

Module 2

Vigilance Administration

Chapter 5

Advisory Board for Banking and Financial Frauds (ABBFF)

Backdrop

Certain landmark judgments like *Indira Devi vs the State of Rajasthan*, Supreme Court of India, 23.07.2021 and *SK Miglani vs State*, 6.08.2018 have delineated the public servants who will get protection under Section 197 of CrPC. It brings to the fore that employees of Public Sector Banks are not afforded that protection of prior sanction from employer before prosecution under CrPC by law enforcement agencies.

However, the very nature of banking requires dealing in public money and involves a fair share of fiduciary risk. As such, it is but natural that a sense of 'fear of unwarranted hardships' exists among the officials of PSBs on decisions taken by them in the normal course of their work. The same may result in reluctance or undue delay in sanctioning the loans/ taking financial decisions. This may have the long-term effect of delaying the flow of funds to the public in general and certain critical sectors. Ultimately this would affect the economy of the country as a whole. Further, rising NPAs in the banking system have already made officials of PSBs wary of being aggressive on the corporate lending front.

The current norms require every public sector bank and financial institution to file complaints with CBI for all bank frauds above ₹3 crore. This itself can promote excessively cautionary lending.

Keeping all these aspects in mind, the Central Vigilance Commission (CVC) in consultation with RBI (based on the recommendations of an Expert Committee formed in the year 2018 on NPAs and Frauds under the Chairmanship of Shri YH Malegam by RBI) decided to constitute an Advisory Board for Banking and Financial Fraud (ABBFF) in August, 2019.

ABBFF has been constituted primarily for first level examination of frauds before recommendations or references are made to investigative agencies such as Central Bureau Investigation (CBI) by the respective public sector banks. ABBFF serves to function as a 'Safety Valve' for the officials by critically and comprehensively examining the gravity of lapses, and accountability, so that a well-considered and justified decision can be taken before the outside agencies haul up the concerned officials for connivance, complicity or malafide intent. It is envisaged that this would help remove the 'fear psychosis' among employees of Public Sector Banks/ Public Sector Financial Institutions (PSBs/ PSFIs).

Composition

ABBFF consists of a chairman and four other members. The tenure of the Chairman and members is for a period of two years. The Chairman/Member shall be eligible for re-appointment, subject to the condition that the total period of appointment as Chairman and/or Member shall not exceed four years or 70 years of age, whichever is earlier. Headquartered in Delhi, the Reserve Bank of India (RBI) provides required secretarial services, logistics and analytical support along with the necessary funding to the board.

Evolution of Jurisdiction

The CVC Office order No. 06/08/19 dated 21.08.2019 entailed that the ABBFF would be conducting first level of examination in all fraud cases of above Rs.50 crore involving officers of the level of General Managers and above, before recommendations or references are made to investigative agencies such as Central Bureau of Investigation (CBI) by the respective PSBs. Further, vide Office Order No. 01/01/2020 dated 15.01.2020, the scope of ABBFF was extended to cover Public Financial Institutions as well. Subsequently, Order No. 14/08/21 dated 19.08.2021 by the Commission extended the jurisdiction of ABBFF to examine the role of all level of officials/ Whole time Directors (WTDs).

As on date, the jurisdiction of ABBFF extends to cover all fraud cases involving amount of Rs.3 crore and above and examines the role of all levels of officials/ WTDs (including ex-officials/ex-WTDs) in PSBs and PSFIs.

The Board may also periodically carry out frauds analysis in the financial system and give inputs to RBI, for policy formulation related to the frauds. Apart from the above, the Board may also advise on any other technical matter referred to it by the CVC or RBI.

Standard Operating Procedure (SOP) for referring to ABBFF

ABBFF will examine the role of officials at all levels / WTDs in PSBs / PSFIs for malafide intent / criminality with regard to the provisions contained in the Prevention of Corruption Act, 1988 (as amended in 2018) even though PSBs / PSFIs may have internally assessed that no staff accountability exists in referred accounts.

Competent Authority for seeking advice from ABBFF in respect of all officers (Below WTDs) is PSBs / PSFI and in respect to Whole Time Directors (WTDs) is Department of Financial Services (DFS), Ministry of Finance, New Delhi.

Lenders would refer all fraud cases above ₹ 3 crore to ABBFF and on receipt of its recommendation or advice, the PSBs / PSFIs concerned would take further action in such matter as advised by ABBFF.

Model Timeline

The reference to ABBFF has to be made within 180 days from the date of declaration of fraud to RBI. The reference to ABBFF will be submitted in the prescribed format with the note put up to Internal Advisory Committee (IAC), views of IAC, CVO & DA, and Biodata of the officials. While filing FIR with CBI the PSBs / PSFIs will mention “unknown public officials”.

The Central Bureau of Investigation may also refer any case or matter to the board where it has any issue or difficulty or in technical matters with the PSBs / PSFIs concerned.

In matters which the CBI *suo moto* proposes to take cognizance by way of Preliminary Enquiry/Regular Case, the procedure u/s 17A of the PC Act, 1988 [as amended w.e.f. 26.07.2018, vide SO3664(E) dated 26.07.2018] would be followed by CBI and the concerned authorities in the PSBs / PSFIs and, therefore, such matters shall not be referred to the Board.

The Board will ordinarily, within a month of receipt of the initial reference, tender its advice to the PSBs / PSFIs / CBI in every matter. The Board would on its own decide on internal procedures for its functions / affairs.

The Board keeps the Commission / RBI informed about its performance / activities on a quarterly basis.
