

# STRENGTHENING PREVENTION, DETECTION, AND PROSECUTION OF CORRUPTION AND PUBLIC-PRIVATE PARTNERSHIP

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## I. OVERVIEW

The term “Corruption” can be defined simply as abuse of entrusted for personal gains. There is no specific definition for “corruption” and as per the Black’s Law dictionary, the corruption is defined as follows: “*The act of doing something with an intent to give some advantage inconsistent with official duty and the rights of others.*”<sup>1</sup>

According to Justice N. Santhosh Hedge, former supreme Court Judge of India, “*Corruption includes improper or selfish exercise of power and influence attached to a public office.*”<sup>2</sup>

Although corruption intends mainly in line with the abuse of entrusted powers, it does not restrict only to that instance. Thus, it comprises bribery, misappropriation, extortion, nepotism, fraud, embezzlement and money-laundering as well.

Corruption is a multifaceted menace which brutally attacks to the economic spine of countries. Almost every country in the world is facing terrible consequences with the same outcomes, though it appears in various configurations. The corruption destroys the people’s livelihoods and economy of the country by obstructing the state revenues and funds which are to be flowed to the General Treasury. It terribly affects to the rule of law and administrative integrity. it creates the social and economic inequality among the citizens. It discourages the investments and finally it creates political instability and insecurity in the society bringing the ill fame and putting that country into the corrupted list in global rankings.

There are no exact proofs to estimate a period of time or era and when and where corruption had its origin and in which form it was originated at the inception. However, the community of the world has realized now, that it is not a single act and it is not an issue, relevant only to the state. Thereby, only the efforts taken by the government or the state were not sufficient enough to combat against the corruption which was entangled in each and every aspect of the society. In the circumstances, since there should be a robust mechanism and frameworks to eradicate it, the role of the private sector in relation to the fighting against corruption was emerged significantly. Having understood said importance of forming collaborative efforts with the private sector, the concept of “public-private partnership against the corruption” (PPP) was originated and expanded all over the world due to its successful applicability of using as a tool to fight against the corruption. Thereby, Public-Private Partnerships (PPP) play a significant role in the scope of anti-corruption mechanisms and tools.

## II. LEGISLATIVE AND INSTITUTIONAL FRAMEWORK IN SRI LANKA TO ACT AGAINST CORRUPTION

From the historical era of Sri Lanka, there were several legislative and institutional mechanisms which were set up from time to time in order to fight against corruption. Certain anti-corruption provisions were there in The Constitution and under the criminal law, Penal Code consists several provisions in relation to

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<sup>1</sup> pg.154, 3<sup>rd</sup> pocket edition of Black’s Law Dictionary.

<sup>2</sup> Pg.06 of “Commentary on Anti-Corruption - Law”, 2021- Justice N. Santhosh Hedge.

the bribery offences. Then Bribery Act<sup>3</sup>, Declaration of Assets and Liabilities Law,<sup>4</sup> Commission to Investigate Allegations of Bribery or Corruption Act<sup>5</sup>, Prevention of Money Laundering Act,<sup>6</sup> came into operation with extensive powers to act against the corruption. Several anti-corruption institutions were also set up in accordance with said legislative frameworks.

## **A. Legislative Scope in Relation to Act Against Corruption In Sri Lanka**

### 1. The Constitution

The Legislature of Sri Lanka (The Parliament) has recognized and accepted to act against the corruption, prevention of corrupt practices and develop a culture with integrity in accordance with the provisions of United Nations Convention Against Corruption (UNCAC) the 21<sup>st</sup> Amendment made to the Constitution.<sup>7</sup>

Thereby, The Parliament passed the Anti-Corruption Act No.09 of 2023 in complying with the 21<sup>st</sup> amendment of The Constitution in order to set up an independent commission with the powers to investigate, prosecute, prevent the corruption and to take measures to implement the United Nations Convention Against Corruption (UNCAC) and any other international Conventions relating to the prevention of corruption, to which Sri Lanka is a party.<sup>8</sup>

### 2. Prevention of Money Laundering Act

As per the provisions of Prevention of Money Laundering Act, money-laundering becomes an offence if any person engages directly or indirectly in any transaction in relation to any property which derived from any unlawful activity or proceeds of crime knowing or having reasons to believe that such property is derived from any unlawful activity or proceeds of crime<sup>9</sup>. As per the interpretation unlawful activity includes the offences under the bribery law as well.<sup>10</sup>

### 3. Anti-Corruption Act, no.09 of 2023

The Anti-Corruption Act was enacted by the legislature by complying with the provisions of the 21<sup>st</sup> amendment to the Constitution. Accordingly, The Commission to Investigate Allegations of Bribery Or Corruption, Sri Lanka (CIABOC) was set up as an independent corporate body in order to investigate, prosecute the offences including corruption, bribery (both public and private sector), conflict of interest, trade in influence, money-laundering etc.

## **B. Institutional Framework in Relation to Act Against Corruption**

Several institutions were also set up to fight against the corruption with the collaboration of the private sector in Sri Lanka. Some institutions were set up with the special laws passed in accordance with The Constitution of Sri Lanka.

