

THE ASSET RECOVERY REGIME IN SRI LANKA - ILLEGALLY DERIVED ASSETS

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I. INTRODUCTION

Corruption is in the limelight of the present Sri Lankan society, as many claim that the economic, social and political changes in the country are due to the damage caused to the nation by stolen State assets through corruption. Exploring possibilities of substantial recovery of State assets stolen as proceeds of corruption has become the main theme of the day. Depriving the people responsible for corruption from enjoying the fruits of corruption, the proceeds of corruption, while making efforts to recover stolen assets has become a major challenge in the current administration of criminal justice. The innovative methods of introducing crime proceeds into financial systems by the perpetrators of corruption calls for holistic approach and joint efforts by all law enforcement authorities, at both national and international levels, towards investigating and prosecuting corruption offences. Asset recovery, freezing, seizure and confiscation of proceeds of crime are governed by several legal provisions in different legislation in specific contexts.¹ The country is focusing on enacting composite legislation on Anti-corruption, Proceeds of Crime and Whistleblower Protection with a view of establishing a strong legal framework to combat corruption and for successful recovery of stolen State assets.

II. IDENTIFICATION, TRACING, SEIZING AND CONFISCATION OF PROCEEDS OF CORRUPTION

The true origin of concealed corrupt assets by white collar offenders has made it virtually impossible to identify and trace ill-gotten wealth. Existing legal provisions in different pieces of legislation attempt to prevent illicit asset flows through keeping due diligence on financial transactions and to recover and confiscate or forfeit proceeds of corruption to the State. Investigation and prosecution of corruption offences involve many procedural steps under different legislation, creating different corruption offences, on recovery of proceeds of corruption.

A. Investigations

1. Substantive Offences and Investigative Powers

The offences of corruption leading to recovery of assets are contained in several pieces of legislation. Transaction with property realized from an unlawful activity is an offence under the Prevention of Money Laundering Act (PMLA).² The Act encompasses a wide range of offences such as unlawful activities³ leading to money-laundering. The definition of *unlawful activity* under the PMLA includes the offences under the Bribery Act⁴ and corruption offences under the Penal Code⁵ such as dishonest misappropriation of property, criminal breach of trust and cheating.⁶ The offences cover even the intentional acquisition or use of proceeds

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¹ Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979 (Sec. 4, 6 (1) (d)), Tobacco Tax Act No.8 of 1999 (S.15(2)), Forest Ordinance [Sec. 40(1)], Poisons, opium & Dangerous Drugs Act as amended by Act, No. 13 of 1984 [Sec. 79] and the Customs Ordinance 1870 (e.g. sec. 125) deal with the seizure of assets.

² Section 3 of the Prevention of Money Laundering Act, No. 5 of 2006 as amended by Act No. 40 of 2011.

³ Ibid., Section 35.

⁴ Part II and V of the Bribery Act No. 11 of 1954.

⁵ Penal Code Ordinance No.2 of 1883.

⁶ Ibid., Sections 386, 388,399 and 401.

of crime in the presence of knowledge of it being proceeds of crime at the time of its receipt. This includes continuation of retention or concealment of proceeds. The term *transaction* as defined⁷ in the PMLA covers all instances of conversion and transfer of proceeds of corruption. Any attempt, conspiracy or abetment relating to the offence also have been made offences under the said provision. Conviction for the commission of a predicate offence, the unlawful activity, is not a pre-requisite in proof of the offence of money-laundering.

A person can be charged with any of the predicate offences or money-laundering as separate charges, without any limitation. The Judicature Act⁸ provides for jurisdiction of High Courts even for the offences committed offshore by citizens. The Bribery Act provides for similar jurisdiction to courts in soliciting and accepting gratification outside the country.⁹ Jurisdiction¹⁰ under the PMLA is available for the commission of unlawful activities outside the country, constituting offences in the offshore jurisdiction or constituting offences if committed in Sri Lanka.

