

Project on Compilation of Cyber Laws

Background:

As Governments and other agencies under the audit jurisdiction of SAIs switchover to IT environment, several crucial issues regarding evidence, authentication of documents, power of investigations, management of records etc. arise which impact the functioning of the auditor. Further more, any deficiencies in law would also act as a barrier to realising the full potential of IT applications. It was with this view that a suggestion was made in the last meeting of the INTOSAI Standing Committee on IT Audit (ISCITA), to compile cyber laws enacted in the various countries. This was intended to provide a compendium for the SAIs to determine the inadequacies in the laws of their countries and implications thereof.

Project Methodology:

After scrutinising the large volume of material on the subject available SAI India, the project coordinator decided to first collect some essential information about IT legislation in all the countries. A convenient starting point for such an exercise was the model law on electronic commerce adopted by the United Nation's Commission on International Trade Law which was adopted by the UN General Assembly in 1997. The UNGA resolution recommended that all States give favourable consideration to the said model law when they enact or revise their law, in view of the need for uniformity of the law. A questionnaire was devised to ascertain whether the IT legislation in the countries conforms to

this model approved by the UNGA. The focus of the questionnaire was circulated to all members of INTOSAI on 29 May 2003, therefore, on the following:-

- (a) The extent to which some of the important constituents of the model law such as those pertaining to legal provisions for data messages were adopted in the legislation.
- (b) Provisions regarding signature and digital certification.
- (c) Definition of offence and powers to deal with offences.

Response to the questionnaire:

We have, till 20 August, 2003 received response to the questionnaire from 14 SAIs. Of these, 8 have replied that there was no Cyber/IT law in their country. Of the 5 who have reported an IT legislation, China and Slovakia have replied to only a few of the questions. Sufficient information has been received only from Austria, Canada and India. From the information available it appears that the legislations in these countries are by and large similar and conform generally with the UNICTRAL model law. This is not surprising because the model law was prepared after consulting Member States and laws enacted after 1997 have taken the model law into account.

Some of the areas in which the Canadian law is different from the others is as under:-

- (i) The mode of authentication is Technology Neutral;
- (ii) Foreign Certifying Authorities are not recognised, the liability of Certifying Authority is not specified and Certifying Authorities are not regulated.

- (iii) No special powers are given to the Government for dealing with cyber crimes.

Future course of action:

The response received till now has not been encouraging. A major factor for this could be the non-existence of IT legislation in most of the countries. Another factor is that there may be several laws that impact IT. For instance in India while an IT Act was passed in 2000, simultaneously amendments were also made to the Indian Penal Code, the Indian Evidence Act, 1872, the Bankers' Books Evidence Act 1981 and the Reserve Bank of India Act, 1934. Thus a comprehensive response to the questionnaire would require a study of all the legislation. Several SAIs may lack the requisite expertise to study such diverse laws in the given time frame. In fact of SAI, UK has indicated that they would find it difficult to respond to the questionnaire due to the multiplicity of legislation impacting IT and the developing case law in the area. The concern of SAI, UK is reasonable and we appreciate their views.

In the context of expanding IT applications, a compendium of IT legislation could provide valuable inputs to the audit community. We, therefore, propose to continue with the project. After completing a study based on the responses of the questionnaire that may be received in the next three months we could identify a few issues of concern to the auditors. Guidelines could then be prepared for identifying the lacunae that may exist in legislation as compared to the UN model or the legislation of some of the advanced countries.