



UNODC

United Nations Office on Drugs and Crime

Country Review Report of Sri Lanka

Review by Palau and Brunei Darussalam of the implementation by
Sri Lanka of articles 5-14 and 51-59 of the United Nations
Convention against Corruption for the review cycle 2016-2021

I. Introduction

1. The Conference of the States Parties to the United Nations Convention against Corruption (hereinafter, UNCAC or the Convention) was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.
2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.
3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.
4. The review process is based on the terms of reference of the Review Mechanism.

II. Process

5. The following review of the implementation by Sri Lanka of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Sri Lanka, and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Palau, Brunei Darussalam and Sri Lanka, by means of telephone conferences, e-mail exchanges or any further means of direct dialogue in accordance with the terms of reference and involving the following experts:

Sri Lanka:

- Justice W.L.R. Silva, Commissioner, Commission to Investigate Allegations of Bribery or Corruption (CIABOC)
- Mr. Sarath Jayamanne, President's Counsel, Director General, CIABOC, Focal Point
- Mrs. Dilrukshi Dias Wickramasinghe, former Director General, CIABOC
- Mr. A L A. Azeez, Sri Lanka's Permanent Representative to the United Nations in Geneva
- Ms. Ayesha Jinasena, Additional Solicitor General, Attorney General's Department
- Mr. Dilan Ratnayake, Deputy Solicitor General, Attorney General's Department
- Mr. Sudarshana De Silva, Senior State Counsel, Attorney General's Department
- Ms. Menaka Munasinghe, Assistant Director (General), CIABOC
- Mrs. Subashini Siriwardena, Assistant Director (General), CIABOC
- Mrs. Disna Gurusinghe, Assistant Director (Legal), CIABOC
- Mrs. Dusmanthee Rajapaksha, Assistant Director (Legal), CIABOC
- Ms. Thanuja Bandara, Assistant Director (Legal), CIABOC

Palau:

- Mr. Dan Mizinov, Chief Public Defender, Ministry of State
- Mr. Steven Killelea, Special Prosecutor, Office of the Special Prosecutor

Brunei Darussalam:

- Mr. Muhamad Hisham Sulaiman, Acting Chief Special Investigator, Head of International and Anti-Money Laundering Unit, Integrity Planning and Development Division, Anti-Corruption Bureau
- Mr. Ak. Hj. Sabarin Pg. Hj. Mohammad, Chief Special Investigator, Head of Integrity and Prevention Unit, Integrity Planning and Development Division, Anti-Corruption Bureau.
- Mr. Christopher Ng Ming Yew, Deputy Senior Counsel & Deputy Public Prosecutor, Attorney General's Chambers

Secretariat:

- Ms. Tanja Santucci, Crime Prevention and Criminal Justice Officer, UNODC
- Ms. Tatiana Balisova, Associate Crime Prevention and Criminal Justice Officer, UNODC

6. A country visit, agreed to by Sri Lanka, was conducted in Colombo from 29 to 31 March 2017.

III. Executive summary

1. Introduction: overview of the legal and institutional framework of Sri Lanka in the context of implementation of the United Nations Convention against Corruption

Sri Lanka signed the Convention on 15 March 2004 and ratified it on 31 March 2004. The Convention entered into force for Sri Lanka on 14 December 2005.

The country's implementation of chapters III and IV of the Convention was reviewed during the third year of the first cycle (CAC/COSP/IRG/I/3/1/Add.20).

Sri Lanka has a mixed legal system of Roman Dutch civil law and English common law, and applies the dualist system for the implementation of international treaties. The nineteenth amendment to the Constitution, of May 2015, provides for the establishment of the Commission to Investigate Allegations of Bribery or Corruption (CIABOC) and empowers it to implement the Convention, thus giving the treaty constitutional recognition.

Sri Lanka is a member of the Asia/Pacific Group on Money Laundering (APG) and the Egmont Group of Financial Intelligence Units.

The most important institutions in the fight against corruption are CIABOC, the Financial Crimes Investigation Division of the Sri Lanka Police, the Attorney General's Department, Financial Intelligence Unit of Sri Lanka, the Public Service Commission, the National Procurement Commission, the Auditor General and the Special Presidential Task Force for Recovery of Illegally Acquired State Assets.