Bribery by public officials,¹¹ judicial officials,¹² members of parliament,¹³ any other person¹⁴ and corruption,¹⁵ the abuse of authority for unlawful loss to the State or for unlawful benefits for him/her or any other person are offences under the Bribery Act. Section 23A of the Bribery Act draws a presumption of bribery against a person who fails to explain the deficit between the known expenditure over known income, illicit enrichment. This provision places a reverse burden of proof to the accused to explain legal means of acquisition of property. Similar provision in the PMLA under section 4 draws the presumption of unlawful origin of assets in illicit enrichment cases.

The offences under the Bribery Act are being investigated and prosecuted by the independent Commission to Investigate Allegations of Bribery or Corruption (CIABOC). The offences under the Penal Code and the PMLA are being investigated by the Police Department and prosecuted by the Attorney General's Department. The Commission to Investigate Allegations of Bribery or Corruption Act (CIABOC Act)¹⁶ entrusts with the independent Commission, comprising of three Commissioners including two retired judges of the Court of Appeal or Supreme Court, several powers of investigations. The Commission can exercise these powers on its own, without seeking judicial orders. It includes calling for information from government institutions, mobile telephone service providers, impounding passports and prohibition orders on transfer of assets.¹⁷ The Police Department as opposed to this is investigating offences under the direct supervision of the Magistrates according to the provisions of the Code of Criminal Procedure Act, where the investigators are expected to report the investigative steps to the Magistrates from time to time.¹⁸ The Financial Intelligence Unit (FIU) established under the Financial Transactions Reporting Act (FTRA)¹⁹ is the regulator as to suspicious financial transactions.

2. Identification and Tracing of Proceeds of Corruption

Most of the investigations still use only the traditional methods of identifying/detecting proceeds of corruption such as relying on information leading to sting operations and witness statements. The CIABOC has a dedicated hotline operated during 24 hours to get swift information as to the commission of offences enabling the investigators the early detection of assets as corpus of the offences. This includes bribes accepted by public officials. Early information as to solicitation of bribes provide opportunity for the investigators to trap the offenders while accepting the bribe.

⁷ Section 35 of the Prevention of Money Laundering Act No. 5 of 2006.

⁸ Section 9(1)(f) of Judicature Act No.2 of 1978.

⁹ Section 89(A) of the Bribery Act No. 11 of 1954.

¹⁰ Section 35(p) of Prevention of Money Laundering (Amendment) Act No.40 of 2011.

¹¹ Sections 16, 17, 19, 21, 22, 23 of the Bribery Act No. 11 of 1954; Public Servant under Section 90 of the Act include a wide range of officials employed in any authority using public funds including public companies.

¹² *Ibid.*, Section 14.

¹³ *Ibid.*, Section 14 & 15.

¹⁴ *Ibid.*, Part II.

¹⁵ *Ibid.*, Section 70.

¹⁶ Commission to Investigate Allegations of Bribery or Corruption.

¹⁷ Section 5 of the Commission to Investigate Allegations of Bribery or Corruption Act No. 19 of 1994.

¹⁸ Code of Criminal Procedure Act No. 15 of 1979.

¹⁹ Financial Transactions Reporting Act, No.6 of 2006.

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Detection of proceeds of corruption through financial transactions are being monitored by the FIU on a risk-based approach. The FIU regulates and supervises all the institutions subjected to the reporting obligations under the FTRA. Both natural and legal persons²⁰ are governed under the FTRA. The FTRA require the subject institutions to have mechanisms in place for customer due diligence and identification on beneficial ownership. Banks are under an administrative responsibility of reporting suspicious transactions and in default subjected to criminal sanctions. Further, the said Act requires the subject institutions to maintain records on such information and also to report suspicious transactions²¹ to the FIU. The regulations²² issued by the FIU cover many natural and legal persons susceptible to assist in transferring proceeds of corruption and include rules as to the due diligence by financial institutions,²³ designated non-finance businesses,²⁴ and insurers.²⁵ The regulation and supervision by the FIU prevent transfer of proceeds of crime as an early step, before a reactive recovery. The FIU assistance to the investigative authorities, both the police and the CIABOC to identify the proceeds of corruption enable the tracing of the said assets before concealments.

