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HANDBOOK

POLICY SUGGESTIONS FOR PROPOSED LEGISLATIVE AMENDMENTS



A lion's paw is a mark of certainty. The cub follows in his father's paw prints. Thus, is the law. If the law is to be amended, it should be for sustainable accuracy. The lion cub's right to explore new avenues cannot be taken away. Yet it is conditioned by the guidance of his forefathers' steps.



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FOR PROPOSED
LEGISLATIVE AMENDMENTS**

“Integrity for Sri Lanka”

**Commission to Investigate Allegations of Bribery of
Corruption**

Democratic Socialist Republic of Sri Lanka

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Introduction

The existing legal framework pertaining to combating bribery and corruption has proven to be inadequate in that the absence of any reform for the past 25 years which has rendered certain laws archaic. In addition, many fresh policy considerations such as fiscal policies and administrative developments have necessitated revisiting the applicable policy framework. Substantive as well as procedural laws thus need to be amended in keeping with the evolving circumstances and trends in the world as do the myriad policies which have a bearing on anti-corruption efforts.

The principal laws governing investigations and prosecutions in relation to bribery and corruption in Sri Lanka have not undergone comprehensive review in over two decades. Neither does the law provide for preventive measures, making it vitally important to reassess the present legal and policy framework.

Additionally, this is also imperative given Sri Lanka's international obligations under UNCAC, OGP, European Union trade concessions, and other regional and bi-lateral obligations calling for strong anti-corruption initiatives including reforming laws. While UNCAC provides basic guidance in strengthening these arms of the fight against corruption, inspiration has also been drawn from the challenges in implementation identified in the two UNCAC reviews of Sri Lanka, and experiences from comparative jurisdictions.

This handbook contains policy suggestions for proposed legislative amendments and outlines key concepts related to such

amendments. The content consists only of suggestions to enhance existing legislative instruments which allows for fresh proposals to be incorporated and further improvements to be made if necessary.

Chapter One contains the key concept and provisions of the Policy on The Proposed Legislative Framework for the Declaration of Assets and Liabilities Law No. 01 Of 1975. The Declaration of Assets and Liabilities Law is important both as an investigative tool and as a preventive tool. Illicit Accumulation of wealth is an offence in itself. The declaration of assets assists in identifying unexplained additions of wealth and therefore is a valuable investigative tool. At the same time, the necessity to declare all assets of a person morally compels the person to refrain from amassing wealth through dishonest means, which therefore acts as an effective preventive tool. Therefore, the law should keep abreast of new global developments both in theory and in practice.

To further strengthen enforcement efforts, the Commission to Investigate Allegations of Bribery and Corruption Act (CIABOC Act) and related criminal legislation will also be amended to include measures such as: broadening CIABOC's mandate to include prevention activities, authorize CIABOC to investigate money laundering related to bribery and corruption, and restructuring powers and procedural laws to streamline the presentation of facts of a case. Chapter Two provides the Discussion and Draft Policy on the Proposed Legislative Framework for The Amendment to the Commission to Investigate Allegations of Bribery and Corruption Act.

Chapter Three contains the Draft Policy on the Proposed Legislative Framework for the Amendment to the Bribery Act, which contemplates amendments to the substantive penal laws. As such, amendments to the Bribery Act No. 11 of 1954 in line with contemporary realities are considered, such as: penalizing bribery of foreign public officials, private sector bribery, conflicts of interest, and offences relating to sporting events.

Chapter Four details the Discussion and Draft Policy on

The Proposed Legislative Framework for the Regulation of Election Expenditure Act. The proposed legislative framework was spearheaded by the Election Commission of Sri Lanka in an attempt to regulate campaign finances in order to attenuate the role of money in politics and promote more egalitarian policy outcomes.

Chapter Five contains the key concept and provisions of the Policy on the Proposed Legislative Framework for the Proceeds of Crime Act in Sri Lanka. The fundamental objective of this legislation is to deprive criminals of their unlawfully acquired assets, which is expected to deter offending in the first place, but also to remove such assets from the pool available for further offending by them or others. The policy was conceptualized and finalized by the Special Presidential Task Force on Recovery of State Assets.

The final Chapter contains a brief discussion on a potential policy framework for Whistleblower Legislation. This chapter defines key considerations and principles in relation to possible legislation for the protection of whistleblowers. Inspiration has been sought from comparative jurisdictions as well as international norms and standards.

It is also noted that responsible authorities have revisited existing laws governing the above delineated subjects and proposed fresh legislation through a stringent, multi-stakeholder participatory process to ensure a comprehensive legal and policy regime geared towards fighting corruption effectively. The process will also contemplate if parliamentary oversight committees will be required to play an enhanced role in monitoring and overseeing anti-corruption efforts.

Chapter 1

POLICY ON THE PROPOSED LEGISLATIVE FRAMEWORK FOR THE DECLARATION OF ASSETS AND LIABILITIES LAW NO. 01 OF 1975

Background

The Declaration of Assets and Liabilities Law provides an effective tool to fight bribery and corruption, which therefore should keep abreast of new developments both in the law and in practice. However, Sri Lankan law on this subject has not been updated since 1988. Bearing this in mind, the Commission to Investigate Allegations of Bribery or Corruption (CIABOC) sought the approval of the cabinet of ministers to amend the CIABOC Act and the Acts incidental thereto (the Declaration of Assets and Liabilities Law being one such Act) which approval was granted on 7th November 2017. Subsequently, drawing inspiration from knowledge sharing opportunities with countries such as Bhutan, Malaysia and Hong Kong on international best practices and experiences in relation to the declaration of assets and liabilities and stakeholder discussions pertaining to the possible amendments to the above law with local stakeholders as well as experts from the Stolen Assets Recovery Initiative (StAR), World Bank, Slovenia, and Indonesia, strategic legislative amendments necessary to effectively enforce the system of declaration of assets and liabilities were identified.

Purpose and objectives of the proposed legislative framework

- To strengthen integrity of governance and increase accountability;
- to enhance public confidence in government and strengthen public participation;
- To prevent illicit enrichment and conflicts of interest from arising in the discharge of public functions/official activities through enhanced public scrutiny;
- To enhance transparency in governance;
- To strengthen existing sanctions and provide for further proportionate and dissuasive sanctions for the effective enforcement of the law;
- To promote inter-agency cooperation in addressing bribery and corruption in governance;
- To give effect to the obligations under UNCAC.

Scope of the proposed legislative framework

Eight (08) substantive issues in relation to the Declaration of Assets and Liabilities Law are proposed to be addressed in the amendments. Those are;

Issue 1: WHO should declare assets and liabilities?

Issue 2: WHAT assets and liabilities should be declared?

Issue 3: WHEN should declarations be made?

Issue 4: Submission Process

Issue 5: Content of the e-declaration form

Issue 6: Verification Process

Issue 7: Public Access

Issue 8: Sanctions

Proposed legislative framework

The following amendments to the Declaration of Assets and Liabilities Law are proposed in light of the above;

1. Long title to the Law:

It is proposed to amend the long title to the Law to reflect the contemporary rationale of the law including reference to international obligations.

2. Preamble:

It is proposed to introduce a preamble or a “purpose/objectives clause” reflecting the importance and relevance of the law. The purpose clause is proposed to include the following purposes:- To strengthen integrity of governance and increase accountability; to enhance public confidence in government and strengthen public participation; to prevent illicit enrichment and conflicts of interest from arising in the discharge of public functions/ official activities through public scrutiny; to enhance transparency in governance; to promote inter-agency cooperation in addressing bribery and corruption in governance and to give effect to international obligations incurred under the UNCAC.