### 1. The Commission to Investigate Allegations of Bribery or Corruption- (CIABOC), Sri Lanka

The Commission to Investigate Allegations of Bribery Or Corruption, Sri Lanka (CIABOC) which is empowered by the 21<sup>st</sup> Amendment of the Constitution of Sri Lanka and the Anti-Corruption Act, is the focal point and the main investigating, prosecuting and prevention authority in respect of the corrupt practices including bribery (public and private sector), corruption, undue accumulation of wealth, conflict of interest, trade in influence, declaration of assets and liabilities and money-laundering etc.

### 2. The Financial Intelligence Unit- (FIU), Central Bank of Sri Lanka

The Financial Intelligence Unit (FIU) was set up under the Ministry of Finance and Planning at the Central Bank in terms of the Financial Transactions Reporting Act No.06 of 2006. It is the main body which supervises the suspicious monetary transactions and act as the central repository of reported information. It has powers to collect information in relation to the unlawful activities which constitutes money-laundering,

<sup>3</sup> Bribery Act, no.11 of 1954.

<sup>4</sup> Declaration of Assets and Liabilities Law, no.01 of 1975.

<sup>5</sup> Commission To Investigate Allegations of Bribery or Corruption Act, No.19 of 1994.

<sup>6</sup> Prevention of Money Laundering Act, no.05 of 2006.

<sup>7</sup> Article 156A (1) (c) of 21<sup>st</sup> Amendment of the 1978 constitution.

<sup>8</sup> Sri Lanka signed the UNCAC on 15/03/2003 and ratified it on 31/01/2003 and UNCAC entered into force on 14/12/2005.

<sup>9</sup> Section 3(1) of Prevention of Money Laundering Act, no.05 of 2006.

<sup>10</sup> Ibid, Section 35.

financing of terrorism and share them to the law enforcement authorities for legal actions and act with the local and global stake holders educate and prevent illegal practices of money-laundering and financing of terrorism.

3. Criminal investigation Department (CID) – Sri Lanka

Criminal investigation Department (CID) is another forum which is engaging in the investigations relating to the money-laundering, and other financial crimes with high value and complexed nature. CID mainly conducts money-laundering investigations and refer them to the Attorney General's Department for legal actions. The law relating to the money-laundering offences empowers the CID to investigate and seize the proceeds of crimes during the investigation too.<sup>11</sup>

**C. Legislative Scope Facilitating Public-Private Partnership (PPP) in Relation to Detect, Prosecute and Prevent Corruption in Sri Lanka**

The governing tool for combating against the corruption with the collaboration of the all sectors of the world is United Nations Convention Against Corruption (UNCAC). Therefore, being a signatory to the UNCAC, Sri Lanka has an obligation to comply with the provisions of the same and enact the laws, mechanisms and procedures to investigate, prosecute, and prevent the corruptions. Accordingly, the legislature of Sri Lanka constitutionally undertook to implement the provisions of the UNCAC by its 21<sup>st</sup> amendment to the constitution.

The provisions of the UNCAC drives its signatories to have strong laws and procedures including the in association with the private sector. The UNCAC provides that the state parties shall take measures to encourage the cooperation between national investigating and prosecuting authorities and entities of the private sector relating to the commission of offences and encourage its nationals and other persons to report to the investigating and prosecuting authorities if offences were committed.<sup>12</sup> In the above legal context, laws of Sri Lanka including the supreme law (the Constitution) have been adjusted as per above provisions in respect of the contribution of private sector in the anti- corruption movement.

**III. STATUTORY PROVISIONS FACILITATING PUBLIC-PRIVATE PARTNERSHIP (PPP) AND RELATED INSTITUTIONS SET UP IN REATION TO DETECT CORRUPTION**

Several legislations have been enacted by the Parliament of Sri Lanka in order to detect the corruption with the collaboration of the private sector. Prevention of Money Laundering Act no.05 of 2006, Financial Reporting Transactions Act, no.06 of 2006 and the Anti- Corruption Act, no.09 of 2023 are the main statutory laws enacted with that purpose.

**A. Anti-Corruption Act no.09 of 2023**

The newly enacted Anti- Corruption Act, was come into operation from 15/09/2023. The Bribery Act no.11 of 1954, the Commission to investigate Allegations of Bribery or Corruption Act no.19 of 1994 and the declaration of Assets and Liabilities Law no.01 of 1975 were repealed with the arrival of Anti- Corruption Act. Therefore, the new Act can be considered as a replacement with new updates regarding the detection, prosecution, prevention and reporting about the corruption.

There are several special provisions which facilitates for the detection of corruption with the partnership of the private sector. The Commission is empowered to conduct investigations, regarding the allegations contained in any information or complaint made to it or any material received by it or on *ex mero motu* where any such allegations or any material received discloses the commission of an offence under the Anti-Corruption Act.<sup>13</sup>

Such complaint or information can be provided to the Commission orally, in writing or by electronic mode

<sup>11</sup> Section7(01) of Prevention of Money Laundering Act, no.05 of 2006.

<sup>12</sup> Article 39(1), 39(2) of UNCAC.

