view, what have been the significant achievements of the Commission during this period?

Ans. My two years' association with Central Vigilance Commission has been very enriching, fruitful and satisfying. Various steps have been taken by the Commission during this period:

- to enhance transparency by systemic improvements;
- reducing public grievances by augmenting system driven online processes for expeditious decision making;
- increasing focus on Pro-active/Preventive Vigilance, so as to reduce the need for and instances of punitive actions;
- increasing public interface of the Commission by undertaking more and more outreach activities for public participation in bringing down corruption and increasing probity in public life.

I wish to share with you some of the recent and important policy changes initiated by the

Commission to achieve the above objectives:-

1. Anonymous/pseudonymous complaints used to be the biggest source of harassment for the officials of the Govt. Departments/ Ministries/CPSEs/ PSUs/PSBs, particularly at the time of their promotions/foreign postings/retirement etc. To put this ordeal totally at rest, CVC has done away with the action on anonymous/pseudonymous complaints. Now the **anonymous/pseudonymous complaints are simply filed** without any action.

Even in the cases of signed complaints, a **system of KYC (Know Your Complainant) has been introduced**, under which the Commission sends a letter to the complainant, seeking his/her confirmation of having sent the complaint. The complainant is requested to send self-attested photo identity verification document along with the confirmation in the prescribed format sent by the Commission. In case the confirmation is not received even after a reminder, the complaint is not taken up for Investigation and Report. This

step has totally eliminated the chances of witch hunting by unscrupulous and coward elements, who were earlier targeting and harassing public officials at the crucial times of their career progression.

2. The Commission has also **done away** with the practice of obtaining **Factual Reports (FRs)** with regard to complaints received. Now an Investigation and Report is advised to be submitted by CVO of the concerned organisation in cases having vigilance overtone.
3. In cases involving difference of opinion in the sanction for prosecution, the Commission has **dispensed with** the mechanism of **holding joint meetings** with the representatives of CBI and the DA of concerned Govt. Deptt./PSU, etc., so as to resolve the issues expeditiously. Now the matter is decided based on the available documents/material and tentative views of the Competent Authority.
4. To dispose off the disciplinary cases expeditiously, the requirement of obtaining Second Stage Advice (**SSA**) **has been dispensed with**, as long as the punishment proposed is in line with First Stage Advice (FSA).
5. To ensure effective vigilance administration, all CVOs have been advised to carefully and cautiously **distinguish between vigilance and non-vigilance cases**, as per definition given in the Vigilance Manual. CVOs have been further advised **not to refer Non-Vigilance cases to the Commission** even in complaints/matters relating to officer employees coming under the purview of Commission, as well as composite cases.
6. CVOs/DAs often raised the issue with the Commission that in the complaints being filed with CBI, the CVOs were asked to give name(s) of officials responsible/accountable for misconduct; which was casting an iota of doubt/suspicion, without being given an opportunity of defending themselves under Principles of Natural Justice. To obviate such discrimination/harassment, the Commission has sorted

out the issue and CVOs can now file complaints with remarks "unknown public servants/officials", if any.

With the above six policy changes and concerted efforts of the Commission, the inflow of infructuous/**bogus complaints and instances of harassment of public officials have drastically come down** and the quality as well as speed of investigation of complaints by the Commission has considerably improved.

7. During the Sectoral review meetings and interactions held with CVOs/CMDs/ Secretaries to the Govt. in various Ministries/Govt. Deptts., during June, 2015 to October, 2015, it was observed that there were large scale pendencies in disposal of vigilance cases and the focus was mainly on Punitive Vigilance. It was as such decided in the full Commission meetings that there was an urgent need to **expedite clearance of pendencies and shift the focus on to Proactive/Preventive Vigilance**.

Every year, the Central Vigilance Commission observes Vigilance Awareness Week, coinciding with the Birth Anniversary of Ironman Sardar Vallabhbhai Patel on 31st October. In line with need of the hour, the Commission decided to adopt theme of "PREVENTIVE VIGILANCE AS A TOOL OF GOOD GOVERNANCE" in 2015. All the Departments and Ministries of Central Govt./PSUs/PSBs/CPSEs etc. were advised to critically **examine/review/revise the Standard Operating Procedures (SOPs)** in their respective organisations to make them more transparent, simple and customer/public friendly so as to ensure integrity, objectivity and transparency in all spheres of activities, pertaining to the Central Govt. and its organisations.

The earlier observed practice of Vigilance Awareness Week was converted into the "YEAR OF PREVENTIVE VIGILANCE", during 2015-16 wherein Employee-Public Interface was converted into more and more **on-line web-based mode of disposal and**

dispensation of Public Services, which added to the "Ease of Doing Business" and reduced the chances/instances of Bribery and Corruption.

Various programmes on **Ethics and Combating Corruption** as well as legal provisions under Prevention of Corruption Act, IPC, Cr.P.C. etc. were conducted in the events organised in Schools, Colleges, Universities, PSUs, PSBs, CPSEs, Govt. Deptts. and Ministries. These steps brought the Central Vigilance Commission closer to the hearts of public; instilled confidence amongst the honest employees and officers and infused fear of law in the minds of corrupt and vulnerable officials.

8. During Vigilance Awareness Week of the year 2016, the Commission has adopted the theme of **"Public Participation in Eradication of Corruption"**, wherein individuals as well as corporates are being encouraged to take **'Integrity Pledge'**. Various outreach activities have been/are being organised by several organisations, PSUs, PSBs, CPSEs, etc. to create awareness among the rural population and around **70,000 "Awareness Gram Sabhas"** have so far been held. As on date, more than **15 lakh individuals and 30,000 corporates have taken integrity pledge** and the work goes on and on.
9. Commission has embarked upon a project to develop an **"Integrity Index"** for Central Public Sector Undertakings (CPSUs) in consultation with Indian Institute of Management (IIM) Ahmedabad. The scope of the project is to (i) develop a conceptual understanding of Integrity index (ii) develop a methodology to construct an integrity index (iii) implement the same initially in select twenty five CPSUs/ Government agencies and (iv) develop an ecosystem to institutionalize and replicate the Integrity Index eventually in all the Govt. Departments/Ministries/CPSEs/PSUs/PSBs etc. in times to come. The Commission feels that the development and implementation of Integrity Index shall be an important step towards enhancing

transparency and reducing corruption in public organisations.

10. **"Vigilance Manual"** (Sixth Edition), which contains operational guidelines for CVOs, DA and Govt. Departments/Ministries/CPSEs/CPSEs etc. from Central Vigilance Commission was last updated and revised way back in the year 2005. Several circulars and instructions have been issued between 2005 and 2017. I am very happy to say that the **Commission has fully updated, upgraded, reviewed and revised the "Vigilance Manual 2017"**, which shall now be available on line on the Website of the Commission. The salient highlight of the latest Vigilance Manual is that it **provides hyperlink to all the relevant circulars of various Govt. Deptts./Ministries** etc., which totally eliminates chances of misinterpretation of guidelines; because the user shall be getting complete set of instructions/circulars online for immediate reference. Printed copies of this Vigilance Manual will also be made available to CVOs/Organisations/Users. The resolve of the Commission is to dynamically update the on-line Manual on day to day basis. Another significant aspect is that the **Special Chapter on Banking**, which was a separate publication, has been **integrated and dovetailed in the Vigilance Manual 2017** itself, thus making it a complete and comprehensive document.
11. There is **closer co-ordination between the CVOs of the organizations and officials of the Commission**, to reduce the pendency as evidenced by the statistics. Commission has now increased the interaction with the CVOs and they are continuously kept informed of the concerns and priorities of the Commission. CVOs are being impressed upon the requirement of taking quicker action on matters relating to declaring frauds and also referring to law enforcing agencies, so that the outside perpetrators of frauds do not get away, because of the delays. A holistic view is being taken on the recommendations of

CBI, seeking sanction for prosecution of officials alleged to have criminally connived with the borrowers. Multipronged strategies have been made and are being implemented to enhance the skill levels of employees both at Commission and vigilance departments of organizations, by exposing them to trainings in India and abroad. Officials of the Commission are addressing at various fora. In this series, I have delivered lectures at National Judicial Academy, Bhopal; National Police Academy, Hyderabad; O.P.Jindal Global University, NCR; Indian School of Business (ISB), Hyderabad/Mohali; RBI, Chandigarh; Narsee Monjee Institute of Management Studies, Mumbai; National Institute of Forensic Science, Delhi; and in various CPSUs/PSBs/IBA/CII, etc.

Q.2 : What are your views on present vigilance and anti-corruption mechanism in Banking and Insurance Sectors?