The FIU is empowered under the FTRA to share information with domestic authorities. It has a legal obligation to refer matters or information as to suspicious transactions to relevant law enforcement authorities. The FIU from time to time has been an informant to the CIABOC on suspicious transactions triggering assets and corruption investigations enabling early detection. All the financial institutions under the rules issued by the FIU are under the obligation to preserve customer due diligence information over a period of six years²⁶ preserving the identification of information on assets.

The assets and liabilities disclosure system²⁷ of public officials and elected officials exposes illicit financial flows. This system prevents public officials claiming further legitimate income and assets further to declared assets and income. Declarations while taking a self-preventive measure for a public official increasing wealth illegally, also provides evidence enabling comparison of declared assets and the detected assets to detect proceeds of bribery, ensuring the recovery of the same.

The CIABOC Act²⁸ empowers the CIABOC²⁹ to search and seize proceeds of crime without obtaining court orders before destruction or concealment of such evidence. This is open even for non-produced documents on request of CIABOC. Section 5 of the CIABOC Act empowers the Commission to call for inter alia financial information from banks of a suspect, his/her spouse and children, company in which the person is a director, a trust in which the person has a beneficial interest or a firm in which the person is a partner. This includes bank documents, account opening forms, customer information, mandates, registrations etc.

Section 16 of the Prevention of Money Laundering Act (PMLA) makes it an exception to secrecy provisions in other laws to divulge such financial information under the PMLA. The FIU or an authorized officer under section 18 of the FTRA has the power to examine books and records of institutions in order to see the compliance status. This stands both as a preventive mechanism against illicit finance flows and early detection method of proceeds of corruption.

Information from financial institutions and public records such as land registry, motor traffic registration and company registration are being used to trace the proceeds. Border crossed proceeds are traced through international cooperation networks such as INTERPOL and the Egmont Group, leading to Mutual Legal Assistance. Dual criminality is a hurdle in obtaining formal international assistance where some of the

²⁰ Section 33 of the Financial Transactions Reporting Act, No.6 of 2006.

²¹ Part I of Financial Transactions Reporting Act, No.6 of 2006.

²² http://fiusrilanka.gov.lk/rules_directions.html

²³ Financial Institutions (Customer Due Diligence) Rules, No. 1 of 2016 - Extraordinary Gazette No 1951/13, January 27 of 2016.

²⁴ Designated Non-Finance Business (Customer Due Diligence) Rules, No. 1 of 2018. - Extraordinary Gazette No 2053/20, January 10 of 2018.

²⁵ Insurers (Customer Due Diligence) Rules, No. 1 of 2019 - Extraordinary Gazette No. 2123/14, May 13 of 2019

²⁶ http://fiusrilanka.gov.lk/docs/Rules/2016/1951_13/1951_13_E.pdf

²⁷ Declaration of Assets and Liabilities Law No. 1 of 1975.

²⁸ Commission to Investigate Allegations of Bribery or Corruption Act No. 19 of 1994; Section 7.

²⁹ Commission to Investigate Allegations of Bribery or Corruption.

substantive offences are found not to be criminal offences in the requested State.

Whistle-blowers are protected under the Assistance to and Protection of Victims of Crime and Witnesses Act.³⁰ They are protected from harassment, intimidation, coercion, violation or suffering from loss or damage in mind, body or reputation or any adverse change in the condition of employment.³¹ They are given an immunity under the CIABOC Act from all criminal and civil litigation resulting from providing any information to the CIABOC.³² In addition, section 23 of the CIABOC Act provides for the protection of the witnesses by making interference with witnesses an offence under the Act. Further, Section 81(1) of the Bribery Act provides for pardoning accomplices for the purpose of obtaining evidence at a trial. Similar provision is available under Section 256 of the Code of Criminal Procedure Act in relation to offences under other penal legislation. These provisions encourage the participants of the offences and the witnesses and informants to provide information to the law enforcement authorities, as to the flows of proceeds of corruption enabling early detection and tracing of such assets.

