

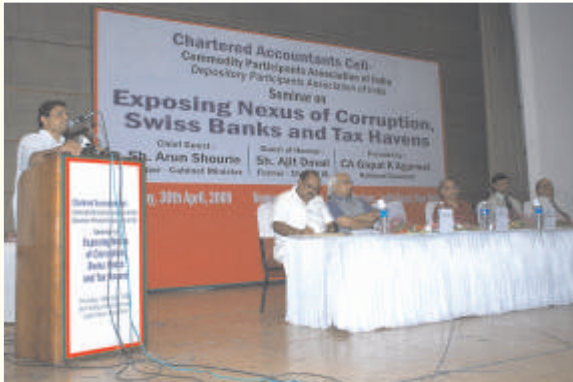


ECONOMICS CELL
BHARTIYA JANATA PARTY

Guidelines for Prevention of Bribery in Private/NGO Sector



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Guidelines for Prevention of Bribery in Private/NGO Sector

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Preface



Our work on Prevention of Corruption Started in April 2009. The issue of black money was taken by us after Shri L K Advani strongly advocated the cause of recovery of stolen assets and therefore encouraged me to follow it up. At that time in my presidential address as Convenor of Chartered Accountants Cell of BJP, I had committed to bring out detailed report, documents and solutions thereof. Initially we brought out a discussion paper on 'Exposing nexus between corruption and swiss money stashed illegally in tax havens'.

Later on in February 2011, our research report of Economics Cell, BJP on 'Ways and means to recover indian money stashed away in foreign countries' (Annexure-II) was released by our party president Shri Nitin Gadkari. This report analyses the whole issue of foreign flows, corruption in India, existing anti corruption legislation and institutions, international scenario on anti corruption moves. To mobilize support and public opinion we also released one logo depicting golden sparrow caged in the web of corruption.

Slowly and steadily the movement was built alongside my increasing involvement with India Against Corruption (IAC) crusade. I was the convener of the demonstration at Jantar Mantar on 19th November 2011, where for the first time Swami Ramdevji, Shri Anna Hazare, Shri Arvind Kejriwal and Smt Kiran Bedi came together to file an FIR against 2G spectrum and Common Wealth Games scam.

The research report analyzed the steps undertaken by various countries internationally to successfully recover their countries wealth abroad, and came out with seven steps required of the government of india to bring our money back. The first and foremost being, ratification of UNCAC. Though ratification was the first step but it had to be supplemented by major other initiatives like, public procurement policies, laws relating to bribery of foreign nationals, whistleblower protection, acts on prevention of bribery in private/ngo sector and clear definition of bribery. All these facts were explicitly mentioned in our research report.

There was long delay to act on these lines as there was lack of proper will on the part of the government. This dilly dealing committed us to draft our own Bill which we termed as 'Prevention of bribery in private/NGO sector bill' (Annexure-I). This bill effectively tackles the issue of prevention of bribery in the private and NGO sector, and lack of provisions regarding Mispricing and valuation of contract and licenses etc., gratification and bribery through third party, lobbying and influencing through public policy debate, rules, regulation and guidelines to be implemented by private sector to check and control bribery and the bribing of foreign nationals. The provisions of incorporating whistleblower protection and clearly defining what constitutes bribery classifying speed money and extortionist bribe, have also been incorporated.

In the course of our in depth analysis we came on the Concept of John Doe Law Suit (Annexure-III). based on that we drafted the Floating Warrant Concept. A John Doe Summons is any summons where the name of the culprit under investigation is unknown and therefore not specifically identified. A summons of this nature can only be served after approval by a Court. As we lack adequate information/provisions relating to proving money stashed in tax havens as criminal money and identity of the account holder is unknown, we can use this warrant. As identity of the

culprit is not known to us, we have to issue a Floating Warrant on the unknown person. Based on this warrant, the person whose account is in the foreign country can be declared as offender and his information demanded. This warrant gets fixed on the person at a later stage when his identity becomes known. With this, Foreign Countries will be bound under UNCAC agreement to divulge information of these accounts. The information received through this process will not be classified as secret and therefore the government will be free to share it with public and other law enforcement agencies.

Both these documents were widely circulated and debated at major business, professional and social forums involving India Policy Foundation (IPF), India Against Corruption (IAC), Bhartiya Vitta Salahkar Samiti (BVSS) etc., where stock holders from all walks of life participated in the debates. These suggestions were examined and incorporated in the final drafts.

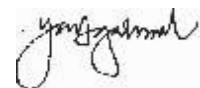
This movement got a big boost when Youth Against Corruption (YAC) adapted these documents as one of its major demand. After a long and detailed discussion at India International Centre on February 2012 and a nationwide movement on the issue, YAC also brought out a booklet in hindi incorporating in details all the deliberations. This bill would not have moved further without the support of YAC and Shri Sunil Ambekar.

Shri Prakash Javedekar found this bill to be very useful and agreed to bring it to the Rajya Sabha as a Private members bill. Now Smt Sushma Swaraj, Leader of Opposition Lok Sabha, has extended full support to the bill and bring it to the Lok Sabha, reiterating her commitment to fight corruption.

I have strong faith in Indian Parliamentary Democracy. I feel that the common men of this country is equally responsible for the state of affair that our democracy finds itself. His indifferent attitude towards exercising his franchise is equally to share the blame. But still if the nation has to progress it will be only through Participatory Democracy. The democracy needs institutions and legislations. The nation is rising. My hope is that 2014 will bring new hope and a welcome change for the country. Let us all prepare for that golden future through our commitment to the Nation first, party second and individual last.

Economic development is must for the progress of a nation. Private Sector and NGO's have contributed a lot towards the growth of our country. It is our resolve to strengthen that. Curbing black money is our motto and bringing our illegal money stashed abroad our aim. We convey our sincere gratitude to all the Business and Professional Associations and there Office Bearers who have come together to support this cause.

If the government does it with legislative effort it is very good. Private sector has so many times taken strong initiatives. One major initiative was corporate governance, which brought wonderful results. Our wish is that with the same zeal they adopt the prevention of bribery in private sector initiative and come up with voluntary compliances. Therefore the next logical step on our part was to bring out a Guideline Note on the subject along with Samples of Anti Bribery Policy adopted by companies (Annexure - IV). We are happy to bring out this guideline note for all of us to incorporate as an ethical business practices in our organizations.



Gopal K Agarwal
National Convener

7th July 2012

Background

1. India ratified United Nations Convention Against Corruption (UNCAC) on 1st May, 2011 after almost seven years when it was adopted by United Nations in its Assembly on 31.10.2003. UNCAC applies, in accordance with its terms, to the prevention, investigation and prosecution of corruption and to the freezing, seizure, confiscation and return of the proceeds of offences established in accordance with the Convention. Ratification of UNCAC shall help India to seek information from other member countries on Indians who have stashed their illegal money in foreign banks and to take constructive steps towards bringing back the same to India.
2. Before India would reap the benefits of ratification of UNCAC, it is required to address and take some additional measures at its end. The most important amongst them are:
 - i) establishment of appropriate systems of public procurement,
 - ii) taking measures in its domestic law to prevent corruption involving private sector and to establish as criminal offences, when committed intentionally, in the course of economic, financial and commercial activities,
 - iii) adopting legislative or other measures as may be necessary to establish bribery of foreign officials and officials of public international organisations as a criminal offence and
 - iv) Considering incorporating into its domestic legal system appropriate measures to provide protection against unjustified treatment for any person who reports in good faith any facts concerning offences established under UNCAC.
3. So far as public procurement is concerned, a bill titled 'the Public Procurement Bill, 2012' has already been introduced in the Parliament. For protection of whistleblowers also a bill titled 'the Public Interest Disclosure and Protection to Persons Making the Disclosure Bill, 2010' has been introduced in the Parliament. But the present government has not taken any step so far to address bribery in private sector and bribery of foreign officials and officials of public international organisations.
4. G 20 in its Seoul Summit in 2010 while acknowledging that corruption is a severe impediment to economic growth, it threatens the integrity of markets, undermine fair competition, distort resource allocation, destroys public trust and undermines the rule of law, adopted 'G20 Anti-Corruption Action Plan' supporting a common approach to an effective global anti-corruption regime, showing collective leadership by taking action in high priority areas that affect our economies and directly engaging private sector stakeholders in the development and implementation of innovative and cooperative practices in support of a clean business environment. India, being member of G 20 also committed itself to the Anti-corruption Action Plan.
5. Subsequent G 20 Summit at Cannes, France on 3-4 November, 2011 and at Los Cabos, Mexico on 18-19 June, 2012, where India participated prominently, saw enhanced engagement of the

private sector (B 20) to fight against corruption and their commitment to build on G 20 Anti-corruption Action Plan.

6. In USA, the Foreign Corrupt Practices Act, 1977 (FCPA) was signed into law in 1977, and was amended in 1998 to implement the anti-bribery conventions of the Organization for Economic Co-operation and Development. The FCPA makes it unlawful to bribe foreign government officials to obtain or retain business. It potentially applies to any individual, firm, officer, director, employee, or agent of a US firm and any stockholder acting on behalf of a firm. Individuals and firms may also be penalized if they order, authorize, or assist someone else to violate the anti-bribery provisions or if they conspire to violate those provisions. The FCPA prohibits corrupt payments through intermediaries. Total foreign direct investment in India by US companies, as on 31.3.2012, is to the tune of Rs. 47,889 crores which is 6.2 % of the total FDI inflow. All US investors are required to comply with the provisions of FCPA in India also and therefore, have adopted anti bribery policies and has set up anti- bribery procedures in their organisations.
7. Similarly, The Bribery Act in United Kingdom was enacted in 2010 and became effective from June 1, 2011. UK Bribery Act deals with bribery in both, public and private sectors. The Act requires corporate and other business entities to formulate and adopt anti bribery policies in accordance with its requirements and there are provisions for severe penalties for non-compliance. Total foreign investment in India by UK companies, as on 31.3.2012, is Rs. 74,661 crores which is 9.45% of the total FDI flow into the country. All UK companies operating in India , directly or through their branches, subsidiaries, joint ventures, representative offices, or agents are required to comply with the provisions of the Bribery Act, 2010 as if, provisions are applicable in India also.

Keeping the above facts in mind, Economic Cell of BJP feels strongly, that India also must have a specific act to deal with bribery in private sector and has therefore, drafted a bill titled ' Prevention of Bribery in Private Sector Bill, 2011' and suggested the Party to introduce the same in Parliament for its enactment. The Bill not only defines 'bribery in private sector' but also 'offence of bribery of foreign public officials,. It requires a commercial entity to put in place adequate procedure designed to prevent persons associated with it from undertaking bribery.

Draft Code of Ethics

1. OECD countries have adopted 'Good Practice Guidance on Internal Controls, Ethics and Compliance' prepared by OECD on the basis of findings and recommendations of the Working Group on Bribery in International Business Transactions and contributions from the private sector and civil sector on a voluntary basis. This Good Practice Guidance is addressed to companies for establishing and ensuring the effectiveness of internal controls, ethics, and compliance programmes or measures for preventing and detecting the bribery of foreign public officials in their international business transactions and to business organizations and professional associations, which play an essential role in assisting companies in these efforts. It recognizes that to be effective, such programmes or measures should be interconnected with a company's overall compliance framework. It is intended to serve as non-legally binding guidance to companies in establishing effective internal controls, ethics, and compliance programmes or measures for preventing and detecting foreign bribery. This Guidance is flexible and intended to be adapted by companies, in particular small and medium-sized enterprises according to their individual circumstances, including their size, type, legal structure and geographical and industrial sector of operation, as well as the jurisdictional and other basic legal principles under which they operate.
2. The UK Bribery Act takes effect in April 2011. United Kingdom's Ministry of Justice has released guidelines for individuals and companies seeking to comply with the UK Bribery Act. These guidelines confirm that following the advice of the government's consultation constitutes a defense against charges of a business entity failing to prevent bribery and having these procedures in place prior to that date can protect the company against financial ruin, caused by the potentially unlimited fines that may be levied. In addition, implementing these principles will also protect the company from Foreign Corrupt Practices Act (FCPA) violations. Employees of companies are suggested to receive regular training on anti-bribery laws and certify that they shall follow corporate policy in this regard. The Handbook has narrated the following six principles for bribery prevention:
 - Risk assessment
 - Top level commitment
 - Due diligence
 - Clear, Practical, and Accessible Policies & Procedures
 - Effective implementation
 - Monitoring and Review
3. Transparency International and a coalition of private sector interests, non-governmental organizations and trade unions developed 'Partnering Against Corruption - Principles for Countering Bribery', known as 'PACI Principles'. The aim of these PACI Principles is to provide a framework for good business practices and risk management strategies for countering Bribery. They are intended to assist enterprises to -

- Eliminate Bribery
- Demonstrate their commitment to countering Bribery and
- Make a positive contribution to improving business standards of integrity, transparency and accountability wherever they operate.

This initiative reflects an appreciation that corruption and bribery are corrosive of economic progress and good governance and recognises the need for anti-bribery principles that can be applied industry-wide. The PACI Principles propagate that:

- The enterprise shall prohibit bribery in any form
- The enterprise shall commit to the continuation or implementation of an effective program to counter bribery.

The PACI Principles suggests that:

- An enterprise should develop a program that clearly articulates values, policies and procedures to be used to prevent bribery occurring in all activities under its effective control.
- In developing the program, an enterprise should identify and assess specific areas that pose the greatest risks from corruption. The program should at a minimum cover the following areas:
 - Bribes
 - Political contributions
 - Charitable contributions and sponsorships
 - Facilitation payments and
 - Gifts, hospitality and expenses
- The program should apply also to its subsidiaries, joint venture, agents, contractors and other third parties with whom the enterprise has business relationship.

4. It is on record that Indian corporate adopted policy on corporate governance suo moto and quite before these became mandatory through listing Agreement. It is suggested that they should take initiative in the case of anti bribery policy also in the same fashion. Instead of waiting for law to be enacted in the respect, they should adopt such policies suo moto and for that purpose, they can take help of the various material referred above as well as Anti Bribery Polices adopted by various companies in UK. Some of the Samples are annexed for ready reference. This will prepare them for implementing the legal requirements as and when enacted.

The Prevention of Bribery in Private/NGO Sector Bill

1. Short title, extent, application and commencement

- (a) This Act may be called 'the Prevention of Bribery in Private/NGO Sector Act,
- (b) It extends to the whole of India.
- (c) It shall come into force on such date as the Central government may, by notification, in the Official gazette, appoint.

2. Definitions

For the purpose of the Act:

- (a) "Bribe" shall include facilitation payments, directly or through third parties and gift, hospitality and expenses whenever they could or perceived to affect the outcome of business transactions and are not reasonable and bonafide.
- (b) "Commercial entity" means—
 - (i) A body which is incorporated under the law of India and which carries on a business (whether there or elsewhere),
 - (ii) Any other body corporate (wherever incorporated) which carries on a business, or part of a business, in India,
 - (iii) A partnership which is formed under the law in India and which carries on a business (whether there or elsewhere), or
 - (iv) Any other partnership (wherever formed) which carries on a business, or part of a business, in India,

For the purposes of this section, a trade or profession is a business.

- (c) 'Confiscation' shall include forfeiture and shall mean the permanent deprivation of property by order of a court or other competent authority.
- (d) The bribe becomes extortion when this demand is accompanied by threats that endanger the personal integrity or the life of the private actors involved, or he is forced to pay bribe to protect his right which are legally due to him, otherwise it takes the form of speed money, this is the bribe given for expediting approvals and for providing (or not withholding) services.
- (e) 'Foreign public official' means any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected, whether permanent or temporary, whether paid or unpaid and a person who performs a public function or provide a public service for a foreign country.

- (f) 'Non- Governmental organisation' means a body which is incorporated under the laws in India or any other body corporate, wherever incorporated which carries on its charitable or religious activities in India, any society registered under the Societies Registration Act, a trust registered under the Public Trust Act or association of persons which is carrying on its charitable or religious activities in India. It shall include community based organisations and for this purpose 'charitable or religious activities' shall mean activities as defined in section 2(15) of the Income Tax Act, 1961.
- (g) 'Person' shall include-
- (i) an individual,
 - (ii) a company
 - (iii) a firm
 - (iv) a society
 - (v) a trust
 - (vi) a HUF
 - (vii) an association of persons or a body of individuals, whether incorporated or not
 - (viii) Limited liability partnership
 - (ix) Every artificial juridical person not falling within any of the preceding sub-clauses and
 - (x) Any agency, office or branch owned or controlled by such person.
- (h) 'Proceeds of crime' shall mean any property derived from or obtained, directly or indirectly through the commission of offence
- (i) 'Property' shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets.

3. Bribery in the private/NGO sector

- a) A person shall be guilty of an offence of giving bribe, when committed intentionally in the course of economic, financial or commercial activities when it is established that there is a promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a commercial entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.
- b) A person shall be guilty of an offence of receiving bribe, when committed intentionally in the course of economic, financial or commercial activities when it is established that there is solicitation or acceptance, directly or indirectly, of an undue advantage by any

person who directs or works, in any capacity, for a commercial entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

4. Offence of Bribery of foreign public officials

A person shall be guilty of an offence of bribery of foreign public officials, when committed intentionally in the conduct of international business, when it is established that there is an offer, promise or giving any undue pecuniary or other advantage, whether directly or through an intermediary, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage. Offence of bribery of foreign public official shall include complicity in, incitement, aiding and abetting or authorisation of an act of bribery of a foreign public official. It shall also include attempt and conspiracy to bribe a foreign public official.

5. Participation or attempt to participate in act of bribery

- (a) Any person who participates in any capacity such as an accomplice, assistant or instigator in an offence under sections 3 or 4 shall also be considered as guilty of offence under that section.
- (b) Any person who makes an attempt to commit an offence under sections 3 or 4 shall be considered as guilty of offence under that section.

6. Failure of commercial entity to prevent bribery

- (a) A commercial entity shall be guilty of an offence under this section if a person is associated with it, bribes another person intending —
 - (i) to obtain or retain business for the commercial entity, or
 - (ii) to obtain or retain an advantage in the conduct of business for the commercial entity.
- (b) But it is a defence for the commercial entity to prove that it had in place adequate procedures, as may be prescribed, designed to prevent persons associated with it from undertaking such conduct.