3. Proposed amendments in relation to Issue 1: WHO should declare assets and liabilities?

Currently, only staff officers are required to declare their assets and liabilities. It is proposed to include the following additions;

- A. Expand the categories of persons required to submit declarations to include -
 - a. The President
 - b. Members of Provincial Councils
 - c. Members of Local Government Authorities

- d. Private staff members of elected representatives (MPs, members of Provincial Councils, Local Authorities)
 - e. Diplomats
 - f. Staff of state banks in managerial and/or supervisory roles
 - g. High risk categories including lower-level staff officers (the exact categories as identified through risk analyses from time to time to be designated by way of regulations)
 - h. Members of the independent commissions provided for in the 19th Amendment.
- B. Further, it is proposed for the law to require the declarant to declare the assets and liabilities of;
- i. Him/herself;
 - ii. Spouse;
 - iii. Dependent children irrespective of age;
 - iv. Other persons who live together or are bound by common everyday life or have mutual rights and obligations, including persons living together but are not married (other than persons whose mutual rights and obligations are not of a family nature – e.g. flatmates).
4. Proposed amendments in relation to Issue 2: WHAT assets and liabilities should be declared?
- A. The following broad categories of assets and liabilities are proposed to be included in the law as requiring disclosure;
- a. Fixed assets
 - b. Monetary assets
 - c. Valuable movable property
 - d. Securities
 - e. Corporate rights

- f. Beneficial ownership of companies
 - g. Intangible assets
 - h. Income
 - i. Financial obligations
 - j. Expenditures and transactions of the declarant
 - k. Concurrent work
 - l. Membership in organizations and their governing bodies
 - m. Other information including information disclosing general conflicts of interest which may from time to time be required through regulations
- B. CIABOC will have the power to make regulations under the Declaration of Assets and Liabilities Law.
 - C. It is proposed to draft and validate gift rules (rules pertaining to the acceptance of gifts by declarants) as a supplement to the principal law.
5. Proposed amendments in relation to Issue 3: WHEN should declarations be made?

The proposed system envisages a multi-phase declaration process.

- A. It is proposed to provide for asset declarations;
 - a. At the point of first appointment;
 - b. Annually (as per the current practice);
 - c. At the end of tenure/at retirement;
 - d. Post-retirement (for 2 years after retirement);
 - e. Ad-hoc declarations in the event of significant changes in assets;
 - f. For candidates at elections to be submitted together with the nomination.

The proposed law will include provision for the anti-corruption agency or officers designated in other institutions (integrity officers) to provide advisory services to declarants in relation to asset declarations. This service will be a voluntary service to make the process easier for declarants and the advice will be provided in writing. However, it will be mandatory for declarants to submit declarations irrespective of whether the advisory service has responded to the queries.

6. Proposed amendments in relation to Issue 4: Submission Process and Issue 5: Content of the e-declaration form

The current system envisages the manual submission of declarations to different supervisors based on the category of declarants. The proposed system will be based on a centralized electronic submission system.

- A. The electronic system for the submission and verification of asset declarations will be centralized and administered by the central authority responsible for the management of asset declarations (the Central Authority will form part of CIABOC and will be setup and empowered under the CIABOC Act)
- B. A transitional clause is required to be included for the manual submission of declarations in the interim period between the operationalization of the law and the e-submission system coming into effect.
- C. As heads of departments are to be responsible/focal persons for overall anti-corruption efforts of the respective agencies, it is further proposed to make provision in the law to assign responsibility to the heads of departments to ensure their supervisees comply with the law.

7. Proposed amendments in relation to Issue 6: Verification Process

While the current system does not provide for a process of verification of submitted declarations, the proposed system will include a verification process.

- A. The proposed system is to provide for verification in the following instances;
 - a. Routine verification of declarations for timeliness in submissions, accuracy, and completeness by the automated system
 - b. Verification upon Red-flags of illicit enrichment detected by the automated system
 - c. Reactive verification upon complaints from internal or external agencies/persons
 - d. Verification upon journalistic investigations

- B. This proposal will require providing for the power for verifiers to access records of other investigative units and databases for verification purposes. This will include records/databases of the Department of Inland Revenue, Department of Motor Traffic, Customs, Registrar General of Lands etc.

8. Proposed amendments in relation to Issue 7: Public Access

The following is proposed to be included in the law to enhance meaningful public access;

- A. To allow public access to a redacted version of the declaration in which only personally sensitive information is withheld for the purpose of protecting the privacy and safety of declarants. The electronic system will automatically generate redacted declarations.

- B. With reference to access to declarations of candidates during elections; During the period between the introduction of the law and the operationalization of the e-system, the candidates will be required to submit a paper-based full disclosure as required by law. A summary of the declaration for purposes of public access will also have to be provided in written form. It will be the responsibility of the Election Commission to collect paper based declarations during the transitional period.
 - C. Provision for the asset declaration law to supersede all secrecy clauses in other laws which would prevent access.
 - D. Public access to information will be governed by the RTI Act, subject to appropriate modifications i.e. the redacted version of declarations.
 - E. Clear provisions on which authorities or agencies could request for full access should be stipulated. These will include the Attorney General, the IGP, designated officers of special police units, Director General of Customs, Commissioner General of Income Tax, FIU.
 - F. The proposed law should provide that any request for information by foreign jurisdictions should be channeled through the Mutual Legal Assistance (MLA) Act. It will also provide for other reciprocal law enforcement arrangements in the international sphere.
9. Proposed amendments in relation to Issue 8: Sanctions

Taking cognizance of the need to always encourage submission of declarations, it is proposed that the sanctions imposed however should be proportionate and sufficiently dissuasive. The following sanctions are proposed to be imposed for the corresponding offences;

a. Late submissions

Fines will be imposed for the late submission of;

- Annual declarations and post-retirement declarations
- First appointment declarations, ad-hoc declarations, and end of tenure (or retirement) declarations
- Candidates at elections (the Election Commission will determine appropriate sanctions in accordance with election laws)

b. Non- submission

Higher fines and prosecution for the non-submission of;

- Annual declarations and post-retirement declarations
- For first appointment declarations, ad-hoc declarations, and end of tenure (or retirement) declarations
- For candidates at elections (The Election Commission will determine appropriate sanctions in accordance with election laws)

c. False information/omission

To provide for imprisonment and higher fines.

d. Non-compliance for Heads of Departments with requirements of reporting (HoDs)

Administrative or disciplinary sanctions to be imposed on Heads of Departments, such as, warnings or appropriate disciplinary measures in the event of repeated violations.

Chapter 2

DISCUSSION AND DRAFT POLICY ON THE PROPOSED LEGISLATIVE FRAMEWORK FOR AMENDMENTS TO THE COMMISSION TO INVESTIGATE ALLEGATIONS OF BRIBERY OR CORRUPTION ACT (CIABOC ACT)

Background

The responsibility to “preserve and protect public property, and to combat misuse and waste of public property” has found a home in the Constitution of Sri Lanka, further strengthened by the Nineteenth amendment to the Constitution, which provides for the establishment of an independent Commission to Investigate Allegations of Bribery or Corruption (CIABOC) and empowers it to implement Sri Lanka’s international obligations in the fight against corruption. The United Nations Convention Against Corruption (UNCAC) recognizes the need for states to have specialized anti-corruption bodies and requires member states to ensure the existence of specific bodies mandated to focus on prevention, coordination and education in relation to anti-corruption activities (Article 6) and to investigate and prosecute corruption (Article 36). As a member of the Open Government Partnership, Sri Lanka has pledged to implement a corruption prevention programme. In a similar vein, GSP+ concessions too require the country to further strengthen its anti-corruption regime to effectively respond to corruption within the country.

Against this backdrop, the Commission to Investigate Allegations of Bribery or Corruption (CIABOC) was granted approval of the Cabinet of Ministers to amend the CIABOC Act and the Acts incidental thereto on 07 November 2017. Pursuant to such approval, a strategic legislative framework to establish an effective anti-corruption Commission is delineated below.

Principles guiding the proposed legislative framework

The proposals are strongly guided by the Jakarta Statement on Principles for Anti-Corruption Agencies (the Jakarta Principles) which set out 16 principles providing detailed guidance on the UNCAC concept of “necessary independence” essential for effective anti-corruption agencies. The Jakarta Statement was subsequently endorsed by the International Association of Anti-Corruption Authorities at its 2013 meeting in Panama and was also noted by the Conference of States Parties (COSP) to the UNCAC in Resolution 5/4 in 2013 and Resolution 7/5 in 2017. The principles espoused in the Jakarta Statement require the law to provide for;

- The anti-corruption agency to be vested with clear mandates;
- Good Collaboration with domestic and international agencies involved in anti-corruption efforts;
- Permanent anti-corruption agencies;
- The appointment of Heads through a process that ensures their apolitical stance, impartiality, neutrality, integrity and competence;
- The continuity of the anti-corruption agency;
- Security of tenure of heads and removal only through a legally established procedure;
- Highest standards of ethical conduct and a strong compliance regime;
- Immunity from civil and criminal proceedings for heads and staff of the anti-corruption agencies for acts committed within the performance of their mandate;
- Adequate remuneration for the Commissioners and staff;
- Authority of the anti-corruption agency over human resources and, adequate and reliable resources;

- Financial Independence;
- Internal and external accountability;
- Publicizing the activities and performance of anti-corruption agencies and continuously engaging with the public including providing a platform for public complaints.