(a) Case study

In a concluded case³³ under Section 23A of the Bribery Act, a person employed in a government institution as a naval engineering assistant had been charged for accumulation of wealth in excess of his known income. Several assets detected by the CIABOC investigators included deposit of money to three bank accounts, a van and a motor bike. The deficit of expenditure over income was claimed to be Rs. 3,500,000/-. The accused at the trial failed to explain the means of income for the deficit. The CIABOC investigators detected and traced the property questioned in the indictment as unexplained acquisitions. This had been done through searching the registries at the Department of Motor Traffic and through obtaining documentary evidence from both government and private banks. However, none of the properties were seized or frozen. The exact means of acquisition of each property was not properly explained and, hence, the difference between the total income and expenditure had been considered at the trial. Having drawn the adverse presumption of bribery in absence of proper explanation for the money spent on acquisitions the court imposed a sentence of five years' rigorous imprisonment and a fine of Rs. 5,000/- on the accused. A mandatory additional penalty of the value equivalent to the deficit presumed to have acquired from bribery (Rs. 3, 500,00/-) was also imposed as a confiscation of the value of the proceeds of bribery.

3. Freezing and Seizing

The PMLA contains specific provisions³⁴ on freezing of proceeds of money-laundering. Designated police officers are empowered under section 7 of the PMLA to issue Freezing Orders, extending to seven days, over such property. This Order can be extended even to any person or institution who will have to give effect to the said order. Contravention of the same amounts to a criminal offence under the same provision of the PMLA. As a measure to track and identify the proceeds, Section 12 of the PMLA empowers the court to issue Orders to the possessors, controllers etc. of property as informed by the police to deliver identification documents of the property to the designated police officer. If any person is in breach of such Order the court may issue a search Order with a view to seize the required documents.

The appointment of a receiver of seized proceeds by court, upon an application of a designated police officer, for obtaining the possession and management of the same is governed under Section 11 of the PMLA.³⁵ In the event of forfeiture or confiscation of property section 15³⁶ of the PMLA empowers the court to appoint a receiver to be in-charge of such property.

The FIU also has the power to do an administrative freezing of property up to seven days.³⁷ The general law on freezing and seizure of assets, process to compel the production of documents and other movable

³⁰ Assistance To And Protection Of Victims Of Crime And Witnesses Act, No. 4 Of 2015.

³¹ Ibid., Section 6.

³² Section 9 of the Commission to Investigate Allegations of Bribery or Corruption Act No. 19 of 1994.

³³ HC B 1855/2010 Decided on 20.09.2018.

³⁴ Section 6-12.

³⁵ Prevention of Money Laundering Act No. 5 of 2006 as amended by Act No.40 of 2011.

³⁶ Ibid.

³⁷ Section 15(2) of the Financial Transactions Reporting Act No. 6 of 2006.

property, is found in the Code of Criminal Procedure Act.³⁸

Under FTRA the authorized officers have the power³⁹ to seize any cash or negotiable instruments suspected to be the evidence of the commission of any offence referred therein. Provisions for seizure and detention of such recoveries are also provided for in the same Act.⁴⁰ Section 26 of the FTRA prescribes the procedure in disposal of assets. Accordingly, the procedure is subjected to the discretion of the High Court of the Western Province Holden in Colombo. This provision provides for continued detention orders based on evidentiary value for the matter under investigation. However, the total period of detention is limited to two years. The same provision allows the High Court to release the seized items for justifiable reasons to any claimant. At the expiration of the period of one year, in absence of any claimant for the seized items, the items are forfeited to the State.

The CIABOC under Section 7 of the CIABOC Act has the power to authorize its officers to search any place or person reasonably suspected to be in possession of evidence or non-produced material as requested for by the CIABOC. This section empowers the searching officers to seize any of the aforesaid material relevant for the commission of any offence under the Bribery Act or the Declaration Law.⁴¹

4. Confiscation

The Bribery Act provides for additional penalties, in addition to the fines imposed as a sentence after conviction, equivalent to the value of the gratification accepted⁴² or the value of property, not exceeding three times of such value, presumed to have been acquired through bribery.⁴³ In illegal accumulation of wealth cases the value of the proceeds is being considered a basis for confiscation⁴⁴ in imposing a fine upon the convict for three times the value of the proceeds and subjecting his/her property equivalent to such value of the fine being confiscated. The court has the discretion even to make an order forfeiting⁴⁵ the proceeds of bribery in lieu of additional penalties. Under the Declaration of Assets and Liabilities Law the assets omitted to have declared are forfeited to the State.⁴⁶