Ans. Department of Financial Services in consultation with the Commission has posted a Chief Vigilance Officer in each of the Public Sector Bank/Insurance Company. There is a very strong vigilance set up and administration mechanism in Public Sector Banks and Life/Non-life Insurance Companies. All the Public Sector Banks have put in place a **Board approved Staff Accountability Policy**. Each of them has an **Internal Advisory Committee (IAC)** comprising of Four/Five operational General Managers, who look into the aspect of staff accountability in cases of frauds, NPAs, misconducts and irregularities. The IAC Report is examined by the competent Disciplinary Authority (DA) to decide, whether the misconduct warrants action under Major or Minor Penalty Proceedings. DA's report is examined by CVO, whether it has Vigilance Angle or not. Cases of Scale-V (AGM) and above are referred to the Commission for advice. **Within the Commission**, we have four Top Management Grade GM/DGM level Advisors (Banking) on deputation from four large Banks, among whom the Commission has allocated various Public Sector Banks and Insurance Companies for examination of cases. So all such cases

received from CVOs are examined by Advisors (Banking) and put up through the Addl. Secretary/Secretary, to the Commission. Under Section 3(3)(b) of the CVC Act., 2003 one Member appointed by Hon'ble President of India, out of three in the Commission, is having expertise and experience in finance including insurance and banking, law, vigilance and investigation. Under Section 9 of CVC Act, the decisions taken by the Commission are unanimous or by opinion of the majority. So at each level within the public sector banks/insurance companies and CVC, proper application of mind is ensured to accord justice with equity and principles of natural justice. The advice of CVC is recommendatory in nature and the DA as a quasi-judicial authority has full liberty to decide action on each case on its individual merits based on documentary evidence/inquiry proceedings.

With several high-ticket alleged frauds coming to fore, the Central Vigilance Commission has now made it mandatory for CVOs of public sector banks to report to it all such matters involving frauds of over ₹1 crore. The banks will also now have to report the modus operandi of all the alleged frauds to the CVC so that timely systemic improvements are brought in to prevent further perpetration of such frauds in the Banking System. Commission has also observed that there were no effective provisions for regulating the conduct and discipline for Whole Time Directors (WTDs) in Public Sector Banks i.e. for Chairmen/MDs & EDs. DFS has been advised to put in place necessary mechanism for enabling provisions to handle misconducts by WTDs in the Rules/Regulations as on the lines prevailing in CPSEs. Similarly, to fine-tune the system of empanelment, appointment, allocation of work and timely submission of reports by the Surveyors in Insurance Sector, recently the Commission held discussions with GIPSA, DFS, CMDs & CVOs of Public Sector Non Life Insurance Companies, for redefining and standardising the SOPs.

Here I would like to make a mention of a very important judgement of Hon'ble Supreme Court of India in Criminal and Connected Writ Petition "**CBI vs. Ramesh Gelli & Others**", delivered on

23.02.2016, wherein the Apex Court has ruled that the **Chairman, Managing Directors and Officers of a private bank are public servants for the purpose of Prevention of Corruption Act, 1988**. As per this landmark judgement:

- All officials working in the Banks operating under RBI license would be defined as public servants under PC Act.
- The Apex Court held that bank employees, private or public, discharge a public duty and are therefore amenable to jurisdiction of the Special Law.
- Section 46A of the Banking Regulation Act says that Bank officials are deemed to be public officials.

Q.3 : Very high NPAs in Public Sector Banks have attracted considerable media attention. What can be done to tackle this problem?

Ans. I would say that Government, Policy makers, Regulator, CVC, CBI and ED are all deeply concerned with rising number of frauds and NPAs in Banking system. The NPA issue has wider implications because during the times when seemingly high growth rates were achieved during the earlier part of this decade, probably the credit appraisal standards were compromised, resulting into formation of bubbles, which have burst now. Complimentary to this, there were several issues in various policies relating to mining, telecom, power, roads, highways, infrastructure sectors, etc. which led to over-leveraging of balance sheets and resultant jump in NPAs because of non-repayment of Bank dues on time. However, rather than recognising them as NPA, deep long restructuring was done from the year 2009 onwards and a new category of restructured assets was created, with a differential treatment in accounting, so as to avoid declaring them NPA immediately at that time. Once the repayments started falling due, these deep long restructured accounts have enmass slipped into NPA, perhaps more so after the Asset Quality Review undertaken by the RBI in 2014-16 period. As far as the resolution part is concerned several attempts

have been made over the years with the major hitch being the decision on how to take deep haircuts to get the bad assets off the books. This is a practical challenge, even today. On their part Government has been tightening the laws to facilitate expeditious recovery proceedings and the Regulator (RBI) has been bringing new dispensation to handle NPAs, such as:-

- Over the years, action under SARFAESI, Lok Adalats, DRTs, Courts, Sale of Assets to ARCs have been instrumental in effecting recoveries from the NPA accounts.
- Under the CDR (Corporate Debt Restructuring), banks used to accept a moratorium on interest payments and longer period for repayment of principal.
- Another 5:25 scheme allows the banks to extend long terms loans of 20-25 years to match the cash flow of projects, while refinancing them by another Bank/ Financial Institution after every 5 or 7 years, keeping in view the Asset/Liability mismatch in the balance-sheet.
- SDR (Strategic Debt Restructuring) gives lenders sweeping powers to throw out management of companies whose assets have turned bad. This scheme entails lot of legal battles, because present Management fights it tooth and nail to thwart change of Management.
- S4A (Scheme for Sustainable Structuring of Stressed Assets) allows banks to consider the sustainable portion of debt as a standard loan provided that they make provision for a part of debt upfront. Bankers get the comfort of two outside experts in the Oversight Committee. As per latest information four large corporate NPA accounts have availed restructuring under S4A.
- Now the Insolvency and Bankruptcy Code, 2016 provides for re-organization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of Assets. It envisages specific roles for each participant – the stakeholders, comprising

debtors and creditors, and the ecosystem comprising Adjudicating Authority (AA), Insolvency and Bankruptcy Board of India (IBBI), information utilities and insolvency professionals. The USP of the code is time bound completion of processes.

- Hon'ble President of India via an ordinance route has conferred powers upon RBI via the amendments to the Banking Regulation Act, 1949, to help it deal more effectively with stressed assets by directing banks to initiate insolvency proceedings in specific NPA cases. RBI is reportedly working out a strategy to deal with the resolution of large NPAs in a calibrated manner.
- Hon'ble Finance Minister has reviewed the current NPA status in a meeting held on 12th June, 2017, for recoveries and resolution being worked out by RBI and Banks.
- Hon'ble Minister for Power Sector has also recently reviewed the Power Sector bad loans and has assured for quick resolution/solution of Power Sector Loans.

Bankers should effectively use all these measures for effective and expeditious recovery from NPAs. Some Bankers are under the wrong impression that once they have reported an account as an NPA to their controlling office(s) and they in turn have reported it to the Regulator and to investigating agencies such as Police, CBI, Enforcement Directorate, etc. their job is over and they were not actively pursuing recovery measures. It should not be felt so by the Bankers. I would like to make it very clear that the Investigating Agencies only look into the aspects of Criminality/Culpability involved. Similarly RBI is using FMR information for statistical purposes alone. Resolution and Recovery of NPA Accounts is and continues to be the sole responsibility of Bankers. We should keep in mind that by each passing day the economic value of security/tangible assets, stocks, plant and machinery, etc. keeps diminishing; so the Bankers are duty bound to effect recovery measures with all sincerity, at the earliest.

Here at the cost of repetition I would like to reiterate that Bankers themselves have to muster courage to recover their Bank's overdues individually or collectively in consortium based NPA accounts. It is their duty and dharma to lend and recover monies. No outsiders can help them to do it and Bankers will have to rise to the occasion and meet this challenge. They have done it in the past (1997 – Verma Committee) and I am sure they will do it now also.

Q.4 : What action is being taken by the Commission against individuals responsible for the NPAs owing to corrupt practices?

Ans. All banks have well defined system of examination of staff accountability in tune with the prevailing guidelines. Whenever a loan account slips into NPA, proper analysis of accountability is done by IAC/DA & CVO and if required, Regular Departmental Action is being initiated against the staff found responsible for the lapses observed. If the borrower is seen to have defrauded the Bank and there is connivance, complicity or criminal angle involved, apart from stringent punishment in Regular Departmental Action, complaints are also being preferred with Law Enforcing and Investigating Agencies, like CBI or State Police, depending on the amount involved, for commencing investigation, filing PE/RC and charge sheets and if need be prosecution proceedings, on conclusion of Investigation.

In glaring cases of frauds and NPAs, the Commission under powers vested u/s 8(1) (d) & (h) of CVC Act suo moto directs the Central Bureau of Investigation (CBI) to launch investigation, take action and submit report to CVC.

Q.5 : During demonetization phase, many instances of corruption in banks were reported. What action is being taken by the Commission against such acts?