7. Failure of non- governmental organisation to prevent bribery

- (a) A non-governmental organisation shall be guilty of an offence under this section if a person is associated with it, bribes another person intending—
 - (i) to obtain or retain assets, grants for the non-governmental organisation or
 - (ii) to obtain or retain an advantage in the conduct of its charitable activities

- (b) But it is a defence for the non-governmental organisation to prove that it had in place adequate procedures, as may be prescribed, designed to prevent persons associated with it from undertaking such conduct.

8. Contravention by companies

- (1) Where a person committing an offence of any provisions of the Act, is a company, every person who, at the time the offence is committed, was in charge of or was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of offence and shall be liable to be proceeded against and punished accordingly,

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the offence took place without his knowledge or that he exercised due diligence to prevent such offence.

- (2) Notwithstanding any thing contained in sub-section (1), where an offence has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of committing offence and shall be liable to be proceeded against and punished accordingly.

Explanation- For the purpose of this section 'company means any body corporate and includes a firm, society, trust, LLP or other association of persons and 'director' in relation to a firm means a partner of the firm and 'director' in relation to a trust means 'trustee of the trustee'.

9. Penalties

- (a) An individual guilty of an offence under section 3 or 4 is liable—
- (i) on summary conviction, to imprisonment for a term not exceeding 60 months or to a fine not exceeding Rs2 Lakh or to both,
 - (ii) on conviction, on indictment, to imprisonment for a term not exceeding 14 years, or to a fine not less than Rs. 5 Lakh or to both.
- (b) Any other person guilty of an offence under section 3 or 4 is liable—
- (i) On summary conviction, to a fine not exceeding Rs2 Lakhs
 - (ii) On conviction, on indictment, to a fine not less than Rs. 5 Lakhs.
- (c) A person guilty of an offence under section 5 is liable on conviction and on indictment to a fine not more than Rs 2 Lakhs

10. Confiscation of proceeds of crime

- (a) Proceeds of crime derived from or involved in offences under Section 3 or 4 or property the value of which corresponds to that of such proceeds shall be confiscated.
- (b) If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to be confiscated.
- (c) If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall be liable to confiscation up to the assessed value of the intermingled proceeds.
- (d) Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to be confiscated in the same manner and to the same extent as proceeds of crime.
- (e) For the purpose of this section, notwithstanding any rights or privilege provided through any other Act or by an agreement between the parties, the adjudicating authority shall have authority to order any bank, financial institution, financial intermediary or commercial entity to provide information, seize or produce records, freeze accounts and remit the proceeds of crime to the designated account.
- (f) The confiscated proceeds shall vest into the Central Government.

11. Law enforcement

- (a) The Central Government, may, by notification in the Official Gazette, appoint as many special judges as may be necessary to try the offences punishable under this Act.
- (b) A person shall not be qualified for appointment as a special judge under this Act unless he is or has been a Session Judge or an Additional Session Judge under the Code of Criminal Procedures, 1973.
- (c) A special judge shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 for the trial.
- (d) A special judge, while trying an offence punishable under this Act shall exercise all the powers and functions exercisable by a District Judge under the Criminal Law Amendment Ordinance, 1944

12. Appeal and revision

The high Court may exercise, so far as applicable, all the powers of appeal and revision conferred by the Code of Criminal Procedure 1973 on a high Court as if the court of special judge were a Court of Session trying cases within the local limits of the High Court.

13. Protection of witnesses and reporting persons

- (a) The Central Government shall take appropriate steps to provide effective protection from potential retaliation or intimidation for witnesses, reporting persons and experts who give testimony concerning offences established under the Act and to their relatives.
- (b) The Central government shall establish procedures for the physical protection of such witnesses and reporting persons and for non-disclosure or limitations on the disclosure of information concerning their identity and whereabouts.
- (c) The provisions of the section shall also apply to victims in so far as they are witnesses.
- (d) In cases of extortionist bribe if the bribe giver files a complaint, he will receive protection under this clause as a whistleblower. This protection will not be available in case of speed money

14. Prevention of bribery by commercial entity

A commercial entity shall make adequate procedures, as may be prescribed, designed to prevent persons associated with it from undertaking bribery.

These procedures shall provide for commercial entities to establish and ensure the effectiveness of internal controls, ethics and compliance measures for preventing and detecting bribery. The procedures shall, inter alia, include:

- (i) a clearly articulated and visible policy prohibiting bribery,
- (ii) instructions for strict compliance with the policy at all levels of the entity,
- (iii) appropriate disciplinary procedures to address violation of the procedures at all levels of the entity
- (iv) setting up independent monitoring body,
- (v) oversight of ethics and compliance measures and reporting to the independent monitoring body,
- (vi) ensuring applicability of the policy and procedures to third parties such as agents, intermediaries, consultants, representatives, distributors, partners, contractors, advisors, suppliers, associates, subsidiaries and joint venture partners and seeking commitment from such third parties to adhere to policy prohibiting bribery
- (vii) measure for periodic communication and training at all levels of the entity of laws against bribery and entity's policy against bribery,
- (viii) Putting in place an appropriate whistle blower mechanism including rewards for reporting and protection of the whistle blowers.

15. Prevention and detection of proceeds of crime

- (a) The banks and financial institutions and other financial intermediaries shall be required to take reasonable steps to determine the identity of beneficial owners of funds deposited into of such customers as may be prescribed.
- (b) The banks and financial institutions and other financial intermediaries shall be required to maintain such records and to provide such information, as may be prescribed, as and when required by the adjudication authorities.

16. Power to make rules

The Central Government shall, by notification, make rules to carry out the provisions of this Act.

17. Application of other laws not barred

The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force.

Ways and Means to recover Indian Money stashed away in Foreign Countries

A research report

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EXECUTIVE SUMMARY

CORRUPTION IN INDIA

India has registered a significant economic growth rate over the last 63 years. Particularly, in recent years the growth rate of India has been approximately twice the world average. The economy of India is the eleventh largest in the world by nominal Gross Domestic Product (GDP) and the fourth largest by Purchasing Power Parity (PPP) (Source: World Economic Outlook Database, April 2010, IMF).

However, India's growth story must be tempered with caution. As the Economic Survey 2009-2010 rightly presents "India's growth performance over the last couple of decades or so has been a subject of a great deal of scholarly enquiry, as well as a cause for celebration. A measured optimism, in this regard, would be understandable but a spillover into unbridled euphoria would not. The case against complacency resides in the large magnitudes of both poverty and inequality which coexist with growth." (Source: Economic Survey 2009-10, Pp 23).

A natural question arises: How has such growth with skewed development come about? Underlying this underperformance is the phenomenon of pervasive corruption in high places and the concomitant illegal flight of scarce capital from India.

ANTI CORRUPTION MEASURES AND THEIR EVALUATION

India has number of anti-corruption legislations namely Prevention of Corruption Act, Prevention of Money Laundering Act, Foreign Contribution Regulation Act, Right to Information Act. Indian Penal Code, it also has provisions relating to prosecution of corrupt Government Officials. Double Tax Avoidance Agreements with various countries under the Income Tax Act also deal with information on tax evaders.

There is number of anti corruption institutions set up in India. Central Vigilance Commission and Central Bureau of Investigation are working at Central Government level whereas State Vigilance Commissions and Lokayuktas are functional at state levels. An independent judiciary system and Central Information Commission and Public Information Officers at each Department level of all states and Central government offices are the most important segment of anti corruption set up in India. In addition to the above, Serious Fraud Investigation Office under the Ministry of Corporate Affairs and Financial Intelligence Units under Ministry of Finance are also looking into financial and economic aspects of corrupt practices. In addition there are number of investigating agencies under the Revenue Department of the Ministry of Finance looking into evasion in direct taxes, indirect taxes, forex dealings and illicit drug trade.

The institutional and legal framework for addressing the problem of corruption in India is established. However, according to Transparency International and Global Financial Integrity, this setup suffers from lack of coordination between the different actors, and efficiency is often reduced due to conflicting mandates. Key institutions are often inadequately staffed and underfunded and end up struggling to maintain their autonomy from outside political forces, even though this autonomy is legally mandated. Their activities are generally not proactive and preventive but are instead focused on investigating reported or suspected acts of corruption. In addition, there is a

general sense that the big fish has successfully avoided investigations and convictions. Additional key anti-corruption legislation have been held up for years, sometimes decades, leading to a perceived lack of political will to tackle corruption at its highest levels.

India's ineffective anti-corruption strategy can be attributed to the lack of political will of its leaders and its unfavorable policy context, which has hindered the enforcement of the anti-corruption laws. This is more evident when we see low per capita expenditure and least favorable staff-population ratio of these institutions. Though there are numerous anti-corruption institutions and legislations in place, their efforts are diluted due to non enforcement or selective enforcement of anti-corruption laws.

INTERNATIONAL SCENARIO ON ANTI CORRUPTION MOVES

Increased opportunities for transnational corruption have been unintended consequences of rapid globalization and economic liberalisation in the past two decades. Transnational corruption manifests in various forms and it could range from bribes and kick backs in international business transactions to using the channels of off-shore banking facilities and technological aids to either launder proceeds of corruption, or to simply park domestically extracted bribes in foreign destinations.

Jurisdictional limits often cause insurmountable barriers in criminal justice responses to corruption. While national authorities are expected to respect the principles of sovereignty of the requesting country, their efforts get impeded by expediencies of diplomatic relations and by divergence of legal systems and investigative practices. Therefore, when corruption transcends national boundaries, a greater degree of domestic inter-agency coordination and enhanced international cooperation is needed.

Recognising the importance of reinforcing national efforts with international cooperation instruments such as mutual legal assistance, extradition, tracing, freezing and confiscation of assets, international and regional conventions such as the UNCAC and OECD Anti Corruption Initiative for Asia and Pacific were put in place.

Keeping in mind the theft of public assets from developing countries, Stolen Asset Recovery (StAR) Initiative was launched in 2007. Apart from these measures, it also cites the case studies of the successful anti-corruption initiatives undertaken by some countries. By strengthening political accountability and transparency through further institutional reforms, they have been able to launch effective anti-corruption programs.

SUGGESTIONS ON RECOVERY MECHANISM AND OTHER ANTI-CORRUPTION MEASURES

Bringing back Indian money stashed in foreign banks/countries is a tedious process which requires a strong political will, vigorous efforts to get international cooperation, heavy cost and substantial time. We should not be expecting results immediately but we have to take some very important decisions right now. Moreover, the issue is not only of bringing back Indian money already stashed away in foreign banks but also of putting checks and balances in place to stop its further flight from India.

Our target should be to confiscate the money generated through corrupt and criminal activities (such as bribes taken by People in Power, civil servants and others or proceeds of crime relating to

illegal drugs, human and arm trafficking, extortion, protection money and money generated for and through organised crimes) and the same should be brought back and used for developmental work and social welfare schemes. Due taxes, interest and penalties must be recovered from tax evaders who have kept the money outside India in tax heaven/foreign jurisdictions offering secrecy of ownership information. All the persons involved must be prosecuted under the legal system of our country, considering such action as criminal activities.

The process of bringing back Indian money from foreign banks involves steps such as identification, verification, confiscation, international mutual legal assistance, litigation in foreign jurisdictions and devising and repatriation mechanism. Since international mutual legal assistance is the most important, India must join the world movement on anti corruption by ratifying/acceding various Conventions namely United Nations Convention on Corruption, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions etc. Secondly, we also have to amend our respective legislations to make them in line with requirements/obligations of these Conventions.

We should take proactive approach for taking benefits of experience of various governmental and non-governmental agencies working towards recovery of stolen assets. Technical assistance under StAR Initiative would not only help us to understand the nuances of asset recovery process but also provide an opportunity to develop in-house skills.

Entering into Double Tax Avoidance Agreements with tax heavens/secret jurisdictions would help us in getting information on identification of persons holding secret accounts and the quantum of money held by them. A more vibrant Financial Intelligence Unit with larger skilled manpower is very vital in interacting with other FIUs for collecting, collating and analysing information from suspicious transaction reports. Mandatory submission of information by way of STRs may be made applicable to other players of the financial systems including tax consultants. Even scope of 'suspicious transaction' itself should be enhance based on the experience gained till date.

Experience of Americans in using John Doe Lawsuits in getting names of persons having bank accounts in tax haven and other such jurisdictions is quite encouraging. In fact US have recently amended it further to make it more effective and implementable. We should also bring such provision in our related legislation.

India is yet to make law on bribery in the private sector, making bribery a criminal offence when committed intentionally in the course of carrying on business or profession. It has been noticed that the business entities in India have used tax havens for tax evasion. USA has recently passed an Act namely 'Stop Tax Haven Abuse Act' to firmly deal with such misuse by US citizens. We should also bring in similar legislation or make amendment in present Income Tax Act to address the problem of abuse of tax havens.

It is also suggested that a single agency, incorporating skilled manpower in the subject, from existing institutions be formed to deal with issue of flight of capital from India. Similarly, financial system regulators in India namely Reserve Bank of India and Security Exchange Board of India (SEBI) have to put in place regulations for collection of relevant and correct information and its submission to the specialized agency like FIU on a timely basis.

CORRUPTION IN INDIA

1) NATURE AND LEVEL OF CORRUPTION

The problem of corruption is an old one. The history of corruption in post-independent India starts in 1948, when the then Indian High Commissioner in London, V K Krishna Menon's name cropped up in a scandal where the Government of India had placed an order for procuring 2000 jeeps with a dubious London based firm. While most of the money was paid beforehand, only 155 jeeps were delivered.

In 1958, Finance Minister T T Krishnamachari, Finance Secretary H M Patel and LIC Chairman L S Vaidyanathan were exposed in a scandal involving LIC's investment of Rupees 1.25 crores in six companies established by Haridas Mundhra. The Finance Secretary was indicted, Mundhra was jailed and T T Krishnamachari resigned.

In 1976, in the face of declining oil prices, the Indian Oil Corporation awarded a Rupees 2.2 crore contract to the Hong Kong based Kuo Oil Company to take future deliveries at current prices. The Indian government suffered a huge financial loss as a result.

In 1980, Petroleum Minister P C Sethi and Petroleum Secretary H N Bahuguna were accused in the Thal Vaishet case. An engineering consultancy contract for setting up the fertilizer project in Thal Vaishet was awarded to the company, Haldor Topsoe in violation of norms. The Italian company Snamprogetti had approximately 50 percent of shares in Haldor Topsoe and it was represented in India then by Ottavio Quattrocchi.

In 1981, Maharashtra Chief Minister, A R Antulay was forced to resign when the then Bombay High Court ruled that he had illegally required builders in Mumbai to make donations to the Indira Gandhi Pratibha Pratishtan, a trust fund that he had established and controlled, in exchange for receiving more cement than the government quota allowed them to buy.

In 1987, the then Prime Minister, Shri Rajiv Gandhi and others were linked to a Rupees 64 crores payoff for the 155mm howitzer gun deal from the Swedish firm Bofors.

In the post-liberalisation period, corruption became a pervasive aspect of modern India due to proliferation of economic activities coupled with rapid increase in population. Ever since the Harshad Mehta scandal came to light in 1991, the number and magnitudes of sums involved in corrupt deals has registered a quantum jump. The C R Bhansali scam, the Fodder scam, Ketan Parekh scam, the UTI scam, the Global Trust scam, the Telgi scam, the IPO scam, the Madhu Koda scam, the Satyam scam - the aforesaid list is only indicative and by no means exhaustive; all these frauds involve gigantic amounts.

The year 2010 has been particularly notorious in terms of the scams that have surfaced to light. The biggest scam that cropped up in 2010 and the largest scam in Indian history was the Rupees 1.76 lakh crores 2G (second generation) spectrum allotment scam. Union Telecom Minister A. Raja was forced to resign on November 14 as a result.

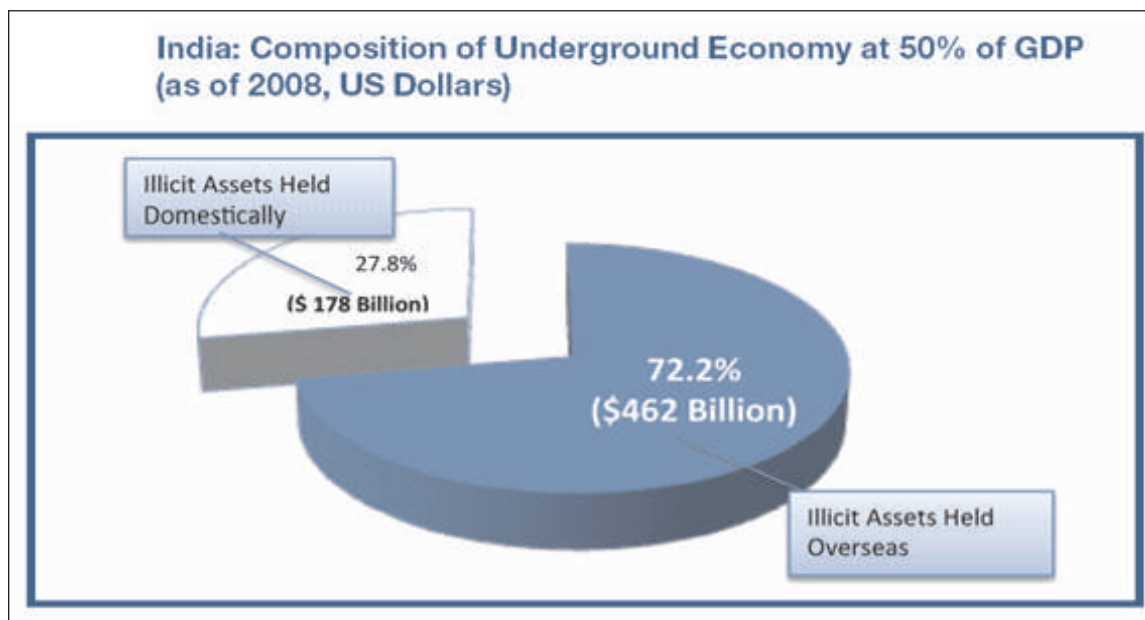
The Commonwealth Games (CWG) cost shot up by 17.5 times from the original estimate and cost Rupees 70,000 crores. The 2010 games were the most expensive Commonwealth Games ever. Investigations into the CWG scam have unearthed dubious bank accounts, fraudulent deals and arrests of officials. The Chairman of the Organising Committee, Suresh Kalmadi, has been forced to resign.