2. Chapter II: preventive measures

2.1. Observations on the implementation of the articles under review

Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)

What Sri Lanka has adopted is not a single anti-corruption strategy, but consists of several significant steps and measures to prevent corruption. The directive principles of State policy and fundamental duties stated in chapter VI of the Constitution contain a call for integrity and the prevention of corruption in government. The 2007 national anti-corruption action plan includes measurable and time-bound actions; however, it has never been systematically implemented or updated. In 2015, CIABOC adopted an anti-corruption strategy entitled “Seven steps to zero tolerance” to guide its work in the areas of enforcement and prevention, together with a three-year implementation plan. The CIABOC strategy provides for the nomination of integrity officers in public institutions, increased transparency of public services and strengthened partnership with civil society. Its implementation is still ongoing, in particular with regard to strengthening the prevention functions of CIABOC. The strategy has been incorporated into the 2015–2017 national action plan for the Open Government Partnership. At the time of the review, efforts were under way to adopt a comprehensive national anti-corruption strategy.

CIABOC, as the main anti-corruption body and designated authority under article 6, paragraph 3, of the Convention, is headed by three commissioners and a director general. The commissioners are appointed by the President upon recommendation of the Constitutional Council for a non-renewable five-year period, and can be removed only with Parliament’s approval. The appointment, tenure and removal of the director general are solely in the hands of the President and no rules are in place regarding disciplinary matters; however, the appointment is made in consultation with the commissioners and any presidential decision can be subject to subsequent judicial review (art. 126 of the Constitution). The independence of CIABOC is enshrined in the nineteenth amendment to the Constitution and the provisions on appointment, tenure and removal of CIABOC commissioners (sect. 2, CIABOC Act).

Among other work, CIABOC operates a reporting mechanism for citizens and organizes ad hoc training and awareness-raising activities. With a view to adopting a more structured approach to corruption prevention, CIABOC has taken steps towards the establishment of a dedicated prevention unit.

The Law Commission of the Ministry of Justice periodically reviews the country’s laws, and, to date, has proposed several amendments to the Bribery Act, the Prevention of Money-Laundering Act and the Mutual Assistance in Criminal Matters Act. In addition, CIABOC and relevant ministries and institutions have initiated legislative amendments to the Declaration of Assets and Liabilities Act, the CIABOC Act, the Commission of Inquires Act, the Judicature Act, the Mutual Assistance in Criminal Matters Act and the Right to Information Act.

Sri Lanka participates in several regional and international fora, including the Anti-Corruption Initiative for Asia and the Pacific of the Asian Development Bank and the Organization for Economic Cooperation and Development, and the South Asian Association for Regional Cooperation. Sri Lanka is a member of the Commonwealth, the International Criminal Police Organization (INTERPOL), the Open Government Partnership, the Forum of Election Management Bodies of South Asia, and the Asset Recovery Inter Agency Network for Asia and the Pacific.

Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)

The appointment, transfer, disciplinary control and dismissal of public officials falls within the purview of the Public Service Commission (Constitution, arts. 54 and 55) and can be further delegated to designated public officials or committees (Constitution, arts. 56 and 57).

The Procedural Rules on the Appointment, Promotion and Transfer of Public Officers and the Establishments Code set out rules for recruitment, appointment, remuneration, promotion, termination, resignation, and general duties and rights of public officials. Vacancy announcements are published in the Gazette of the Democratic Socialist Republic of Sri Lanka, newspapers and on the Internet. The selection of candidates is based on written exams and interviews. All appointments are made in accordance with service minutes and schemes of recruitment developed for each post by Government departments and approved by the Public Service Commission (chap. IV of the Procedural Rules, chap. II of the Establishments Code). On appointment, public officials take an oath of office (sect. 85 of the Procedural Rules). A system of rotation of public officials is in place (chap. XVIII of the Procedural Rules). Complaints regarding the recruitment process, disciplinary action or any other grievances may be lodged with the Public Service Commission or the Administrative Appeals Tribunal (arts. 58 and 59 of the Constitution, chap. XX of the Procedural Rules), subject to judicial review under articles 138 and 126 of the Constitution.