Ans. Following the decision of the government to demonetize the old Rs. 500/1000 notes from midnight of November 8, 2016, the Reserve Bank had put in place cash withdrawal limits for individuals as well as businessmen and also

issued instructions from time to time, to facilitate genuine cash transactions by the customers. By and large banks have done commendable work by putting in long hours of untiring efforts in managing banking transactions during the Demonetization period.

Some isolated instances have come to the notice of the Commission, where employees of various Banks were found involved in carrying out transactions which were irregular and violative of RBI's instructions. CVOs of RBI and all Public Sector Banks were advised by the Commission to take immediate action in such cases and some employees of RBI and various Public Sector Banks have even been placed under suspension and disciplinary proceedings have been initiated against them. Some of the officials have been transferred to non-sensitive posts.

Office of CVC will not tolerate any illegalities or irregularities in any of the banking transactions and stern action would be taken against individuals involved in such irregular and unauthorized activities.

Q.6 : What is your advice to the CVOs?

Ans. First and foremost, CVOs should read Vigilance Manual, all important circulars, disciplinary action rules and individual files very carefully. CVOs are extended arms of the Central Vigilance Commission, through whom the effective Vigilance Administration is ensured in the Govt. Depts./Organizations, to which they are deputed. CVO should make everyone in the organization realize that Vigilance Administration is one of the important management tools, which will make the organization reap the benefits of its effective administration. CVO should strive to make "Vigilance activity" become the business of everyone in the organization. He should strive to reduce/eliminate the delays, in various phases of handling vigilance cases, so as to reduce the pain of charged officers. CVO should also strive to study the existing gaps in the prevailing systems and procedures, to suggest/make systemic improvements and prevent recurrence of irregularities, in future. He should concentrate on strengthening preventive

vigilance mechanism to obviate the usage of punitive vigilance mechanism and should strive to use technology to improve transparency in all the activities of the organization. There should be a thorough and critical analysis of each file/case brought before CVO and considered view should be formed in line with Rules, Regulations, laws and documentary evidences. CVO has to remember that he is dealing with life, career and future of officials/employees and as such in each case he needs to take a very rational and balanced view.

Q.7 : What do you perceive as the major challenges before the Commission presently?

Ans. Central Vigilance Commission is having superintendence over the vigilance administration of all the Government and Public Sector organizations, in addition to superintendence over the CBI. The major challenge before CVC is to make the CVOs, organizations and officials appreciate that proper Vigilance Administration can increase the efficiency and lead the organizations to reap the benefits of its implementation and that it is not a hindrance in their functioning. The delays observed in the identification and disposal of vigilance cases have to be drastically reduced, so as to make the delinquent officials realize that no-one can escape from the long hands of the Law. While enlisting the support and participation of public in general and employees in particular, in effective implementation of vigilance administration, efforts of the Commission will always be to increase transparency in all processes of the organization, by leveraging the technology.

Q.8 : What steps are being taken to reduce delay in vigilance cases?

Ans. The pendency of vigilance cases, as per the records of Commission is made available to all the organizations on the web portal and the Vigilance Officials of all organizations are advised to regularly peruse the same and take required remedial steps to clear the pendencies and take the same to logical conclusion, as per prescribed timelines. Apart from this, there are regular meetings between the officials of

the Commission and personnel of respective organizations, to dwell on the pendency and take required measures. There are also periodical review meetings and Annual Sectoral Review meetings, which among others also address the pendency. It is being strived to enhance the skill levels of the Vigilance officials at all organizations by exposing them to various training programmes within India and also overseas, so as to enable them to function in more effective manner.

Q.9 : Recently, the Government has brought out an order to amend the Banking Regulation Act to deal with NPA problem. What are your views on this?

Ans. Hon'ble President of India has accorded his consent for the Banking Regulations Amendment Ordinance on May 5, 2017 to accelerate resolution of non-performing assets (NPAs), or bad loans, clogging the Indian banking system.

The three key measures proposed in the ordinance are:

- i. The government may authorise the Reserve Bank of India (RBI) to issue directions to banks to initiate insolvency proceedings against defaulters under the bankruptcy code.
- ii. RBI on its own accord can issue directions to banks for resolution of stressed assets.
- iii. RBI may form committees with members it can choose to appoint to advise banks on resolution of stressed assets.

The above measures, give the RBI and the central government powers to act strongly against any company which has defaulted on its loans. Earlier the banks that were part of a consortium found it difficult to trigger bankruptcy proceedings. This ordinance attempts to solve that problem with RBI directing banks to collectively initiate insolvency proceedings in a transparent and market-determined approach.

The insolvency and bankruptcy code is a time-bound process and seeks to reduce the time for resolving a default case to less than a year as against the average time taken of

more than four years currently. The objective is to strengthen and virtually give a stamp of approval to the Regulator to initiate resolution process.

Q.10 : It is being said that one of the reasons to bring this amendment empowering the RBI was the fear of the bank management regarding vigilance agencies. Do you think there is some trust deficit between vigilance agencies on the one hand and bank management on the other? What in your view, needs to be done to overcome such a situation?

Ans. I don't think CVC has ever acted against bonafide business decisions of Bankers. What the Commission says is to follow a just, transparent and equitable process to scientifically work out the realisable value of the transaction, by proper price discovery. The analysis of records reveal that the so-called fear of the bank managements regarding over activism by the vigilance agencies is ill founded and not supported by statistics of the cases handled in Commission. To the contrary, Commission takes a very careful, cautious, considerate and documentary evidence based decision, which is evident from the fact that CVC has declined sanction for prosecution, in the case of difference of opinion between, CBI & DA, in respect of 87% of the cases in the calendar year 2016. Further, the vigilance cases suo-moto taken up by Commission or CBI are very very rare and miniscule, as compared to what is received by Commission, with the consensus recommendations of DA & CVO.

Commission is always open to taking steps for cutting down the delays in disposal of vigilance cases, by more closer co-ordination between the officials of the Commission and CVOs and also by improving the quality of investigation and effective conduct of Inquiries.

Finally I would like to say that all Bankers are **handling PUBLIC MONEY** as Trustees, in good faith and as such they should be scrupulously honest, dedicated and committed to the cause of ensuring safety, security and economic value of Public deposits. Their **BONAFIDE decisions will be protected** and strict and stern action

will ensue in malafide and grave misconducts. Do not fall into the trap of Intermediaries/Loan Arrangers/Middlemen. In the Gyan Sangam 2015, Hon'ble Prime Minister himself assured Bankers that there will be no interfering references and phone calls from Deptt. of Financial Services/Ministry of Finance, recommending any loan/recovery proposals and all decisions of the Bankers should be merit based. As such, Bankers should **learn to say 'No' to unbankable** loan proposals and extraneous pressures; and **'DO' proper due diligence** in Pre-sanction appraisals, legally valid and enforceable loan documentation and charging of securities, proper post disbursement followup to obviate diversion of funds.

Q.11 : What do you feel is the way forward for the Commission?

Ans. In the prevailing environment in the country, there is a consensus for **Zero-tolerance to Corruption**. Commission has been closely working with all the Organizations

and striving to enhance transparency in all the processes of the organization by leveraging on the technology. Commission is also enlisting the support of people, in its fight against corruption.

The Commission's role would be more pivotal in the coming days as we all know that corruption is a major impediment to growth and development.

The Commission would continuously strive to evolve systems & procedures to strengthen the preventive vigilance mechanism in all the organizations, to eliminate corruption and other related irregularities.

Based on my 40 years experience in Banking and Vigilance I would advise all public officials to **be alert, Agile, Proactive, Preventive, Careful, Cautious, Vigilant and forward Looking !**

Wishing you **GOD SPEED!!**



Try not to become a man of success but rather try to become a man of value.

– Albert Einstein

Corruption Prevention - Independent Commission Against Corruption (ICAC), Hong Kong



Praveen Sinha
Additional Secretary, CVC

Introduction

The Independent Commission Against Corruption (ICAC) was established on 15.2.1974, when Hong Kong was still under British rule. The decision to set up an independent organisation to tackle corruption was made following a Commission of Inquiry into the problem of corruption in Hong Kong. The ICAC derives its charter from the ICAC Ordinance. Its main aim was to clean up endemic corruption in Hong Kong through multi pronged strategy of law enforcement, Prevention and Community education. It is headed by a Commissioner who is directly responsible to the Chief Executive.

ICAC has three functional departments:-

- i) Operations. (OD)
- ii) Corruption Prevention. (CPD)
- iii) Community Relations. (CRD)

The work of ICAC is scrutinized by independent Advisory Committees appointed by the Chief executive of Hong Kong. They have representatives from different sectors of the community.

Corruption Prevention Department (CPD)

Duties:

The duties of ICAC are set out in section 12 of ICAC ordinance, which is summarized as below:

- (a-c) Investigate suspected corruption or misconduct of public officers.
- (d) Examine Government and Public body procedures and secure revision of corruption prone practice.
- (e) Instruct, advise and assist any person

or private organisation, on the latter's request, on ways to eliminate corrupt practices.