The Adarsh Cooperative Housing Society scam exposed the corrupt nexus amongst politicians and civil servants in order to grab prime land in Mumbai. The society had set up an illegal multistoried building in Mumbai. It was originally intended for the Kargil war widows, but was eventually occupied by the elites and the well connected. Chief Minister Ashok Chavan was forced to resign as the beneficiaries included three of his very close relatives.

The IPL-Kochi franchisee scam claimed the scalp of Union Minister of State for External Affairs, Shashi Tharoor. He had to quit after it was discovered that Rupees 70 crores worth 'sweat equity' was given free of cost to his then 'close friend' and now wife, Sunanda Pushkar.

The Housing loan scam saw the CBI arresting LIC Housing Finance Chief Executive Ramachandran Nair and seven others from the LIC and state owned banks. With the non-banking finance company, Money Matters acting as middleman, Nair and the bank officials had been sanctioning large loans to builders in return for bribes.

Other data also point to a stiff and increasing incidence of corruption in the country. Transparency International (TI), a global NGO established in 1993 and dedicated to promoting a corruption free world, evaluates countries on the basis of an annual Corruption Perceptions Index (CPI). TI ranked India 87 overall in 2010, worse off than all developed countries and even some countries in Africa.



A recent Global Financial Integrity (GFI) report suggests that in India, the underground economy is closely tied to illicit financial outflows. The total value of illicit assets held abroad represents about 72% of the size of India's underground economy which has been estimated at 50% of India's GDP. (Source: Dev Kar "The Drivers and Dynamics of Illicit Financial Flows from India: 1948-2008" Table 8, pp67) Clearly, the fact of corruption is undeniable.

2) TAX HAVENS AND INDIAN MONEY STASHED AWAY IN FOREIGN BANKS

The Organisation for Economic Co-operation and Development (OECD) identifies three key factors in considering whether a jurisdiction is a tax haven:

1. No or only nominal taxes. Tax havens impose no or only nominal taxes (generally or in special circumstances) and offer themselves, or are perceived to offer themselves, as a place to be used by non-residents to escape high taxes in their country of residence.
2. Protection of personal financial information. Tax havens typically have laws or administrative practices under which businesses and individuals can benefit from strict rules and other protections against scrutiny by foreign tax authorities. This prevents the transmittance of information about taxpayers who are benefitting from the low tax jurisdiction.
3. Lack of transparency. A lack of transparency in the operation of the legislative, legal or administrative provisions is another factor used to identify tax havens. The OECD is concerned that law should be applied openly and consistently, and that information needed by foreign tax authorities to determine a taxpayer's situation should be made available. Lack of transparency in one country can make it difficult, if not impossible, for other tax authorities to apply their laws effectively. 'Secret rulings', negotiated tax rates, or other practices that fail to apply the law openly and consistently are examples of a lack of transparency. Limited regulatory supervision or a government's lack of legal access to financial records is contributing factors.

However, the OECD found that its definition caught certain aspects of its members' tax systems (most developed countries have low or zero taxes for certain favored groups). Its later work has therefore focused on the single aspect of information exchange. This is generally thought to be an inadequate definition of a tax haven, but is politically expedient because it includes the small tax havens (with little power in the international political arena) but exempts the powerful countries with tax haven aspects such as the USA and UK.

In deciding whether or not a jurisdiction is a tax haven, the first factor to look at is whether there are no or nominal taxes. If this is the case, the other two factors - whether or not there is an exchange of information and transparency - must be analysed. Having no or nominal taxes is not sufficient, by itself, to characterise a jurisdiction as a tax haven. The OECD recognises that every jurisdiction has a right to determine whether to impose direct taxes and, if so, to determine the quantum of taxes.

A Factsheet on Illegal Financial Flows (IFFs) from India

Nature and Dimensions of IFFs: IFFs are, by and large, a measure of corruption in a country; after all, the corrupt eagerly strive to hide their ill-gotten wealth through scams, bribery and kickbacks in deals away from the arms of law and consequently, take their funds to destinations where domestic law would not apply and where they would be assured secrecy. Regarding Indian money stashed in foreign banks, the Supreme Court Bench said "It is pure and simple theft of the national money. We are talking about mind-boggling crime. We are not on the niceties of various treaties... We are talking about the huge money. That is the plunder of nation."

'Tax havens' and 'Offshore Financial Centers (OFCs)' have served as ideal destinations for parking such ill-gotten wealth. However, the definitions of tax havens and OFCs have been disputed for years and therefore, clarity has not been arrived at in terms of identifying the exact number of places which facilitate such illegal financial flows.

Tax Justice Network (TJN), an independent organization dedicated to research, analysis and advocacy of issues related to tax regulation, has come up with an omnibus term for such destinations where illegal financial flows are parked. Calling them 'secrecy jurisdictions', TJN defines them, as 'places that intentionally create regulation for the primary benefit and use of those not resident in their geographical domain.' This regulation is designed to undermine the legislation or regulation of another jurisdiction. To facilitate its use, secrecy jurisdictions also create a deliberate, legally backed veil of secrecy that ensures that those from outside the jurisdiction making use of its regulation cannot be identified to be doing so. (Source: <http://www.secrecyjurisdictions.com/>). On the basis of painstaking research, TJN has identified 60 'secrecy jurisdictions' in September 2009, some of which like Netherlands, Belgium, Austria, UK and parts of the USA are not conventionally considered 'tax havens'; TJN's research reveals that they are.

Recent developments surrounding IFFs: As long as the Western economies were doing well, the entire world had to be reconciled to such 'secrecy jurisdictions'. However, the recent global economic crisis and the collapse of their giant financial institutions made US and several other European countries change their attitude and join hands to make a determined effort to have banking secrecy laws in such countries changed.

Meanwhile, a study authorized by the Global Financial Integrity (GFI) and authored by Dev Kar and Cartwright Smith that was published in December 2008 found that India lost \$ 27.3 billion annually in Illicit Financial Flows during 2002-2006, making it the sixth largest exporter of illicit capital in the world. This meant a total loss of \$ 137.5 billion for the entire five year period. (Source: Dev Kar and Devon Cartwright-Smith. Dec 2008. *Illicit Financial Flows from Developing countries: 2002-2006*. Available at www.gfip.org)

In the run up to the 2009 Lok Sabha polls, Shri L K Advani first raised the issue of Indian money stashed in tax havens abroad. On the basis of the aforesaid GFI authorized study, Shri Advani said that Rupees 25 lakh crores were parked in such secret jurisdictions. He also constituted a 4 member Task Force to examine the issue in detail and the Interim Recommendations of the BJP Task Force

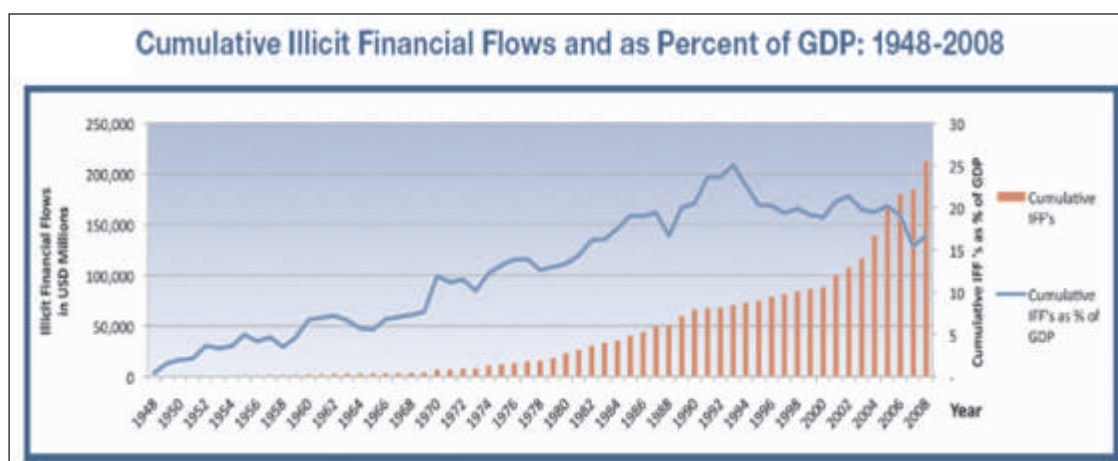
suggested a 6 point global strategy and a 7 point national strategy to bring back Indian funds illegally stashed abroad.

The global strategy revolves around India making sufficient efforts in shaping public opinion towards showing that India is concerned about the issue. For instance, the Report states " when Germany and France took the issue of secret banks and tax havens in the G-20 preparatory meeting at Berlin in February this year (2009) India kept silent for no conceivable reason. Again when the two nations supported by the UK and USA campaigned against secret banks and tax havens in the G-20 meeting at London in April (2009), India surprisingly kept mum. Lastly, when the German government offered to open to all nations the secret names of the account holders in LGT bank in Liechtenstein, India did not effectively work to get the names of several Indians believed to be in the secret records."

The national strategy focused on providing adequate legislative support for the purpose of recovering illegal wealth. The report recognized that "while the recovery of Indian monies stashed away is largely to be made at the global level there has to be proper statutory and institutional infrastructure within the nation to handle the problem of flight of Indian monies to tax havens and secret banks and also to take measures to bring back the Indian wealth stashed abroad." The report further states "Legislations to enable the government to initiate legal action and simplify procedures to take action against people who have stashed their money in tax havens should be enacted."

Chartered accountants cell of BJP under its National Convener Shri Gopal K Agarwal also released a discussion paper at a convention in New Delhi, and promised to bring out a detailed strategic document on the subject.

Global Financial Integrity (GFI) Report on IFFs from India: In November 2010, GFI published the most comprehensive report on IFFs from India, entitled "The Drivers and Dynamics of Illicit Financial Flows from India: 1948-2008" authored by Dev Kar. (Source: available at www.gfip.org)



The report states that from 1948 to 2008, India lost a whopping \$213 billion in illegal capital flight. If accumulated interest on this were to be added, this figure would touch a mind boggling \$462 billion. The report adds a caveat "in all likelihood, this estimate is significantly understated". The total capital flight is approximately equal to 16.6 percent of India's GDP as of yearend 2008.

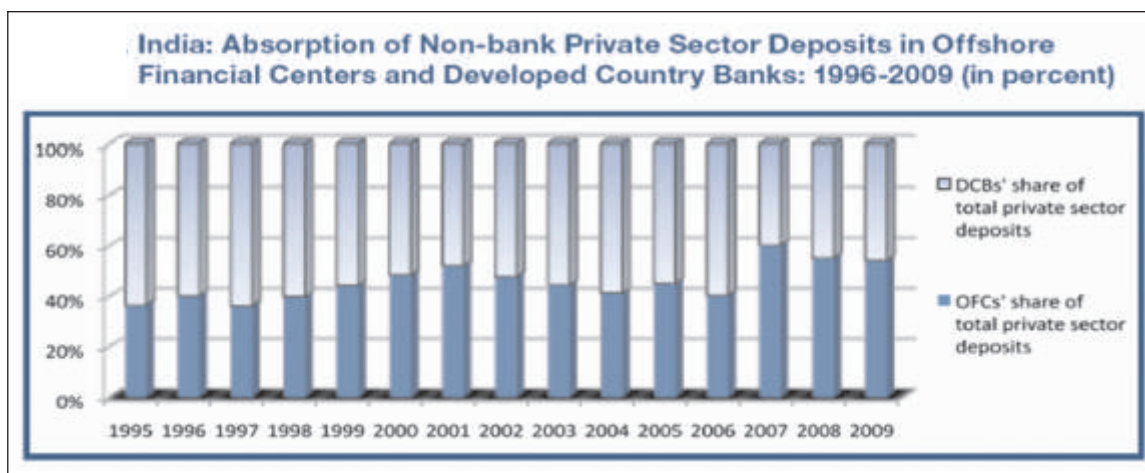
Interestingly, the report states that trade liberalization and general deregulation has led to a greater outflow of illicit funds from India. In real terms, the outflows of illicit capital accelerated from an average annual rate of 9.1 percent during 1948-1990 to 16.4 percent during 1991-2008. So for the post reform period, "there are clear indications that faster economic growth seemed to go hand-in-hand with larger, not lower, illicit flows and a worsening income distribution." High Net worth Individuals and Private Companies were found to be the primary drivers behind the illicit capital flows from India.

Supreme Court Litigation on IFFs: Pending before the Supreme Court of India is a writ petition filed by Senior Advocate Shri Ram Jethmalani and five other eminent citizens that aims at forcing government to bring back India's wealth stashed away illegally in tax havens overseas. When the matter came up for hearing in January 2011, the apex Court sternly admonished the Solicitor General Gopal Subramaniam when he said that the Government had received from the German government all details about the monies deposited by Indian citizens in Liechtenstein Bank but the Government of India did not wish to make these details public.

NDA's letter to the Prime Minister on IFFs: Taking stock of the vital issue of illegal capital flight from India, the NDA wrote a letter to the Prime Minister in January 2011. A critical paragraph in the letter reads as follows: "The investigative report in a Swiss journal, 'Schweizer Illustrierte' dated 19/11/1991 has named 14 global leaders of the Third World countries with accounts in Switzerland. The name of a former Indian Prime Minister was also mentioned. This report has never been denied. Some startling revelations in a book "The State within a State - The KGB hold on Russia in past and future" by Dr. Yevgenia Albats mentions the benefits received by a former Prime Minister of India and his family, accruing from commercial dealings with the Soviets." (Source: Shri L K Advani's blog dated 16 January, 2011. "*Indian Wealth Abroad: S.C pulls up GOI*".)

3) IMPACT OF IFFs AND CORRUPTION ON INDIAN ECONOMY

Economic impact of IFFs: Ill-gotten wealth through bribery, kickbacks and scams has a deleterious effect on both the society and the economy. But when this illicit wealth is stashed away abroad in secrecy jurisdictions, the consequences are far more damaging. The BJP task Force's report states, "Economists call this the flight of capital. This is Indian people's money stolen away from them. There is a difference between black money within the country and the black wealth shifted out of India. While both are bad and are prejudicial to the national economy, the black wealth stashed out of India represents capital flight from India. It is a total loss to the nation. On black money the government and the people lose the tax. But in capital flight the country itself loses the money. So capital flight is more dangerous. And now besides economic prejudice, it causes high security risk."



India has lost a total of approximately 20 lakh 85 thousand crore rupees in illegal flight. Assuming a tax rate of 30 percent, the nation has lost roughly Rupees 6 lakh 25 thousand crore rupees in taxes. In other words, the Government of India instead of facing persistent deficits would have had surpluses. Enough resources would have been available for investment in social and physical infrastructure like schools, colleges, health centers and hospitals, roads, power projects and irrigation systems. This hike in investment would have created jobs for millions of youth in the nation and led to a step-up in the economic growth. Clearly, the fiscal crisis, the problems of infrastructure and employment are inextricably linked with capital flight from the country. In a nutshell, illegal capital flight has serious macroeconomic consequences.

The illegal capital outflows generated from kickbacks, frauds and bribery have severe microeconomic consequences also. A massive telecommunication scam may ultimately lead to a breakdown of telephone services; a huge sports scam may lead to poor quality of sports infrastructure in the country, and a gigantic housing scam may in the ultimate analysis lead to abysmal housing construction. Clearly, capital flight can have disastrous effects on implementation at the micro level.

Illegal capital flight also leads to growing inequalities in asset and wealth distribution, thus leading to social discontent. Shadow financial firms and disguised corporations situated in secrecy jurisdictions enable shifting of capital out from India and then round trip them back to India for investments.

Illegal capital flight ultimately leads to less assistance from international organizations and donor countries as there is no guarantee that the funds they give would be used optimally and for the purpose for which they had been given.

Capital flight not only poses a challenge for economic development but also presents grave national security risks. In fact, former National Security Adviser, M K Narayanan had pointed out that funds which were allowed to flow from secret sources into India's stock markets had been used for terror

purposes. A June 2010 report by the Paris based Financial Action Task Force (FATF) has noted that India faces many risks emanating from money laundering activities by terror groups.

Moreover, were the entire \$462 billion of illegal capital flows to be repatriated to India, our country could get rid of all the external debt it has contracted over the years. As per the Economic Survey 2009-10, India's external debt stood at approximately \$224 billion as at end 2008. After paying off the foreign creditors, the rest \$238 billion could be utilized for a massive programme of poverty alleviation and rural renewal.

A repatriation of illegal capital would also strengthen the value of the Indian rupee making imports cheaper (albeit exports would get dearer!) and may also lead to a lower rate of inflation because of cheaper imports.

Empirical literature on corruption and its impact: The empirical literature on corruption was pioneered by Paolo Mauro (1995) (Source: Paolo Mauro. 1995. *Corruption and Growth*. Quarterly Journal of Economics 110(3): 681-712) who established the impact of corruption on growth and investment for a cross country data set and found a significant negative association between the corruption index and the investment rate or rate of growth. Since then Brunetti and Weder (2003) (Source: Aymo Brunetti and Beatrice Weder 2003. *A Free Press is Bad News for Corruption*. Journal of Public Economics 87(7-8)) and Meon and Sekkat(2005) (Source: Pierre-Guillaume Meon and Khaled Sekkat. 2005. *Does Corruption grease or sand the wheels of Growth*. Public Choice 122(1): 69-72) have reported similar findings.

Interestingly, a recent study by Keshav Choudhary (2010) demonstrates the pernicious impact of corruption on growth for India. Using data for 2000-2005, Choudhary (Source: Keshav Choudhary. 2010. *The Impact of Corruption on Growth: An Empirical Analysis in the Indian Context*. Asian Journal of Public Affairs. Vol 3 No.2 (67-80)) finds evidence that "corruption has had a significant negative impact on economic growth in India and the adverse impact on investment is a plausible channel through which this impact occurs." The study thus puts "the speculation on the impact of corruption on firm empirical ground."