Further, inspiration has been drawn from comparative jurisdictions, such as Hong Kong, Singapore, Malaysia, and Indonesia, jurisdiction hosting some of the most effective anti-corruption agencies globally.

Purpose and objectives of the proposed legislative framework

- To establish an independent Commission, protected from undue influence, with adequate powers, training, and resources to undertake its' responsibilities;
- To strengthen integrity of governance and increase accountability;
- To enhance public confidence in government and strengthen public participation;
- to promote inter-agency cooperation and international collaboration in addressing bribery and corruption;
- To strengthen existing sanctions and provide for further proportionate and dissuasive sanctions for the effective enforcement of the law;
- To give effect to obligations under UNCAC, other international agreements, and accepted international norms, standards, and best practices.

Scope of the proposed legislative framework

This legislative framework addresses the following aspects;

- Establishment of the Commission and the composition, appointment, and tenure of the Commissioners
- Appointment and tenure of the Director General and staff of the Commission
- Operational and financial independence, and authority over human resources
- Functions and powers of the Commission
- Protection of informers, whistleblowers, witnesses, and other persons assisting the Commission
- Establishment of the Directorate of Assets Declaration
- Offences in relation to the functioning of the Commission
- Miscellaneous provisions
- transitional provisions

Proposed legislative framework

The following provisions are proposed to be included in the new legislation in light of the above;

1. Long title to the Law:

It is proposed to amend the long title to the existing Act to reflect the contemporary rationale of the legislation including reference to international obligations. The long title will reflect the expanded mandate of the Commission which includes education and prevention of corruption in addition to the existing mandates of investigation and prosecution. The scope of application of the Act will extend to offences under the Prevention of Money Laundering Act No. 05 of 2006 and the Penal Code in certain instances.

2. Purpose/objectives clause:

It is proposed to introduce a preamble or a “purpose/objectives clause” reflecting the importance and relevance of the law. The purpose clause is proposed to include the objectives and purposes listed above.

3. Short title:

The short title is proposed to be amended to include the words “the Anti-corruption Act” in place of “Commission to Investigate Allegations of Bribery or Corruption Act” as the previous name connotes that the mandate of the Commission is confined to investigations and prosecutions. The change is to reflect the expanded mandate of the Commission.

4. Establishment of the Commission and the composition, appointment, and tenure of the Commissioners

The Commission will be the institutional framework comprising the 3 Commissioners together with the Director General and other staff. The Commission shall be answerable to parliament. Qualifications and disqualifications for appointment as Commissioners are proposed to be included, in addition to the existing provisions on appointment of Commissioners. Further, an age of retirement is proposed to be introduced for the Commissioners.

The salaries of the Commissioners shall be on par with that of Supreme Court judges. They will hold office for 3 years. The provisions on removal will remain intact.

5. Operational and financial independence, and authority over human resources

Provisions on operational independence and financial autonomy are proposed to be included to ensure the independence of the Commission is preserved in order to discharge its’ functions efficiently and effectively. The new provision is proposed to provide operational independence to the Commission in the sense of acting independently, impartially, fairly and in the public interest while not

being subject the control or direction of any person or authority except in terms of this Act and the Constitution.

As for financial independence, it is proposed to require the Parliament to allocate funds to the Commission based on an estimate directly submitted to Parliament by the Commission. The Commission shall have a fund into which Parliamentary allocations, donations, grants, bequests, and 20% of the funds from penalties imposed by court are credited. If the budgetary allocations are not approved on time, the Parliament will be required to approve emergency funds which will not be less than the total sum allocated in the previous year. In addition, the Parliament will provide funds for complex investigations as and when needed.

The Commission will also have authority over the human resources of the Commission. The power of appointment, promotion, transfer, disciplinary control and dismissal of the officers and other employees recruited by the Commission will be with the Commission. This is to ensure the Commission has the ability to recruit competent officers with expertise on the basis of institutional requirements thus being able to respond effectively to bribery and corruption. At present, the Commission grapples with its inability to attract qualified prosecutors and investigators as much as it requires due to the non-competitive remuneration packages available.

6. Director General and staff of the Commission

As a specific role has been contemplated for the Commissioners, the Director General (DG) is proposed to be the CEO and the CFO of the Commission, and will be heading the Institutional framework and responsible for a wide variety of activities, including corruption prevention, human resources, investigations, instituting prosecutions, international cooperation, domestic inter-agency cooperation etc. Criteria for appointment and grounds for removal of the Director General are proposed to be provided for in this section. The DG will thus be appointed by the Constitutional

Council. Removal will be through a Constitutional process in the same manner as the Commissioners. The qualifications and disqualifications for appointment of the DG are also proposed to be included in the Act.

The power of appointment, promotion, transfer, disciplinary control and dismissal of the officers and other servants recruited by the Commission is proposed to be vested with the Commission. It is proposed that the Commission could also request for secondments from other public entities including public corporations and the local government service. In addition, the Commission is proposed to have the power to hire consultants, experts, interns, apprentices, and volunteers as well as staff on fixed-term contracts. Remuneration of all staff, including consultants, will be decided by the Commission.

It is proposed to retain Section 17 of the current CIABOC Act, which is the secrecy clause, however subject to the proviso that it shall not be a violation of the provision to share information with certain persons and entities prescribed by the Commission.

It is further proposed to retain Section 19 of the existing CIABOC Act which provides protection from action to the employees of the Commission for acts committed in good faith in the course of employment.

7. Protection of informers, whistleblowers, witnesses, and other persons assisting the Commission

Provisions are proposed to be introduced, having especial regard to the recommendation following the 1st review cycle of UNCAC to consider adopting additional measures within the domestic legal system to ensure that persons reporting information concerning corrupt practices are protected against unjustified treatment (as required by Article 33 of UNCAC). These provisions are also proposed for the better manifestation of protections afforded under the Assistance to and protection of victims of crime and witnesses Act, No. 4 of 2015. Under that Act a person is protected if he makes a complaint to a law

enforcement agency. But, it does not provide for instances of whistle-blowers (employees of organizations reporting about corruption within the organization) reporting to their own supervisors. Therefore, it is proposed for the new Act to include provisions for the protection of;

- a. Identity of Informers
- b. Whistle-blowers
- c. Witnesses and any other person assisting the Commission

In addition, the Commission shall have the power to take any measures to ensure the physical safety of any person assisting the Commission such as requiring the police to provide physical protection to the person.

8. Establishment of the Directorate of Assets Declaration

CIABOC will act as the Central Authority for the management of Declarations of Assets and Liabilities. Therefore, the legislative mandate of CIABOC is expanded to accommodate the collection and verification of Declaration of Assets and Liabilities through a separate unit established for such purpose. This unit will be referred to as the “Directorate of Assets Declaration”. It will be independent with adequate powers to discharge its’ mandate. The procedure will be provided for in the proposed regulations issued under the law.

9. Functions and powers of the Commission

Functions of the Commission are expanded to reflect the new mandate of the Commission. New functions (apart from investigations and prosecutions) include prevention and anti-corruption education related functions such as, educating the public, advising and assisting government departments on compliance, reviewing legislation, collecting and verifying declarations of assets, entering into cooperation agreements with international and domestic law enforcement and other agencies for effective investigations.

Specific powers on investigations, prosecution, education, prevention, and international cooperation have been included.

The list of powers in relation to the Commission is (certain powers are elaborated on, for clarity);

1. Power to investigate complaints;
2. Powers of search and seizure;
3. Powers of arrest and powers in relation to the procedure after arrest-
4. Power to take fingerprints, photographs, and non-intimate samples for DNA testing (hair, iris scans etc.);
5. Power to examine persons and obtain information;
6. Power to obtain the assistance of experts;
7. Power to obtain assistance of Magistrates;
8. Power to obtain restraining orders against property being disposed of, to impound passports, freeze bank accounts, and to impose prohibitions on dealing with property situated outside Sri Lanka;
9. Special powers of investigations;
10. Power to intercept communications;
11. Delegation of investigations;
12. Power to initiate and be part of joint investigations, and to share information;
13. Powers of prosecutions and the power to appeal;
14. Power to request assistance from the Attorney General;
15. Power to enter deferred prosecution agreements;
16. Power to confiscate property and forfeit property;
17. Powers of international cooperation;
18. Powers of prevention and education.