Property of a convicted person under Section 3 of the PMLA is subject to be forfeited. Forfeiture of proceeds derived from money-laundering,⁴⁷ value-based confiscation⁴⁸ of proceeds of money-laundering and extended confiscation of proceeds of assets⁴⁹ belongs to the convict of money-laundering are provided for in the PMLA. In light of this both laws enable confiscation of proceeds of corruption.

Section 28A (1) proviso of the Bribery Act precludes prejudicial Orders of forfeiture or confiscation being made against the interest of *bona fide* purchases of subject property. A similar provision is available under Section 13(2) of the PMLA.⁵⁰

Confiscation and forfeiture are wholly dependent upon the conviction of the accused. Upon an acquittal the seized and frozen proceeds are subjected to production disposal procedure under the CCPA.⁵¹

(a) *Case Study*

In a bribery case⁵² concluded in the year 2019, the first accused who was the Secretary to a prominent ministry had solicited a bribe of USD 3 Million to facilitate an ongoing investment by a foreign national. The

³⁸ Part VI of the Code of Criminal Procedure Act No. 15 of 1979.

³⁹ Ibid., Section 25.

⁴⁰ Ibid., Section 25.

⁴¹ Declaration of Assets and Liabilities Law No. 1 of 1975.

⁴² Section 26 of the Bribery Act No.11 of 1954.

⁴³ Ibid., Section 26A.

⁴⁴ Section 26A of the Bribery Act No. 11 of 1954.

⁴⁵ Ibid., Section 28A.

⁴⁶ Section 9(3A) Declaration of Assets and Liabilities Law No. 1 of 1975.

⁴⁷ Section 13(1) of the Prevention of Money Laundering Act No. 5 of 2006 .

⁴⁸ Section 13 of the Prevention of Money Laundering Act No. 5 of 2006.

⁴⁹ Ibid., Section 13(4).

⁵⁰ Ibid as amended by Act No. 40 of 2011.

⁵¹ Chapter XXXVIII of the Code of Criminal Procedure Act No. 15 of 1979.

⁵² HC/PTB/1/04/2019 Decide on 19.12.2019.

ministry in which the accused was an employee had had an official involvement relating to the said investment. He further had solicited Rs. 3 million and Rs. 100 million from the same investor on different dates. An advance of Rs. 20 million had been demanded on a later date. Said money had been accepted at a sting operation conducted by the CIABOC upon the information of the complainant investor. The bribe money had been recovered on the spot in the possession of the accused. The second accused who was a chairman of a prominent public entity had conspired with, aided and abetted the first accused in soliciting and accepting the money. Both the accused were convicted and the court while imposing a sentence of 20 years' rigorous imprisonment and a fine of Rs. 65, 000/- upon the first accused also imposed an additional penalty of Rs. 20 million for accepting the solicited money. In this case the value of the gratification accepted by the accused had been recovered and confiscated as an additional penalty under Section 26 of the Bribery Act.

B. International Cooperation

1. Identifying and Tracing of Proceeds of Corruption

The Mutual Legal Assistance in Criminal Matters Act governs⁵³ the whole regime of international cooperation as to criminal matters. Part VII⁵⁴ of the MACMA relates to tracing, seizure and freezing of proceeds of crime. Enforcement of foreign Orders are subjected to section 19 of the MACMA. Non-conviction-based confiscation also is provided for in the amended Act.⁵⁵ The law does not provide for confiscation of property of foreign origin through domestic adjudication of offences. Also, seizing, freezing and preservation of property based on future confiscation upon reasonable grounds is not provided for in the law. Section 27 of the PMLA⁵⁶ provides that for the purposes of investigation and prosecution of offences under the Act, the matters relating to international cooperation should be governed by the MACMA.⁵⁷ Accordingly, such cooperation can be sought on the basis of being a commonwealth country, an existing agreement, a United Nations treaty obligation or under reciprocity.⁵⁸ The Central Authority for requests is the Secretary to the Ministry of Justice.