ANTI-CORRUPTION MEASURES - LEGISLATIONS AND INSTITUTIONS

1) VARIOUS LEGISLATION ADDRESSING ANTI CORRUPTION MEASURES

Prevention of Corruption Act

The intent and purpose of introduction of PCA is very good but on ground Zero, the corrupt have gone scot free as the prosecution rate is abysmally low. The intent to improve the prosecution is lacking and so is the mechanism of gathering information through informers. It is matter of record that once a complaint is filed against corrupt officers, the Investigating Officers convey themselves

to the officer accused of corruption, collect their share of booty and the matter is killed by providing loop holes. Except for a few high profile cases, it is very difficult to prove anybody's involvement in corrupt practices, be it Mr. A.R. Antulay or Mr. Bhajan Lal's case. None of the Politicians/ Bureaucrats accused of amassing wealth through illegal means have been punished till date.

The parallel economy of collection of bribes from over loaded trucks by issuing monthly stickers by the Regional Transport Officers of each State and its distribution among officers from various enforcement agencies is done with utmost honesty. We do not find any case in any of the States, where the State Government has initiated any steps in curbing this dangerous practice.

The sale of steel scrap and liquor without payment of taxes and duties from one State to another State where each truck passes through so many barriers is classic example of organized mafia with active connivance of the officers. How many officers have been put behind the bars is anybody's guess.

All this leads to the conclusion that the mechanism of gathering information and thereafter initiation of proceedings against the erring officials suffers from serious draw backs and merits complete overhaul of the system.

Prevention of Money Laundering Act, 2002

The Prevention of Money Laundering Act, 2002 (PMLA 2002) and subsequent amendments in the year of 2005, mandates that in addition to client identity verification, banks and financial institutions need to maintain and furnish records to the various regulatory authorities as defined by the Indian government. It also allows the regulatory authorities to freeze, seize and confiscate suspect accounts.

PMLA 2002 also provides for mutual legal assistance in India by making enabling provisions for agreements with foreign countries to enforce this Act; assistance to a contracting State in the investigation of an offence; reciprocal arrangements for processes; and assistance for transfer of accused persons and attachment, seizure and confiscation of property in a contracting State or India. In addition, the Anti-Organized Crime Law stipulates mutual assistance in the execution of court orders for confiscation, collection of equivalent value and securance in criminal cases occurring in foreign countries and this law also stipulates the provision of information regarding suspicious transactions to foreign authorities.

It is concluded that joint efforts made by each country, in developing a reliable strategy of a vigorous domestic enforcement of law as well as international cooperation, is the most effective means to cope with problems related to economic crime, including money laundering. It would also be beneficial to adopt some of the following measures:

1. First and foremost it is important that the number of state parties to the TOC convention should be increased.
2. Given the fact that the TOC convention gives due consideration to diversities of the legal and financial system of member states and allows each state party to exercise discretionary power to a certain degree, it is feared that those committing economic crimes, including money laundering, may target countries with lenient legal provisions and international criminal

organizations may end up setting a strong foothold in these countries, even if every State accedes to the Convention. In order to dispel such concerns States Parties should be encouraged to apply article 34 paragraphs 3 of the TOC convention which stipulates each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating transnational organized crime.

3. Borderless criminal justice is essential in order to deal with borderless economic crimes including money laundering.
4. It should be recognized that information sharing is important in order to suppress cross-border crimes. Items of information to be shared are as follows: suspicious transaction reports, information relating to offences and suspects modus operandi and others. Despite some countries' efforts to exchange information on economic crimes, including money laundering, it has become more evident that information sharing instead of information exchange is more necessary.
5. There should be a unified standard for Criminalization of common criminal offences occurring in each country. Authority for universal jurisdiction on the above offences should be granted to all countries.
6. In the local legislation, the legal criteria applicable to an increase in scope of predicate offences, which would enable the successful combating of organized economic crime, including money laundering should be adopted.
7. Viable practices on confiscation and seizure measures, through the renewed legal concepts that enhance the powers of prosecuting authorities should be established.
8. The financial institutions, telephone carriers and internet service providers should take responsibility for preventing their services from being misused as criminal tools.

The Foreign Contribution (Regulation) Act, 2006

The Foreign Contribution (Regulation) Act, 2006 replaces the Foreign Contribution (Regulation) Act, 1976. The original Act (FCRA) was established to regulate the acceptance and utilization of all foreign funds through donations or gifts. According to the Ministry of Home Affairs, FCRA 2004-05 Annual Report, 'The primary purpose of this Act is to ensure that foreign contribution is utilized for genuine activities without compromising on concerns for National Security.' The new Act tightens restrictions on foreign contribution primarily to the voluntary sector and political organisations. Highlights of the Act include:

- a) The Act seeks to regulate the acceptance and utilization of all foreign funds through donations, gifts or grants.
- b) The 1976 Act lists a number of organisations and individuals that are prohibited from accepting foreign contribution. The Bill adds organisations of a "political nature" and electronic media organisations to the list.

- c) The Act requires all persons with a "definite cultural, economic, educational, religious or social programme" to register under FCRA to accept foreign contribution. The central government may deny, suspend or cancel certification under certain conditions.
- d) The Act mandates that organisations must renew FCRA certification every five years. Both the application and the renewal carry a fee.
- e) The Act allows the central government to conduct separate audits for FCRA certified organisations and grants it the power of search and seizure.

The Act has still not been brought into force. In any case some inherent lacunas in it would make it an ineffective legislation, namely:

- a) Though the stated objective of the Act is to strengthen internal security, it addresses only the voluntary sector and only foreign funding. This constitutes less than one per cent of gross inflow of foreign funds into India.
- b) Many of the objectives of the Act are met by other laws in force such as the Unlawful Activities Prevention Act, 1967, the Prevention of Money Laundering Act, 2002, the Foreign Exchange Management Act, 1999, and the Income Tax Act, 1961, thereby leading to the problem of duplicity in law.
- c) The new Act prohibits all organisations of a "political nature" from receiving any foreign contribution. It gives the central government powers to classify any organisation in this category but does not provide any guidelines to define organisations of a "political nature."
- d) The FCRA registration process under the Act confers a number of discretionary powers to the authorised officer.
- e) There are a number of terms in the Act including, "foreign source," "foreign hospitality," and "speculative business" that either lack clarity or are not defined.

Right to Information Act

The Right to Information Act introduced by the State Governments and the Central Government is a step in right direction but its implementation has been marred by controversies since inception. Those who had been instrumental in scuttling information during their tenure as Officers in various departments have been made the Information Commissioners. Thus, they have been gifted a retirement berth.

The efforts by the Government are on to make RTI redundant by introducing limit on number of words. The Judiciary has already scuttled RTI by levying huge fee and carving out exceptions.

The scare of amendments to the Right to Information Act has made a habit of rearing its head every so often. In a recent letter to an RTI activist, the Department of Personnel and Training has confirmed the central government's intention to overhaul the 2005 Act, of course, with the now-familiar caveat that the process would include consultations with the stakeholders. In the time-tested manner of

governments and bureaucracies, the department is upfront about some of the amendments while deliberately obfuscating the nature of some others. The door is to be shown to applications deemed to be "frivolous or vexatious." Section 8 of the Act, which prescribes exemptions to the Act, could be amended to "take care of the sensitivity of the office of the Chief Justice of India" as well as to "slightly modify the provision about disclosure of cabinet papers." Therefore, the office of the CJI will enjoy full immunity. Cabinet papers currently being processed are already exempted from scrutiny under Section 8. However, the bar abates once a Cabinet decision has been taken. Undoubtedly, therefore, the "slight" modification hinted at in the letter is aimed at making Cabinet decisions permanently inaccessible and opaque. Another amendment under consideration could disallow single-commissioner Information Commission benches. If that happens, the disposal of cases could slow down, rendering the Act ineffective.

Then there is the matter of "frivolous or vexatious" applications. Any government department will naturally be vexed by an application that seeks to expose misconduct or corruption. Under a future version of the Act, all queries relating to the awards could be deemed "vexatious." It is true that the RTI is not always approached in the public interest; for example, there may be a disproportionate use of the Act by insiders, those within officialdom, to pursue their narrow career interests or even personal agendas. But this cannot be an excuse to dilute or degrade an Act that is recognised as being among the best in the world. At a workshop held recently to assess the RTI environment in South Asia, India was held up as model. It would be a great pity if the government was allowed to get away with the retrogressive amendments it has in mind.

Provisions of Indian Penal Code

The Indian Penal Code was introduced by the British Government in India in 1860 and since then no effort has been made to amend, modify or replace the outdated and archaic law framed by the Britishers.

The IPC suffers from serious deficiencies as a consequence to which the prosecution suffers serious setback. Before filing charge sheet against a Public Servant, sanction from the Government is required (under Section 197 of Criminal Procedure Code). This means that none of the cases pending would succeed as the entire proceedings against the corrupt officers' stand vitiated because of substantial delay.

Further, in some cases the FIR/case has to be registered within three years from the date of commission of offence failing which any action initiated after expiry of period of limitation is barred.

Once the proceedings are initiated by the Court, there is no time limit for completion of Trial. That's the precise reason as to why the proceedings continue for years after year without any result as a result of which the corrupt officers continue to reap the benefit of position.

Also, lack of trained Police Force and will to impart professionally trained Police Officers has seriously affected the prosecution. Therefore, there is not only a need to replace the outdated archaic IPC but also to induct professionals in the Police Force, train them and then permit them to implement the law.

Double Tax Avoidance Agreements (DTAA's)

The Central Government, acting under Section 90 of the Income Tax Act, 1961 has been authorised to enter into DTAA's with other countries. The object of such agreements is to evolve an equitable basis for the allocation of the right to tax different types of income between the 'source' and 'residence' states ensuring in the process tax neutrality in the transactions between residents and non-residents. Tax treaties serve the purpose of providing protection to tax payers against double taxation and thus preventing the discouragement which taxation may provide in the free flow of international trade, international investment and international transfer of technology.

Another important feature of tax treaties is the existence of a clause providing for exchange of information between the two contracting States which may be necessary for carrying out the provisions of the agreement or for effective implementations of domestic laws concerning taxes covered by the tax treaty. Information about residents getting payments in other contracting States necessary for proper assessment of total income of such individual is thus facilitated by such agreements.

The Central Government has so far entered into comprehensive agreements with 75 countries. Recently, India requested 65 nations with whom the government has DTAA's, to revise the existing article on exchange of information to make it more effective and remove the secrecy clause.

2) VARIOUS ANTI CORRUPTION INSTITUTIONS AND AGENCIES AND THEIR EVALUATION

Central Government Level

At Central Government level, we have Central Vigilance Commission, Departmental Vigilance and Central Bureau of Investigation. CVC and Departmental Vigilance deal with vigilance (disciplinary proceedings) aspect of a corruption case and CBI deals with criminal aspect of that case. CVC is the apex body for all vigilance cases in Government of India.

Central Vigilance Commission (CVC)

The Central Vigilance Commission is the apex body that advises Central Government in cases involving corruption by the officers. It functions through Skeleton staff at its disposal and also with the help of the Central Vigilance Officers posted in the Departments/Ministries, who are drawn from the same Department/Ministry. It supervises Central Bureau of Investigation in cases related to Prevention of Corruption Act, 1988 and cases under Criminal Procedure Code against public servants. Though it is considered as premier organization which is mandated to control vigilance activities for more than 1500 Central Government Departments some of which have huge manpower deployment in the field formation like Income Tax, Central Excise, Railways, Customs, Public Sector Undertakings, it has miniscule manpower. CVC can recommend action to be taken against corrupt officers. However, the recommendations by the CVC are not binding on the government.

- CVC depends on the vigilance wings of respective departments and has to forward most of the complaints for inquiry to them. While it monitors the progress of these complaints, the complainants are often disturbed by the ensuing delay. It can directly enquire into complaints on its own, especially when it suspects motivated delays or where senior officials could be implicated. But given the constraint of manpower such number is really small.
- CVC is merely an advisory body. Central Government Departments seek CVC's advice on various corruption cases. However, they are free to accept or reject CVC's advice. Even in those cases, which are directly enquired into by the CVC, it can only advise government. CVC mentions these cases of non-acceptance in its monthly reports and the Annual Report to Parliament. But these are not much in focus in Parliamentary debates or by the media.
- CVC cannot direct CBI to initiate enquiries against any officer of the level of Joint Secretary and above on its own. The CBI has to seek the permission of that department, which obviously would not be granted if the senior officers of that department are involved.
- CVC does not have powers to register criminal case. It deals only with vigilance or disciplinary matters.
- It does not have powers over politicians. If there is an involvement of a politician in any case, CVC could at best bring it to the notice of the Government. There are several cases of serious corruption in which officials and political executive are involved together.
- It does not have any direct powers over departmental vigilance wings. Often it is seen that CVC forwards a complaint to a department and then keeps sending reminders to them to enquire and send report. Many a times, the departments just do not comply. CVC does not have any really effective powers over them to seek compliance of its orders.
- CVC does not have administrative control over officials in vigilance wings of various central government departments to which it forwards corruption complaints. Though the government does consult CVC before appointing the Chief Vigilance Officers of various departments, however, the final decision lies with the government. Also, the officials below CVO are appointed/transferred by that department only. Only in exceptional cases, if the CVO chooses to bring it to the notice of CVC, CVC could bring pressure on the Department to revoke orders but again such recommendations are not binding.
- Appointments to CVC are directly under the control of ruling political party, though the leader of the Opposition is a member of the Committee to select CVC and VCs. But the Committee only considers names put up before it and that is decided by the Government. The appointments are opaque.
- CVC Act gives supervisory powers to CVC over CBI. However, these supervisory powers have remained ineffective. CVC does not have the power to call for any file from CBI or to direct them to do any case in a particular manner. Besides, CBI is under administrative control of DOPT rather than CVC.

- Therefore, though CVC is relatively independent in its functioning, it neither has resources nor powers to enquire and take action on complaints of corruption in a manner that meets the expectations of people.

Central Bureau of Investigation (CBI)

The Central Bureau of Investigation traces its origin to the Delhi Special Police Establishment (SPE) which was set up in 1941 by the Government of India. Till date our Government has not realized the fact that the CBI needs to have a full fledged act and rules for its independent functioning. The officers from state police are drafted on deputation to CBI. It is claimed that the CBI officers are trained but the fact remains that none of the police officers are trained in conducting any kind of investigation by the parent State Government. Thus, the reason for dismal performance by CBI is lack of expertise. Also, as per information available on its web site, it is short staffed by at least 20%.

CBI is under the direct functional control & superintendence of the Central Government. Therefore, very often this premier agency is used to settle the scores with the political opponents. It is a matter of record that the prosecution rate involving high profile cases related to politicians and bureaucrats continue to drag for decades before the special courts and the politicians or bureaucrats continue to enjoy their freedom. As and when any political opponent is to be taught a lesson, the strings of CBI are pulled.

CBI has powers of a police station to register FIR and investigate any case related to a Central Government department on its own or any case referred to it by any state government or any court. However:

- CBI is overburdened and does not accept cases even where amount of defalcation is alleged to be around Rs 1 crore.
- CBI is directly under the administrative control of Central Government. So, if a complaint pertains to any minister or politician who is part of a ruling coalition or a bureaucrat who is close to them, CBI's credibility suffers and there is increasing public perception that it cannot do a fair investigation and that it is influenced to scuttle these cases.

Therefore, if a citizen wants to make a complaint about corruption by a politician or an official in the Central Government, there isn't a single anti-corruption agency which is effective and independent of the government, whose wrong-doings are sought to be investigated. CBI has powers but it is not independent. CVC is independent but it does not have sufficient powers or resources.

At State Level

The position if anything is worse in the States. All vigilance agencies (like state vigilance department, departmental vigilance wings) and anti-corruption agencies (like anti-corruption department of state police, CID etc.) are directly under the control of state government and therefore, ineffective in fairly investigating corruption cases against their political bosses. In some states, we have the institution of Lokayuktas.

State Vigilance Commissions/Departments

The State Governments have put in place the system of Vigilance Commissions/ Departments. Normally the police officers or some of the departmental officers are appointed as heads of Vigilance Departments. Unfortunately, the Vigilance Departments have failed in carrying out its mandate.

Lokayuktas

- Lokayuktas cannot initiate investigations on their own. They have to seek permission of state government to investigate cases involving officials above certain levels.
- In some states, vigilance department has been given powers over bureaucrats and Lokayuktas have been given powers only over politicians. Such division of jurisdiction hampers investigations. In a case involving both politician and bureaucrats (which is the case most of the times), both Lokayukta and the vigilance department feel handicapped.
- Lokayuktas merely have advisory roles. They do not have the powers to directly initiate prosecution. They make recommendations to the government, which may or may not agree with those recommendations.
- They also do not have adequate resources to investigate the large number of complaints that they receive.
- Lokayukta is appointed by the state government in a non-transparent and arbitrary manner. In some states, their independence has been seriously eroded.

Therefore, there isn't any effective anti-corruption agency either at the centre or at the state level, which is independent of political executive and which has the power and the resources to entertain and investigate any complaint of corruption and then prosecutes the guilty person.

Central Information Commission (CIC)

The Central Information Commission is the Apex Appellate Body that hears the appeals filed by the information seekers who have been denied information by the APIO/CPIO or the first Appellate Authority. As the matter reaches CIC, first and foremost the appellant has to wait due to pendency. Once the matter reaches for hearing, the Appellant is treated as a criminal by the Information Commissioners. Very often they not only misbehave with the Appellant, but the Appellant is also threatened by the Information Commissioners themselves. Since the Information Commissioners is one side of the coin and the other side of the coin is the APIO/CPIO/AA, the penalties are imposed in rare cases and that too where the Information Commissioner or his junior is interested.