10. Offences in relation to the functioning of the Commission

All offences under the section are proposed to be cognizable offences. The offence of contempt was retained. The other offences proposed are;

- Making false complaints and statements
- Contravening secrecy/confidentiality
- Resisting or obstructing officers
- Obstruction of search
- Giving false evidence in court
- Falsely pretending to be an officer
- Obstructing justice
- Interference with witnesses
- Abetment of offences
- Attempts
- Conspiracy to commit an offence

These will attract imprisonment, fines, or both.

11. Miscellaneous Provisions

Miscellaneous provisions include obligations to submit financial reports and performance reports to Parliament, provisions on jurisdiction and extradition, regulations making powers (shall vest with the Commission), sentencing guidelines , etc.

12. Transitional Provisions

It is proposed for transitional provisions to include a clause stipulating that the investigations, inquiries, and prosecutions commenced under the existing Act will continue notwithstanding the repealing of the Act.

A further transitional provision is proposed to provide for the continuance of the current Commission until its term ends before a new Commission is appointed under the proposed Act.

Chapter 3

DISCUSSION AND DRAFT POLICY ON THE PROPOSED LEGISLATIVE FRAMEWORK FOR AMENDMENTS TO THE BRIBERY ACT

Background

In most countries including Sri Lanka, the prevalence of bribery and corruption hinder social development. It interrupts good governance and distorts democratic values, destroys the rule of law and social cohabitation, breaches human rights, creates disparity in resource distribution, and tarnishes the image of the country in the international arena. Laws relating to combating bribery were first introduced to the Sri Lankan legislative framework in 1883 as sanctions under the Penal Code. The Bribery Act was introduced in 1954 and last amended in the year 1994. In 1975 the Declaration of Assets and liabilities Law was introduced to further strengthen the law pertaining to bribery and amended in 1988. However, since 1988, these laws have not been reviewed or updated.

Sri Lanka signed the United Nations Convention against Corruption (UNCAC) on 15th March 2004 and ratified it on 31st March 2004. Accordingly, Sri Lanka is bound under Article 5 subsection 3 of the United Nations Convention against Corruption to “periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption”. While recognizing the need for states to have specialized anti-corruption bodies mandated to focus on prevention, and education in relation to anti-corruption activities and to investigate and prosecute corruption, UNCAC further requires the criminalization of certain conduct such as private sector bribery, conflicts of interest, bribery of foreign

public officials in order to ensure an effective anti-corruption regime geared towards eradicating all forms of corruption. As a member of the Open Government Partnership (OGP), Sri Lanka has pledged to implement a corruption prevention programme. In a similar vein, GSP+ concessions too require the country to further strengthen its anti-corruption regime to effectively respond to corruption within the country.

Against this background, the Commission to Investigate Allegations of Bribery or Corruption (CIABOC) was granted approval of the Cabinet of Ministers to amend the Bribery Act on 07 November 2017. Pursuant to such approval, and in response to the dire need of the hour, the first long-awaited amendment to the Bribery Act was introduced in 2018, which allows initiating prosecutions in the High Court for the offence of Corruption under the bribery Act, a power that remained with the Magistrate until this amendment. It further supplements the amendment to the Judicature Act establishing permanent High Courts at Bar, by facilitating the initiation of Trial-at-Bar proceedings for serious corruption cases, under certain circumstances.

In addition to the above amendment, further comprehensive amendments to the Bribery Act are envisioned. Accordingly, the comprehensive strategic legislative framework necessary to strengthen and increase the efficacy of the Bribery Act is delineated below.

Objectives and purposes of the proposed legislative framework

- To enhance transparency in governance and to encourage the government to conduct itself in such a manner as to win public confidence;
- To strengthen integrity of governance and increase accountability;
- To introduce new offences in relation to Bribery and corruption, and declaration of assets and liabilities;

- To strengthen existing sanctions and provide for further proportionate and dissuasive sanctions for the effective enforcement of the law;
- To give effect to obligations incurred under UNCAC, other international agreements, and accepted international norms, standards, and best practices.

Scope and content of the proposed legislative framework

The proposed legislative framework, while retaining the existing offences of bribery, corruption, and other related offences, will introduce a set of new offences to expand the scope of the Act.

The following provisions are proposed to be included in the new legislation in light of the above;

10. Long title to the Law:

It is proposed to amend the long title to the existing Act to reflect the contemporary rationale of the legislation including reference to international obligations.

11. Purpose/Objectives clause:

It is proposed to introduce a preamble or a “purpose/objectives clause” reflecting the importance and relevance of the law. The purpose clause is proposed to include the objectives and purposes listed above.

12. Substantive offences:

In addition to existing substantive offences, certain new offences are proposed to be introduced to respond to contemporary realities and to give effect to international obligations which require Sri Lanka to criminalize certain conduct within its’ anti-corruption regime.

The following substantive offences are proposed to be included;

- Bribery Offences- retained from the existing Act
- Accumulation of wealth by bribery- retained from the existing Act

- Sexual Bribery
- Bribery of foreign public officials
- Bribery in the private sector
- Failure to declare Conflicts of interest- applies only to public sector employees
- Offences relating to sporting events
- Money Laundering- in so far as it is in relation to a predicate offence stipulated in this Act
- Corruption- retained from the existing Act

Following is a synopsis of the content of the offences proposed to be included in the Bribery Act;

(a). Sexual Bribery

‘Sexual bribery’ is proposed to be defined as a form of ‘gratification’.

Sexual bribery is defined as sexual favours solicited and received by persons in power or authority, in the exercise of that power or authority. Such favours are solicited as a condition for giving employment, a promotion, a right, a privilege or any other service, favour or advantage. A “sexual favour” could be sexual intercourse, or any act that would not amount to sexual intercourse, but will amount to or constitute physical, verbal, or non-verbal conduct of a sexual nature.

(b). Bribery of foreign public officials and officials of public international organizations

The intentional promise, offering or giving to a foreign public official or an official of a public international organization, either directly or indirectly, an undue gratification, to ensure that the official act or refrain from acting in the exercise of his/her official

duties is considered ‘bribery of foreign officials’. Such bribe is offered in order to obtain or retain business or other advantage in relation to the conduct of international business. The bribe could be given to the foreign official him/herself or to any person associated with him.

Subject to jurisdictional considerations, solicitation and acceptance of such bribes could also be criminalized.

(c). Bribery in the private sector

Incidences of bribery which occur wholly within the private sector is classified as ‘private sector bribery’. These transactions transpire often with no involvement of the government or public sector, and are committed intentionally in the course of economic, financial or commercial activities.

The active criminal conduct comprise the promise, offer, or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person him/herself or for another person, in order that he/she, in breach of his/her duties, act or refrain from acting. Soliciting and accepting an undue advantage in order to act or refrain from acting too will amount to criminal conduct.

The overarching requirement is that both passive and active bribery in the private sector should occur in the course of economic, financial, or commercial activities. This offence is proposed to carry penal sanctions for the private sector entities in which the offender/s is/are employed. However, it will be a defence for the private sector entity to prove that the private sector entity had in place adequate procedures designed to prevent persons associated with private sector entity from undertaking such conduct.

(d). Failure to declare Conflicts of interest

Conflicts of interest occur when a public official’s personal interests are in competition with his official and/or public duties. If the public official is involved in the decision making process or is casting a vote where his vote is required for the final determination,

he must ensure that neither he nor a relative nor an associate of his has a personal interest in the decision which the public body is to take. The public official would be in breach of his obligations if he involves himself in the decision making or voting process despite the existence of a personal interest. In this regard, it is not necessary to prove that the public official influenced the decision.

Additionally, where a public authority in which a public official is employed proposes to deal with a company, partnership or other undertaking in which that public official or a relative or associate of his has a direct or indirect interest, that public official is proposed to forthwith disclose to that public body the nature of such interest.

(e). Offences relating to sporting events

Provisions are introduced to criminalize certain conduct which occurs in the sphere of competitive sports. The objective in this regard is to preserve the integrity of sport, upholding values of sportsmanship.

Any person who, directly or indirectly, engages in active or passive bribery in return for engaging in any act which constitutes a threat to or undermines the integrity of any sporting event, or fails to report the occurrence of such conduct is proposed to be held accountable.

In this regard, penalized conduct includes but is not limited to match-fixing, pitch-fixing, influencing the outcome of gambling etc.

