

Report of the Auditor General on Head 299 – National Intellectual Property Office of Sri Lanka - Year 2016

The audit of the Appropriation Account, and the Reconciliation Statements including the financial records, books, registers and other records of the Head 299 – National Intellectual Property Office of Sri Lanka for the year ended 31 December 2016 was carried out in pursuance of provisions in Article 154 (1) of the Constitution of the Democratic Socialist Republic of Sri Lanka. The Management Audit Report for the year under review was issued to the Director General of National Intellectual Properties on 08 September 2017. The audit observations, comments and findings on the accounts and the reconciliation statements were based on a review of the Accounts and Reconciliation Statements presented to audit and tests of samples of transactions. The scope and extent of such review and tests were such as to enable as wide an audit coverage as possible within the limitations of staff, other resources and time available to me.

1.2 Responsibility of the Chief Accounting Officer and the Accounting Officer for the Accounts and Reconciliation Statements

The Chief Accounting Officer and the Accounting Officer are responsible for the maintenance, preparation and fair presentation of the Appropriation Account and the Reconciliation Statements in accordance with the provisions in Articles 148,149,150 and 152 of the Constitution of the Democratic Socialist Republic of Sri Lanka, other statutory provisions and Public Finance and Administrative Regulations. This responsibility includes: designing, implementing and maintaining internal control relevant to the preparation and fair presentation of Accounts and Reconciliation Statements that are free from material misstatements whether due to fraud or error.

2. Accounts

2.1 Appropriation Account

(a.) Total Provision and Expenditure

The net recurrent provision made for the Office totaled Rs. 28.75 million and out of that, a sum of Rs. 28.15 million had been utilized by the end of the year under review. Accordingly, the savings out of the total net provisions of the Office amounted to Rs. 0.60 million or 2.08 per cent.

(b.) Utilization of Provision Granted by Other Ministries and Departments

Provision amounting to Rs. 38.00 million had been granted by the Line Ministry on the project for the accession to the Madrid Protocol, the international trademark system. By the end of the year under review, Rs. 37.96 million had been utilized therefrom. Accordingly, a sum of Rs. 0.04 million had been saved from the provision made.

2.2 Advances to Public Officers Account

Limits Authorized by Parliament

The limits authorized by Parliament for the Advances to Public Officers Account Item No.29901 of the National Intellectual Property Office of Sri Lanka and the actual amounts are given below.

<u>Expenditure</u>		<u>Receipts</u>		<u>Debit Balance</u>	
Maximum Limit	Actual	Minimum Limit	Actual	Maximum Limit	Actual
Rs. Millions	Rs. Millions	Rs. Millions	Rs. Millions	Rs. Millions	Rs. Millions
3.00	2.73	1.20	2.03	10.00	7.33

2.3 Audit Observation

The Appropriation Account, and the Reconciliation Statements of the National Intellectual Property Office of Sri Lanka for the year ended 31 December 2016 had been satisfactorily prepared subject to the Audit Observations appearing in the Management Audit Report referred to in Paragraph 1.1 above. The material and significant Audit Observations, out of the Audit Observations included in the Management Audit Report, appear in Paragraph 3.

3. Material and Significant Audit Observations

3.1 Non-maintenance of Registers and Books

It was observed in audit test checks that the Office had not properly maintained the following registers.

<u>Type of Register</u>	<u>Relevant Regulation</u>
Attendance Register for the Procurement Committee and the Technical Evaluation Committees.	Guideline 2.11.2 of the Government Procurement Guidelines.
Reports of the Committee Meetings.	Guideline 2.11.3 (a) of the Government Procurement Guidelines.
Register for Calling for Bids.	Guideline 5.2.1 of the Government Procurement Guidelines.
Register for Opening Bids.	Guideline 6.3.6 of the Government Procurement Guidelines.

3.2 Appropriation Account

Utilization of Provision Granted by Other Ministries and Departments

According to a budget proposal for the year 2016, it had been planned to implement a project within a period of 2 years from 01 January 2016 to 31 December 2017 for the accession to the Madrid Protocol in view of registering the trademarks of the National Intellectual Property Office internationally, and a sum of Rs. 100 million had been allocated thereon. The following observations are made in this connection.

- (a.) Under the facilitation of physical requirements for the said project, the ground floor of the building belonging to the Chamber of Commerce had been obtained on rent until the completion of the project. The premises had been obtained for a period of 2 years from 15 May 2016 to 14 May 2018 at a monthly rental of Rs. 175,000. However, the said premises had not been made use of until 08 September 2017, but a sum of Rs. 2.43 million had been paid until May 2017 as rental.
- (b.) Although a sum of Rs. 3.88 million had been spent on purchasing office equipment and furniture required for this project, many of those items could not be made use of as the said premises had not been utilized for execution of the activities of the project.
- (c.) A Memorandum of Understanding had been entered into between the Information Communication Technology Agency and the National Intellectual Property Office on 30 December 2016 in respect of purchasing the server computer, and installation and maintenance of the system relating to the implementation of this project. Accordingly, a sum of Rs. 32.50 million had been paid for the process of purchasing, installation, and maintenance. Despite being agreed to complete the purchasing within a period of 6 months from the date the agreement had been signed, quotations had not even been called up to 28 June 2017 relating to the purchase.

3.3 Reconciliation Statement for the Advances to Public Officers Account

According to the reconciliation statement for the Advances to Public Officers Account bearing Item No. 29901 as at 31 December 2016, the balance that continued to exist for a period of 7 years amounted to Rs. 139,410 as at that date. The Office had taken legal action to recover that outstanding balance.