It has been observed that the Information Commissioners have appointed a few juniors who conduct hearings for and on behalf of the Information Commissioner and hear both the CPIO/Appellate Authority and the Appellant. Thereafter, they go back to the Information Commissioner and inform both the parties that the decisions shall be communicated to them. It is surprising that how such patently illegal practice can be permitted within the Apex Organization.

Serious Fraud Investigation Office (SFIO)

SFIO is a multi-disciplinary organization under Ministry of Corporate Affairs, consisting of experts in the field of accountancy, forensic auditing, law, information technology, investigation, company law, capital market and taxation for detecting and prosecuting or recommending for prosecution white-collar crimes/frauds. These experts have been taken from various organizations like banks, Securities & Exchange Board of India, Comptroller and Auditor General and concerned organizations and departments of the Government.

It started functioning from 1st October, 2003 only. This organization was set up in the backdrop of a stock market scams, failure of non financial banking companies, phenomena of vanishing companies and plantation companies. This organization has one regional office in Mumbai which started functioning from October 2004.

Financial Intelligence Unit (FIU)

Consequent to the enactment of the Prevention of Money Laundering Act, 2002, FIU-IND was set up in 2004. It is a central national agency for receiving, processing, analysing and disseminating information relating to suspected financial transactions. It is an independent agency reporting to Economic Intelligence Council headed by the Finance Minister.

FIU-IND receives Cash Transactions Reports (CTRs) and Suspicious Transactions Reports (STRs) from various reporting entities (banks, insurance companies and financial market intermediaries) under the PMLA. After analysing the information received, it shares that with national intelligence and law enforcement agencies, regulatory authorities and foreign FIUs

Investigating Agencies under Revenue Department, Ministry of Finance

The Government of India has set up the following Investigation Agencies which function under the Department of Revenue in the Ministry of Finance:

- The Central Economic Intelligence Bureau (CEIB),
- Directorate General of Revenue Intelligence(DRI),
- Directorate of Enforcement (ED),
- Directorate General of Anti-Evasion (DGAE),
- Directorate General of Income Tax (Investigation) (DGIT(I)) and
- Narcotics Control Bureau (NCB).

CEIB, an apex body, was set up to coordinate and strengthen the intelligence gathering activities as well as investigative efforts of all the Agencies which enforce economic laws. It also acts as a Secretariat of the Economic Intelligence Council which is responsible to ensure full co-ordination among the various agencies including Central Bureau of Investigation, Reserve Bank of India, Intelligence Bureau etc.

DRI deals with Customs related offences. It is responsible for collection of intelligence about smuggling of contraband goods, narcotics, under-invoicing, over-invoicing etc. through sources of India and abroad, including secret sources. It analyses and disseminates such intelligence to the field formations for action, keeps liaison with foreign countries, Indian Missions and enforcement agencies abroad on anti-smuggling matters and keeps liaison with the CBI and through them with the INTERPOL. It functions as the liaison authority for exchange of information among ESCAP countries for combating international smuggling and customs frauds in terms of the recommendations of the ESCAP conference.

ED deals with foreign exchange related offences. It is mainly concerned with the enforcement of the provisions of the Foreign Exchange Management Act to prevent leakage of foreign exchange which generally occurs through malpractices such as remittances of Indians abroad other than through normal banking channels, non-repatriation of the proceeds of the exported goods, under-invoicing of exports and over-invoicing of imports and any other type of invoice manipulation, illegal acquisition of foreign exchange through Hawala and secreting of commission abroad. Its mandates are to detect cases of violation and also perform substantial adjudicatory functions to curb such malpractices.

DGAE deals with central excise related offences. It collects, collates and disseminates intelligence relating to evasion of central excise duties on an all India basis. It coordinates action with Enforcement agencies like Income-Tax, VAT etc. in respect of cases in which central excise evasion has come to notice.

DGIT (I) deals with Income Tax related offences. Its functions include collection of intelligence pertaining to evasion of direct taxes, organising search actions to unearth black money from time to time, dissemination of information and intelligence collected by passing on the same to the concerned authorities including assessing authorities, and maintaining liaison with other Central and State agencies in all matters pertaining to tax evasion.

NCB deals with drugs related offences. It is the apex coordinating agency. It also functions as an enforcement agency through its field units which collect and analyse data related to seizures of narcotic drugs and psychotropic substance, study trends, modus operandi, collect and disseminate intelligence and work in close cooperation with the Customs, State Police and other law enforcement agencies.

INTERNATIONAL SCENARIO ON ANTI-CORRUPTION MOVES

1) INITIATIVES by UN, OECD, G-20, G-8 AND FATF

United Nations (UN)

UN towards its commitment to maintain international peace and security, developing friendly relations among nations, promoting social progress, better living standards and human rights, works on a broad range of fundamental issues, from sustainable development, environment and refugees protection, disaster relief, counter terrorism, disarmament and non-proliferation to

promoting democracy, human rights, gender equality, advancement of women, good governance, economic and social development and international health.

Through UN efforts, governments have concluded many conventions and multilateral agreements to make the world a safer and healthier place with greater opportunity and justice for all. One such convention is the United Nations Convention against Corruption (UNCAC). It is the only legally binding universal anti-corruption instrument. The Convention's far-reaching approach and the mandatory character of many of its provisions make it a unique tool for developing a comprehensive response to a global problem. The UNCAC covers wide spectrum including promoting, and strengthening measures to prevent and combat corruption, facilitate and support international cooperation, technical assistance and information exchange in asset recovery.

Other conventions which are worth mentioning here are:

- The United Nations Convention against Illicit Trade of Narcotics Drugs and Psychotropic Substances, 1988.
- The United Nations Convention against Transnational Organized Crime, 2000.

The Law Enforcement, Organized Crime and Anti-Money-Laundering Unit of United Nations office on Drugs and Crime (UNODC) is responsible for carrying out the Global Programme against Money-Laundering, Proceeds of Crime and the Financing of Terrorism, which was established in 1997 in response to the mandate given to UNODC through the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. The Unit's mandate was strengthened in 1998 by the Political Declaration and the measures for countering money-laundering adopted by the General Assembly at its twentieth special session, which broadened the scope of the mandate to cover all serious crime, not just drug-related offences.

The broad objective of the Global Programme is to strengthen the ability of Member States to implement measures against money-laundering and the financing of terrorism and to assist them in detecting, seizing and confiscating illicit proceeds, as required pursuant to United Nations instruments and other globally accepted standards, by providing relevant and appropriate technical assistance upon request.

Organisation for Economic Cooperation and Development (OECD)

Fighting corruption is one of the main priorities of OECD. It has set up standards and principals to promote anti-corruption measures. It has addressed the problem of corruption with its multidisciplinary approach which includes fighting bribery of foreign public officials, combating corruption in fiscal policy, public and private sector governance, development aid and export credits. OECD members have adopted Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in 1997. It requires each party to take such measures to establish that it is a criminal offence under its law for any person to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for third party, in order that the official act or refrain from acting in relation

to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.

OECD has also developed the Agreement on Exchange of Information on Tax Matters. It is not a binding instrument but contains two models for bilateral agreements drawn up in the light of the commitments undertaken by the OECD and the committed jurisdictions. The purpose of this Agreement is to promote international cooperation in tax matters through exchange of information.

G-20

The G-20 has successfully taken up a range of issues since 1999, including agreement about reducing abuse of the financial system, dealing with financial crises and combating terrorist financing. The G-20 also aims to foster the adoption of internationally recognized standards through the example set by its members in areas such as the transparency of fiscal policy and combating money laundering and the financing of terrorism. In 2004, G-20 countries committed themselves to higher standards of transparency and exchange of information on tax matters. This aims to combat abuses of the financial system and illicit activities including tax evasion.

In Seoul Summit in 2010, G-20 has taken up an agenda for action on combating corruption, promoting market integrity and supporting a clean business environment. G-20 Anti Corruption Action Plan targets that by 2011, it shall establish clear and effective channels for mutual legal assistance and other forms of international cooperation on corruption and asset recovery and point of contacts for law enforcement and international cooperation on corruption cases and develop specialized expertise for asset recovery.

G-8

With renewal of commitment to fight corruption, G-8 has been pursuing transparency in public financial management and accountability. The G-8 committed to seek, when appropriate and in accordance with national laws, to deny entry and safe haven to public officials found guilty of corruption, enforce anti-bribery laws rigorously, and establish procedures and controls to conduct enhanced due diligence on accounts of "politically exposed persons." The G-8 leaders also committed to implement and promote the FATF recommendations, the UN Convention on Transnational Organised Crime, and the UN Convention against Corruption.

Financial Action Task Force (FATF)

FATF is an inter-governmental policy making body, comprised of over 30 countries, that has ministerial mandate to establish international standards for combating money laundering and terrorist financing. It was set up in 1989 by the G-7 Summit in Paris. FATF has issued 40 recommendations providing comprehensive plan of action to prevent abuse of financial system for money laundering. It has also issued 9 special recommendations to set out the basic framework to detect, prevent and suppress the financing of terrorism and terrorist acts. Over 170 jurisdictions have joined FATF or FATF style regional bodies (such as Asia Pacific Group on Money Laundering) and

committed at the ministerial level to implementing FATF standards and having anti-money laundering (AML)/counter terrorist financing (CFT) systems.

Finding that law enforcing agencies had limited access to relevant financial information, need was felt to set up national level central agency for reporting suspicious financial transactions by entities in financial sector. These are called Financial Intelligence Units (FIUs) by various countries. A network of FIUs was established as an informal group for stimulation of international cooperation, known as Egmont Group in 1995. It has now more than 101 member countries with operational FIUs.

FATF has recently published a Reference Guide and Information Note on use of FATF Recommendations to support fight against corruption.

2) INITIATIVES by NGOs

Transparency International (TI)

TI, the global civil society organisation leading the fight against corruption, was established in 1993. It is a global network including more than 90 locally established national chapters and chapters-information. Through joint cooperation, Transparency International promotes inter-governmental agreements to fight corruption in cooperation with international organisations.

Transparency International was one of a handful of civil society organisations involved in drafting two major international agreements, the United Nations Convention against Corruption and the African Union Convention on Preventing and Combating Corruption. It was also closely involved in establishing the OECD's Anti-Bribery Convention.

TI has developed some corruption-fighting tools such as 'Integrity Pacts' which help to safeguard public procurement from corruption. It assesses and publishes the annual 'Corruption Perceptions Index (CPI)' which ranks countries by perceived levels of corruption among public officials and 'Bribe Payers Index' (BPI) which looks at the supply side of corruption, ranking the leading exporting countries according to their propensity to bribe when doing business abroad. It also publishes 'Global Corruption Barometer', which is a survey that assesses general public's attitude towards corruption in countries around the world, collecting the knowledge necessary for the design of anti-corruption measures.

TI's indices have helped to place the fight against corruption at the forefront of the political agenda in many countries.

Global Financial Integrity (GFI)

GFI, launched in 2006, works towards promoting national and multilateral policies, safeguards and agreements aimed at curtailing the cross-border flow of illegal money. It facilitates strategic partnerships, and conducts groundbreaking research to curtail illicit financial flows and enhance global development and security. It has published its research papers on relevant topics such as Tax Revenue Loss from Trade Mispricing and Illicit Financial Flows.

Camden Assets Recovery Inter-Agency Network (CARIN)

CARIN, an informal government forfeiture organization was established to build an informal international network for law enforcement and prosecutorial/judicial officers who are asset forfeiture practitioners. Main objectives of CARIN include promoting the exchange of information and good practices between 33 members of CARIN, focusing upon and promoting the forfeiture of all assets that are currently within the scope of existing ratified international agreements, encouraging members to establish national asset recovery offices within their jurisdiction.

Other NGOs

A large number of NGOs are working on anti-corruption issues and also offer assistance to countries to strengthen their capacities to tackle anti-corruption reform and to move closer to international standard. Some of the important NGO's are mentioned below:

- Anti-corruption Gateway for Europe and Eurasia
- Anti-corruption Network for Transition Economies
- African Parliamentarians' Network Against Corruption
- Asia Crime Prevention Foundation
- Centre for International Private Enterprise Anti corruption Program
- Commission For Africa
- European Healthcare Fraud and Corruption Network
- European Partners Against Corruption
- Global Organisation of Parliamentarians against Corruption

3.) THE STOLEN ASSET RECOVERY (StAR) INITIATIVE

StAR Initiative was launched in 2007 jointly by the UNODC and the World Bank Group to address the problem of theft of public assets from developing countries by corrupt leaders and hidden in the financial centers of developed countries. The international legal framework underpinning StAR Initiative is provided by the UNCAC. StAR Initiative is described as the 'missing link' in an effective anti-corruption effort. By putting corrupt leaders on notice that stolen assets will be traced, seized, confiscated and returned to the victim country, StAR constitutes a formidable deterrent to corruption.

The objectives of StAR are to enhance cooperation between those developed and developing countries which have ratified UNCAC and to help and cooperate in enhancing legislative, investigative, judicial and enforcement capacity of the developing countries seeking recovery of stolen assets.

It is a well accepted fact that public assets stolen from the developing countries are often hidden in banks located in financial centers of developed countries or in the tax heavens. Further multinational corporations from the developed countries are often the source of bribes paid to public officials in developing countries.

StAR has prepared an Action Plan Matrix which identifies two ways to help developing countries recover stolen assets. One is reducing barriers in developed countries to recover stolen assets and second is strengthening the ability of developing countries to recover them. UNODC and World Bank would not be involved directly in the investigation, tracing, law enforcing, prosecution, confiscation and repatriation of stolen assets but would provide technical assistance on adopting domestic legal frameworks for consistence with UNCAC.

In recent years, Nigeria, Peru, Zambia and Philippines have enjoyed some success in recovery of assets stolen by their corrupt former leaders. But the process has been very costly and time consuming. Lack of political will, limited legal, investigative and judicial capacity and non-cooperative attitude of jurisdiction where stolen assets are hidden are some of the serious obstacles which developing countries might face in the process of recovering the stolen assets.

UNODC and World Bank under StAR Initiative have come out with another publication titled 'Asset Recovery Hand Book-A Guide for Practitioners'. This publication while suggesting the process of recovery of stolen assets, deals with inter alia, general process for asset recovery, legal avenues for achieving asset recovery, strategic considerations for developing and managing a case, securing evidence and tracing assets, mechanism of confiscation, bringing a civil action and recovery of asset from the foreign jurisdiction.

4) CASE STUDIES OF SUCCESSFUL ATTEMPTS MADE BY SOME COUNTRIES TO BRING BACK THEIR ASSETS TAKEN AWAY BY THEIR CITIZENS/RULERS/ BUREAUCRATS

UNODC and World Bank in their document titled 'Stolen Asset Recovery Initiative: Challenges, Opportunities and Action Plan', issued in June 2007, has prepared case studies on three countries namely, Nigeria, Peru and Philippines which has achieved some success in recovering their stolen assets. Another case study of Zambia has also been reported subsequently. Synopsis of these case studies, as appearing in the document, is reproduced as an Annexure. Main findings of these case studies are:

- i) Lack of transparency and low public accountability facilitates the looting of public assets.
- ii) The main techniques used to launder the proceeds of corruption include wire transfers, use of shell corporations in bank secrecy jurisdictions and direct deposit in the form of cash or bearer instruments.
- iii) Strong domestic will is fundamental to successful asset recovery.
- iv) Despite high level of corruption, small steps towards accountability and transparency may significantly reduce the theft of public assets.
- v) Little can be achieved without the effective cooperation and goodwill of countries where proceeds of corruption are hidden.
- vi) Due to either weak system or lack of sound international practice in public financial management, recovered money could not be put to the best use.

5.) NEW US LEGISLATION AGAINST OFFSHORE TAX EVASION

The US has recently passed a legislation titled 'The Stop Tax Haven Abuse Act, 2009' which deals with problem of offshore tax abuse. The Act was passed after a period of more than two years when it was first introduced in February, 2007.

The Bill was introduced after the Senate Permanent Subcommittee on Investigation presented multiple case histories exposing how two banks namely UBS AG of Switzerland and LTG Bank of Liechtenstein, used array of secrecy tricks to help US clients hide assets and dodge US taxes. The Subcommittee's investigation revealed that UBS had opened Swiss accounts for an estimated 19,000 US clients with nearly \$18 billion in assets. It further presented seven case histories of US persons who had secretly stashed million of dollars in accounts with LTG Bank. These case histories unfolded like spy novels, with secret meetings, hidden funds, shell corporations and complex offshore transactions spanning the globe from the US to Liechtenstein, Switzerland, the British Virgin Islands, Australia and Hong Kong. What the case histories had in common were officials of LTG Bank and its affiliates acting willing partners to move a lot of money into LTG accounts while obscuring the ownership and origin of the funds from tax authorities, creditors and courts.

A Report by the Government Accounting Office shows that out of the 100 largest publicly traded corporations, 83 have subsidiaries in tax havens. For example Morgan Stanley has 273 tax haven subsidiaries while Citigroup has 427 subsidiaries with 90 in the Cayman Islands alone.

While introducing the Stop Tax Haven Abuse Act, Senator Carl Levin has said *"We can fight back against offshore secrecy jurisdictions and offshore tax abuses if we summon the political will. Our bill offers powerful new tools to tear down the tax haven secrecy walls in favor of transparency, cooperation and tax compliance. To tear down those secrecy walls, protect honest tax payers and obtain the revenue essential for critical needs, I hope my colleagues will act during this Congress to enact a legislation to shut down the \$ 100 billion yearly in offshore tax abuses."*

The Stop Tax Haven Abuse Act contains provisions deterring the use of offshore secrecy jurisdictions for tax evasion by establishing rebuttable evidentiary presumption and securities legal proceedings for non-publicly traded entities located in Offshore Secrecy jurisdictions. It also contains provisions such as increased penalty for failing to disclose offshore holdings, strengthening John Doe summons's use in offshore tax cases, strengthening tax shelter penalties, tougher tax shelter opinion standards for tax practitioners and codifying and strengthening the economic substance doctrine.