(f). Money Laundering

It is proposed to include the offence of money laundering (the conversion or transfer of property which is the proceeds of crime, to conceal or disguise the illicit origin of the property) in relation to money or property accumulated through bribery.

13. Sanctions

It is proposed to strengthen existing sanctions and include further proportionate and dissuasive sanctions for the effective enforcement of the law. Sanctions will include terms of imprisonment as well as proportionate fines. In addition, concepts such as Deferred Prosecution Agreements (DPAs), withdrawal of indictments, conditional pardoning, are proposed to be introduced.

Chapter 4

DRAFT POLICY ON THE PROPOSED LEGISLATIVE FRAMEWORK FOR THE REGULATION OF ELECTIONS EXPENDITURE

Background

For generations, campaign finance activists have voiced an array of concerns about the effect of money on elections and governance. Laws that regulate campaign financing are one attempt to attenuate the role of money in politics and promote more egalitarian policy outcomes. The basic questions with regards to campaign finances are; how much is the general public aware about campaign financing, how concerned is the public about its role in the political system and what—if anything—can be done about it. Unregulated campaign finances can result in corrupt activities and practices that hinder the concepts of transparent and accountable good governance.

The first constitution of independent Sri Lanka had laws and provisions to regulate campaign finances, which were conspicuously absent from the second constitution of 1978. Therefore, inadequate provisions to control campaign finances and the lacuna in the law have resulted in an increased rate of corruption necessitating an effective regulatory mechanism for campaign financing. The proposed Regulation of Election Expenditure Act seeks to regulate campaign financing, as detailed below.

Principles guiding the proposed legislative framework

Sri Lanka is bound under Article 05 (03) of UNCAC to “periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption”. Article 156 A (1) b of the 19th Amendment to the Constitution, adopted on 15th May 2015, empowers the implementation of UNCAC and other international conventions to prevent corruption. Further to this, the OGP, of which Sri Lanka is a member, obligates the government to ensure transparency and accountability in government. The necessity for the proposed legislation stems from the requirement to specify with clarity, the types of expenditure that are allowed and which are dis-allowed in the context of elections, while also laying down clear instructions regarding detailed and comprehensive election expenditure monitoring.

Purpose and objectives of the proposed legislative framework

- To establish clear and accountable systems to monitor and restrict expenditure during election campaigns;
- To prohibit the acceptance of certain types of funding which may jeopardize the integrity of elections;
- To strengthen existing sanctions and provide for further proportionate and dissuasive sanctions for the effective enforcement of the law in relation to campaign expenditure;
- To strengthen the integrity of governance and increase accountability;
- To give effect to the obligations under UNCAC and other international agreements.

Scope of the proposed legislative framework

The proposed legislative framework addresses the following aspects of the campaign expenditure law;

- The scope of application of the proposed legislation
- Regulations on election expenditure of recognized political parties and independent groups, and candidates
- Prohibition on the acceptance of certain donations
- Requirements of accounting and auditing of expenditure
- Sanctions for violations

Proposed legislative framework

The following provisions are proposed to be included in the proposed legislation in light of the above;

1. The scope of application of the proposed legislation

It is proposed to extend the application of the legislation to every election conducted under; the Presidential Elections Act, No 15 of 1981; the Parliamentary Elections Act, No 1 of 1981; the Provincial Councils Elections Act, No 2 of 1988, and the Local Authorities Elections Ordinance.

2. Regulations on election expenditure of recognized political parties and independent groups, and candidates

Political parties and candidates require money to publicize their electoral platforms and to pursue effective campaigns. Campaign expenditure has grown in many countries since the turn of the 21st century. The rising cost of elections is particularly evident in Sri Lankan political campaigns as well. Campaign finance raises fundamental ethical

questions for democratic regimes. Most often, debates about campaign finance revolve around the protection of freedom of expression and the prevention of corruption. It is generally agreed that regulations and limits can justifiably be placed on campaign finance in order to prevent corruption.

By regulating campaign fund-raising and spending, governments seek to avoid a situation whereby politicians use the power associated with their office to reward large contributors. Even in the absence of any actual quid pro quo, large contributions can arguably contradict the democratic principle of “one person, one vote,” since contributors gain a privileged channel to express their interests and opinions. In addition to preventing outright corruption, campaign finance regulation thus seeks to limit undue influence of money in politics.

Therefore, the proposed provisions in relation to limiting campaign expenditure have sought guidance from international standards in order to prevent misuse and corruption of public funds.

3. Prohibition on the acceptance of certain donations

The key issue with political donations is whether large donations secure greater access to politicians than ordinary people would have to the same politicians. Another issue is whether large donations sway politicians to bestow illegitimate favours or adopt policies that directly benefit donors.

It is proposed to include express provisions to prohibit a recognized political party, independent group or a candidate at an election to which the proposed legislation applies from accepting a donation or contribution from; a government department, a public corporation or a company registered or deemed to be registered under the Companies Act in which the government or a public corporation owns any shares; a foreign government, an international organization or a body corporate incorporated or registered outside Sri Lanka, and any donor or contributor whose identity is not disclosed.

In a situation where a recognized political party, an independent group or a candidate at an election to which the proposed legislation applies, receives or accepts a prohibited donation, a) the chairman, secretary and other office-bearers of that party; (b) every member of that independent group c) such candidate, as the case maybe, shall each be guilty of an offence and shall be penalized accordingly. It is also proposed for the penalty for such contravention to include a prohibition for an offender to be registered as an elector of voting for a period of three years from the date of his/ her conviction unless he/ she can prove that the acceptance of the prohibited donation was without his/ her connivance or sanction.

4. Requirements of accounting and auditing of expenditure

Many countries in the world have provisions in their laws to place limits on both contributions to and expenditure of election campaigns. These restrictions could be imposed not only to prevent undue influence of donors on decisions of elected representatives after they assume office but also to counteract the capacity of affluent members of society to exercise a disproportionate influence on the election. Under accountable and transparent governance practices the government can also legitimately intervene to preserve the equality and fairness of the electoral process.

Most political campaigns are financed by funds from the general public, collected as donations for political activities. When there is an involvement of such public contributions, it is essential to have a proper accounting and auditing system to record and regulate incoming funds and expenditure.

The proposed provisions on accounting and auditing of expenditure will limit the misappropriation of public funds and will reduce corruption.

5. Sanctions

A proportionate and suitably dissuasive sanctions regime is envisaged under the proposed legislation to dissuade political parties, independent groups, and individuals contesting elections from contravening limitations imposed on campaign expenditure. The expected outcome of such a regime is to improve accountability in regulating campaign expenditure by political parties, independent groups, and individuals.

Chapter 5

SYNOPSIS OF THE POLICY ON THE PROPOSED LEGISLATIVE FRAMEWORK FOR THE PROCEEDS OF CRIME ACT

Background

Proceeds of crime are assets, monetary or otherwise, acquired by criminals during the course of their criminal activity. Laws are directed towards assets used in committing a crime and those derived from criminal acts. The intention is to deprive criminals of their unlawfully acquired or held assets in order to deter them from offending and to remove such assets from the pool available for further offences being committed by them or others. Proceeds of crime could also include a person's unexplained wealth. A presumption will be drawn that such wealth was acquired through illegal means.

The salient features of the proposed Proceeds of Crime Act are as follows;

Purpose and objectives of the proposed legislative framework

- Deprive criminals from ill-gained assets (proceeds of crime);
- Compensate victims of crime;
- Undermine organized crime including terrorism, financial, and economic crime;
- Create an economically viable proceeds of crime recovery system;

- Preserve the value of seized or confiscated assets for the benefit of the state, society, and victims of crime;
- Ensure accountability, transparency, and public confidence in the proceeds of crime recovery system.

Scope of the proposed legislative framework

1. This law will apply to the following situations:

- a. Where any person commits any offence in Sri Lanka
- b. Where a (i) Sri Lankan citizen, (ii) Sri Lankan dual-citizen, (iii) a person domiciled or found in Sri Lanka, has committed any offence within or outside Sri Lanka and the proceeds derived of such offence (proceeds of crime) are found in or outside Sri Lanka
- c. Where proceeds of crime are found in Sri Lanka
- d. Where proceeds of crime have come into, been taken out of or passed through Sri Lanka.