The FIU under FTRA may share and disclose with its foreign counterpart institutions any information or suspicious transaction reports on agreed terms and conditions.⁵⁹ Agreements between the foreign authorities and the FIU are entered into with the permission of the Minister in-charge of the FIU. Such agreements ensure the relevancy of information to the foreign agency and the confidentiality as to the use of such information. From the year 2017 to 2021 the FIU has received 148 such requests for information and has sent 266 similar requests to its counterparts. In the year 2021 the FIU has responded to 19 such requests.⁶⁰ The legislation requires securing confidentiality and restricted use of information provided. Accordingly, as a member of the Asia Pacific Group (APG) on money-laundering the FIU has entered into a Memorandum of Understanding (MOU) with its counterparts from more than 34 countries.⁶¹ Sharing of such information is also available under other international networks such as INTERPOL, the Egmont Group, the South Asian Association of Regional Cooperation (SAARC) and the Bay of Bengal Initiative for Multi-Sectoral Economic Cooperation (BIMSTEC).

The FTRA prohibits⁶² maintaining anonymous or identified by number accounts. Section 11 of the FTRA permits disclosure of financial information, subjected to secrecy, in court proceedings. Hence, bank secrecy cannot be a ground for refusal of any assistance request. Absence of dual criminality also is not a direct reason for a refusal of a request but subjected to the discretion⁶³ of the Central Authority, the Secretary to the Ministry of Justice.⁶⁴ Sections 15 & 17 of the MACMA provide for assistance in search and seizure of proceeds and tracing of proceeds, respectively. The Financial Intelligence Unit is the domestic centre for the

⁵³ Sections 17,18 & 19 of the Mutual Assistance in Criminal Matters Act No. 25 of 2002.

⁵⁴ Ibid., Sections 17-19.

⁵⁵ Mutual Assistance in Criminal Matters (Amendment) Act No. 24 of 2018.

⁵⁶ Prevention of Money Laundering Act No. 5 of 2006 as amended by Act No. 40 of 2011.

⁵⁷ Mutual Legal Assistance in Criminal Matters Act No. 25 of 2002.

⁵⁸ Section 2 *ibid* as amended by Act No. 24 of 2018.

⁵⁹ Sections 16, 17 of the Financial Transactions Reporting Act No. 6 of 2006.

⁶⁰ FIU Annual Report 2021 http://fiusrilanka.gov.lk/docs/AR/FIU_AR_2021.pdf

⁶¹ <http://fiusrilanka.gov.lk>

⁶² Section 2 of the Financial Transactions Reporting Act No.6 of 2006.

⁶³ Section 6(1) of the Mutual Assistance in Criminal Matters Act No.25 of 2002.

⁶⁴ Section 4 of the Mutual legal Assistance in Criminal Matters (Amendment) Act No. 24 of 2018.

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Egmont Group network. Sri Lanka became a member of the GlobE network and agrees to share information on an informal basis with its member countries.

The FTRA empowers⁶⁵ the authorized officers to search any person leaving or arriving Sri Lanka, upon suspected grounds of committing an offence under the FTRA on currency reporting. Requisite declarations⁶⁶ to the customs and immigration and emigration authorities as to the excessive limit of outgoing and incoming foreign currency as prescribed under the regulations screens, prevent and detect the illegal transfer of money. Even for the offshore remittances of money, the tax clearance of the Inland Revenue Department is required as a preventive measure of transferring ill-gotten money.

Section 7 of the MACMA provides for international cooperation on identification and locating possible witnesses for proceeds of corruption.