<sup>13</sup> Section 41 of Anti- Corruption Act, no.09 of 2023.

of communication.<sup>14</sup> After the investigations, the Commission has the powers to direct the Director-General to institute proceedings in respect of such offence in the appropriate court.<sup>15</sup>

The Commission can direct any bank, a non-banking financial institution, or designated non-finance business to produce, any information relating to the account of any person in respect of whom any inquiry or investigation is being conducted and any bank, non-banking financial institution, or designated non-finance business to provide information and material to the Commission.<sup>16</sup>

The Commission has powers to conduct a joint-investigations for a specific period by an agreement between the Commission and any other investigative authority in Sri Lanka.<sup>17</sup>

Further, the CIABOC is the central authority on declarations of assets and liabilities. It should monitor and conduct a verification process in relation to the declaration assets and liabilities in order to detect, investigate and take actions against undue enrichment/ accumulation of illegal wealth and conflict of interests. The officers/persons whom were subjected to this law include even private staff members of the Members of Parliament, Executives of trade unions, Chairmen, Directors and staff officers of Companies, in which not less than twenty-five per centum of shares are held by the State, office bearers of media, office bearers of National Associations of Sports and many more categories listed out in the Act.<sup>18</sup>

#### **B. Prevention of Money Laundering Act no.05 of 2006 — Criminal Investigation Department (CID)**

As per the Act, it makes it an offence for not declaring any information to Financial Investigation Unit (FIU) relating to any property that has been derived from any unlawful activity.<sup>19</sup>

#### **C. Financial Transactions Reporting Act, no.06 of 2006 — Financial Intelligence Unit (FIU)**

FIU is the main supervisory authority to collect the information about suspicious financial transactions which fall within the definition of money-laundering and financing of terrorism and disseminate them to the appropriate law enforcement agencies for investigation or the prosecution.<sup>20</sup>

### **IV. STATUTORY PROVISIONS FACILITATING PUBLIC-PRIVATE PARTNERSHIP (PPP) AND RELATED INSTITUTIONS SET UP IN RELATION TO PROSECUTION OF CORRUPTION**

As per above mentioned statutory provisions, mainly two institutions have been set up in order to take actions in respect of corruptions. The main prosecution body for offences of corruption is the CIABOC and the other authority is Attorney General's Department.

#### **A. Anti-Corruption Act, no.09 of 2023 — The Commission to Investigate Allegations of Bribery or Corruption (CIABOC)**

As far as the Anti- Corruption Act is concerned the Commission to Investigate Allegations of Bribery or Corruption (CIABOC) is empowered to conduct investigations, prosecutions and prevention in respect of corruption and other associated offences. The Anti- Corruption Act, makes it an offence for offering, solicitation or acceptance of a gratification by of private sector and if convicted be liable to a fine not exceeding 1 million Rupees or to a term of rigorous imprisonment not exceeding 07 years or to both fine and imprisonment.<sup>21</sup>

Anti-Corruption Act makes it an offence for offering or accepting a gratification in respect of threatening

<sup>14</sup> Ibid, section 43(1).

<sup>15</sup> Ibid, section 42.

<sup>16</sup> Ibid section 47.

<sup>17</sup> Ibid, Section 61(1).

<sup>18</sup> Ibid, Section 80.

<sup>19</sup> Section 05 of Prevention of Money Laundering Act, no.05 of 2006.

<sup>20</sup> Section 15 of financial transactions Reporting Act, no.06 of 2006.

<sup>21</sup> Section 106 of Anti- Corruption Act, No.09 of 2023.

or undermining the integrity of any sporting events including influencing the run of play or the outcome of the sporting event or non-reporting such acts to the higher authorities of the sporting body, regulatory authority or to the nearest police station. It also carries same punishment as stated above for the offence of "private sector bribery" under section 106 of the Anti-Corruption Act.<sup>22</sup>

There are several offences in respect of non-declaration of assets and liabilities and other associated offences such as misinformation and submitting wrongful details in it. There is an administrative fine at the 01<sup>st</sup> instance and a legal action is considered if the offence is continuously committed.<sup>23</sup>

The Commission is empowered to investigate and prosecute the offences of money-laundering, misappropriation, criminal breach of trust, frauds, forgery, falsification of accounts, offences against Public Property Act, and offences under the Computer Crimes Act no.24 of 2007 if those offences and other offences under this Act were committed during the same transaction.

When an offence was committed falls under section 106 (private sector bribery) and section 108 (offences relating to sporting events) of this Act, The Commission with the permission of the High Court, may enter into a deferred prosecution agreement with any person to suspend and defer the Criminal Proceedings against such person for a period not less than five years and not exceeding ten years subject to certain conditions.

Where the Commission agrees to suspend or defer the criminal proceedings, it shall pay due regard to-

- the state policy on prevention of bribery and corruption;
- the national interest and public interest;
- views of the victims of the offence, if any; and the representations that may be made by the accused person or on his behalf by his Attorney-at-Law.

Conditions to be fulfilled within a stipulated period and said conditions include following:

- (i) to publicly express remorse and apology before the High Court
- (ii) to provide reparation to victims of the offence
- (iii) to publicly undertake that such person refrains from committing an offence under this Act; or
- (iv) to pay as compensation to the State the full amount relating to the offence.<sup>24</sup>

#### **B. Prevention of Money Laundering Act no.05 of 2006 and Financial Transactions Reporting Act, no.06 of 2006 — Attorney General's Department**

Offences under the Financial Transactions Reporting Act, no.06 of 2006 and offences of Prevention of Money Laundering Act are being investigated by the officers of FIU and the CID but, prosecuted by the Attorney General's Department.