- (f) Advise heads of Government departments and Public bodies on corruption prevention.
- (g) Educate the public against the evils of corruption.
- (h) Enlist and foster public support in combating corruption.

While (a)-(c) above are performed by the Operations department and (g), (h) are the functions of Community Relations department, the statutory duties of the Corruption prevention department are as laid down in (d)-(f) above.

Structure:

The CPD is organised into **six Assignment groups and a Management group**. Each assignment group is responsible for the corruption prevention work of a number of specific government departments and public bodies. The management group provides administrative support to the department.

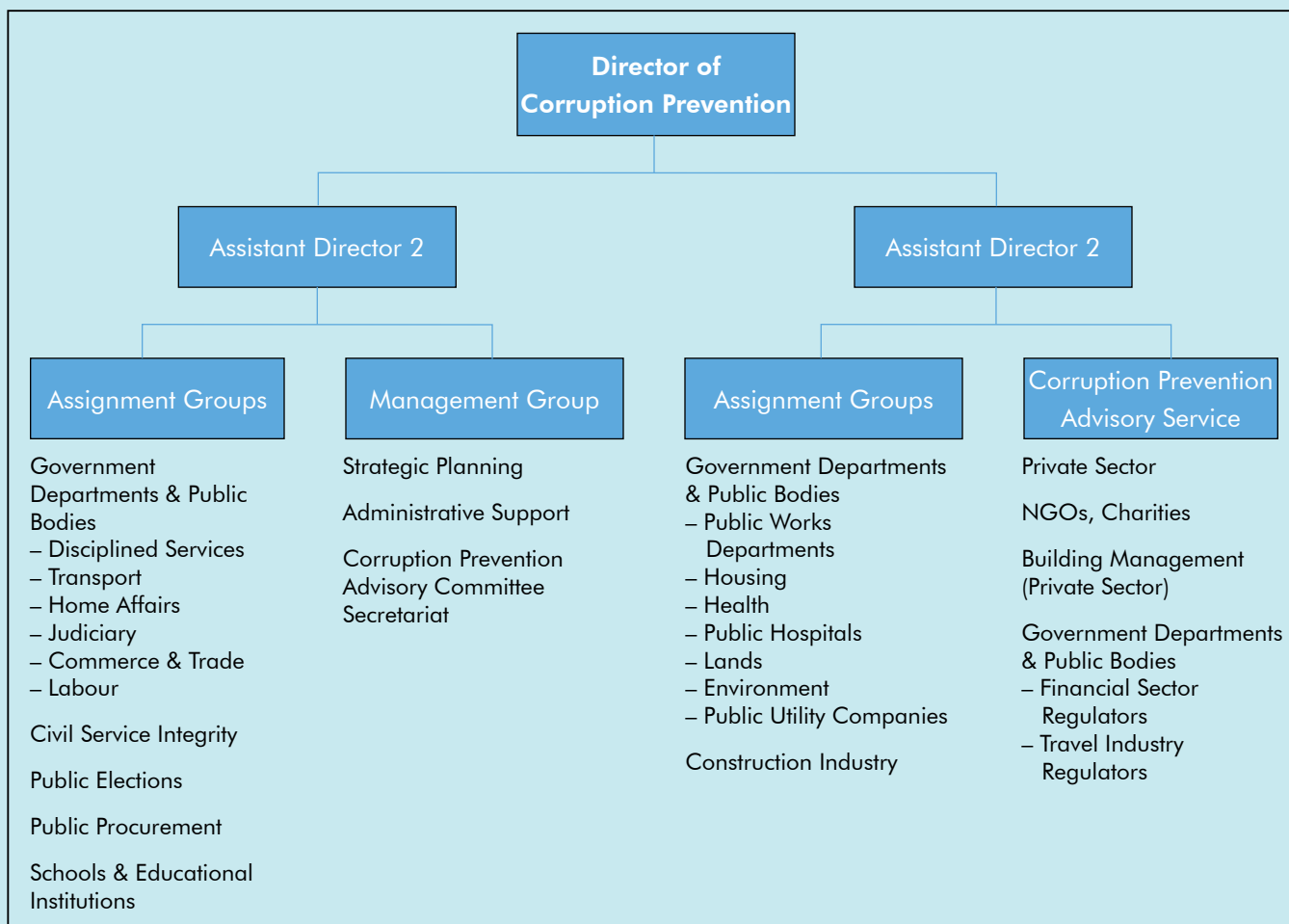
The staffs of the department include accountants, engineers, surveyors, IT professionals, former civil servants etc.

There is Independent oversight of the functioning of this department as well. The **Corruption Prevention Advisory Committee (CPAC)** along with six CPAC sub-committees monitor the work of CPD. Their members are drawn from various sectors.

Prevention in Public Sector

Powers:

In respect of corruption prevention, the ICAC is empowered under section 13 of ICAC ordinance:



- i) Power to enter government premises and demand answers about duties and documents.
- ii) Access to record, documents of a public body.

Work Strategy:

The CPT performs its task mainly through the following work strategy:

- i) Partnership with government departments and public bodies- CPG/ liaison mechanism.
- ii) Corruption Prevention Studies.
- iii) Corruption Prevention Quick advice.
- iv) Corruption Prevention Training- both to Frontline staff and the managers/ supervisors.

Partnership- Corruption Prevention Groups (CPG):

It is the duty of senior management to implement good systems and controls to prevent

corruption. CPD provides support, assistance and advice. The Corruption Prevention Groups have been constituted in the government departments/ public bodies. The first one was set up in police department. It comprises the senior management of the department/ body and the CPD of ICAC.

Corruption Prevention Study:

The CPD carries out Corruption Prevention Study of the assigned departments and submits its report to the Corruption Prevention Advisory Committee (CPAC). After endorsement by the CPAC and after seeking the Client department's suggestions, it is sent to the latter for implementation. The Report enumerates the identified risks and weaknesses and the gives recommendations for systemic improvement.

For this study, they may go through the laws, guidelines etc., files and records, study other departments and collect information, hold interviews, meetings, do site observation and gather information from public.

The study is carried out in High Risk Areas like Procurement, Law Enforcement, Licensing, Construction etc. As per the Annual Report of ICAC, 69 assignments were completed in 2015. (43 for government departments, 20 for public bodies and NGOs, 6 for other organisations)

Corruption Prevention Quick advice:

It is given to Government departments and Public bodies during the formulation of new legislations, policies, initiatives and procedures etc., in major infrastructure projects, areas of significant public interest & concern and issues of public safety to ensure that corruption prevention safeguards are built in as early as possible. Some examples of the schemes or projects where such quick advice was given include Construction of Cruise terminal, Construction of an International Airport, initiation of a new Kindergarten funding policy, Medical service PPP schemes. In 2015, such advice was provided on 627 occasions.

Prevention in Private Sector

The CPD of ICAC also renders assistance to the private sector, through instruments like:

- i) Free advisory service.
- ii) Corruption Prevention Capacity building.
- iii) Guide on Managing relationship with public servants.

Corruption Prevention Advisory Service (CPAS):

The Advisory Services Group (ASG) was set up in 1985 to provide free and confidential corruption prevention advice to individual business entities on request. In 30 years it has provided services to over 7000 individuals or organisations. It was rebranded as corruption prevention advisory service (CPAS) in 2015. [cpas@cpd.icac.org.hk]

The CPAS conduct occasional corruption prevention studies and also provides Quick

advice on request to private corporations, trade areas of public concern, public body owned companies, major subvented organisations like NGOs, charities etc.

Corruption Prevention Capacity building:

Tourism, Securities, Banking, Insurance, Private hospitals, Hotels, Construction industry, Private sector Procurement are some of the areas where such Capacity Building steps were taken.

For this purpose, Corruption Prevention Guides containing the relevant provisions of law, corruption risks, case studies, preventive measures etc. for specific trades and industry specific Training Video Package have been prepared. The corruption prevention training was injected into the qualifications framework (QF) as a pilot project in the Retail Industry.

Managing Relationship with Public Servants:

Cross-Public-Private Approach

- 1) Business operators may not be aware about the restrictions on offering gifts or hospitality to Public servants and in ignorance may risk breaking the anti - bribery and related laws. Integrity and Corruption Prevention Guide on Managing relationships with public servants was brought out to provide guidance on the legal requirements and advice on the proper behaviour in dealing with public servants.
- 2) Corruption Prevention services for Contractors of government departments or public bodies are provided. They mainly consist of:

Integrity management talks for contractor's staff, Sample Code of conduct for contractors & Anti bribery and anti-collusion clauses in contracts.
- 3) Corruption Prevention Services for Grantees of Government Funding Schemes are also offered.



