

Strengthening Frameworks for International Co-operation in Multijurisdictional Corruption Investigations

Address by Mr. Pradeep Kumar, Central Vigilance Commissioner

Mr. Daniel Clegg, Professor Pakdee Pothisiri, Mr. Muhammad Salim Sundar bin Abdullah, Mr. Balwinder Singh, delegates to this Conference, Ladies and Gentlemen.

Enforcement of anti-corruption laws and punishing the corrupt is the basic requirement of any anti-corruption framework. With increasing globalization and increasing international trade and financial flows, corruption has also acquired transnational dimensions. The linkage between corruption and other forms of crime like money laundering, tax evasion; and financing of terrorism and other illegal activities, poses a serious threat to the global community.

Cases of corruption may therefore involve multi-jurisdictional investigations. The bribe giver, the bribe receiver, the proceeds of corruption and the evidence of crime may all be in different countries. Bribery may be committed by multinational companies that operate simultaneously in several countries. All of these factors could give rise to investigations into the same case in more than one jurisdiction. Multi-jurisdictional investigation may also involve investigations conducted by international bodies like the United Nations, the World Bank or the ADB. There may also be jurisdictional issues between the states and the federal government.

Multi-jurisdictional investigation has its unique problems. First, gathering of evidence across national boundaries poses limitations for the investigators of the country where the crime has occurred. This may call for joint investigation and special investigative techniques. The second problem is apprehending the offenders who might have fled the country after committing the offence. This requires effective extradition arrangements. The third problem is recovery or confiscation of the proceeds of corruption which might have been invested in another country. The solution lies in evolving an effective framework for cooperation in investigation and Mutual Legal Assistance.

Some of the unique challenges of multi-jurisdictional investigation are Data Privacy issues, Double Jeopardy, differing connotations and interpretations as to what constitutes corruption and different anti-

corruption laws in different countries. Disclosing the details of bank accounts by a bank or details of transactions by a company may involve a conflict between adherence to anti-corruption and data privacy laws. Similarly, Double Jeopardy may arise when multiple countries claim jurisdiction over a corruption investigation. Another basic problem is that just like sociologists could not arrive at a widely acceptable definition of marriage, the anti-corruption experts have not been able to arrive at a common definition of corruption. Even the UNCAC has left the term corruption undefined. Thus what is construed as corruption in one country may be viewed as a facilitation payment necessitated by culture in another country.

The sophistication of financial transactions and complexities of multi-jurisdictional crimes requires a comprehensive and multi-disciplinary approach for investigation of such cases. It may require the collaboration of experts from various disciplines like legal, financial, taxation, forensic audit and information technology.

Notwithstanding the problems and challenges posed by multi-jurisdictional investigation, it is heartening to note that the international community is recognising the problem and striving to strengthen the framework for international cooperation to combat the global dimensions of corruption. The UN Convention Against Corruption provides a basic foundation for such cooperation. The OECD's Anti-Bribery Convention, The Foreign Corruption Practices Act (FCPA) and the UK Bribery Act have added teeth to the enforcement of anti-corruption laws in transnational business. The International Association of Anti-Corruption Authorities (IAACA) also provides a valuable platform for such cooperation. The Central Vigilance Commission of India is heading a Task Force on Knowledge Management as part of the initiative of the International Association of Anti-Corruption Authorities to facilitate sharing of information among the countries.

During this session, I am sure the esteemed panellists with their vast experience and knowledge would enlighten us on the challenges involved and recommend an effective framework to guide multi-jurisdictional investigation of corruption cases.