SUGGESTIONS ON RECOVERY MECHANISM AND OTHER ANTI-CORRUPTION MEASURES

Strategy

It is important to understand that Indian money stashed in foreign banks/countries may have been generated from:

1. Corruption including bribes, cuts and swindled money.
2. Criminal activities including drug trafficking, arms deals, human trafficking, trafficking of endangered species, extortion/protection money, money relating to murder/organised crime or for waging war against state.
3. Tax evasion by various means including mispricing, use of tax heaven entities and falsification of accounts.

The different nature of money has to be dealt with differently. Target should be:

- 1) To confiscate the money, which is generated through corrupt and illegal activities.
- 2) To collect due tax, interest and penalties on money generated through tax evasion.
- 3) To launch prosecution in both the cases mentioned above.

Process

In line with the strategy explained above, the processes may be divided into two parts:

- 1) Identification, verification, collection of taxes, confiscation and return of stolen money/assets to India and prosecution of guilty.
- 2) Introduction of new legislation or amendment of current laws to prevent further accumulation of wealth outside India and to ensure continuous availability of information on that.

STEPS TO BE TAKEN UNDER THE PROCESS OF IDENTIFICATION, VERIFICATION, COLLECTION OF TAXES, CONFISCATION AND RETURN OF STOLEN MONEY/ASSETS TO INDIA AND PROSECUTION OF GUILTY

- 1) To ratify UNCAC

UNCAC requires member countries to return assets obtained through corruption to the country from which they were stolen. To take advantage of such provision in the Convention, we have to first ratify the Convention.

- 2) To fill gaps in complying with obligations under UNCAC

Before we take any benefit under UNCAC, we have to implement our obligations under the Convention. A Gap Analysis carried out by TI can be reviewed to identify gaps. As per the Document prepared by TI, legislations on bribery in private sector (Article 21) and protection of witnesses (Article 32), provisions for forfeiture of property of corrupt public servants (Article 31) and providing right to initiate legal proceedings against those responsible for the damage in order to obtain compensation (Article 35) are some important areas where we have to take immediate steps.

- 3) To secure help from StAR in implementing UNCAC and filing international mutual legal assistance (MLA) requests under UNCAC.

As a part of its Action Plan Matrix, UNODC and World Bank Group shall provide technical assistance to developing countries on implementing UNCAC, especially on adoption of

domestic legal frameworks for consistency with UNCAC and relating to enhancement of the capacity of the criminal justice system to effectively prevent asset looting and approaching asset recovery consistent with internationally accepted legal standards. Efforts should be made to include India as one of such countries.

International cooperation is essential for the successful recovery of assets that have been transferred to or hidden in foreign jurisdiction. International cooperation includes' informal assistance, MLA requests and extradition. MLA request is a written request used to gather evidence (involving coercive measures), obtaining provisional measures and seek enforcement of domestic orders in a foreign jurisdiction.

Initially, technical assistance from UNODC and World Bank Group can be taken on filing a request for mutual legal assistance, how to approach receiving countries and advice on contracts with lawyers and forensic accountants working with relevant country authorities. Simultaneously, steps shall be taken to develop reasonable expertise within the country to handle this aspect independently.

- 4) To accede to OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

The OECD Convention deals with the issue of bribery of foreign public officials including mutual legal assistance for the purpose of criminal investigations and proceedings. Under the convention, a party shall not decline to render mutual legal assistance to the requesting party for criminal matters within the scope of the Convention even on the ground of bank secrecy.

We have to amend the Prevention of Corruption Act to bring in foreign bribery and related money laundering crimes under its ambit. We shall also be required to fulfill other obligations under the Convention to take full benefits.

- 5) To make quick moves to negotiate Double Tax Avoidance Agreements with tax heavens/uncooperative jurisdictions to ensure availability of relevant information

Not only non-cooperating and high risk jurisdictions, as identified by FATF should be approached and be persuaded to enter into DTAA with India, but treaties with other tax heavens should also be renegotiated to have excess of information.

- 6) To comply with FATF recommendations, especially relating to politically exposed persons and transactions involving wire transfers, and to seek frequent exchange of information from other FIUs.

As decided in March 2009 meeting of G20 Working Group on Reinforcement International Cooperation and Promoting Integrity in Financial Markets, we should implement all the FATF 40+9 Recommendations to take benefit of enhanced information exchange.

FIU-IND may be suitably expanded to ensure not only collection of more formal or informal information from other FIUs across the world to identify the beneficial owners of the parked funds/assets and to more effective monitoring of PEPs but also to properly analyse suspicious transaction reports (STRs) being received from financial institutions along with information received from other FIUs.

Mechanism should be developed and put in place to make it obligatory on the part of financial institutions to provide STRs on wire transfers.

7) To introduce legal provisions on the lines of 'John Doe Summons'

John Doe Summons are summons where the name of the tax payer under investigation is unknown and hence not specifically identified. When a plaintiff believes that it has a cause of action against a defendant, who for any reason, cannot be identified by the plaintiff before the lawsuit is commenced he goes for John Doe Lawsuit. US IRS has served such summons to the Swiss Bank UBS and has achieved some success in getting the names of the secret account holders. Looking into the present law in US known as 'John Doe Summons' and its application in UBS case, we should also amend our respective laws to have such provision and should start using it in getting the names of undisclosed Indian depositors in foreign banks.

STEPS TO BE TAKEN UNDER THE PROCESS OF INTRODUCTION OF NEW LEGISLATION OR AMENDMENT OF CURRENT LAWS TO PREVENT FURTHER ACCUMULATION OF WEALTH OUTSIDE INDIA AND TO ENSURE CONTINUOUS AVAILABILITY OF INFORMATION ON THAT

1) Introduce law on bribery in the private sector

In the Gap Analysis carried out by TI, it has pointed out that in terms of Article 21 of the Convention, India should consider adopting a legislation to establish as criminal offence when committed intentionally in the course of economic, financial and commercial activities. The existing laws such as the Prevention of Money Laundering Act can also be amended to address the issue.

2) Introduce legislation in line with Stop Tax Haven Abuse Act, 2009 of USA.

To avoid tax evasion through tax havens, we should also introduce a statute in line with 'The Stop Tax Haven Abuse Act, 2009' of USA. Alternatively, the present Income Tax Act may be amended to include provisions such as:

- Introduction of taxability provisions on businesses incorporated in a tax haven, pretending to be a foreign corporation for local tax purposes while in reality being managed and controlled from India only (section 103).
- Reporting requirement for Indian persons who benefit from a passive foreign investment corporation (Section 109).
- Taxability clause on transfer of valuable patents to the shell corporation.
- Provisions relating to rebuttable presumption in tax and securities legal proceedings for non-publicly traded entities located in offshore secrecy jurisdiction with regard to its control and beneficial ownership located in the country if involving a Indian person (Section 101)

- Strict KYC norms for opening bank account in India and to disclose ultimate beneficial ownership in case of Participatory Notes (PN).
 - Obligation on the tax payer to provide information on his involvement in offshore corporations, trust or other entities.
 - Introduce severe penalties on professional promoting abusive tax shelters.
- 3) To strengthen national anti corruption framework by constituting a new single agency dealing with the menace of flight of capital from the country

A single agency, made out of workforce from various related agency can be formed to serve the purpose better due to highly technical and skilled job of bringing back the stolen money/assets.

- 4.) To ensure proactive role of financial system regulators like Reserve Bank of India and Securities Exchange Board of India

The crux of the matter is availability of relevant information. Financial system regulators are the best placed agencies to put in place regulations for generation of authentic and timely information. Therefore, the role of RBI which regulates banks and NBFCs, and SEBI which regulates listed corporate and market intermediaries are very crucial, and proactive actions are required by them in this regard.

Concept of John Doe Law Suit in USA

A John Doe Summons is any summons where the name of the culprit under investigation is unknown and therefore not specifically identified. A John Doe summons can only be served after approval by a Federal court.

Restricted Authority to Issue John Doe Summonses

John Doe summonses can only be issued by high ranking executives who are specifically authorized to do so.

No Fishing Expeditions with John Doe Summons

The Service should no longer be in the information-gathering or research stage of a project when it decides to seek court authorization to serve a John Doe summons. The project research should be sufficiently developed to enable the Service to identify a specific tax compliance problem. The Service should be prepared to investigate the tax liabilities of specific taxpayers based on the information received from the John Doe summons. A John Doe summons cannot be used to conduct a "fishing expedition."

Necessary Purpose

The purpose of a John Doe summons is to investigate the tax liability of a specific unidentified taxpayer (or a group of such taxpayers), even if a secondary purpose is to gather information for research purposes.

Note

In some investigations, it may be possible for the Service to obtain the identities of taxpayers without issuing a John Doe summons. If the Service is conducting an investigation of a known taxpayer (such as a tax shelter promoter) who can identify an unknown taxpayer or class of taxpayers (such as the shelter investors) and the identities of the unknown taxpayers are relevant to the investigation of the known taxpayer, the Service can issue a standard, non-John Doe summons as part of the known taxpayer's investigation and can require the production of the unknown taxpayer's identities. This technique is only acceptable where discovering the identities of the unknown taxpayers is relevant to the investigation of the known taxpayer. This type of summons is referred to as a "dual purpose summons."

Statutory Requirements for a Valid John Doe Summons

District Court Approval Required Before Serving a John Doe Summons. Before a John Doe summons can be served, it must be approved for service by a district court in an ex parte proceeding.

Three Additional Requirements for Approval. A John Doe summons must meet the standard four-part test that applies to all other summonses. Three additional requirements that a John Doe summons must meet before it will qualify for district court approval are identified below and further analyzed in following subparagraphs.

- A. The summons must relate to the investigation of a particular person or ascertainable group or class of persons.
- B. The Service must have a reasonable basis for believing that such person or group or class of persons may fail or may have failed to comply with the tax laws.
- C. The information and identities sought to be obtained from summoned records must not be readily available from other sources.

Samples of Anti Bribery Policy Adopted by Companies



Contents

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10. If in Doubt/Advice

1. About this policy

This policy sets out what we must all do to help prevent bribery in all its forms. A bribe may include any payment, benefit or gift offered or given with the purpose of influencing a decision or outcome. The bribe may not always be of a large value. It could be a lunch or an invitation to a sporting event.

We recognise that market practice varies across the territories in which M&S does business and therefore what is normal and accepted in one place may not be accepted in another. However, we are fully committed to complying with our obligations under applicable legislation, including the Bribery Act 2010 (the “Act”), and ensuring that no bribes or corrupt payments are made, offered, sought or obtained by anyone acting on our behalf, to anyone, anywhere in the world.

If you are ever in doubt about a situation with which you are presented, always seek advice. You should contact the Group Secretary on +44 (0) 20 8718 3604 or email: company.secretary@marks-and-spencer.com in the first instance.

2. Who must comply?

The M&S Anti-Bribery policy is mandatory for all M&S employees, agents, intermediaries, consultants, distributors, sub-contractors, suppliers and Joint Venture partners working on the Company’s behalf anywhere in the world (“Business Partners”). Our franchise partners are also expected to conduct themselves in accordance with the standards set out in this policy.

It is important that you take the time to read and comply with this Policy. The prevention, detection and reporting of any bribery in any form is the responsibility of all employees across the M&S Group and all individuals and entities over which M&S has control. Appropriate confidential channels for employees and Business Partners are in place to report any suspicion of bribery, these are described later in this Policy. Any failure to comply with this Policy will be treated seriously and may result in disciplinary action.

3. How do you comply?

You must read and abide by the terms of this Policy. You may also be required to provide written confirmation that you will comply with this policy, by signing up via the Code of Ethics.

For Employees:

Any act of bribery, in whatever form is unacceptable. We will consider taking disciplinary action against anyone who fails to comply with the anti-bribery policy up to and including dismissal. Failure to comply with this policy may also leave you open to a criminal prosecution under the Act. An offence under the Act can result in a fine and/or up to a maximum of 10 years imprisonment.

4. What happens if you don't comply?

For Marks & Spencer:

A breach of this Policy by an employee or business partner could result in the Company breaching the Act. An offence under the Act can result in the business being fined and would likely lead to negative publicity and serious damage to the reputation of the M&S brand.

4. What you cannot do

Prohibited conduct

The following conduct is absolutely prohibited under this Policy:

- making unofficial payments to officials in order to obtain any permission, permit or stamp particularly in connection with importing or exporting goods;
- appointing any third party or supplier to act on behalf of M&S who you know or have good reason to believe to have engaged in any corrupt or unlawful conduct including any offences under the Act; or
- paying any third party for the purposes of being a 'fixer' to open doors and make connections for us overseas.

Facilitation payments

Facilitation payments ('facilitating', 'speed' 'back-hander' or 'grease' payments) are any payments, usually small cash payments made to low-level officials, as a bribe to secure or expedite the performance of a routine or necessary action or level of service.

M&S employees or Business Partners must never offer, pay, solicit or accept bribes in any form, including facilitation payments.

Exception:

The only exception to paying a facilitation payment is where your life is in danger. If a facilitation payment is made in such circumstances, it must be reported as soon as practicable or possible to the Group Secretary, as the Chief Compliance Officer, in order that it can be recorded.

M&S employees and Business Partners should report, via the Speak Up employee helpline any instance where a facilitation payment is alleged to have been paid on the Company's behalf.

From the UK: 08000 150281

From the Republic of Ireland: 1800 411 063,

International: +44 (0) 208 718 5562,

6. Checking out suppliers and partners: due diligence

Where there is a Significant Bribery Risk all Business units must consult Legal in relation to appropriate anti bribery compliance measures before:

- appointing a new supplier;
- entering into a partnership;
- appointing an agent to work on the Company's behalf; or
- entering into a new contract/ or amending the terms of an existing contract

A Significant Bribery Risk will arise if:

1. the supplier, partner or agent etc is based in a High Risk Jurisdiction (see list attached at the end of this Policy)
2. the services being provided involve work being undertaken, directly or indirectly on our behalf, in any High Risk Jurisdiction
3. the services involve goods passing through borders between High Risk Jurisdictions
4. the services involve business partners paying fees, taxes or payments on behalf of M&S in relation to the import or export of goods.
5. the services involves business partners obtaining official permits, permissions or agreement from public officials or agencies; or
6. there are any particular reasons to suspect that the risk of corruption or bribery is higher than normal.

Legal will advise on the level of due diligence required and the form of any anti-bribery clauses required in relation to an agreement or contract. Any due diligence must be completed before:

- the contract with an agent or partner is signed or renewed;
- the agent does any work;
- the partnership undertakes any activities;

If the business unit and Legal cannot agree on whether due diligence is required or the due diligence to be undertaken, then the matter must be referred for determination to the relevant Business Unit executive and to the Head of Legal.

7. Gifts, Hospitality and Entertainment

All M&S employees are expected to conduct themselves with integrity, impartiality and honesty at all times. Accordingly, all employees are required to follow these rules on Gifts, Hospitality and Entertainment. In addition, employees of M&S Joint Ventures or subsidiaries,

whether in the UK or elsewhere, are required follow these standards. We also expect employees of our franchise partners and suppliers to conduct themselves in accordance with these standards.

You must maintain a high standard of professionalism and not open yourself up to suspicion of dishonesty or put yourself in a position of conflict between your work and your private interests. Gifts and entertainment given and received as a reward, inducement or encouragement for preferential treatment or inappropriate or dishonest conduct are strictly prohibited. In particular, no gifts, hospitality or entertainment may be given or accepted during a tender process or during contractual negotiations if there is any realistic risk that such gifts or entertainment could influence the outcome of such processes or negotiations.

It is important that all M&S employees' actions are able to withstand scrutiny, and not cause any embarrassment to the Company, yourself or any third party, including contractors or suppliers.

Receiving and giving gifts

You may accept low value token gifts such as branded pens, stationery and mouse mats produced for the purpose of being given away, if given by an existing supplier. Occasional boxes of confectionery, etc may be given to a department as opposed to an individual. Otherwise you must refuse personal gifts such as Christmas, wedding or birthday gifts, including vouchers or cash equivalents, received from franchise partners, suppliers, clients and other third parties. In some parts of the world it is conventional for individuals to exchange gifts in various business related contexts. If you are engaged in business in such locations a gift can be accepted and a reciprocal gift of a reasonable value may be given, if approved by the relevant Business Unit Executive. However, the accepted gift should be registered in the International Gift Register or the Business Unit's Gift Register and entered into a raffle with the proceeds donated to charity.

Any gifts offered must be acceptable within the policy of the receiver's company/organisation and if you are in any doubts about acceptability no gift should be provided.

Hospitality/Entertainment

M&S employees may occasionally receive invitations from suppliers or others to corporate hospitality or entertainment events.

Hospitality or entertainment may only be accepted if:-

- employees or personnel from the supplier are in attendance;
- the supplier does not pay any accommodation or (more than trivial) travel expenses for M&S employees;
- the entertainment and/or acceptance of it could not be interpreted as a reward, inducement or encouragement for a favour or preferential treatment; and
- it is not unduly lavish or extravagant.

Reciprocal hospitality may be offered but needs to be approved by a Business Unit Executive, for example when our overseas suppliers/partners visit the UK.

Hospitality and Entertainment Register

To ensure openness and transparency, all hospitality and entertainment must be recorded in the relevant Hospitality and Entertainment Register on a monthly basis. Employees working within the International business must record such activity on the International Register, and other employees must record such activity in the Register retained within their Business Unit. These registers will be reviewed by the Business Unit Director quarterly and reported to the Audit Committee annually.

8. Political and Charitable Contributions

M&S does not make contributions or donations to political organisations or independent candidates, nor does it incur any political expenditure.

We respect the right of individual employees to make personal contributions, provided they are not made in any way to obtain advantage in a business transaction.

M&S communicates views to government and others, on matters which affect its business interests or those of its shareholders and employees, as a way of assisting in the development of regulation and legislation affecting the business.

M&S is committed through Plan A to charitable giving and supporting the community. The Company ensures that at least one per cent of pre-tax profits fund initiatives that benefit the community. Donations are given according to Company policy and care must be taken to ensure such donations are never used to gain improper influence.

9. Speaking Up – Reporting Bribery

M&S aims to conduct business with the highest standards of ethics, honesty and integrity, and recognises that you have an important role to play in maintaining this aim. Any employee concerned about any form of malpractice, improper action, or wrongdoing by the Company, its employees or other stakeholders are strongly encouraged to report the matter through the dedicated Speak Up helpline.