Standardizing Anti-Bribery Management: 37001:2016



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Introduction

Malpractices in delivery of social services have plagued the society since ages and corruption in various forms has been prevalent for long. In the contemporary context, corruption has taken a structural and institutional shape. This has further widened the gap between governmental policy and its implementation at the grass-root level.

Corruption is “the abuse of entrusted power for private gain¹”. OECD defines corruption² as “the abuse of a public or private office for personal gain. The active or passive misuse of the powers of Public officials (appointed or elected) for private financial or other benefits.” The World Bank defines corruption³ as “the abuse of public office for private gain.”

Corruption can take various forms based on human actions such as bribery (giving and taking of money for getting things done); theft/misappropriation (e.g. providing information to competitors); fraud (related to money or information of high relevance to public); collusion; coercion; obstruction; or nepotism (bestowal of favour to one’s kith).

These forms of corruption may involve various entities simultaneously and may take forms such as Mega Corruption, Petty Corruption, Systemic Corruption/ Organizational Corruption/ Collusive Corruption, Political Corruption, Judicial Corruption, Executive Corruption, Institutional Corruption, among others.

Corruption in any form invariably leads to ineffective resource mobilization & utilization;

impediment to growth & development; increase in social inequality & exclusion; increase of mistrust; and deterioration of living standards & quality of services.

Corruption in the era of globalization:

The interconnectedness of political, economic, and cultural set up is increasing with each passing day.

This phenomenon of globalization contributes significantly to holistic development. Gone are the days when industrialization was geographically concentrated in one part, fed by raw materials from another part of the globe. Mutual dependence and development is increasingly steering the politico-economic canvas of the world. Globalization has brought better avenues in almost every field of human development viz. – it has brought better and cheaper means of dealing with health issues closer to the reach of people, it has allowed better utilization of human resources, it has further opened avenues for better education, has caused technology transfer so that no human being is deprived of the fruits of development, it has also led to significant recognition of rights based movement, etc. But to the detriment, on the other hand globalization has brought to fore its set of ramifications. The increase in interconnectedness has changed the corrupt practices adopted by various entities. Needless is to mention the fact that corruption impedes the outreach of development to the target audience and affects the economy of a country writ large⁴. Globalization has paved way for new forms of malpractices, tax evasion and

¹ <https://www.transparency.org/what-is-corruption/#define>

² <https://stats.oecd.org/glossary/detail.asp?ID=4773>

³ <http://www1.worldbank.org/publicsector/anticorrupt/corruptn/cor02.htm>

⁴ <https://www.brookings.edu/research/corruption-and-globalization/>

base erosion being the most prevalent. Bribery, as a form of corruption has also changed its means and extra-territorial bribe has increased substantially.

However, alternatively, statistical evidences also suggest that increase in globalization has the ability of minimizing corruption⁵. This development may be attributed to global realization of the need to deter corrupt behavior and the steps taken by countries collectively in this regard. A comprehensive step taken in this regard is the United Nations Convention Against Corruption (UNCAC). The UNCAC is a legally binding treaty which calls for the countries to make changes in their national legislation. Subsequently, it has fostered in achieving anti-corruption goals globally. The treaty circumscribes within its reach the following aspects viz. Preventive measures, Criminalization and Law Enforcement, International Cooperation, Asset Recovery, and Technical Assistance & Information Exchange. This, therefore, works its way through national systems and helps in improvising international cooperation for promoting anti-corruption behavior.

Bribery is identified as one of the most rampant forms of corruption. It is defined as 'An offer or receipt of any gift, loan, fee, reward or other advantage to or from any person as an inducement to do something which is dishonest, illegal or a breach of trust, in the conduct of the enterprise's business⁶'. Bribery is common and frequent because of the immediate benefits it brings to parties involved in the act. In order to deal with the menace of bribery in enterprises International Organization for Standardization has formulated set of guidelines for establishing a framework to implement, maintain, review and improvise anti-bribery management system. The framework acts as guideline to develop

a system which would help in promoting anti-bribery practices in the company. The ISO 37001 is the first anti-bribery management framework system, which addresses bribe as a form of risk in an organization. The scope of applicability of these standards is exhaustive and can extend to public companies, private companies, small and medium enterprises (SMEs), and non-governmental organizations encompassing bribery as a risk to the organization collectively and its employees individually. The measures required by ISO 37001 are designed to be integrated with existing management processes and controls. It follows the common high-level structure for ISO management system standards, for easy integration with, for example, ISO 9001 i.e. companies and organizations already employed ISO 9001 would have little or no problem implementing this standard moreover, new or enhanced measures can be integrated into existing systems which make this standard highly incorporable with the existing organizational structure.

Implementing ISO 37001⁷

Implementing ISO 37001 standards relies on certain requirements⁸. These have been grouped under various aspects which drive a business enterprise such as Leadership, Planning, Support, Operation, Evaluation, and Improvement. Being a management-system, the standard uses fundamental tenets of management for implementation of the standard.

Commitment from Top Leadership, Assessment of Bribery Risks, Documentation of Guiding Policies, Personnel Control & Training, Due Diligence, Performance Review, Corrective Measures, and Continuous Improvement have been identified as key areas under the standard for development of anti-bribery management system.

⁵Badinger, Harald & Nindl, Elizabeth, Globalization, Inequality, and Corruption, Working Paper No. 139, Department of Economics, Available at –<http://epub.wu.ac.at/3521/1/wp139.pdf>;

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⁶<https://www.transparency.org/glossary/term/bribery>

⁷ The standard provides for detailed procedure to be adopted for implementation of Anti-Bribery Management System. In this section, we discuss only few important aspects of the System.

⁸ ISO 37001:2016

The organization must implement a series of measures and controls in a reasonable and proportionate manner to help prevent, detect, and deal with bribery. Under the system, an officer regarded as the Anti-Bribery Compliance Officer is to be appointed for implementing the Anti-bribery Management System. Simultaneously, the organizational top level management must ensure that the system is adopted in consonance with the purpose of the organization; providing for setting up of anti-bribery objectives; and is committed to continual development of the system so developed. The policy must be made public within the organization and should be available in the form of an accessible document to interested parties.

Management leadership, commitment and responsibility⁹:

A unique feature of ISO 37001 anti-bribery management system is the commitment and involvement of top management and leadership for implementation of standards within the organization. It also indulges the leadership of the organization to demonstrate and commit itself to Anti-bribery management system by¹⁰:

- ensuring that the anti-bribery policy and anti-bribery objectives are established and are compatible with the strategic direction of the organization;
- ensuring the integration of the anti-bribery management system requirements into the organization's business processes;
- ensuring that the resources needed for the anti-bribery management system are available;
- ensuring that the anti-bribery management system achieves its intended outcome(s); and
- directing and supporting persons to contribute to the effectiveness of the anti-bribery management system.

Personnel controls and training:

The organization, under the system should

provide appropriate training and guidance to all personnel who are responsible for implementing anti-bribery management system or who might encounter bribery in relation to their duties; should strive to make them aware of and understand the policy, the anti-bribery management system, risks and damages which may result from bribery and allied practices; and the mechanism established for reporting bribery risks.

Risk assessments

The organization must undertake risk assessments aimed at examining general bribery risks faced by the organization's business; in relation to specific transactions or projects, examine, as appropriate, the country in which the transaction or project is being, or is to be, undertaken, the business sector, the work type and business model, and the organization's actual or proposed business associates; and be repeated on an ongoing basis so that changes and new information can be properly assessed.

Due diligence on projects and business associates

Where the risk assessment shows that a business associate might pose a more than negligible bribery risk, the organization should implement procedures to undertake due diligence on the business associate prior to entering into any business relationship with it. The due diligence must be repeated at a definite frequency on an ongoing basis during the business relationship so that changes and new information can be properly assessed.

Financial, commercial and contractual controls

Depending on the size of the organization and transaction, the procurement and other commercial controls, implemented by an organization, could include mandatory pre-qualification requirement, independent evaluation from more than one personnel, and placing higher level of management oversight.

⁹ Clause 5; ISO 37001:2016

¹⁰ Clause 5.1; ISO 37001:2016

Reporting, monitoring, investigation and review

The organization should determine the parameters which must be monitored and measured, the methods to be adopted for such monitoring and measurement, the time of conducting them, and when would the results be monitored and analyzed.

Corrective action and continual improvement

When nonconformity occurs, the organization shall take action to control and correct it, and evaluate the need for action to eliminate the causes of the nonconformity, in order that it does not recur or occur elsewhere.

The requirements for implementing these standards are inter-related and therefore, must be integrated with the existing management system. These systems need to be assessed continuously, improved as and when required, employees trained and informed continuously, thereby making it an organizational process.