### **V. STATUTORY PROVISIONS OF ANTI-CORRUPTION ACT FACILITATING PUBLIC-PRIVATE PARTNERSHIP (PPP) IN RELATION TO PREVENT CORRUPTION**

As a state party which became a signatory to the UNCAC, Sri Lanka has taken several mechanisms including legislative measures to combat against the corruption. The Anti-Corruption Act was enacted mainly in order to give effect to the provisions of the UNCAC. Moreover, the National Action Plan for Combatting Bribery and Corruption in Sri Lanka also was based mostly on the provisions of the UNCAC.<sup>25</sup>

<sup>22</sup> Ibid, Section 108.

<sup>23</sup> Section 90 of Anti-Corruption Act, No.09 of 2023.

<sup>24</sup> Section 71 of the Anti-Corruption Act, no.09 of 2023.

<sup>25</sup> <https://ciaboc.gov.lk/media-centre/resources/national-action-plan-2019-2023>.

### **A. Anti-Corruption Act no.09 of 2023- Sri Lanka**

There are several new provisions in the Anti- Corruption Act in respect of the Prevention and Public Private Partnerships. Section 39(2) of the Act reads as follows:

*“The Commission shall promote active participation of civil society, non-governmental and community-based organizations, in the prevention of and the fight against corruption to raise public awareness regarding the existence of, causes and gravity of and threats posed by corruption”*

As per the section 40 of the Act, the Commission can provide consultation, guidance, and advice to any institution public or private, on prevention strategies or measures to eradicate corruption and instruct, advice and assist any person for that purpose. Further, the Commission has powers to introduce codes of conduct for the private sector entities in order to develop good commercial practices, take measures to prevent corruption in the contractual relations between the Government and private sector entities, take measures to enlist and foster public support against corruption.<sup>26</sup>

### **B. National Action Plan for Combating Bribery and Corruption in Sri Lanka**

The National Action Plan for Combating Bribery and Corruption was launched in 2019 with the approval of the Cabinet. The Action Plan is premised on 04 strategies for combating bribery and corruption in Sri Lanka namely as follows:

- Prevention Measures and value-based education and community engagement
- Institutional Strengthening of CIABOC and other Law Enforcement Agencies
- Law and Policy Reforms.

Under the “Prevention Measures”, establishment of a Corruption Prevention Division at CIABOC, enhancing integrity and preventing corruption in the public and private sector, appointment of integrity officers and facilitation officers, forming corruption prevention committees, institutional Action Plans with risk assessment, gift rules, conflict of interest rules, codes of ethics, oath of integrity, integrity pledge, corruption free zone are several actions for the public and private sectors to be done.<sup>27</sup>

Further, for “Optimizing Citizen’s Access to Public Services” includes, Citizen charter, electronic payment system, public display of standard processes, promote digitalization, reception officers were available. Under the “Preventing Corruption in the Private Sector” includes reviewing current codes of ethics, introducing codes of ethics and regulatory audits for integrity.

“Value-Based Education and Community Engagement” includes integrity education for children and youth, introducing a curriculum on integrity and anti-corruption to primary, middle and high school, developing a National Policy on Anti-corruption and Integrity Education in Universities, Promoting Youth Movements and Youth Coalitions committed to integrity, strengthening the role of media to promote a culture of integrity strengthening the role of media to promote a culture of integrity, strengthening civil society and citizens to enhance accountability, engaging the private sector towards a society of integrity, identifying private sector associations, Professional Associations, Social Service Clubs, and chambers of Commerce as partners and sign MOUs, incorporating corruption prevention and integrity programmes into Corporate Social Responsibility initiatives, Developing a model of Signing of Integrity Pacts between private companies and public sector institutions in public-private partnerships, training religious leaders on linking integrity, values, anti-corruption with religion etc.

<sup>26</sup> Section 40 of Anti- Corruption Act.

<sup>27</sup> Page 41, Strategy one, National Action Plan for Combating Bribery and Corruption 2019-2023 <https://ciaboc.gov.lk/media-centre/resources/national-action-plan-2019-2023>.

## VI. PRACTICAL APPLICATION OF PREVENTING CORRUPTION AND PUBLIC-PRIVATE PARTNERSHIPS IN SRI LANKA

### A. Prevention Unit of the CIABOC

The CIABOC has set up a prevention unit with well - trained qualified graduate prevention officers in 2020 and they are conducting awareness on Anti- Corruption law and integrity concepts and prevention programmes for all sectors, conducting researches on the corruption issues of the institutions, identifying and preparing guidelines for all sectors, appointing and integrity officers and integrity clubs in all institutions including universities and schools and training them, training trainers for all institutions, inspecting laws and procedures of the institutes and assisting to buildup new mechanisms to minimize corruption issues. Currently, said Prevention officers, investigating officers and legal officers are conducting awareness programmes, trainer-trainee programmes as per the national and institutional action plan and have appointed nearly 1000 integrity officers in the public institutes.

### B. Jointly Working with NGOs

The CIABOC, actively joined hands with non-governmental organizations (NGO) on prevention works. Accordingly, workshop for sharing experience with 50 NGOs were successfully conducted in 2023 and since then several projects have been planned out to carry out with the active participation of civil societies.