III. ASSET RECOVERY

Recovery of assets is through the direct execution⁶⁷ of conviction-based foreign confiscation orders under MACMA. Direct recovery of proceeds of corruption is not available under Sri Lankan law. Prompt reply to a Mutual Assistance request is a responsibility of the Central Authority.⁶⁸ Prompt transmission of information on exigent instances is provided for by the law.⁶⁹ While making evidence received from a competent authority as prescribed admissible in judicial proceedings,⁷⁰ the amended MACMA facilitates video conferencing of witnesses at domestic judicial proceedings from different States.⁷¹ This provision also facilitates joint investigations by local and foreign authorities. Section 17 of the MACMA as amended specifically deals with requests for tracing proceeds of crime. Fresh legal provisions in the amended MACMA includes preservation, search and seizure of computer data.⁷²

The Criminal Investigation Department and FIU in 2018 did promptly assist Bangladesh and Taiwan on a cross-border wire transaction. The stolen assets detected, seized and repatriated to Bangladesh amounted to around USD 20 Million. Similar occurrences of fraudulent wire transfers had been detected by the CID from time to time and had assisted the foreign jurisdictions in that regard.

IV. CHALLENGES

Legal restriction⁷³ in the CIABOC Act as to the maintenance of secrecy except only for the purposes of the CIABOC Act is a major challenge for investigations. This provision debar exchange of information even with law enforcement authorities such as FIU and police. When the police investigate corruption-related Penal Code offences and the offence of money-laundering, the CIABOC is prohibited by law from sharing information with those institutions even in the presence of same transaction offences of bribery and corruption. The CIABOC cannot seek joint investigations with the said institutions. Investigation of the same incident by both police and the CIABOC on different offences enable concealing proceeds and loss of vital evidence in view of delay and absence of coherence between investigations.

Non-availability of proper coordination among domestic law enforcement authorities too is a defect in the

⁶⁵ Section 24 of the Financial Reporting Act No.6 of 2006.

⁶⁶ Regulations made under the Exchange Control Act No.12 of 2017 https://www.cbsl.gov.lk/sites/default/files/cbslweb_documents/laws/cdg/Foreign_Exchange_Act_Direction_No_2_of_2021_e.pdf

⁶⁷ Sections 19, 20 of the Mutual Legal Assistance in Criminal Matters Act No. 25 of 2002 .

⁶⁸ Section 5A of the *ibid* as amended by Act No.24 of 2018.

⁶⁹ *Ibid.*, Section 5B.

⁷⁰ *Ibid.*, Section 11.

⁷¹ *Ibid.*, Section 14.

⁷² *Ibid.*, Part VIIA.

⁷³ Section 17 of the Commission to Investigate Allegations of Bribery or Corruption Act No. 19 of 1994.

criminal justice system. If all the law enforcement authorities investigating into one and the same incident under different legislation have a legal basis to join together and share information within the respective authorities, it expedites detection and tracing of proceeds before possible conversions.

Given the complexities in cross-border transactions the requisite of providing the evidentiary basis, the nexus between the suspect and the assets as proceeds of crime, remain a challenge in the absence of expertise in identifying and tracing the proceeds of corruption. Discovering concrete evidence on illegally accumulated foreign assets is a challenge faced by the CIABOC. Tracing cooperative witnesses also is a challenge in the background of absence of a strong witness protection regime.

Unavailability of a designated authority with expertise for the management of the seized property is a main lacuna in law. Absence of comprehensive legal provisions as to the seizing, freezing, forfeiture and confiscation of proceeds of all types of corruption offences is an existing gap in the law. Present laws do not lay down provisions for non-conviction-based confiscation. Hence, acquittal of the accused of a corruption case ends at releasing even proceeds of corruption to the same owner upon claim without confiscation.

The present legal provisions relating to witnesses and informants of corruption offences are not sufficiently protected under the legal provisions providing physical and mental protection from all forms of harassments, including employment related matters, relocation or non-disclosure of identity of informants.

The dual criminality requirement under MACMA would be a basis for refusal of requests for assistance. Hence, absence of offences such as bribery by foreign public officials, trading in influence, private sector bribery etc. would be subject to the discretion of the Central Authority.

Inadequacy of trained and specialized investigators and prosecutors is a similar challenge for lack of operational and financial dependence based on the general recruitment and financial procedures. Requirement of methodical training to professional investigators is a key step to secure successful recovery of assets.