3.4 Accountability and Good Governance

3.4.1 Annual Action Plan

The Action Plan for the year 2016 had not been prepared in terms of Public Finance Circular, No. 01/2014, dated 17 February 2014, by including the organizational structure of the Office, cadre information, budget, Internal Audit Plan, and the Procurement Plan.

3.4.2 Internal Audit

An internal audit had not been carried out adequately on the activities of the Office in terms of Circular, No. DMA/2009(1) of the Management Audit Department, dated 09 June 2009.

3.5 Assets Management

Idle and Underutilized Assets

A motor vehicle costing Rs. 3,126,957 purchased in the year 2000 had remained idle from the commencement of the year under review up to 08 September 2017.

3.6 Non-compliances

Non-compliances with Laws, Rules, and Regulations

Instances of non-compliances with Laws, Rules, and provisions of the Regulations observed in audit test checks, are analyzed below.

Reference to Laws, Rules, Regulations, and Management Decisions	Non-compliance
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(a.) Intellectual Property Act, No. 36 of 2003	In terms of Section 175 (5) on the registration of agents, the registration can be renewed within a period of 06 months from the date of expiration of the validity period, upon payment of a surcharge imposed. In the event that renewal fee is not paid within a period of 02 weeks from the date of expiration of the period of registration, the agent should be removed from the register in terms of Section 10 (ii) of the Regulation 58. Due to this discrepancy, the name could not be removed in terms of Section 10 (ii) of Regulation 58.
(b.) Intellectual Property Regulations, No. 01 of 2006	In terms of Section 11 of Regulation 58, the Director General should act to publish the list of registered agents, or the removal of registered agents from the register. However, a list of removed agents had not been displayed on the website, and the list of registered agents displayed thereon, included agents whose period of validity had expired.
(c.) Public Administration Circular, No. 41/90, dated 10 October 1990.	Fuel consumption of the vehicles belonging to the Office had not been examined.

3.7 Irregular Transactions

Some of the transactions performed by the Office had been of irregular nature. Several of such instances observed are as follows.

Purchase of Computers, Accessories, and Furniture

Five laptops, 08 computers, and 06 printers had been purchased spending a sum of Rs. 1.90 million whilst Rs. 1.82 million had been spent on purchasing furniture for the Madrid Project. The following matters were observed in this connection.

- (i) The supplier had been informed that the said items be supplied before 28 December 2016, but they had been received during the period from 30 December 2016 to 27 March 2017.
- (ii) Except for the laptops, a member of the Technical Evaluation Committee verifying on 28 December 2016 that the rest of the items complied with the specifications, was controversial.
- (iii) Of the items purchased, 05 printers valued at Rs. 1.28 million, 04 laptops, 04 computers, and furniture valued at Rs. 1.65 million, had remained idle even by 20 June 2017 without being used.
- (iv) In terms of Guideline 5.4.10 of the Government Procurement Guidelines, a sum equivalent to 10 per cent of the contract price should be obtained as a performance bond. However, it had not been done so.
- (v) Agreements had not properly been entered into with the relevant institutions in terms of Guideline 8.9.1 (b) of the Government Procurement Guidelines.
- (vi) Due to failure in verifying as to whether the provision was adequate for the said purchase, the sum of Rs. 927,500 relating to 05 laptops, had to be paid from the provision for the year 2017.

3.8 Management Weaknesses

The following deficiencies were observed in audit test checks.

(a.) Registration and Administration of Agents

- (i) The Director General is authorized through the Gazette Extraordinary, dated 17 May 2006 to conduct an examination by the Office itself, or with the assistance of Sri Lanka Law College or the Sri Lanka Institute of Development Administration for the enrollment and registration of agents. However, even by the end of the year under review, no action had been taken to conduct the examination. Only an Attorney-at-Law of the Supreme Court had been appointed as an agent.

- (ii) As the renewal fee had been higher than the registration fee for an agent, a tendency had arisen among the registered agents to register anew instead of renewing the registration after 03 years. As such, attention of the Office is required on the revision of fees.
- (iii) No review had been made on the accuracy and completeness of the documents relating to the registration of trade and patent licenses, and technical plans being received by the Office through the agents. Hence, the officers of the Office had to rectify the errors and omissions in the documents received through them. This situation had adversely affected the efficiency of the office and the objective of registering the agents as well.

(b.) Obtaining a Revenue Code

One third of the revenue generated by the Intellectual Property Fund should be remitted to the Treasury, but a revenue code could not be obtained thereon even by the end of the year under review.

3.9 Human Resource Management

Approved Cadre and Actual Cadre

The position of cadre stood as follows as at 31 December 2016.

<u>Category of Employee</u>	<u>Approved No.</u>	<u>Actual No.</u>	<u>No. of Vacancies</u>
(i) Senior Level	12	06	06
(ii) Tertiary Level	05	05	-
(iii) Secondary Level	66	45	21
(iv) Primary Level	<u>15</u>	<u>14</u>	<u>01</u>
Total	<u>98</u>	<u>70</u>	<u>28</u>

The following observation is made in this connection.

Sixteen vacancies existed in the posts of technical officers of the intellectual property, intellectual property officers, and development officers who examine the applications received by the Office relating to trademarks, patents, and registration of technical plans. Such vacancies had adversely affected the performance of the Office.