### C. Conducting Awareness Programmes

The CIABOC conducting regular awareness programmes for public sector (ministries, departments, state companies, statutory boards etc.) private sector, civil society, media, school children and staff and undergraduates, and staff of the universities. Specially, conducting awareness programmes for the private companies to educate them on the new Anti- Corruption Act and integrity concepts. Accordingly, conducted awareness programmes at the private companies Prime Lands (Pvt) Ltd, Hatton National Bank, HNB-Assurance and Civil Aviation (Pvt) Ltd etc. further, the CIABOC has planned to issue guidelines and codes of conduct with the rules pertaining to the conflict of interest to the public sector to minimize the corruption issues and enhance the efficiency with a smooth running of business.

### D. Signing Memorandum of Understanding (MOU)<sup>28</sup> with Stake Holders

#### 1. MOU signed with University of Sri Jayawardhana, Sri Lanka – 2023

Objectives of said MOU include:

- i. Providing clean and upright educational approach in Sri Lanka through value-based education and community engagement
- ii. socializing the message of integrity, creating awareness, empowering and creating a generation of students with integrity by the participation of the staff officers in the field of education, teachers, non-academic officers, apprentice and students with the collaboration of CIABOC, Ministry of Education and Higher Education, National Education Commission and the National Institute of Education.
- iii. Minimizing chances of bribery and corruption from the future society and promoting an anti-corruption culture both within and outside the educational system by developing upright attitudes.
- iv. Creating awareness of the university community.
- v. build a clean society against bribery and educating students, on the value of being an honoured citizen and to secure the resources of the country through installing positive values such as mutual respect, and self-discipline.
- vi. Developing integrity concepts in university community.

<sup>28</sup> <https://ciaboc.gov.lk/media-centre/resources/publications>

2. MOU Signed with Ministry of Education, Sri Lanka - 2022

The CIABOC has signed this MOU<sup>29</sup> with the Ministry of Education in order to achieve following Objectives:

- i. Providing clean and upright educational approach in Sri Lanka.
  - ii. Socializing the message of integrity, creating awareness, empowering and creating a generation of students with integrity.
  - iii. Minimizing chances of bribery and corruption from the future society and promoting an anti-corruption culture.
  - iv. Creating awareness of the school community.
  - v. Realizing the students, the value of being an honoured citizen and to secure the resources of the country through installing positive values such as mutual respect and self-discipline.
  - vi. Developing integrity concepts in school community through value-based education and community engagement and spreading decent message to the society with a zero tolerance for bribery and corruption.
3. MOU Signed with The Financial Intelligence Unit (FIU) of Sri Lanka-2024<sup>30</sup>
- The Commission to Investigate Allegations of Bribery or Corruption (CIABOC) entered into a Memorandum of Understanding (MOU) with The Financial Intelligence Unit (FIU) of Sri Lanka to exchange information relating to investigations and prosecutions of money-laundering, bribery or corruption, and other related offences.

## **VII. PRACTICAL APPLICATION OF DETECTING CORRUPTION AND PUBLIC-PRIVATE PARTNERSHIPS IN SRI LANKA**

### **A. Mechanisms of Reporting Corruption**

- i. CIABOC has adopted several measures to enable citizens to conveniently make complaints on bribery and corruption, such as establishing a hotline for 24 hours, facsimile, postal and emails, online and walk-in complaints. The hotline “1954” is well known to the public and provides the first information on most of the raids conducted by CIABOC.
- ii. Since 2015, all complaints are acknowledged with a reference number and the public can inquire about their complaints using the reference number. As per the Anti- Corruption Act, the complainant can obtain the progress of the investigation upon a request made by him.<sup>31</sup>
- iii. CIABOC’s website publicly disseminates and provides access to information on its activities on detections, prosecutions, prevention, other important events including press conferences, educational videos, international Anti- Corruption Day celebrations, and other local and international partnerships.<sup>32</sup>
- iv. except above institutions, complaints can be made to the other institutions such as, police, criminal Investigation Department (CID), Fraud Bureau in respect of the corruption related offences according to the value and the purview of such institutions.

<sup>29</sup> <https://ciaboc.gov.lk/media-centre/resources/publications>

<sup>30</sup> <https://ciaboc.gov.lk/media-centre/latest-news/1177-memorandum-of-understanding-signed-between-the-commission-to-investigate-allegations-of-bribery-or-corruption-and-the-financial-intelligence-unit-of-sri-lanka> , [https://fiusrilanka.gov.lk/docs/press\\_releases/2024/FIU\\_2024\\_06\\_18/FIU\\_2024\\_06\\_18\\_E.pdf](https://fiusrilanka.gov.lk/docs/press_releases/2024/FIU_2024_06_18/FIU_2024_06_18_E.pdf)

<sup>31</sup> Section 44 of Anti- Corruption Act no.09 of 2023.

<sup>32</sup> <https://www.ciaboc.gov.lk> .



## **B. Measures Taken Aimed at Enhancing Integrity, Transparency, and Accountability of Public and Private Entities**

Measures pertaining to record-keeping, preparation of financial statements, accounting and auditing in the private sector are prescribed in the Accounting and Auditing Standards Act Companies Act, Securities and Exchange Commission Act, Monetary Law Act, Banking Act, Insurance Act and Finance Companies Act.