2. The proposed law will provide for an effective and expeditious procedure for the following:

- a. Investigation of the acquisition, placement, layering, integration, use, control and possession of proceeds of crime whether situated within or outside Sri Lanka;
- b. Identification, tracing and detection of such proceeds;
- c. Seizure or freezing (restraint) administration/management of such proceeds, including confiscated/forfeited proceeds of crime and realization of the monetary value thereof;
- d. Investigation of offences recognized by this law;
- e. Institution of legal proceedings relating to proceeds of crime and offences recognized by this law;
- f. Confiscation/forfeiture of proceeds of crime;
- g. Disposal of proceeds of crime;

- h. Provide reparation to victims of crime;
- i. Recognize the rights of bona-fide third parties;
- j. Provide for mutual legal assistance regarding proceeds of crime;
- k. Recognize the existing civil law remedy for individuals and foreign states to seek direct recovery of proceeds of crime located in Sri Lanka;
- l. Provide for annual reporting to parliament and periodic public reporting;
- m. Any other matter incidental thereto.

3. The proposed law will also:

- i. Relate to, inter alia, proceeds of crimes owned or possessed by natural persons and corporate entities.
- ii. Make provision for the establishment of a statutory body for the accomplishment of the objectives of the proposed law, and name such statutory authority as the Proceeds of Crime Recovery and Management Authority of Sri Lanka (hereinafter, ‘the Authority’).

4.

The bona fide owner /or the person entitled to possess a property alleged to be a proceed of crime shall be entitled to expeditiously regain possession and control of such property pursuant to necessary investigations and judicial inquiry. Such property shall not be subjected to the scheme relating to the confiscation/forfeiture of such property. However, if such investigation and judicial inquiry is to take time, pending the completion of the investigation, the claimant shall be entitled to possession of such property on security to be provided by the claimant.

5. The following shall serve as guiding principles in the enforcement and interpretation of the provisions of the proposed law:

- (a) Achieving the objectives of criminal justice
- (b) Necessity
- (c) Proportionality
- (d) Public interest

6.

- (a) Where applicable, provisions relating to seizure, freezing, management and confiscation of proceeds of money laundering contained in the Prevention of Money Laundering Act, Bribery Act, and the Code of Criminal Procedure Act will be repealed and replaced by provisions of the proposed law.
- (b) The proposed law will not have the effect of amending or repealing such provisions of any other law, such as the Customs Ordinance, Excise Ordinance, Banking Act and the Inland Revenue Act.
- (c) Law enforcement officers empowered by other statutes such as the Police Ordinance, Code of Criminal Procedure Act, Bribery Act, Commission to Investigate Allegations of Bribery or Corruption Act, Customs Ordinance, etc. shall be entitled to use provisions of the proposed law for the seizure, freezing, management and confiscation of proceeds of crime. Provided however, if proceeds of crime are seized in terms of the proposed law, ensuing steps relating to the management of seized proceeds of crime and confiscation of such proceeds shall be effected in terms of this law.

Proposed legislative framework

1. The offence of money laundering

The proposed law makes it an offence to possess, control, transfer, invest, receive, gift, make arrangements, disguise, have beneficial control or ownership, hide, or dispose of proceeds of crime, or engaged in any other transaction, knowing or having reasons to believe that such property is, or represents, the proceeds of crime. This offence shall carry the same punishment as the offence of Money Laundering attracts in the Prevention of Money Laundering Act.

2. Duty to report

The proposed law requires specified persons who have knowledge of the existence of proceeds of crime or property derived out of such proceeds of crime, to convey such information to the Authority. Violation of such duty shall constitute an offence.

3. Post-conviction confiscation/forfeiture

The proposed law will provide for the confiscation/forfeiture of the benefit/value of the proceeds of crime, following the prosecution and conviction of any person for having committed an offence.

Following the conviction of a person for having committed an offence, it shall be mandatory to commence confiscation proceedings (pertaining to the proceeds of crime in respect of the crime relating to which the accused was convicted) connected to the trial relating to the committing of the offence, unless such proceedings are waived by court on application by the Authority (on grounds of triviality of the identified proceeds of crime or the value thereof or where the accused does not have identifiable assets) having obtained the concurrence of the relevant victim of crime (if any and if available) and the relevant law enforcement agency. An order for confiscation shall be appealable.

4. Extended confiscation

Following the conviction of a person for an offence, the proposed law will also provide for (in addition to confiscation of the proceeds of the crime he was convicted of, referred to in the preceding paragraph) the conduct of a judicial inquiry based on an application by the Attorney General, for the confiscation of other property owned by such convicted person. Upon prima-facie satisfaction of the court by the Attorney General, that such property may have been derived out of unlawful means, the court shall make an assumption that such property was derived from a course of criminal activity during the 7 years preceding the commission of the offence in respect of which the accused has been convicted. In such proceedings for extended confiscation, the convicted accused shall have the right to show, on a balance of probabilities, that the court should not make the assumption that it would otherwise be entitled to make and therefore such property should not be confiscated. This order shall also be subjected to an appeal.

5. Scope of confiscation proceedings

Confiscation proceedings may take place even with regard to cases instituted in terms of sec. 136(1)(a) (Private Plaints) of the CCPA. In such proceedings, post-conviction confiscation proceedings shall be handled by the complainant who instituted criminal proceedings.

6. Non-conviction based confiscation proceedings

The proposed law will provide for an effective and expeditious judicial procedure for non-conviction based confiscation/forfeiture of property (sometimes referred to as in rem confiscation) of the proceeds of crime. Such proceedings may be initiated only by the Authority and its authorized agents (such as law enforcement authorities – police, customs, excise, forest, etc.), and will not be conditioned upon a prosecution or conviction of any person for having committed an offence. Even in situations where a person is prosecuted for having

committed an offence, notwithstanding the accused having not been convicted, it shall be possible to commence non-conviction based proceeding seeking the confiscation of what is believed to be proceeds of crime or value/benefit thereof. Such order for confiscation shall be appealable.

The proposed law will recognize that any property or beneficial interest in any property which can be shown on a balance of probabilities to have been unlawfully obtained, will be liable to be confiscated by way of ‘non-conviction based confiscation proceedings’ (for avoidance of doubt, it is recognized that, this burden does not require the state to prove a causal relationship between the committing of a particular offence and the identified asset).

7. Seized property not confiscated

Following seizure of property and completion of connected criminal investigations and prosecutions (if any), if confiscation proceedings are not instituted within a reasonable period of time in terms of one of the three mechanisms described above, such property shall be returned to the claimant. This shall be on application to court by the person from whose custody such property was seized.

8. Restraint, seizure, administration/management and preservation of proceeds of crime

The proposed law will provide for effective and expeditious law enforcement and judicial procedures for restraint, seizure, temporary administration/management (pending confiscation/forfeiture) and preservation of proceeds of crime.

The proposed law will also provide for the following:

- a. Manner in which proceeds of crime may be seized;
- b. Law enforcement personnel who would be authorized to seize property;

- c. The manner in which seized proceeds of crime shall be managed/administered (including the use of external expertise) pending and during judicial proceedings, including due diligence and good faith in which seized property shall be administered/ managed;
- d. Pre-confiscation sale/disposal of certain proceeds of crime such as perishable goods;
- e. Discharge of such property not confiscated;
- f. The manner in which claims for possible loss caused as a result of or associated with the seizure of property shall be adjudicated upon.

The proposed law would include adequate safeguards to protect bona-fide interests of third-party claimants.

9. Apportionment of confiscated proceeds and transfer to a trust fund

Following applications being made by the Authority or the claimants if any (victims) to court, proceeds of crime or value thereof confiscated including proceeds of crime transmitted to Sri Lanka following confiscation and forfeiture by foreign judicial/law enforcement authorities, shall be apportioned by such court to provide reparation to the relevant victims of crime (including the government). The Authority shall be entitled to receive reimbursement of actual expenditure incurred in the administration and management of the seized property or up to 10% of the proceeds of confiscated property, whichever is higher. If thereafter, there are any proceeds remaining, such proceeds shall be forfeited and transferred to an independent trust fund ("Trust Fund for Confiscated Proceeds of Crime"), which shall report to and come under the supervision of the parliament.

In order to facilitate victims of crime to present claims to court in terms of the preceding paragraph, following the confiscation of proceeds of crime by a court in Sri Lanka or the return of proceeds

of crime from a foreign country, the Authority shall cause the publication of a Notice containing information of such confiscation and its possible causal link to identified proceeds of crime and the committing of crime that resulted in the deriving of such proceeds, enabling victims of crime to take cognizance of such confiscation or return of proceeds of crime to Sri Lanka, and if they so wish present claims to court.