Implications of ISO 37001:

These standards are helpful to the organization because primarily it does not require any independent or extra-managerial or institutional set up. The standards provide for integration within the existing organizational management system. The standards use preventive measures for dealing with bribery over curative measures (post-menace rehabilitation). Therefore, it ensures dealing with bribery at the point of inception and guiding personnel behavior in consonance with the standards. Alternatively, if an organization implements these standards, it would provide competitive advantage by minimizing the risk of bribery which might result in loss of prospective business to the organization and subsequent increase of costs. External certification under ISO 37001 frameworks also ensure that the organization is open to external scrutiny, ensures commitment of the organization towards implementation of anti-bribery laws in consonance with international standards. Moreover, the standards implemented aim at integrating inter-organizational improvisation with respect to anti-bribery practices. This ensures collective

action towards dealing with bribery as a risk. Therefore, the factors within the organization and those outside the organization together help in achieving the goals of anti-bribery management system.

Relevance of ISO 37001 Standards in Indian Context:

India has gradually taken measures to deal with the problem of corruption through structural/ institutional reforms. These reforms aim at bringing transparency with an increased focus on governance. Simultaneously, statutory reforms have also been introduced to curb the menace of corruption. These changes take into consideration the increased role of private sector, civil society, and other informal organizations (such as NGOs) participation in improving the delivery of developmental programs to the citizenry and the problems which may crop up. In such scenario, adopting ISO 37001 standard plays a crucial role in improvising the image of the organization and showcasing its commitment towards promotion of anti-bribery system. It would also assure the government, working with such organizations, about the commitment of the company towards better delivery of services. These standards would ensure integration of business enterprises and their increased commitment towards the society. In order to effectively churn out benefits from this standard, organizations need to set proper mechanism. The management-system is integrative in its approach and does not call for stand-alone institutionalized mechanism. The commitment towards implementation of standards flows from top-level leadership and therefore, would increase collective action towards bribery risks.

However, the standard is limited in its approach because it does not encompass money laundering, fraud risks, and other forms of corruption at the policy level. But such integration may be detrimental to the objective of the standards. It is therefore equally important that third party evaluation should be conducted for gauging the effectiveness with which the implementation of standard is being carried out. However, third party assessment

of organizational standard implementation helps in external review and improvisation of organization anti-bribery management system. Moreover, being specialized standard, it would help in dealing better with the menace of bribery. If organizations apply this standard, it will give global competitive advantage to companies and international recognition of the commitment of the company towards implementation of standards with uniformity in applicability of standards. Since an essential requirement under the standard is integration of top level management in operationalization of the system, it would help in boosting the confidence and morale of employees within

the organization and other persons dealing with the organization.

Bribery as a form of corruption has become knitted in the society. Many steps at the international and national level have been taken to curb this menace. The international standard would not eliminate bribe in a day. However, with the involvement of business organizations and civil society, this would go a long way in minimizing corruption in the form of bribe and standardizing the procedures adopted in curbing bribery practices. Such uniformity can be succinctly used by various stakeholders to gauge enterprise commitment towards anti-bribery management.



Source : Cartoonstock.com

A Brief History of International Anti-Corruption Measures



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The two week training program organised by the Central Vigilance Commission for CVOs and officials of CVC at International Anti-Corruption Academy (IACA) in Austria turned out to be quite an experience for the participants. IACA was initiated by INTERPOL, the United Nations Office on Drugs and Crime (UNODC), the European Anti-Fraud Office, the Republic of Austria, and other stakeholders. It became an international organization in 2011 and offers anti-corruption think-tank activities and trainings. In the customised training program arranged by CVC, speakers from several countries provided the participants a global perspective on the measures adopted by the international community to combat corruption, including increased cooperation among nations and setting up of watchdog bodies at the international as well as national level. The following is a brief account of what we learnt about these measures and the organisations that are involved in the fight against corruption at international level.

What is Corruption?

While the World Bank defines corruption as “the abuse of public office for private gain”, Transparency International has defined it as “the abuse of entrusted power for private gain” and the UN Convention Against Transnational Organized Crime (2000) described it as the solicitation or acceptance by a public official of an undue advantage in order that the official act or refrain from acting in the exercise of his or her official duties. Whatever the definition, we can all recognize an act of corruption when we come across one. The big question is what is the cost of corruption in today’s world?

The World Bank estimates that businesses and individuals pay an estimated \$1.5 trillion in

bribes each year. This is about 2% of global GDP—and 10 times the value of overseas development assistance. Another study has estimated the amount of illicit financial flows from the developing world at \$ 1.1 Trillion in 2013. Interestingly, 78% of such illicit flows are estimated to be accounted for by trade mis-invoicing. According to The Economist, offshore assets of Indian residents held in global banks are estimated to be between \$100 billion and \$150 billion. Corruption is thus causing immense damage, especially in the developing economies, and is preventing them to rise out of poverty. According to U.N. Secretary General, Ban Ki-moon, 30% of development aid in 2011 failed to reach its destination owing to corruption. Realizing the enormity of the problem, what has the global community been doing to fight corruption? Precious little till the 1970s, however international efforts against corruption have gathered steam in the past few decades. A plethora of conventions and organizations, private as well as public have been set up in the past few decades and have been contributing in the fight against international corruption. Some of the prominent organisations and their salient contributions are highlighted here in chronological order.

1956: The idea of INTERPOL was born in 1914 but the organization in its present form came into existence in 1956. It has 190 members and apart from fighting crime through international cooperation, it is helping States in recovery of stolen public funds by corrupt individuals.

1975: UN Resolution on measures against corrupt practices of corporations is adopted.

1977: Enactment of Foreign Corrupt Practices Act (FCPA) in USA to make it illegal for US entities to influence foreign officials with any

personal payments or rewards for obtaining or retaining business. This is probably the first such major effort by any country to criminalize acts of corruption in other countries by not only its own citizens but even foreign entities who have business links with it. Till then, bribing of foreign officials / governments was rampant and many MNCs regularly wrote off bribes as business expenses in their tax filings in several countries. The Act came into existence in the backdrop of investigations in the mid-1970s in which over 400 U.S. companies admitted making questionable or illegal payments in excess of \$300 million to foreign government officials, politicians, and political parties. Over the decades, there have been several landmark cases where stiff penalties have been imposed by US authorities on companies for promoting corruption in foreign jurisdictions. In 2008, Siemens AG paid a \$450 million fine for violating the FCPA. As a term of its settlement with the World Bank, Siemens also set aside over \$100 million to fund anti-corruption initiatives around the world. Part of that money is now used to provide scholarships to qualified and deserving anti-corruption professionals to participate in IACA's anti-corruption trainings. Similarly Goodyear, Biomet, Marubeni and ALCOA have also been fined heavily under the Act. FCPA has had a significant impact on reducing corruption by US corporations in other countries.

1977: First set of rules to combat extortion & bribery by ICC is adopted.

1993: Transparency International (TI) was set up and is now present in more than 100 countries. It works for the creation of international anti-corruption conventions, prosecution of corrupt leaders and seizures of their illicitly gained riches and companies to be held accountable for their behaviour both at home and abroad.

Since 1995 TI has been publishing the **Corruption Perception Index (CPI)** which ranks countries on their perceived level of public sector corruption. In 2016, the Index has rated 176 countries with Denmark perceived as the

least corrupt country and Somalia the most. India's rank is 79, the same as China, Brazil and Belarus.

1997: EU Anti-Corruption Convention of Brussels and OECD Anti-Bribery Convention of Paris of 1997 on Foreign Officials were held in which 20 Guiding Principles were adopted by Council of Europe and 34 OECD countries agreed to enact laws to prohibit paying bribes to authorities in other countries. It is noteworthy that the Augusta-Westland case was investigated by Italian authorities under the law against foreign bribery offences which was implemented into the Italian legal system in accordance with the guidelines of both these conventions.

Also, United Nations Office on Drugs and Crime (UNODC) was set up in this year. Its objectives include, among others, to loosen the grip of corrupt individuals on governments, national borders and trading channels as well as to help States recover assets stolen by corrupt individuals.

1999: OECD Convention on Combating Bribery came into force and established legally binding standards to criminalise bribery of foreign public officials in international business transactions and provided for a host of related measures that make this effective. It is the first and only international anti-corruption instrument focused on the 'supply side' of the bribery transaction. In 2009, the convention adopted further measures to reinforce anti-bribery tools.

2003: United Nations Convention against Corruption (UNCAC), a multilateral treaty negotiated by member states of the United Nations (UN) and promoted by UNODC was set up and in 2005 entered into force requiring its 140 signatories to enact and enforce criminal sanctions against a range of corrupt acts, while also cooperating more thoroughly to prevent corruption and recover illicitly gained assets. UNCAC provides a comprehensive platform for Governments, non-governmental organizations, civil society and individual citizens.