We believe it is essential to create an environment in which you feel able to raise any matters of genuine concern internally without fear of disciplinary action being taken against you, that you will be taken seriously, and that the matters will be investigated appropriately and as far as practicable be kept confidential.

M&S believes that any employee with knowledge of bribery in any form should not remain silent. We take all matters of malpractice, improper action or wrongdoing very seriously and you are strongly encouraged to raise incidents or behaviours that are not in accordance with the policy, by following the procedure set out below:

**Line
Manager**

In the first instance, you should consider raising your concerns with your line manager. He/she has a responsibility to listen and respond to any matter that is of concern to you. Concerns can be raised verbally or in writing. Your line manager will determine whether he/she is able to investigate the concern directly, keeping the Group Secretary updated, if appropriate, of progress and its conclusion.

If your line manager is unable to resolve the issue locally, he/she will escalate the concern to the Group Secretary, who will manage your concern in accordance with the Independent Internal Individual process set out below.

**Senior
Manager**

If you feel that you cannot raise your concern with your line manager, for whatever reason, you should contact the senior manager in your business unit or store, who will consider the matter, manage any investigation, keeping the Group Secretary informed, if appropriate, of progress and its conclusion.

If the senior manager in your business unit or store is unable to resolve the issue locally, he/she will escalate the concern to the Group Secretary, who will manage your concern in accordance with the Independent Internal Individual process set out below.

**Independent
Internal
Individual**

If you feel you need to raise the issue outside of your immediate working environment, you should contact the Group Secretary on +44 (0) 20 8718 3604 or email: company.secretary@marks-and-spencer.com. The Group Secretary will record the concern and determine the appropriate approach to take in managing any investigation, including whether to appoint an external independent individual to review the matter, or refer it to the appropriate internal or external body. The Group Secretary will inform the Chief Executive and the Audit Committee Chairman of any serious issues as a matter of urgency.

STANDARD CHARTERED

Group Anti-Bribery Policy Statement

Purpose and Scope

The Group Anti-Bribery Policy ('the Policy') draws together the Group's principles on anti-bribery. The Policy is designed to reduce the risk of the Group, staff, or persons associated with the Group from offering, receiving or extorting bribes, either directly or by proxy, and thereby mitigate the risk of the Group being subject to legal or regulatory sanctions and reputational damage. It contributes to the Group's 'Here for good' brand promise, its participation in national and international initiatives to combat corruption, and is consistent with the Group's values and ethical stance. The Policy applies to all staff. The Policy is subject to any more demanding local legal or regulatory requirements.

Responsibility

Bribery is a serious criminal offence in many countries. All staff are responsible for meeting their personal legal obligations to not commit bribery and adhere strictly with this Policy. An act of bribery anywhere in the world by persons associated with the Group can expose it to the risk of prosecution for failing to prevent bribery. This can result in an unlimited fine unless the Group can demonstrate that adequate procedures are in place to prevent bribery.

Group Financial Crime Risk defines Group policy and Group procedures. Consumer Bank and Wholesale Bank will maintain procedures where appropriate in line with this Policy and the Group Anti-Bribery Procedures. Country Compliance maintains local procedures in line with the Group procedures and local legal or regulatory requirements.

Policy Statement

The Group strictly prohibits bribery in any form – including the use of 'facilitation payments'.

The Group must not allow charitable donations, sponsorships and direct or indirect contributions to political parties or organisations to be used as a subterfuge for bribery.

The Group must not offer gifts or entertainment as an advantage intending to commit bribery. All gifts and entertainment must be given or received in accordance with applicable Group, Wholesale Bank and Consumer Bank policy and procedure.

The Group prohibits bribery committed on its behalf by intermediaries. Intermediaries regarded as posing an enhanced risk of bribery must be subject to due diligence, appropriate contractual terms and governance.

Staff must report any concerns they may have with respect to non-compliance with this Policy. The Group must maintain processes to enable staff to raise such concerns in confidence.

The Group must consider whether to terminate its relationship with an associated person who commits, or is suspected to have committed, bribery.

The Group will not sanction or disadvantage any staff or persons associated with the Group on account of a refusal to commit bribery.

Staff found to have breached this Policy will be subject to disciplinary proceedings. Potential penalties include the termination of employment.

June 2011

STONE KING

BRIBERY ACT - 2010

EFFECTIVE DATE : 1ST JULY 2011

ANTI-BRIBERY POLICY

1. To Whom this Policy Applies

- 1.1. *This policy covers all our people, and all parts of our practice.*

In particular, this policy applies not only to our partners and permanently employed staff, but also to temporary employees, agency staff and to people who work for us as contractors, wherever they may be based or may work from time to time.

- 1.2. In the case of associated businesses, joint ventures, consultants, agents and others who may do business on behalf of the firm, we will promote the adoption of policies consistent with the principles set out in this policy, where appropriate.

2. Our Commitment

- 2.1. The firm strictly prohibits all firm personnel from giving or accepting bribes.

- 2.2. That means you must not offer, promise, give, request, accept or receive anything which might reasonably be regarded as a bribe.

3. What is Bribery?

- 3.1. The legal definition of bribery is very wide, and the penalties are severe.

- 3.2. Bribery is defined as giving someone a financial or other advantage to induce them to perform their functions or activities improperly, or to reward them for having done so.

- 3.3. Giving a financial or other advantage to someone you know is not allowed to receive it is also bribery. Public officials for example may be subject to strict rules forbidding them from accepting hospitality or other advantages.

- 3.4. Giving a financial or other advantage to a foreign public official intending to influence them in their duties is bribery. (See the notes below on “foreign public officials” and “grease payments”.)

- 3.5. A bribe need not involve cash or other financial asset. It can be any sort of advantage.

- 3.6. Offering, promising or requesting a bribe is just as illegal as actually paying or receiving a bribe.

4. Your Duty to Report

- 4.1. Be open. Report any concerns, and if you are in any doubt, seek guidance on what you should do. Never try to conceal or disguise your actions.

- 4.2. If you are unsure whether something is permitted or not seek guidance before committing yourself or the firm.

- 4.3. Management needs to be aware of the bribery risks that we face. Accordingly if someone within or outside the firm requests or offers anything which might be regarded as a bribe, report it (see section 6, below).
 - 4.4. If you or anyone else may have paid a bribe or engaged in unethical conduct, report it. If you have made an error of judgement, but then report it, we will show appropriate understanding. If you make such an error but then seek to conceal or disguise your actions this will be regarded very seriously.
 - 4.5. In particular, keep accurate records. Serious corruption offences in other businesses have often involved inaccurate record-keeping. Making false records is a criminal offence.
5. Whistle-blower Protection: Our Promise To You
- 5.1. You will not be subject to any retaliation or retribution for reporting in good faith your concerns about a suspected breach of this policy.
 - 5.2. Anyone who retaliates against someone who has made such a report will be subject to disciplinary action.
 - 5.3. While we would prefer you to report any concerns openly, you may do so anonymously.
 - 5.4. Whistle-blower protection applies if you make a report in good faith, even if your concerns turn out to be unjustified. "Good faith" means that you believe the report to be true, and that you do not make the report with malice, intending to damage another person or the firm.
6. To Whom Should You Turn?
- 6.1. In general you should raise questions or concerns with your supervisor.
 - 6.2. If you are reluctant to raise concerns with your supervisor, or if s/he is unavailable, then in general you should report to the next highest level of management.
 - 6.3. David Goffin, Finance Director and Anti-Money Laundering Officer is responsible for ensuring this policy is implemented throughout the firm, and that it is reviewed and updated from time to time. You should feel free to raise any questions or concerns with him.
7. Examples, and The Action You Should Take
- 7.1. *Gifts:*
 - a. It is acceptable business practice for gifts of modest value to be given and received to celebrate achievements, or to celebrate a seasonal festival, or as an incidental part of a business relationship. At the same time there is an obvious risk that a substantial gift, or a series of small gifts, could be perceived as bribery.
 - b. Accordingly you should not give a gift in connection with the firm's business which:

- is in the form of cash, or cash equivalents, such as gift vouchers
 - involves something being promised or offered in return
 - the recipient or the giver would not wish to be known to their employers or principals
 - is substantial in value.
- c. If you are sent a gift in connection with your employment you should inform your supervisor in writing (an e-mail is acceptable). The firm may require gifts to be returned, or for them to be shared.

7.2. *Hospitality and Entertainment:*

Entertainment of clients and contacts can be a valuable way of establishing cordial relationships, improving the image of an organisation, and presenting products or services. Anti-bribery law does not prohibit expenditure intended for such purposes. Hence, subject to appropriate budgetary approval, and depending on the nature of your role, it may be appropriate for you to provide or accept hospitality including meals and drinks, and attendance at sports, theatre and other events.

But hospitality should only be offered or accepted for legitimate business reasons. Hospitality should not be intended to put the recipient under a sense of obligation. You should not offer or accept hospitality which is unduly lavish or excessive. Nor should you offer hospitality which you believe the recipient is not allowed to accept, under the rules applicable in his or her organisation.

7.3. *Travel and Accommodation Expenses:*

It may be proper and appropriate for us to pay travel expenses, and accommodation and subsistence expenses so that potential clients or business partners may visit us, and/or meet with us and/or may learn more about our services. However please take these precautions.

- a. The nature and value of expenses paid should be reasonable and proportionate to the business objective for the visit.
- b. The nature and value of the expenses should be clarified in advance, and the guest should be told that we can only provide a refund against receipts.
- c. A refund of a substantial amount should normally be paid via the guest's employer, and not to them personally.

7.4. *Political and charitable donations:*

- a. We do not wish to discourage you from engaging in political activity nor charitable giving or fund raising. However be aware that requests for political or charitable donations may be made corruptly. Accordingly donations should not be promised or made as part of the process of doing business.
- b. We may make charitable donations via the firm's charitable trust "The Stone King Foundation". Requests for such donations should be referred to Tamsin Simmonds

on the appropriate form – which can be found on the HUB under team name “CSR”.

- c. If a request for a political or charitable donation is made with an explicit or implicit promise that some advantage would be improperly offered in return, you should explain that you do not have authority to make such a donation, and should report the request.

7.5. *Foreign public officials:*

- a. The law is particularly strict concerning foreign public officials. If you provide any financial or other advantage to a foreign public official with the intention of influencing them in their duties, you may have committed a bribery offence.
- b. Accordingly you should not normally provide gifts or significant hospitality or travel or accommodation expenses which may benefit such an official personally. However, we do understand that in certain countries giving and receiving gifts is a cultural norm. If you are faced with such a situation seek guidance before proceeding.
- c. Note that the definition of “foreign public official” is very wide. For example it includes the employees of foreign nationalised industries.

7.6. *Grease Payments (also known as “Facilitation Payments”):*

- a. These are generally small payments to low-ranking government officials for things such as granting a licence promptly, or providing some other public service to which we are entitled. However prevalent such payments may be in certain countries, making such a payment will normally be an offence under the UK Bribery Act. Accordingly you should decline to make grease payments.
- b. As an exception, you may be permitted to make such a payment, if
 - the payment is permitted under local law (in which case the recipient should be prepared to give you an official receipt), or
 - you are compelled to make the payment to prevent physical injury or other serious and imminent harm to yourself or others.

If possible seek approval before making such a payment. If it is not practical to obtain such approval, you must report the payment immediately thereafter, and the payment must be accurately documented and reported in the firm’s books and records.

7.7. *Other examples:*

Other examples of bribes may include the unpaid use of corporate services or property, loans, loan guarantees or the provision of employment to the family or contacts of people with whom we deal. It is impossible to provide a comprehensive list of possible bribes. Apply the general principle, that you should avoid anything that might reasonably be regarded as a bribe, and should report any concerns that you have.

FXCM

ANTI-BRIBERY POLICY

FXCM Europe, namely Forex Capital Markets Limited and FXCM Securities Limited, values its reputation for ethical behaviour and for financial probity and reliability. It recognises that over and above the commission of crime, any involvement in bribery will reflect adversely on its image and reputation. We are also committed to implementing and enforcing effective systems to counter bribery by:

- Setting out a clear anti.bribery policy.
- Training all employees so that they can recognise and avoid the use of bribery by themselves and others.
- Encouraging its employees to be vigilant and to report any suspicion of bribery, providing them with suitable channels of communication and ensuring sensitive information is treated appropriately.
- Rigorously investigating instances of alleged bribery and assisting the police and other appropriate authorities in any resulting prosecution.
- Taking a firm and vigorous action against any individuals involved in bribery.

Who is Covered By The Policy?

This policy applies to all individual employees of FXCM Europe, including its branches, agents or other persons acting on behalf of FXCM Europe and its consultants, contractors, and any other person providing services to us.

What is A Bribe?

A bribe is a financial or other advantage offered or given:

- To anyone to persuade them to or reward them for performing their duties improperly; or
- To any public official with the intention of influencing the official in the performance of his duties

Gifts and Hospitality

This policy is not meant to prohibit the following practices provided that they are customary, are proportionate and are properly recorded:

- Normal and appropriate hospitality.
- The use of a recognised fast track process which is publicly available on payment of an appropriate fee; and/or

- The offer of resources to assist a person or body, to make a decision more efficiently, provided that such is supplied for that purpose only.

Facilitation Payments and Kickbacks

We do not make, and will not accept, facilitation payments or “kickbacks” of any kind. Facilitation payments are typically small, unofficial payments made to secure or expedite a routine government action by a government official. Kickbacks are typically payments made in return for a business favour or advantage.

Record Keeping

We will keep financial records and have appropriate internal controls in place which will evidence the business reason for making any payments to third parties. It is vital that the following records are kept:

- All expense claims relating to hospitality, gifts or expenses incurred to third parties must be submitted in accordance with our expenses policy and specifically record the reason for expenditure.
- All accounts, invoices, memoranda and other documents and records relating to dealings with third parties, such as clients, suppliers and business contacts, must be prepared and maintained with strict accuracy and completeness. No accounts must be kept “off-book” to facilitate or conceal improper payments.

Employees Responsibility

The prevention, detection and reporting of bribery is the responsibility of all employees and the Board members throughout FXCM Europe. Suitable channels of communication will be maintained via the Whistleblowing process. Inevitably, decisions as to what is acceptable may not always be easy. If anyone is in any doubt as to whether a potential act constitutes bribery, the matter should be referred to our General Counsel before proceeding. If necessary, guidance should also be sought from the Head of Compliance Europe.

BBC

Anti-Bribery Policy

June 2011

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1. ANTI-BRIBERY POLICY STATEMENT

- 1.1 The BBC is committed to conducting business in accordance with the highest ethical and legal standards. The integrity of our staff, and those with whom we do business, is critical to our success. Our audiences and stakeholders have every right to expect that professional, competent and trustworthy people are working in the best interests of the BBC. The BBC Trust, as the guardian of the licence fee and public interest, must ensure that the BBC observes high standards of openness and transparency and exercise rigorous stewardship of public money. This Anti-Bribery and Corruption Policy is drafted with these obligations in mind.
- 1.2 The BBC takes a zero-tolerance approach to bribery and corruption and is committed to acting professionally, fairly and with integrity in all its business dealings and relationships wherever it operates. The BBC is committed to implementing and enforcing effective systems to counter bribery.
- 1.3 The BBC's Anti-Bribery Code of Conduct (which comprises this Policy and its associated guidance) reflects our commitment to uphold all laws relevant to countering bribery and corruption in all the jurisdictions in which we operate. In particular, we are committed to compliance with the Bribery Act 2010, in respect of our conduct both at home and abroad. The Bribery Act 2010 applies to individuals and all organisations carrying on a business in the UK, including the broadcasting sector. The territorial jurisdiction of the prosecutors extends to offences committed both in the UK and abroad.
- 1.4 The purpose of this Policy is to:
 - (a) set out our responsibilities, and of those working for us, in observing and upholding our position on bribery and corruption; and
 - (b) provide information and guidance to those working for us on how to recognise and deal with bribery and corruption issues.
- 1.5 Bribery and corruption are punishable for individuals by up to ten years imprisonment and if the BBC is found to have failed to prevent bribery in relation to its business it could face unlimited fines and extensive reputational damage. We therefore take our legal responsibilities very seriously.
- 1.6 We have conducted a Risk Assessment exercise considering the nature and extent of the potential risks of bribery faced by the BBC, taking into account all interactions the BBC has with third parties. We will continue to monitor our overall risk profile.
- 1.7 In this Policy, third party means any individual or organisation you come into contact with during the course of your work for us, and includes actual and potential clients, customers, suppliers, distributors, business contacts, agents, advisers, and government and public bodies, including their advisors, representatives and officials, politicians and political parties.

2. Who Is Covered By The Policy?

- 2.1 Under Section 7 of the Bribery Act the BBC may be liable to be prosecuted for an offence if a person associated with it bribes another person, intending to obtain or retain business or a business advantage for the organisation. It is a defence for the organisation to show that it has in place "adequate procedures" designed to prevent bribery by its "associated persons". A person is associated with an organisation if it performs services for or on behalf of that person, eg as employee, subsidiary, agent or subcontractor.
- 2.2 This Policy applies to all individuals working at all levels and grades, including senior managers, officers, directors, employees (whether permanent, fixed-term or temporary), consultants, contractors, trainees, seconded staff, casual staff and agency staff, volunteers, interns, agents, sponsors, or any other person associated with us, or any of our subsidiaries or their employees, wherever located (collectively referred to as staff in this Policy).

3. What Is Bribery?

A bribe is an inducement or reward offered, promised or provided in order to gain any commercial, contractual, regulatory or personal advantage.

Examples:

Offering a bribe

You offer an artist's agent tickets to a major sporting event, but only if they agree to reduce the advance requested by the artist for his performance.

This would be an offence as you are making the offer to gain a commercial and contractual advantage. The BBC may also be found to have committed an offence because the offer has been made to obtain business for the BBC. It may also be an offence for the artist's agent to accept your offer.

Receiving a bribe

The promoter of a major record label offers to take the presenter of your radio show on a family holiday if she agrees to play the latest single from their latest signing on her breakfast show.