That a victim of crime has received reparation from confiscated proceeds of crime, shall not deprive such victim of crime from claiming in civil proceedings damages and compensation with regard to the original loss of the relevant property which was subjected to criminality.

The trust shall utilize its funds for the following purposes:

- a. To strengthen law enforcement, in particular, in its efforts to recover proceeds of crime.
- b. To strengthen administration of justice.
- c. To promote and protect rights and entitlements of victims of crime and witnesses.
- d. For development and maintenance of crime prevention measures.
- e. To provide lawful incentives to law enforcement officers associated with enforcing provisions of this law.
- f. To strengthen a fund to be entitled 'Informants Reward Fund'.
- g. To achieve targets of the Sustainable Development Goals.

The board of trustees of the trust shall be seven in number, and shall comprise persons of repute having expertise in the fields of administration of justice, law enforcement, public finance, financial management, business management, related civil society activism, and auditing. The trustees of the trust fund including its chairman shall be appointed by the constitutional council.

The management and administration of the trust fund shall be transparent and amenable to public inspection.

The accounts of the trust fund shall be audited by the Auditor General. Audited accounts shall be made publicly available and tabled in parliament annually.

10. Proceeds of Crime Recovery and Management Authority of Sri Lanka ('the Authority') and institutional arrangements

A statutory body (to be called 'Proceeds of Crime Recovery & Management Authority of Sri Lanka' – PCRMASL) will be created by the proposed law, for the enforcement of provisions of this law, including in particular (a) conduct of investigations into proceeds of crime, (b) detection, seizure, temporary administration, transfer and (c) disposal of proceeds of crime based on authority received from a judicial order.

The Authority shall be entitled to sue and be sued under its own name.

The Authority shall be empowered to coordinate (a) matters relating to enforcement of the law relating to proceeds of crime, and (b) the seizure, transfer, and management of seized proceeds of crime.

The Authority shall have the same powers as a law enforcement agency with regard to identification, detection, seizure and investigation of proceeds of crime. It will not restrict the existing powers of other law enforcement agencies referred to herein. In addition, the Authority shall be authorized and mandated to :

- a. Be a centre of excellence in respect of proceeds of crime and engage in knowledge and best practices transfer relating to the identification, detection, investigation, seizure, administration and management of proceeds of crime.

- b. Coordinate between other law enforcement agencies.
- c. Maintain a data-base relating to the seizure, transfer, management and confiscation / forfeiture of proceeds of crime.
- d. Institute legal proceedings in court, for the commencement of non-conviction based confiscation proceedings.
- e. Conduct research into enforcement aspects relating to provisions of this law.
- f. Enter into Memorandums of Understandings and other work arrangements with other statutory bodies and law enforcement agencies.

Unless generally or on a case by case basis authorized by the Authority, the Authority shall be the only agency of the state empowered with legal authority in terms of the proposed law to administer and manage seized proceeds of crime, pending final judicial order on the confiscation/forfeiture of proceeds of crime.

Prior to commencement of non-conviction based confiscation proceedings (for reasons to be recorded), the Authority shall consult the relevant law enforcement agency which caused the seizure of the relevant proceeds of crime.

The following law enforcement agencies of the state will be empowered by this law to exercise the powers and functions contained herein relating to the identification, detection, investigation, seizure of proceeds of crime, and issue orders seeking declarations relating to assets (Unexplained Wealth Orders):

- a. Police (including the CID and the FCID)
- b. CIABOC
- c. Customs
- d. Excise

- e. Forest
- f. Wildlife
- g. Securities and Exchange Commission

Law enforcement authorities referred to in the preceding paragraph would also be entitled to (with the assistance of the attorney general and following notification given to the Authority) move court (following conviction) for post-conviction confiscation and non-conviction based confiscation of proceeds of crime seized by such agency. However, during the interim period, such proceeds of crime shall be managed/administered by the Authority.

Following seizure of proceeds of crime by a law enforcement agency authorised by this law to do so, it shall within 3 working days of such seizure convey such information to the Authority, which will serve as the central database, and facilitate the Authority to commence the management /administration of such proceeds of crime. It shall also within 7 working days file a report in a court of competent jurisdiction of such seizure.

The Authority shall be liable for any act or omission done in willful disregard of the law, or with malice, or for a collateral purpose or negligently.

No officer, other employee, advisor or consultant of the Authority shall be liable for any action engaged in by him in compliance with the law, a judicial order or otherwise in good faith.

11. Powers of investigation

The Authority and other law enforcement authorities recognized by the proposed law, shall in terms of the proposed law, possess the following powers:

- a. Law enforcement officer authorized in terms of the proposed law, shall be entitled to exercise the following powers, having obtained a magisterial order:
 - i. Conduct search of premises, unless the custodian of such premises gives consent.
 - ii. Conduct of search of premises, without revealing such search to the custodian of such property, for a period of time specified in the judicial order.
 - iii. Interception of live telephone communications, with due regard to privacy and confidentiality.
 - iv. Conduct of controlled deliveries.
 - v. Imposition of travel restrictions.
 - vi. Recording of communications between parties.
 - vii. Prohibit /restrain the transfer of property, funds or any interest.
 - viii. Freezing of bank accounts.
 - ix. Conduct surveillance in a manner that would have a bearing on the privacy of persons.
- b. Law enforcement officers authorized in terms of the proposed law, shall be entitled to directly exercise the following powers:
 - i. Cause the arrest of any person suspected or have been concerned in the committing an offence in terms of this law.

- ii. Search any person at the time of arrest.
- iii. Require any person to submit an affidavit containing information specified in a Notice issued to him. Non-compliance and the provision of false information to be an offence. The contents of such affidavit shall not be 'evidence' in subsequent judicial proceedings against the maker of the affidavit, save for the purpose of proving a charge of submitting an affidavit in terms of this provision containing false information.
- iv. Call for bank records of every description, income tax records, declarations of assets and liabilities, notwithstanding anything in the Inland Revenue Act or the Declaration of Assets and Liabilities Act.
- v. Call for telecommunication records.
- vi. Call for any record from any statutory authority or other record keeping entity.
- vii. Summon any person for an interview.
- viii. Interview and record the statement of any person.
- ix. Any other item that is required for the purpose of the investigations.
- x. Access to computer and other automated systems.
- xi. Conduct general surveillance.

No law enforcement officer empowered under this Act, shall unless (a) acting in terms of a judicial order, (b) acting in compliance with any law, or (c) for the purpose of giving effect to the objectives of this law, reveal to any person any information collected or received in the course of any investigation. Violation of this prohibition shall amount to an offence.

12. Unexplained Wealth Orders

The proposed law will provide for the issuance of orders requiring persons found in possession of assets which appears to a law enforcement officer authorized in terms of this law to be unexplainable, to be obligated to make a sworn declaration, on the manner in which such assets were derived.

- a. The law will also provide for consequences for non-compliance and for making false declarations.
- b. The proposed law would empower the Authority to require any person against whom reasonable grounds exist that such person has committed or having been concerned in committing an offence punishable with a term of imprisonment of either description of 5 years or more (serious criminal offences), or has been transacting with proceeds of crime, to make a sworn declaration (in accordance with the stipulated form) of his assets and liabilities.
- c. The proposed law would also empower the Authority to issue a Notice on any person to make a sworn declaration of the manner in which such person acquired assets owned by him.
- d. The Authority can require the respondent to provide evidence of the manner in which certain assets were acquired or transactions effected.

The Authority or any law enforcement officer authorized in terms of this law, shall not be obliged to accept the truth of a declaration made in terms of the preceding section, if the contents therein are found by the Authority or law enforcement officers empowered in terms of this Act, to be false or having reason to be that the contents therein is not true or improbable.

The information contained in such a declaration may be used for the following purposes:

- a. As 'investigational material' in the conduct of criminal investigations into the possible committing of serious crimes,
- b. As a possible basis to commence non-conviction based confiscation proceedings, or
- c. The contents of such sworn declaration shall not be 'evidence' in subsequent judicial proceedings against the maker of the affidavit, save for the purpose of proving a charge of submitting a sworn declaration containing false information.

13. Legal professional privilege

The proposed law will highlight that a person who communicates with a lawyer, for the purposes of committing a criminal act, cannot claim privilege. This is an encapsulation of the common law position on legal professional privilege.