The Establishments Code sets out rules relating to public officials' conduct and discipline (chaps. 47 and 48). Public officials may not accept secondary employment, but derogations may be granted by way of exception (chap. 30). No cooling-off period is in place for public officials moving to the private sector. While the Code requires public officials to avoid conflicts of interest (chaps. 29 and 30), it does not comprehensively outline obligations and procedures in that regard. Gifts are generally prohibited, but courtesy gifts of a value less than LKR 5,000 (about USD 30) may be permissible if reported to the Secretary of the Ministry of Foreign Affairs (chap. 47). Chapter 48 regulates disciplinary procedures and sets out sanctions for non-compliance with the Code, which include reprimands, disciplinary transfers, reductions in rank or salary, and dismissal. Sri Lanka does not define any public positions as particularly vulnerable to corruption.

No specific duty to report corruption exists for public officials. Although officials can use the CIABOC reporting mechanism, they are often reluctant to do so for fear that that would conflict with their confidentiality obligations.

Members of Parliament, judges, public officials of Government departments, ministries, and local authorities, chairpersons and staff of public corporations, candidates for elected public office and elected officials are required to declare their assets and liabilities and those of their family members (Declaration of Assets and Liabilities Act, sects. 2 and 3). Declarations must be submitted within three months after appointment and annually thereafter (sect. 3 of the Act, art. 87 of the Procedural Rules). Failure to declare, and any false statements or omissions, result in prosecution or disciplinary action (sect. 9 of the Act, chap. 29 of the Establishments Code). Declarations are entrusted to the heads of the respective offices for safekeeping and may be requested by an investigative body for inspection. No formal monitoring or verification system is in place. CIABOC has proposed several amendments to the Declaration of Assets and Liabilities Act to address its existing limitations. Declarations are available to the public for a fee (sect. 5, subsect. 3, of the Act).

General criteria concerning candidature for and election to public office are stipulated in the Constitution (chap. XIV). Detailed criteria are set out in special legislation such as the Presidential Elections Act, the Parliamentary Elections Act, the Provincial Elections Act, the Referendum Act and the Local Authorities Elections Ordinance. While office holders of recognized political parties and candidates nominated for elections must declare their assets (sects. 2–4 of the Act), non-compliance is not a hindrance to election. A public official who seeks

election as a member of Parliament must resign from public service (chaps. 32 and 47 of the Establishments Code).

No law is in place regarding funding of candidates for elected public office or of political parties, and discussions on the adoption of such legislation are under way. The Parliamentary Elections Act provides for public subsidies of recognized political parties for general elections (sect. 127).

Independence of the judiciary is guaranteed in the Constitution (chap. XV) and interference with the judiciary is a punishable offence (art. 111C). Judges of the Supreme Court and the Court of Appeal are appointed by the President subject to the approval of the Constitutional Council and can only be removed by order of the President with the support of the majority of the Parliament on grounds of proved misconduct or incapacity (art. 107). However, only serious violations may trigger impeachment and ordinary, less serious disciplinary violations are not subject to any disciplinary action and sanctions. A proposed amendment to the Constitution would introduce a new procedure to address non-impeachable misconduct. Judges of the High Court are appointed by the President on the recommendation of the Judicial Service Commission (art. 111). The Judicial Service Commission is vested with authority over the appointment, transfer, dismissal and disciplinary control of judges in the High Court and lower courts and scheduled public officials (art. 111H). The Judicial Service Commission Rules and the Commission's circulars, the Establishments Code, the Supreme Court Rules and the Court of Appeal Rules govern the conduct of judges. Sri Lanka is in the process of developing a comprehensive judicial code of conduct. The Judicial Service Commission, through the Judges Institute, provides training to judges aimed at strengthening their integrity.