- Article 13 of the Constitution ensures due process and requires fair trial. The Establishment Code and Public Service Commission Rules govern the appointment, code of conduct, and disciplinary control of public officers.
- Government financial and procurement procedures are governed by Financial Regulations and government procurement guidelines. The National Procurement Commission is constitutionally required to formulate guidelines on rule of law principles on procurement.
- The Right to Information Act No. 12 of 2016 provides an opportunity for transparency and accountability.
- Sri Lanka Accounting and Auditing Standards Monitoring Board (SLAASMB).  
The Board is established as a body corporate for monitoring compliance of the Sri Lanka Accounting Standards and Sri Lanka Auditing Standards.
- Department of Registrar of Companies  
The Companies Act No. 07 of 2007 set out the obligations of all companies formed under the Companies Act to prepare financial statements. Section 120 of the Act regulates the company records which should be kept and available for public inspection.
- The Securities and Exchange Commission  
The Securities and Exchange Commission was set up under the Securities and Exchange Commission Act, no.19 of 2021. It ensures that the Sri Lankan regulatory setting is effective and that securities law is fitted to fulfil the needs of the market and international best practices. It provides additional compliance and disclosure requirements for all listed companies when preparing financial statements.
- National Procurement Commission (NPC)  
National Procurement Commission (NPC) was set up on 04/05/2023 in terms of the 21<sup>st</sup> Amendment made to the Constitution in order to preparing of guidelines and instructions, monitoring and regulatory activities pertaining to the procurements done by all government entities.<sup>33</sup>

## **C. Measures Taken Aimed to Protect, Informers, Witnesses, Victims and Whistle-Blowers in Relation to Corruption**

### 1. National Authority for the Protection of Victims of Crimes And Witnesses.

National Authority for the Protection of Victims of crimes and Witnesses was set up in terms of Assistance to And Protection of Victims of crimes and Witnesses Act, No.10 of 2023. With the main objects of:

- setting out the rights and entitlements of victims of crime and witnesses and duties and responsibilities of the State, judicial officers and public officers in upholding, promoting and protecting the rights and entitlements of victims of crime and witnesses.
- providing assistance and protection to victims and witnesses, providing a mechanism to enable the victims of crime and witnesses to exercise and enforce their rights and entitlements and to obtain relief, granting of redress including compensation, restitution, reparation and rehabilitation to victims of crime and witnesses<sup>34</sup>

The National Authority for the Protection of Victims of crimes and Witnesses is in force now and they actively engage in the process of facilitating witnesses to testify from distant place thorough contemporaneous audio-visual means. Further they involve in the court cases for compensation and taking measures in respect

<sup>33</sup> Article 156 of 21<sup>st</sup> Amendment of the Constitution.

<sup>34</sup> Section -02 of Assistance to And Protection of Victims of crimes and Witnesses Act, No.10 of 2023.

of the complaints received by them.

2. Commission to Investigate Allegations of Bribery or Corruption. (CIABOC)

The CIABOC is empowered by the Anti-Corruption Act no.09 of 2023 with certain provisions in respect of the protection of informers, witnesses, victims and whistle blowers. Thereby, such information and the identity of the informer shall not be disclosed in any proceedings before any court, tribunal, or other authority and if violated, be liable a to a fine of one hundred thousand rupees or to a term of imprisonment not exceeding six months or to both such fine and imprisonment.<sup>35</sup>

Further, where a person provides information to the Commission to any other law enforcement authority believing that such information is true, he shall not be subject to civil or criminal liability for providing such information and also, an informer shall not be subject to adverse conditions of employment, reprisal, coercion, intimidation, retaliation, harassment, any injury to his person, or threatening and if he is a whistle blower, no disciplinary action shall be taken against him for providing such information. Despite any prohibition of or restriction on the disclosure of information under any other law, contract, oath or practice, a whistle-blower shall not be subject to detrimental action.

**D. The Safety Measures to Be Taken by the CIABOC**

The CIABOC can implement following safety measures to protect such person or any other person from intimidation, harassment, injury or threat. Accordingly, the Commission shall have the power to provide legal representation to any informer, whistle-blower or witness during an investigation, including inquiries at Magistrate’s Court, and at a trial in the High Court into an alleged offence committed against such whistle-blower or witness.

**VIII. CIABOC ACHIEVEMENTS**

**A. International Obligations and Commitments**

There are number of conventions/treaties that Sri Lanka became a party in relation to combat against corruption.

1. United Nations Convention Against Corruption UNCAC

As the main international arm, setting up for against the corruption, Sri Lanka has signed and ratified it 2004. However, after having several reviewing circles, Sri Lanka managed to enact the Anti-Corruption Act with almost all the relevant provisions which are to be adopted to the domestic law. Thereby, complying with the provisions of the *UNCAC*, several new concepts and offences, mechanisms such as, prevention mechanisms, private sector bribery, Sports bribery, Conflict of interests, trade in influence, E-Asset Declaration system, witness and whistle blower protection, enhancing the punishments etc. were introduced to the Anti-Corruption Act with independent powers and the Commission was set up as an independent body corporate.

2. Open Government Partnership (OGP)

The Open Government Partnership (OGP) was formed in 2011 by governments and civil society organizations in order to work together to address difficult challenges. It was founded to have a better collaboration between governments, civil society, and citizens with the purpose of facing common challenges unitedly and successfully. Sri Lanka became a party in 2015 and now fulfilled most of the commitments including setting up an E-Asset declaration platform according to the 2019-2021 Action Plan.<sup>36</sup>

**B. Local Initiatives to Fight Against Corruption**

- The CIABOC has set up a new Money Laundering Unit and Asset Declaration Unit in terms of the newly introduced provisions under the Anti-Corruption Act and started investigations on newly introduced offences of money-laundering, sexual bribery, sports bribery, trade in influence, and conflict

<sup>35</sup> Section 73 of Anti-Corruption Act, no.09 of 2023.