14. Power of the Authority to delegate functions

The Authority will be empowered to delegate either on a generic or case by case basis, some of its functions and withdraw such delegation for reasons to be recorded, to law enforcement agencies including the following, enabling such law enforcement agencies to carry out such delegated functions under the guidance and supervision of the Authority:

- a. Police (including the CID and the FCID)
- b. CIABOC
- c. Customs
- d. Excise
- e. Forest
- f. Wildlife
- g. Securities and Exchange Commission

15. Joint Investigation Teams

The Authority will be empowered to constitute joint investigation teams including designated foreign law enforcement agencies and experts appointed by the Authority to act on its behalf.

16. The Authority and international co-operation and asset recovery

The Authority, with the consent of the ‘Trust Fund for Confiscated Proceeds of Crime’ will be empowered to enter into agreements with foreign states and organizations similar to the Authority for the transfer and/or sharing of proceeds of crime or value thereof.

The Authority will be empowered to make applications to foreign judicial and law enforcement authorities, seeking seizure, confiscation and return of the value of proceeds of crime situated in such countries pertaining to the committing of crime in Sri Lanka. The Authority will be empowered to access and receive any material from other jurisdictions in respect of any investigation coming within its purview.

The Authority will be empowered to receive requests from another state (with whom Sri Lanka has reciprocal or multilateral agreements) pertaining to the seizure, confiscation and return to

such state the proceeds of crime situated in Sri Lanka pertaining to the committing of crime in such foreign countries or non-conviction based forfeiture requests.

17. Composition of the Authority

The chairman of the Authority shall be appointed by the Constitutional Council. The chairman shall hold office for a period of 5 years.

The Authority shall have a board of management. It shall be the principle decision making body of the Authority. The board of management shall comprise of the following:

- a. Attorney general or his nominee
- b. Inspector General of police or his nominee
- c. Director general or nominee of the CIABOC
- d. A senior officer each approved by the Constitutional Council from the following institutions, on a nomination by the respective head of institution:
 - i. Sri Lanka Customs
 - ii. Department of Inland Revenue
 - iii. Securities and Exchange Commission
 - iv. Financial Intelligence Unit of Sri Lanka
 - v. Ministry of Justice
 - vi. Ministry of Finance
 - vii. Ministry of Foreign Affairs

In addition to the chairman, the constitutional council shall also appoint four individuals with expertise in the following fields:

- a. Criminal justice;
- b. Proceeds of crime administration and management;
- c. Economics, finance and auditing;
- d. Related civil society activism

The Authority shall have a chief executive officer, who shall be appointed by the board of management.

The Authority will have authorized officers to enforce provisions of this Act, and they shall possess police powers.

The finances of the Authority shall be audited by the auditor general.

Chapter 6

A BRIEF DISCUSSION ON A POTENTIAL POLICY FRAMEWORK FOR WHISTLEBLOWER PROTECTION LEGISLATION

Background

Experience has demonstrated that corruption, fraud, or any other related criminal activity especially occurs in the absence of transparency and accountability in the procedures within institutions. However, such illegal conduct is not exposed due to the fear of reprisals by employees within the institutions. Therefore, it has been suggested that comprehensive dedicated legislation must be introduced for the protection of whistleblowers to encourage integrity and accountability across the board, both in the public as well as private sectors.

The definition of whistleblower varies from jurisdiction to jurisdiction. International guidelines and other instruments commonly accommodate the broadest definition, for instance, Article 33 of UNCAC stipulates that the assurance ought to be given to "any individual". The Organization for Economic Co-operation and Development (OECD) defines 'Whistleblower protection' as "Legal protection from discriminatory or disciplinary action for employees who disclose to the competent authorities in good faith and on reasonable grounds wrongdoing of whatever kind in the context of their Workplace". There appears to be global agreement in respect of essential procedures and standards in whistleblower legislation. Emerging standards incorporate an expansive meaning of whistleblower that secures public and private sectors and volunteers, contractual workers and students, and assurance from all types of striking back and oppression against whistleblowers.

Factors preventing whistleblowers from disclosing illegal conduct

- Lack of assurance in the protection of confidentiality of the disclosure.
- Permitting individual opinions and perceptions regarding the whistleblower to impact the evaluation of a disclosure.
- The high possibility of retaliation is not taken into proper consideration by the competent authorities.
- Overlooking the potential irreconcilable situations when choosing who ought to evaluate the disclosure.
- Enabling political contemplation to impact the appraisal of a revelation or the discoveries of an examination.
- Deferring the examination for prolonged length of time enabling any proof of wrongdoing to be adjusted or destroyed.

Purpose and objectives of the proposed legislative framework

The following can be identified as the objectives of the proposed legislation;

- The proposed legislation should as its fundamental objective, seek to protect whistleblowers;
- It should place more emphasis on preventive measures instead of merely conducting investigations and prosecutions in reaction to breaches of protection;
- It must take into consideration that any public official or other individual including a non-governmental organization may make such a disclosure;
- The legislation should provide for reparations to victims;

- Proportionately dissuasive sanctions ought to be included to deter the exposure of whistleblowers;

A few considerations for the proposed legislative framework

These considerations have significantly been influenced by the OECD report on “Committing to Effective Whistleblower Protection, an in-depth analysis of the evolution of standards in whistleblower protection in both the public and private sectors”.

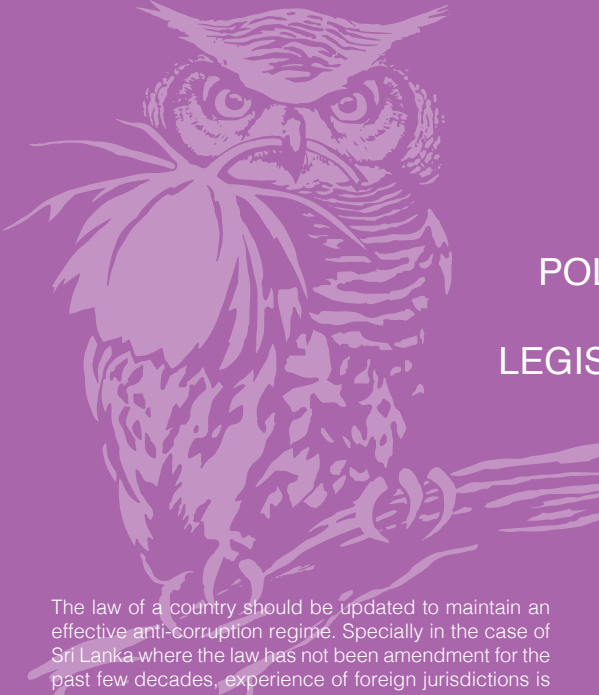
- Ensure whistleblower protection in both the public and private sectors, for persons who report suspected activity in good faith and on reasonable grounds to the competent authorities.
- Encourage protected reporting mechanisms and prevention of retaliation in companies’ internal controls, ethics, and compliance systems.
- Implement whistleblower protection broadly, covering all who carry out functions related to an organization’s mandate.
- Clearly communicate the processes in place and raise awareness through training, newsletters and information sessions about reporting channels and procedures to facilitate disclosures.
- Encourage institutions to develop review mechanisms to identify data, benchmarks, and indicators relative to whistleblower protection systems. It also should incorporate the broader integrity framework in order to evaluate effectiveness and monitor performance.

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4

HANDBOOK

POLICY SUGGESTIONS FOR PROPOSED LEGISLATIVE AMENDMENTS



The law of a country should be updated to maintain an effective anti-corruption regime. Specially in the case of Sri Lanka where the law has not been amendment for the past few decades, experience of foreign jurisdictions is pivotal in amending the country's laws. The law pertaining to bribery in Sri Lanka has not been amended for the past 25 years. Now it has come to a point where such amendments are indispensable. As such, this handbook introduces a policy framework amending the law of bribery, Commissions Act and Asset Declaration law. Furthermore, the recovery of lost revenue due to bribery and corruption must also be ensured. The unregulated expenditure on political campaigns during election times taint the good reputation of institutions whereby implementation of Whistleblower laws will enable integrity and transparency. A draft including all these aspects have been thus formulated which incorporated suggestions made by the public. When the necessary amendments are completed, the law will be strengthened as a Lion's Paw.

1 INTEGRITY HANDBOOK

2 GIFT RULES

3 CONFLICT OF INTEREST

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இலஞ்சம் அல்லது ஊழல் பற்றிய சார்த்துதல்களை புலனாய்வு செய்வதற்கான ஆணைக்குழு

COMMISSION TO INVESTIGATE ALLEGATIONS OF BRIBERY OR CORRUPTION

CIABOC