The Attorney General is appointed by the President, subject to the approval of the Constitutional Council. In line with the Removal of Officers (Procedure) Act, the Attorney General can only be removed by Parliament on specific grounds after inquiry. Prosecutors are considered public officials and therefore must comply with the Establishments Code, the Procedural Rules and the rules of conduct and etiquette governing all attorneys as regulated by the Supreme Court. Disciplinary matters concerning officers of the Attorney General's Department are handled by the Public Service Commission.

Public procurement and management of public finances (art. 9)

Sri Lanka applies a decentralized procurement system, where the responsibility of procurement actions is vested with secretaries of respective line ministries. The National Procurement Commission formulates procurement procedures and guidelines and monitors their implementation (chap. XIXB of the Constitution). All government procurement must be carried out in line with the Procurement Guidelines 2006: Goods and Works, which set out various procurement methods (chap. 3), procurement preparedness and planning rules (chap. 4), bidding procedures (chaps. 5–7) and rules for awarding contracts (chap. 8), as well as with the Guide to Project Management and Contract Management for Infrastructure Development Projects (Works) of 2017. In addition, the Procurement Manual of 2006 provides detailed rules on various aspects of public procurement. Complaints can be lodged with the National Procurement Commission, the Procurement Appeals Board or the Supreme Court. At the time of the review, both the Guidelines and the Manual were being revised by the Commission to fully comply with international standards. The Commission, the Sri Lanka Institute of Development Administration and the Miloda Academy of Financial Studies provide training to procurement officials.

Chapter XVII of the Constitution deals with the management of public finances, including the adoption of the national budget. While Parliament has full control over public finances (art. 148 of the Constitution), the Department of National Budget of the Ministry of Finance formulates the national budget, including preparing budget estimates and a three-year budgetary framework. It

also monitors budgetary expenditure, including allocation of financial resources for public programmes and projects, assisting the implementation of the national budget and monitoring the implementation of budgetary provisions. The Fiscal Management (Responsibility) Act regulates the reporting on revenue and expenditure by public bodies and requires the Ministry of Finance to prepare regular budget position reports (sects. 10–15). The Audit Service Commission, consisting of the Auditor General and four other members, overlooks the compliance by public authorities with the Accounting and Auditing Standards Act. The Financial Regulations and the Treasury Circulars issued by the Ministry of Finance lay out the rules regarding the preservation of accounting books, financial statements and public records. Ministries, departments institutional bodies, non-revenue-earning statutory bodies and public enterprises are required to report in accordance with these regulations and are audited by the Auditor General. Forgery or falsification of public accounts is a criminal offence (sects. 452 and 453 of the Penal Code; sect. 5, subsect. 2 of the Offences against Public Property Act).

Public reporting; participation of society (arts. 10 and 13)

The Constitution guarantees the right of access to information (art. 14A). Any violations can be reported to the Ombudsman and the Human Rights Commission.

In 2017, following consultations with the civil society lasting several years, Sri Lanka adopted the Right to Information Act to comprehensively regulate access to information. The Act came into force on 4 February 2017, but its provisions were not fully implemented at the time of the review. Among other things, the Act describes procedures for obtaining information (sects. 24–30), grounds for denial of access (sects. 5 and 35) and duties of public bodies to maintain records (sect. 7). It also requires public authorities to appoint dedicated information officers and appeal officers (sects. 23 and 31). The Right to Information Commission monitors public bodies' compliance, issues guidelines and serves as a second instance body for appeals (sects. 14, 15, and 31–34).

Most government departments maintain their own websites, and Sri Lanka aims to build an e-government system to provide public services electronically. CIABOC is in the process of developing citizens' charters for local government and public administration to provide citizens with detailed information on existing public services, including their costs and the time frames for their execution.

Anyone can report corruption incidents to CIABOC in person, through the general post, through a dedicated hotline and by email. The CIABOC Act provides immunity from civil and criminal liability to such persons (sect. 9). The Assistance to and Protection of Victims of Crime and Witnesses Act further provides for the protection of reporting persons against any form of harassment at work.

CIABOC cooperates with civil society through various activities. Civil society has been consulted in drafting laws as a matter of practice, as was the case with the Declaration of Assets and Liabilities Act, the Audit Act and the Right to Information Act.