2009: UNCAC Coalition is a group set up in 2006 that now numbers over 350 civil society groups from nearly 100 countries. In 2009, it brought about a review mechanism for the UNCAC to rate Governments on their anti-corruption performance. The mechanism includes self-assessment followed by a peer review process in which each member country's progress in implementation of UNODC guidelines is reviewed by other member countries. India is also a member of this coalition.

2010: Enactment of UK Bribery Act and Dodd-Frank Act in USA which further tightened the noose on international bribery. In June 2010 the G20 Anti-Corruption Working Group's (ACWG) was set up. The ACWG actively works with the World Bank Group, the OECD, the UNODC, the IMF, the FATF, as well as with the Business 20 (B20) and the Civil Society 20 (C20). The World Bank and the UNODC are also involved in the ACWG through the active participation and contribution of Stolen Asset Recovery Initiative (StAR) to its work. StAR plays an advisory role on asset recovery, anti-money laundering/counter-terrorism financing, transparency & beneficial ownership, and income & asset disclosures.

2015: UN Human Rights Commission (UNHRC) adopted resolution on the negative impact of corruption on the enjoyment of human rights.

2015: Governments, businesses and civil society together with the United Nations have started to mobilize efforts to achieve the Sustainable Development Agenda by 2030. In 2015, countries adopted this Agenda and its 17 Sustainable Development Goals, which aim to end poverty and ensure lives of dignity for all, and it recognizes the need to fight corruption in all its aspects and calls for significant reductions in illicit financial flows as well as for the recovery of stolen assets.

In conclusion, the participants got acquainted with the global machinery at work against international corruption, spearheaded by various arms of the United Nations, Interpol, OECD, World Bank and individual States as well as several NGOs. India is an active member of several of these conventions, though a case can be made for legislation on the lines of FCPA of USA and the UK Bribery Act of 2010 as Indian Conglomerates expand their global footprint. Law Commission of India has already submitted the proposed amendments for Prevention of Bribery of Foreign Public Officials and Officials of Public International Organisations in 2015. As of now, there is no specific provision against bribing of foreign public officials by Indian citizens who are not Indian public servants.

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Corruption and Money Laundering: Prevention & Detection Role of Banks / FIs



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Corrupt persons and fraudsters always try to legalize the money they earned through their crimes. We often find financial infrastructure being used for various economic crimes, money laundering, terrorism financing and corruption. These funds are generally received in cash and sufficiently layered and parked in banks before they reach the final destination of investments.

The United Nations Convention against Corruption (UNCAC) also concerned about the links between corruption and other forms of crime, in particular, organized crime and economic crime including money laundering. UNCAC further concerned about cases of corruption that involve vast quantities of assets, which may constitute a substantial proportion of the resources of States and threaten the political stability and sustainable development of those States. The Convention convinced that corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies, making international co-operation essential to prevent and control it.

Customer/ beneficiary identification and reporting of suspicious transactions

Article 14 of UNCAC resolution suggests various measures to prevent money laundering which include instituting a comprehensive domestic regulatory and supervisory regime for banks and non banking financial institutions and also other bodies particularly susceptible to money laundering in order to deter and detect all forms of money laundering. The Article further says that the regime shall also emphasize the requirements for customer and beneficial owner identification, record keeping and reporting of suspicious transactions.

Exchange of information at National and International level

The Article also suggests that administrative, regulatory, law enforcement and other authorities dedicated to combating money laundering shall have the ability to co-operate and exchange information at the National and international levels within conditions prescribed by its domestic law.

Financial Intelligence Unit (FIU)

The Article recommends establishment of a 'Financial Intelligence Unit (FIU)' to serve as a national centre for the collection, analysis and dissemination of information regarding potential money laundering.

Movement of Cash and Negotiable Instruments

The Article 14 also prescribes for implementing feasible measures to detect and monitor movement of cash and negotiable instruments across borders without impeding the movement of legitimate capital. Such measures may include reporting by individuals and businesses, the cross border transfer of substantial quantities of cash and negotiable instruments.

Remittances & Payment Systems

The Article also suggests implementing appropriate feasible measures for financial institutions/banks for money remittances, as under:

1. To include accurate and meaningful information on the originator on all forms of electronic transfer of funds and related message formats.
2. To maintain such information end to end throughout the payment chain.

3. To apply enhanced scrutiny on transfer of funds that does not contain complete information on the originator.

FATF Recommendations and International Standards on combating money laundering and the financing of terrorism etc

The Financial Action Task Force (FATF) is an independent inter governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing etc.

The FATF recommendations are recognized as the 'Global Anti Money Laundering (AML) and Counter Terrorist Financing (CFT) Standards'. FATF recommendations lay stress on Customer Due Diligence (CDD) and record keeping. FATF recommends that Financial Institutions (FIs) should be prohibited from keeping anonymous accounts or accounts in obviously fictitious names. FIs should be required to undertake 'Customer Due Diligence (CDD)' measures when:

1. Establishing business relations;
2. Carrying out occasional transaction (over and above stipulated threshold);
3. There is a suspicion of money laundering or terrorism financing; or
4. Financial Institution has doubts about the periodicity or adequacy of previously obtained customer identification data.

FATF recommendations also suggest that FIs should follow a 'Risk Based Approach' while implementing the CDD measures. They also suggest that FIs should apply these recommendations to the existing customers on the basis of materiality and risk and should conduct due diligence on such existing relationship at appropriate times.

According to FATF recommendations, FIs should keep all necessary records of transactions (both domestic and international) for at least five years, to enable them to comply with the information requests from competent authorities.

FATF also suggested that for all wire transfers

or related messages FIs should include required/ accurate originator and beneficiary information and ensure that the information remains throughout the entire payment chain.

FATF recommendations also stipulate that if a financial institution suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity or are related to terrorist financing, should report promptly its suspicion to Financial Intelligence Unit (FIU).

Bank for International Settlement (BIS) guidelines on money laundering

Supporting the adoption of the standards issued by FATF, Basel Committee on Banking Supervision also issued guidelines to banks to include AML/ CFT within their overall risk management.

The Basel Committee is committed to promote the implementation of sound AML and CFT policies and procedures that are critical in protecting the safety and soundness of banks and the integrity of the international financial system. According to the Committee, sound ML/ FT risk management has particular relevance to the overall safety and soundness of banks and of the banking system and has the following primary objectives for banking supervision:

- It helps in protecting the reputation of both banks and national banking systems by preventing and deterring use of banks to launder illicit proceeds or to raise or move funds in support of terrorism.
- It preserves the integrity of the international finance system as well as the work of government in addressing corruption and in combating the financing of terrorism.

India's initiatives & challenges in preventing money laundering

Keeping in view the above recommendations, Reserve Bank of India had already issued the following master guidelines to banks/FIs.

- a. Master directions on Know Your Customer (KYC)
- b. Master circular on AML/ CFT

RBI also introduced ISO 20022 Message Standards in RTGS (Real Time Gross Settlement) Payment System to capture full information on remittances.

Aadhar ceding into bank accounts and further mapping to all financial transactions reporting, in phased manner, is a step towards maintaining the trail and identity of the originators and beneficiaries.

However, banks in India are still struggling with KYC non-compliances and Risk Categorization of accounts. Non compliances are also observed in submission of STRS and reporting of High value Cash Deposits. KYC still needs to be complied/updated in many old/dormant/inoperative accounts. It is reported that during demonetization period, fraudsters used these accounts in big way for deposit of Specified Bank Notes (SBNs). Gross violations are also observed in complying KYC guidelines while opening new accounts.

Banks need to focus on the following with more serious attention:

- KYC/CDD should not be treated as a paper ritual;
- Meaningful & physical verification of residential/business addresses particularly while opening accounts in respect of legal

entities viz., business firms/companies/ non-profit organizations/trusts etc;

- Zero tolerance for non-adherence of KYC/CDD and this should not be seen just as a compliance issue by bank managements;
- Regulatory penalty is not a remedy (for violations in KYC/AML/CFT guidelines) to arrest money laundering;
- More diligent scrutiny of alerts thrown by AML/CFT software and logical disposal by bank branches;
- Effective oversight on high value remittances through payment systems (viz., NEFT/RTGS/SWIFT etc);
- Full and accurate information related to remitter/beneficiaries to be captured at CBS level itself for all SFMS/MT/ISO/SWIFT message formats.
- Ensuring genuineness of business transactions for all forex remittances.

Any lenient approach in this area may pose a serious threat to anti-corruption initiatives.

References:

1. United Nations Convention against Corruption (UNCAC) – General Assembly Resolution 2003.
2. FATF Recommendations – International Standards on combating money laundering and the financing of terrorism & proliferation (updated 2016).
3. RBI Notifications



Integrity without knowledge is weak and useless, and knowledge without integrity is dangerous and dreadful.