It is an offence for the promoter to make such an offer. It would be an offence for you to accept the offer as you would be doing so to gain a personal advantage.

Bribing a foreign official

A fixer which you have booked makes an additional payment to a foreign official to speed up the issuing of a registration licence for a local branch in a remote African country. There is no official process for speeding up the issuing of a licence in the country.

The offence of bribing a foreign public official has been committed as soon as the offer is made. This is because it is made to gain a business advantage for the BBC. The BBC itself may also be found to have committed an offence, if it has failed to prevent such occurrences negligently.

4. Gifts and Hospitality

4.1 This policy does not prohibit normal and appropriate hospitality (given and received) to or from third parties.

4.2 The giving or receipt of gifts is not prohibited, if the following requirements are met:

- (a) it complies with the BBC's Policy on Gifts and Hospitality¹;
- (b) it is not made with the intention of influencing a third party to obtain or retain business or a business advantage, or to reward the provision or retention of business or a business advantage, or in explicit or implicit exchange for favours or benefits;
- (c) it complies with local law;
- (d) it is given in our name, not in your name;
- (e) it does not include cash or a cash equivalent (such as gift certificates or vouchers);
- (f) it is appropriate in the circumstances. For example, in the UK it is customary for small gifts to be given at Christmas time;
- (g) taking into account the reason for the gift, it is of an appropriate type and value and given at an appropriate time;
- (h) it is given openly, not secretly; and
- (i) gifts should not be offered to, or accepted from, government officials or representatives, or politicians or political parties, without the prior approval of your line manager or your Division's Legal and Business Affairs representative.

4.3 We appreciate that the practice of giving business gifts varies between countries and regions and what may be normal and acceptable in one region may not be in another.

The test to be applied is whether in all the circumstances the gift or hospitality is reasonable and justifiable. The intention behind the gift should always be considered.

5. Gifts and Hospitality - What is Not Acceptable?

It is not acceptable for you (or someone on your behalf) to:

- (a) give, promise to give, or offer, a payment, gift or hospitality with the expectation or hope that a business advantage will be received, or to reward a business advantage already given;
- (b) give, promise to give, or offer, a payment, gift or hospitality to a government official, agent or representative to "facilitate" or expedite a routine procedure;

1. Highlighting illustrates an embedded link to the relevant document

- (c) accept payment from a third party that you know or suspect is offered with the expectation that it will obtain a business advantage for them;
- (d) accept a gift or hospitality from a third party if you know or suspect that it is offered or provided with an expectation that a business advantage will be provided by us in return;
- (e) threaten or retaliate against another worker who has refused to commit a bribery offence or who has raised concerns under this policy; or
- (f) engage in any activity that might lead to a breach of this policy.

6. Facilitation Payments

- 6.1 Facilitation payments are typically small, unofficial payments made to secure or expedite a routine or necessary government action by a government official, when we have already paid for, or are entitled to, that action. They are not commonly requested in the UK, but this is a widespread form of bribery, despite being illegal in almost every country in which we operate. Under Sections 1 and 6 of the Bribery Act 2010, bribes and facilitation payments are illegal and the offer of any of these forms of payments in any of the countries in which we operate is against BBC policy.
- 6.2 There is specific Guidance on Facilitation Payments and how to resist requests for them. Anyone whose work involves overseas productions, or travel overseas on BBC business, is required to review this guidance and act in accordance with it. Our zero-tolerance approach to bribery in the case of facilitation payments involves a policy of resistance which is achieved in stages. Our policy is to refuse to pay facilitation payments unless payment is clearly unavoidable and being made in exceptional circumstances (such as those referred to in paragraph 6.4). Clear documentation will be required for any payments made. Our ultimate goal is the elimination of such payments made on behalf of the BBC.
- 6.3 If you are asked to make a payment on our behalf, you should always be mindful of what the payment is for and whether the amount requested is proportionate to the goods or services provided. Where practical, and safe to do so, you should always ask for a receipt which details the reason for the payment. If you have any suspicions, concerns or queries regarding a payment, you should raise these with your line manager or your Legal and Business Affairs representative.
- 6.4 You should never refuse to make a payment if faced with a threat of, or fear of, violence or loss of liberty. The safety of our employees is of primary concern in all our operations both at home and abroad. The Guidance issued by the Ministry of Justice on the Bribery Act includes a defence of duress which is stated to be likely to be available in the case of payments made to protect "life, limb or liberty".

7. Donations

The BBC does not make contributions to political parties or charitable donations, except in relation to designated BBC charities. If, in exceptional circumstances, a donation appears appropriate the Editorial Policy Guidance on Charities must be consulted and the donation must not be offered or made without the prior approval of Editorial Policy.

8. Your Responsibilities

8.1 You must ensure that you read, understand and comply with this Policy.

8.2 The prevention, detection and reporting of bribery and other forms of corruption are the responsibility of all those working for us or under our control. All staff are required to avoid any activity that might lead to, or suggest, a breach of this Policy.

8.3 You must notify your line manager OR your legal and business affairs representative or the BBC Whistle-blowing Helpline as soon as possible if you believe or suspect that a conflict with this Policy has occurred, or may occur in the future. For example, if a supplier or potential supplier offers you something to gain a business advantage with us, or indicates to you that a gift or payment is required to secure their business. Further "red flags" that may indicate bribery or corruption are set out at the end of this Policy.

8.4 Any employee who breaches this Policy may face disciplinary action, which could result in dismissal for gross misconduct. We reserve our right to dismiss staff if they breach this Policy.

9. Record-keeping

9.1 Financial records must be kept and appropriate internal controls must be put in place which will evidence the business reason for making payments to third parties.

9.2 Written records of all hospitality or gifts accepted or offered must be declared and kept, which will be subject to managerial review.

9.3 All expenses claims relating to hospitality, gifts or expenses incurred to third parties must be submitted in accordance with our expenses policy and specifically record the reason for the expenditure.

9.4 All accounts, invoices, memoranda and other documents and records relating to dealings with third parties, such as clients, suppliers and business contacts, should be prepared and maintained with strict accuracy and completeness. No accounts must be kept "off-book" to facilitate or conceal improper payments.

10. What To Do If You Have A Specific Concern About Bribery Or Corruption

10.1 All staff are encouraged to raise concerns about any issue or suspicion of malpractice at the earliest possible stage. If you are unsure whether a particular act constitutes bribery or corruption, or if you have any other queries, these should be raised with your line

manager OR your legal and business affairs representative or through the confidential helpline. Concerns should be reported by following the procedure set out in the BBC Whistleblowing Policy.

- 10.2 It is important that you tell your line manager or your legal and business affairs representative as soon as possible if you are offered a bribe by a third party, are asked to make one, suspect that this may happen in the future, or believe that you are affected by any another form of unlawful activity.

11. Protection

- 11.1 Staff who refuse to accept or offer a bribe, or those who raise concerns or report another's wrongdoing, are sometimes worried about possible repercussions. We aim to encourage openness and will support anyone who raises genuine concerns in good faith under this policy, even if they turn out to be mistaken.
- 11.2 The BBC is committed to ensuring no one suffers any detrimental treatment as a result of refusing to take part in bribery or corruption, or because of reporting in good faith their suspicion that an actual or potential bribery or other corruption offence has taken place, or may take place in the future. Detrimental treatment includes dismissal, disciplinary action, threats or other unfavourable treatment connected with raising a concern. If you believe that you have suffered any such treatment, you should inform the compliance manager immediately. If the matter is not remedied, and you are an employee, you should raise it formally through the BBC Whistleblowing Policy or through our Grievance Procedure.

12. TRAINING AND COMMUNICATION

- 12.1 Anti-Bribery Training on this Policy is available online. Your Divisional Director is responsible for identifying which staff in his/her Division are required to undergo training on this Policy, but if you consider that you need further information we would encourage you to complete the online training module. In addition, targeted 1- 2-1 training is available for all staff designated as requiring this by their Divisional Director. You can consult your line manager or legal and business affairs representative for further information.
- 12.2 Training and guidance will be updated and communicated as appropriate on a regular basis and all relevant staff will receive regular, relevant training on how to implement and adhere to this policy.
- 12.3 The BBC's zero-tolerance approach to bribery and corruption must be communicated to all suppliers, contractors and business partners at the outset of our business relationship with them and as appropriate thereafter.

13. Who Is Responsible For The Policy?

- 13.1 The Executive Board has overall responsibility for ensuring this policy complies with our legal and ethical obligations, and that all those under our control comply with it. The

Chief Operating Officer and the Chief Financial Officer are the joint-sponsors of the BBC's Anti-Bribery Policy.

13.2 The Divisional Directors have primary and day-to-day responsibility for implementing this Policy, and for monitoring its use and effectiveness. The Group General Counsel has primary responsibility for dealing with any queries on its interpretation. BBC management at all levels are responsible for ensuring those reporting to them are made aware of and understand this Policy and are given adequate and regular training on it.

14. Monitoring and Review

14.1 The effectiveness of the implementation of this Policy will be reviewed and monitored regularly considering its suitability, adequacy and effectiveness. Any improvements identified will be made as soon as possible. Internal control systems and procedures will be subject to regular audits to provide assurance that they are effective in countering bribery and corruption.

14.2 All staff are responsible for the success of this policy and should ensure they use it to disclose any suspected danger or wrongdoing.

14.3 Staff are invited to comment on this Policy and suggest ways in which it might be improved. Comments, suggestions and queries should be addressed to your legal and business affairs representative.

14.4 This Policy does not directly form part of any employee's contract of employment and it may be amended at any time.

Potential Risk Scenarios: "Red Flags"

The following is a list of possible red flags that may arise during the course of your work and which may raise concerns under various anti-bribery and anti-corruption laws. The list is not intended to be exhaustive and is for illustrative purposes only.

If you encounter any of these red flags while working for us, you must report them promptly to your line manager OR to your Legal and Business Affairs representative OR using the procedure set out in the Whistleblowing Policy:

- (a) you become aware that a third party engages in, or has been accused of engaging in, improper business practices;
- (b) you learn that a third party has a reputation for paying bribes, or requiring that bribes are paid to them, or has a reputation for having a "special relationship" with foreign government officials;
- (c) a third party insists on receiving a commission or fee payment before committing to sign up to a contract with us, or carrying out a government function or process for us;

- (d) a third party requests payment in cash and/or refuses to sign a formal commission or fee agreement, or to provide an invoice or receipt for a payment made;
- (e) a third party requests that payment is made to a country or geographic location different from where the third party resides or conducts business;
- (f) a third party requests an unexpected additional fee or commission to "facilitate" a service;
- (g) a third party demands lavish entertainment or gifts before commencing or continuing contractual negotiations or provision of services;
- (h) a third party requests that a payment is made to "overlook" potential legal violations;
- (i) a third party requests that you provide employment or some other advantage to a friend or relative;
- (j) you receive an invoice from a third party that appears to be non-standard or customised;
- (k) a third party insists on the use of side letters or refuses to put terms agreed in writing;
- (l) you notice that we have been invoiced for a commission or fee payment that appears large given the service stated to have been provided;
- (m) a third party requests or requires the use of an agent, intermediary, consultant, distributor or supplier that is not typically used by or known to us;
- (n) you are offered an unusually generous gift or offered lavish hospitality by a third party.

CIMA

ANTI-BRIBERY POLICY

CIMA is committed to the highest standards of ethical conduct and integrity in its business activities in the UK and overseas. It is committed to preventing and prohibiting corruption in all its forms, including extortion and bribery, in accordance with the 10th principle of the UNGC and the Bribery Act 2010. CIMA will not tolerate any form of bribery by, or of, its employees, agents or consultants or any person or body acting on its behalf.

“Bribery” 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 CIMA's business”

Likewise, all those with whom CIMA does business will be expected to confirm that they will abide by the principles set out in CIMA's anti-bribery policy in all respects; if you do not have commensurate anti-bribery procedures in place it is unlikely that CIMA will do business with you.

What is prohibited?

CIMA prohibits employees or associated persons from offering, promising, giving, soliciting or accepting any bribe. The bribe might be cash, a gift or other inducement to, or from, any person or company, whether a public or government official, official of a state-controlled industry, political party or a private person or company, regardless of whether the employee or associated person is situated in the UK or overseas.

The bribe might be made to ensure that a person or company improperly performs duties or functions (for example, by not acting impartially or in good faith or in accordance with their position of trust) to gain any commercial, contractual or regulatory advantage for CIMA in either obtaining or maintaining CIMA business, or to gain any personal advantage, financial or otherwise, for the individual or anyone connected with the individual.

This prohibition also applies to indirect contributions, payments or gifts made in any manner as an inducement or reward for improper performance, for example through consultants, contractors, sub-contractors, agents, sub-agents, sponsors or sub-sponsors, joint-venture partners, advisors, customers, suppliers or other third parties.

Due diligence will be undertaken and recorded by employees and associated persons prior to entering into any contract, arrangement or relationship with a potential supplier of services, agent, consultant or representative in accordance with CIMA's procurement and risk management procedures.

Employees and associated persons are also required to keep accurate, detailed and up-to-date records of all corporate hospitality, entertainment or gifts accepted or offered in CIMA's hospitality register.

Facilitation Payments

CIMA prohibits its employees or associated persons from making or accepting any facilitation payments. Facilitation payments, or offers of such payments, will constitute a criminal offence by both the individual concerned and CIMA under the Bribery Act 2010, even where such payments are made or requested overseas.

CIMA depends on its employees and associated persons to ensure that the highest standards of ethical conduct are maintained in all its business dealings. Employees and associated persons are requested to assist CIMA and to remain vigilant in preventing, detecting and reporting bribery.

CIMA will investigate fully any instances of alleged or suspected bribery.

THE ROYAL SOCIETY OF EDINBURGH

ANTI BRIBERY POLICY

1. Introduction

- 1.1 The Royal Society of Edinburgh and the RSE Scotland Foundation (“RSE”) anti-bribery policy and associated procedures are set out below.

2. Policy Statement

- 2.1 The RSE requires Royal Society of Edinburgh Fellows (“Fellows”), its staff and other persons who provide or perform a service for or on behalf of the RSE, at all times to act honestly and with integrity and to safeguard the RSE resources for which they are responsible.
- 2.2 The RSE is committed to ensuring that its business is conducted in an open and transparent manner, will adhere to the six principles of bribery prevention outlined in the Government's guidance, and it will take all appropriate steps to address the risks of bribery.
- 2.3 The RSE condemns all acts of bribery or corruption; any cases brought to its attention will be investigated exhaustively and dealt with appropriately.
- 2.4 The RSE is committed to the highest international standards of integrity and to ensuring it adheres to and promotes best practice in bribery prevention.

3. Definitions and Scope

- 3.1 Bribery is commonly described as the offer or acceptance of a reward to persuade another to act dishonestly and or in breach of the law.
- 3.2 It includes the offering, promising, giving, receiving or soliciting of a financial, academic or other advantage or favour as a means to influence the actions of an individual (or individuals).
- 3.3 The Bribery Act 2010 provides for 4 bribery offences:
 - Bribing: offering, promising or giving an advantage;
 - Being bribed: requesting, agreeing to or accepting an advantage;
 - Bribing a foreign official;
 - Failing as an organisation to prevent any person who performs services on its behalf from committing an act of bribery.
- 3.4 This Policy extends to all RSE activities and operations and to all of its dealings and negotiations with third parties in all countries in which Fellows, staff, and other persons who provide or perform a service for or on behalf of the RSE operate.

- 3.5 All Fellows, staff, and other persons who provide or perform a service for or on behalf of the RSE are required to comply with this policy

4. Responsibilities

- 4.1 The RSE Audit & Risk Committee has a general responsibility for monitoring the operation and effectiveness of its anti-bribery arrangements and shall receive appropriate reports on any bribery activity.

- 4.2 Each Fellow, member of staff and other persons who provide or perform a service for or on behalf of the RSE is responsible for:

- Acting with propriety at all times and in particular in the use of official resources and the handling and use of public funds;
- Conducting themselves in accordance with the principles identified by the Committee on Standards in Public Life, which are: integrity, objectivity, accountability, openness, honesty and leadership;
- Being alert to the possibility that unusual events, behaviours or transactions could be an indication of bribery;
- Seeking advice from the RSE Chief Executive, or the Royal Society of Edinburgh (“the Society”) General Secretary, if unsure about what constitutes an act of bribery in respect of RSE activities, operations and dealings;
- Reporting details immediately to the RSE Chief Executive or the Society's General Secretary if they suspect bribery is taking or has taken place;
- Cooperating fully with whomever is conducting internal checks, reviews or investigations

5. Action in the event of bribery

- 5.1 All cases of actual or suspected bribery will be vigorously and promptly investigated and appropriate action will be taken. The police will be informed where considered appropriate.

- 5.2 Disciplinary action will be considered, not only against any staff found to have perpetrated bribery, but also against staff managers whose negligence is held to have facilitated or condoned an act of bribery. Both categories may constitute gross misconduct, the penalty for which may include summary dismissal.

- 5.3 If a Fellow is found to have perpetrated bribery, or to have facilitated or condoned an act of bribery while providing or performing a service for or on behalf of the RSE, the incident will be referred to the Society's Council for consideration and action. In serious cases, such behaviour may constitute conduct injurious to the character or interests of the Society and may result in expulsion from the Fellowship in accordance with Law 42 of the Laws of the Society.

Reference :

- i. UK Bribery Act Handbook
- www.fcpa-worldcompliance.com
- ii. Business Principles for Countering Bribery Multi Stakeholder Initiative
- Transparency International
- iii. Business Principles for Controlling Bribery (SME Edition)
- Transparency International
- iv. Corporate Responsibility & Anti Corruption
- ICC Rules on Combating Corruption
- v. Corporate Responsibility & Anti Corruption
- ICC Guidelines on Agents, Intermediaries & Other Third Partner.
- vi. Good Practice Guidance on Internal Controls, Ethics & Compliance
- OECD
- vii. Principles for Countering Bribery
- Partnering Against Corruption
- viii. Fighting Corruption Assistance to Small Business
- UNIDO & UNODC