<sup>36</sup> <https://www.opengovpartnership.org/documents/sri-lanka-hybrid-report-2019-2021/> access on 04/07/2024.

of interest etc.

- The Prevention Unit has expanded its operations covering the public sector, private sector, Civil Societies, non-governmental organizations in respect of training, awareness of new Anti- Corruption Act, prevention programmes, sharing experience, preparing guidelines and entering into MOUs.
- The CIABOC has started sharing information with other investigation agencies such as Financial Intelligence Unit (FIU), Inland Revenue Department etc. and joint investigations as empowered by new Anti- Corruption Act.

## **IX. JUDICIAL INTERVENTION FOR INVESTIGATIONS AND PROSECUTIONS RELATING TO CORRUPTIONS OF PUBLIC - PRIVATE SECTORS IN SRI LANKA**

### **A. Sexual Gratification Raid Conducted Against the Accountant Cum Manager - HR Of Thilanka Resort and Spa (Pvt) Ltd.<sup>37</sup>**

Investigation Officers of the Commission arrested an Accountant cum Manager (Human Resources) of a private Hotel at around 26.01.2024 on a complaint made by a woman employee who is working as an Account Assistant of the same hotel. The suspect has solicited a sexual gratification from the complainant several times promising to pay her the full-service charge amount, instead of the 75% she is paid at present, and to make her permanent in the post.

The complainant lodged a complaint to the CIABOC over the phone, due to the repeated undue requests made by the suspect. The suspect has taken her to another hotel. The suspect was arrested inside the hotel room on allegations of soliciting and accepting sexual gratification. Further investigations are being conducted and an indictment to be filed against the suspect for the offence of soliciting and accepting of "sexual gratification"<sup>38</sup> under the section 106 of Anti- Corruption Act, no.09 of 2023, which is applicable even to the private sector bribery.

### **B. Corruption Case Filed and Tried in Permanent Trial-At-Bar Against Former President's Chief of Staff Dr. I.H.K. Mahanama and the Former Chairman of the State Timber Corporation P. Dissanayake<sup>39</sup>**

The investigations were commenced on a complaint lodged by an Indian businessman who came to Sri Lanka to invest in Kanthale Sugar Factory. The first Accused Dr. I.H.K Mahanama has served as the Secretary of the Ministry of Lands since 2015 to 31.03.2018. He was the President's Chief of Staff from the year 2018 to 03.05.2018. The second Accused P. Dissanayake was the Chairman of the State Timber Corporation. In the first instance, the first Accused has solicited a bribe of USD 3 million to transfer the absolute ownership of the land, buildings and machinery of the Kanthale sugar factory to the complainant. Subsequently, the 1<sup>st</sup> and the 2<sup>nd</sup> Accused have solicited a bribe of Rs.100 million and accepted Rs. 20 million.

Indictment was served before the Permanent Trial- at- Bar against both suspects. Both accused were convicted at the end of the trial, sentenced to 20 years of rigorous imprisonment, a fine of Rs. 65,000/- and a penalty of 20 million and P. Dissanayake was sentenced to 12 years of rigorous imprisonment, with a fine of Rs.55,000/-. Both Accused appealed to the Supreme Court challenging the permanent Trial- at- Bar verdict on 11/01/2023 and it was heard before a Five-Judge Bench of the Supreme Court and they have unanimously upheld the Trial -at- Bar verdict and the appeal was dismissed.

<sup>37</sup> B/216/2024, Magistrate's Court- Kekirawa, Sri Lanka.

<sup>38</sup> Section 162 of Anti- Corruption Act, no.09 of 2023, "Sexual favour" means - sexual intercourse; or any act that may not amount to sexual intercourse, but may amount to or constitute physical, verbal or non-verbal conduct of a sexual nature, including the exposure of a private body part or any act performed by the use of information and communication technology or any other means.

<sup>39</sup> HC/PTB/1/04/2019, Colombo, Sri Lanka.

**C. Corruption Case Filed Against Sajin De Vas Gunawardhana–Former Chief Executive Officer (CEO) of Mihin Lanka Air Lines (Pvt) Ltd.**

Sajin Vass Gunawardena, who was accused of allegedly causing a loss of Rs. 883 million to the government while purchasing ground support equipment during his tenure as the Chief Executive Officer of the Mihin Lanka Air Lines (Pvt) Ltd. He was a former parliamentarian too. In 2007, Mihin Lanka called for tenders for hiring ground handling equipment and six companies had shown their interest as bidders. However, said Sajin De Vass Gunawardnana had entered into a contract with another company named “TPL International (Pvt) Ltd” for hiring ground handling equipments for a monthly rental of USD 223,000/- though that company was not a prospective bidder in this procurement process. The accused had presented a board paper stating that the best bidder to award the tender and accordingly, the tender was awarded to said “TPL International (Pvt) Ltd” without proceeding with the tender procedure further.

As per the agreement between the parties, Mihin Lanka is not liable to pay the freight charges and demurrages for the import of the goods. However, the Accused has authorized said payment of charges causing a loss of Rs.18,543,253/- to the government. After having an investigation, the CIABOC filed an indictment against the Accused and the case is still pending.