Absence of a common approach with regard to the recovery of assets including legislation addressing all aspects of recovery of proceeds of corruption supported by an effective enforcement system remain the main lapse in the criminal justice system. Added to that lack of overarching measures as to the revelation of beneficial ownership, third-party ownership and unregistered assets remain an obstacle for timely detection of proceeds of corruption. Special investigative techniques such as wiretapping, use of bugging devices etc. are also not legitimized under the law.

V. PROPOSALS

The secrecy provision in the CIABOC Act should be relaxed to share information among law enforcement authorities for successful investigations. Laws should be amended to enable forming of joint investigation teams with different authorities. Further, the CIABOC as the special agency to deal with bribery and corruption, should be mandated to investigate and prosecute incidental offences under the Penal Code and the offence of money-laundering committed within the same transaction.

A composite law on proceeds of crime would rectify the existing lacunas in law. These include the property management authority, non-conviction-based confiscation, extended confiscation, value-based confiscation, civil forfeiture etc.

Legal provisions are required on wider protection to informants, victims and witnesses of corruption offences and special investigative techniques enabling the CIABOC to take swift actions on identification and tracing of proceeds. Provisions on offences such as private sector bribery, bribery of foreign public officials, trading in influence and sports corruption would cater for dual criminality requirements on mutual assistance requests. Strengthening the CIABOC with operational and financial independence is advisable for having skilled and professional investigators and prosecutors.

VI. CONCLUSION

The legal and institutional framework relating to identification, tracing, seizing, freezing and confiscation of proceeds of crime in Sri Lanka reflects the involvement of a number of institutions such as CIABOC, FIU, police, Attorney General and Ministry of Justice and the existence of a number of related laws. Although the existing legal provisions fulfil the requirements under UNCAC, some areas need to be further strengthened, while some concerns call for consideration of fresh legal provisions in order to have a coherence and completeness on the subject. Considering the multiple involvements and differences in legislation, a composite law on the subject of asset recovery is a key requirement under the present context. Currently the authorities are in the process of drafting a composite Proceeds of Crime Bill covering all the aspects of recovery of stolen assets. It is expected to provide logical, technical and practical solutions for many issues raised relating to asset recovery including international cooperation. Recent amendment of the Mutual Legal Assistance in Criminal Matters Act No. 24 of 2018 has already addressed many issues relating to foreign jurisdiction-based recovery of proceeds of corruption. The proposed composite Anti-Corruption Bill would further strengthen the national anti-corruption body's readiness to recover such proceeds.

Appendix

A. Abbreviations

CIABOC Act	Commission to Investigate Allegations of Bribery or Corruption Act No 19 of 1994
CIABOC	Commission to Investigate Allegations of Bribery or Corruption
CID	Criminal Investigation Department
FIU	Financial Intelligence Unit
FTRA	Financial Transactions Reporting Act No.6 of 2006
Globe	Global Operational Network of Anti-corruption Law Enforcement
INTERPOL	The International Criminal Police Organisation
MACMA	Mutual Legal Assistance in Criminal Matters Act No.25 of 2002
PMLA	Prevention of Money Laundering Act, No.5 of 2006

B. Legislation

Assistance to and Protection of Victims of Crime and Witness protection Act No.4 of 2015
 Bribery Act No.11 of 1954
 Code of Criminal Procedure Act No. 15 of 1979
 Commission to Investigate Allegations of Bribery or Corruption Act No. 19 of 1994
 Customs Ordinance No. 17 of 1869
 Declaration of Assets and Liabilities Law No 1 of 1975
 Financial Transactions Reporting Act No. 6 of 2006
 Forest Ordinance No. 16 of 1907
 Judicature Act No. 2 of 1978
 Mutual Legal Assistance in Criminal Matters Act No.25 of 2002
 Mutual Legal Assistance in Criminal Matters (Amendment) Act No.24 of 2018
 Penal Code No.2 of 1883
 Poisons, opium & Dangerous Drugs Act as amended by Act, No. 13 of 1984
 Prevention of Money Laundering Act No. 5 of 2006
 Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979
 Tobacco Tax Act No.8 of 1999