– Samuel Johnson



SP Gautam
Technical Examiner, CVC

Intricacies of Price Escalation

Introduction

The article is related to the misuse of provision of Price Escalation Clause given in many tenders. This very misuse of escalation provision makes it possible to pay the contractor huge amount beyond initial tendered cost. But how, we will see now.

Case-Study

- In one of the PSU, Work Manual has provision that price escalation clause will be applicable only if work contract duration is beyond 12 months. If the contract completion period is within or up to one year duration, then no escalation clause is applicable. So foundation of irregularity is laid down by extending the contract completion period beyond 12 months. The subject contract was also one such contract in which contract completion period is put up beyond 12 months. Supply items constitute 80% of tender value and remaining 20% is for installation, testing and commissioning purpose.
- Supply items were to be supplied within one year of Letter of Award date. The dates for supply of all items were fixed and these milestones were to be achieved by the contract, failing which the provision of L.D. was to be invoked.
- As the project completion period was beyond 12 months, so the escalation clause was also applicable in the subject tender. If at all escalation clause was to be invoked, escalation was to be given from the month previous to the month of submission of bid. Escalation was to be given up to month previous to the month of supply of those items.

- Under the given circumstances, the contractor had two choices :
Either to supply all the items as per milestones laid down in the contract and save the L.D.
Or
To bear the burden of L.D. by supplying the items late and then claiming the price escalation as given in NIT.
- The contractor was obviously cleverer and he resorted to second option. As a result, he was imposed upon full L.D. as penalty. But he didn't mind because as per clause of NIT, he was going to get escalation since the month previous to in which he submitted the bid. Overall calculation was done on the basis of Wholesale Price Index (WPI) and escalation came out to be higher than the L.D. imposed. Thus contractor was heavily benefitted by this provision.

Analysis:

- The contractor delayed the supply of items deliberately and missed all milestones for supply of items. But he was not even reminded of this delay anytime during the 12 months. He was written a letter only once and that too after missing the deadline of 12 months. In response of this letter, the contractor requested to extend the completion time of job by another 6 months but with imposing of L.D.
- Had the provision of price escalation been implied with, for duration only after original period of milestone (and that too only when delay in supply is on account of employer, without giving any escalation for delay on account of firm) , then exercising

the option of delay, paying full L.D. and then claiming escalation would not have been a beneficial deal for the contractor.

- Probably the design of NIT conditions governing escalation is benefitting more to contractor.

Suggestions:

- Delay on part of Contractor should be brought on record by writing him continuously; not like this case when a letter is written to firm only after one year of award of contract. This was probably purposefully so as not to bring on record the fact that delay is on part of contractor.

- Escalation Clause should not be applicable if delay is on part of contractor.
- Escalation should be given not from month previous to month in which he submitted the bid because during that period his rates were supposed to be firm. It should rather be given from the month only after original envisaged supply period and that too only when delay is not on part of contractor e.g. if delay is due to non-availability of front then escalation can be applied but if delay is due to not placing the P.O. timely upon firms then no escalation should be given.



Source : Cartoonstock.com

Important Activities in the Commission

- Hon'ble Lieutenant Governor of Puducherry, Dr. Kiran Bedi visited the Central Vigilance Commission on 02.05.2017



- Shri K.V. Chowdary, Central Vigilance Commissioner, inaugurated a Training Workshop, as chief guest, organized by Transparency International India (TII) on "Probity in Public Procurement and Integrity Pact" held on 19.05.2017 in New Delhi.



- Shri K.V. Chowdary, Central Vigilance Commissioner participated in a "Workshop on Tax and Asset Recovery" Organized by World Bank in Washington, D.C on 01.06.2017.
- Shri K.V. Chowdary, Central Vigilance Commissioner represented India at the Eighth Session of the Implementation Review Group of UNCAC held in Vienna from 19th-23rd June 2017.
- Central Vigilance Commission observed "Swachhta Pakhawada" from 16th to 30th June, 2017. During the Pakhawada, various activities were organized by the Commission including cleanliness awareness training camp, distribution of dustbins etc. at Kendriya Vidyalaya and other Government Schools at INA colony on 27th- 28th June 2017.

Activities during the Swachhata Pakhwada 2017



- In this quarter the Commission invited following eminent persons to deliver lectures and interact with audience under its Knowledge Management Programme. These were webcast live by NIC to a wider audience worldwide. These lectures can be accessed at the Commission's website www.cvc.gov.in.

| Eminent Speaker | Topic | Date |
|---|--|------------|
| Ms. Anita Kapur, Member, Competition Appellate Tribunal | Tax Regime for Countering Corruption | 26.04.2017 |
| Dr. Jitendra Singh, Minister of State (PP) | Government's Recent Initiatives to Curb Corruption | 09.05.2017 |
| Dr. Nasim Zaidi, Chief Election Commissioner | Political Finance & Some Implications | 29.06.2017 |



Ms. Anita Kapur delivering the lecture on 26.04.2017



Dr. Jitendra Singh interacting with audience on 09.05.2017



Dr. Nasim Zaidi, CEC, addressing the gathering on 29.06.2017

It is the spirit and not the form of law that keeps justice alive.

– Earl Warren

Welcome Corner



Shri Shailendra Singh, joined as Chief Technical Examiner, Central Vigilance Commission on 08.05.2017. Earlier he was working as Advisor in the Commission.



Shri Deepak Israni, joined as Dy. Secretary, Central Vigilance Commission on 10.04.2017.



Smt. Rolley M. Varma, joined as Director, Central Vigilance Commission on 15.05.2017.



Shri Tarun Mittal, joined as Technical Examiner, Central Vigilance Commission on 28.04.2017.



Shri Ajay Kumar Kanoujia, joined as Director, Central Vigilance Commission on 10.04.2017.



Shri B M Dhawan, joined as Assistant Technical Examiner, Central Vigilance Commission on 05.04.2017.



Shri Nitin Kumar, joined as Director, Central Vigilance Commission on 17.04.2017.

Shri S K Jain, joined as Assistant Technical Examiner, Central Vigilance Commission on 05.05.2017.



Shri Satya Pratap Singh, joined as Dy. Secretary, Central Vigilance Commission on 01.05.2017.



Shri Satranjan Kumar, joined as Junior Technical Examiner, Central Vigilance Commission on 05.04.2017.

We wish them all the best.

Farewell Corner



Shri Ashok Kumar Nakra,
Director, CVC was relieved from
the Commission on 30.06.2017
after completion of tenure.



Smt. Rashmi Sinha, Director,
CVC was relieved from the
Commission on 23.05.2017
after completion of tenure.

We wish them all the best.

IMPORTANT CIRCULARS/GUIDELINES/OM ISSUED BY COMMISSION

1. Office Memorandum dated 23rd May 2017
Sub: Pendency with the Ministries/ Departments/ Organisations -Regarding.
2. CIRCULAR No. 05/05/2017 dated 31st May 2017
Sub: Submission of APARs of CVOs on time for acceptance by the CVC -Regarding.
3. CIRCULAR No. 06/06/2017 dated 14th Jun 2017
Sub: Reporting of fraud cases to Polices/State CIDs/Economic Offences Wing of State Police b Public Sector Baqns. -Regarding.

Note: For details, please refer to the Commission's website www.cvc.gov.in

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Disclaimer: The views expressed in the articles etc. are those of the authors and do not necessarily reflect the policy or position of the Commission. In order to ensure brevity and readability, some articles may be abridged.



Shri K.V. Chowdary, Central Vigilance Commissioner during the course of an event organized by World Bank in Washington, D.C.



Shri K.V. Chowdary, CVC with Shri Martin Kreutner, Dean of IACA during visit to Vienna. © Photo copyright IACA

HAVE YOU TAKEN INTEGRITY PLEDGE ?
PARTICIPATE IN THE FIGHT AGAINST CORRUPTION

 सत्यमेव जयते

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ईमानदारी को प्रोत्साहन देने तथा भ्रष्टाचार उन्मूलन में जन सहभागिता
PUBLIC PARTICIPATION IN PROMOTING INTEGRITY AND ERADICATING CORRUPTION

सत्यनिष्ठा प्रतिज्ञा
INTEGRITY PLEDGE

एक नागरिक के रूप में
AS A CITIZEN — OR — एक संगठन के रूप में
AS AN ORGANIZATION

प्रतिज्ञा तीन आसान चरणों में लें
TAKE PLEDGE IN THREE EASY STEPS

1. बुनियादी विवरण दर्ज करें | ENTER BASIC DETAILS
2. प्रतिज्ञा की भाषा चुनिये | SELECT PLEDGE LANGUAGE
3. पढ़ें और प्रतिज्ञा लें | READ & TAKE PLEDGE

यदि प्रतिज्ञा पहले ही ले चुके हैं तो वचनबद्धता का प्रमाण-पत्र प्राप्त करें | If already taken Pledge, Get the Certificate of Commitment

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