**D. Bribery Case Filed Against Palitha Fernando- Chairman Of Rakna Arakshaka Lanka Ltd And Nissanka Senadhipathi – Chairman Of Avant Guard Maritime Services (Pvt) Ltd.<sup>40</sup>**

01<sup>st</sup> Accused was the Chairman of the Rakna Arakshaka Lanka Limited which was a state-owned company and the 02<sup>nd</sup> Accused was the Chairman of the Avant Garde Maritime Services (Pvt) Ltd. Both companies had entered into an agreement for setting up a floating armoury in the High seas. No procurement procedure had been followed in relation to this contract. The initial discussions were commenced on the 08<sup>th</sup> of August 2012 and the agreement had been signed by 25/12/2012.

It was revealed that, during the execution of that agreement and afterwards, the 02<sup>nd</sup> Accused had deposited Rs. 35,500,000/= into the bank Account which was opened up by the 01<sup>st</sup> Accused in the name of “Palitha Fernando Trust”. Both suspects were arrested and produced before the court by the CIABOC during the investigation for offences of offering and accepting Rs.35,500,000/= in 06 instances. Later, an indictment was filed against both Accused in the High Court for offering and acceptance of a bribe of Rs. 35,500,000/= through said bank account.

**X. BARRIERS AND CHALLENGES FOR FIGHTING AGAINST CORRUPTIONS**

Issues and challenges are main driving forces for anti- corruption agencies to have the innovative, optional and strong mechanisms to fight against the Corruption. Following challenges can be identified as the key challenges of the Public- Private Partnership engraved in the implementation of anti- corruption mechanisms.

**A. Challenges Arising from Private Sector Entities**

- The Anti- Corruption Act covers only the small area of the private sector. As per the interpretation of the private sector entity means specified business enterprise as defined in the Accounting and Audit Standards Act. It does not cover the sole proprietorships, partnerships as well.
- Most of the private sector entities do not have their own mechanism to regulate their business by identifying and disclosing their red flags, corruption risks to the law enforcement authorities.
- Most of the Private Sector entities do not act with Codes of Conduct and there is no proper supervisory system to enforce the internal regulations and disciplinary control over the integrity, conflict of interest, and corruption related issues.
- Some Private sector entities are acting neither in accordance with the existing procurement guidelines

<sup>40</sup> HCB/25/2017, High Court, Colombo, Sri Lanka.

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nor their own approved mechanism in the procurement procedure.

- Most of the officers of private entities are not interested in reporting/complaining against their higher authorities due to ignorance, disinterestedness, lack of knowledge or fear.
- Some professionals such as, attorneys-At- Law do not report suspicious financial transactions to the FIU due to the issues relating to the Ethics for not divulging the identity of the clients.

Finding solutions for above issues, it is suggested to bring the necessary amendments to the Anti-Corruption Act and other relevant laws to cover all the sectors of the Private entities and to avoid clashes between the laws and professional ethics for the convenience of the professionals such as Attorneys-at- Law, implementing the provisions of the Anti-Corruption Act firmly regarding the monitoring, regulating the anti-corruption mechanisms in the private sector, enhance the prevention mechanisms for the private sector.

### 2. Challenges for Prosecution of Corruption

- Entertaining technical objections (such as directive of the all 03 Commissioners) raised by the defence party.
- Witnesses are reluctant to testify due to the lengthy legal proceedings and diminishing of interest to testify with the passage of time.
- Difficulty to prove charges with electronic evidence (audio-video recordings, CCTV etc.) due to the legal requirements relating to the complicated procedure of presenting them to court as admissible evidence.
- Difficulty to obtain the assistance of the witnesses since the suspects with political background stays in the same position or higher positions even after indictments were filed against them.

It is suggested to set up separate special court to try economic crimes such as corruption, money-laundering and conflict of interest etc. to avoid lengthy legal proceedings and postponements of cases, bringing required amendments to make the law relating to the admissibility of the electronic evidence uncomplicated, training the judicial officers in respect of the developed judicial proceedings and attitudes of integrity etc.

### 3. Challenges Coming from the Civil Society

- Failure to complain due to the lack of knowledge and attitudes, fear for intervention
- Victims of corruption with high profile do not complain against most of the corruptions since they act with unanimity with the corrupted officials.
- Less interest to assist for the investigations and prosecution due to the lack of knowledge about the economic crimes and consequences of the same.

It is suggested to enhance the awareness of the civil society in relation to the Anti- Corruption Act, negative impacts of the economic crimes and inculcate the integrity concepts with sophisticated prevention methods, strengthen the witness and whistle-blower protection implementing the provisions contained in the Anti- Corruption Act.

## XI. CONCLUSION

Sri Lanka has stepped into a new path towards the battle against the corruption with the enactment of the Anti- Corruption Act no.09 of 2023 and other related legislations. Implementation of special provisions inserted to the Anti- Corruption Act, in complying with the *UNCAC* will strengthen the collaboration with

the different stakeholders such as private sector entities, civil society activists, general public etc.

The newly introduced offences, new investigation techniques, international cooperation, independent and justifiable implementation of powers and mechanisms in relation to the prevention of corruption in the public and private sectors will be the robust arms for the team of the CIABOC to have a successful battle against corruption and make the country corruption free with the public-private partnerships.