CIABOC works with the Ministry of Education and the National Institute of Education to incorporate the fight against corruption into school curricula, and is developing regulations to curb corruption in school administrations, as well as creative competitions and school integrity clubs.

Private sector (art. 12)

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, the

Companies Act, the Securities and Exchange Commission Act, the Monetary Law Act, the Banking Act, the Insurance Act and the Finance Companies Act.

The Accounting and Auditing Standards Act is applicable to “specified business enterprises” (sect. 5 and the schedule of the Act), which currently comprise 1,410 enterprises, including private companies and banks. Business enterprises are required to audit their accounts (sect. 6) and non-compliance is punishable (sects. 6, 7 and 27). The Institute of Chartered Accountants of Sri Lanka has adopted the Accounting and Auditing Standards in accordance with the Accounting and Auditing Standards Act (sects. 2 and 3) and to comply with international standards. The Accounting and Auditing Standards Monitoring Board monitors compliance with the Act and the Standards and refers suspected cases of corruption to law enforcement authorities. The Accounting Standards Committee and the Auditing Standards Committee make recommendations relating to the Standards (sects. 8 and 9).

All companies formed under the Companies Act are obliged to keep correct accounting records (sect. 148), prepare financial statements (sects. 150–153) and appoint an auditor (sects. 154–160). Company records are to be kept available for public inspection (sect. 120). Measures and penalties for non-compliance are set out in part XXI.

Under to the Accounting and Auditing Standards Act, audits of specified business enterprises must be carried out by members of the Institute of Chartered Accountants. In line with the Companies Act, audits of other entities can be carried out by auditors registered with the Company Registrar.

In order to promote the use of good commercial practices, the Institute of Chartered Accountants, the Chamber of Commerce and other associations conduct annual competitions on corporate reporting and corporate best practices. Codes of corporate governance have been adopted for licensed banks and finance companies.

No special whistle-blowing mechanism exists for the private sector.

Tax deductibility of expenses that constitute bribes is prohibited (sects. 10–19 of the Inland Revenue Act, No. 24 of 2017).

Measures to prevent money-laundering (art. 14)

As a member of the APG, Sri Lanka is bound by the Financial Action Task Force recommendations and subject to its evaluations.

The domestic legal regime against money-laundering includes the Prevention of Money-Laundering Act, the Financial Transactions Reporting Act and the Convention on the Suppression of Terrorist Financing Act. Offences under the Bribery Act and other corruption-related offences under the Penal Code are considered predicate offences for the purposes of the Prevention of Money-Laundering Act and the Financial Transactions Reporting Act (see the definition of the term “unlawful activity” in those two acts). Therefore, money obtained through corruption comes within the ambit of the Financial Intelligence Unit.

All institutions carrying out finance business or designated non-finance business, as defined in section 33 of the Financial Transactions Reporting Act, are required to comply with that Act, including its provisions regarding verification of customers’ identity, maintenance of records and due diligence. Those institutions are required to file suspicious transaction reports with the Financial Intelligence Unit in accordance with the Act. The Financial Intelligence Unit supervises institutions’ compliance with the Act, including through on-site inspections, imposes administrative penalties, issues directives and refers matters to the courts. Existing sectoral bank and non-bank supervision departments and the Exchange Control Department of the Central Bank of Sri Lanka also play a supervisory role.

The Financial Transactions Reporting Act sets out the powers of the Financial Intelligence Unit to transmit information to domestic law enforcement authorities, including CIABOC (sect. 15) and foreign institutions (sects. 15–17). The Financial Intelligence Unit is a member of the Egmont Group and has concluded memorandums of understanding with 34 foreign counterparts. The authorities of Sri Lanka cooperate through various platforms, including INTERPOL, the South Asian Association for Regional Cooperation and the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation.

Regulations are in place requiring financial institutions, including money remitters and their agents, to obtain and maintain information on the originator of funds transfers and to monitor transactions that are accompanied by insufficient information.

Sri Lanka has a disclosure-based regime to monitor the movement of currency and bearer-negotiable instruments across its borders (sects. 24–27). Under the Foreign Exchange Act Regulations of 2017, cross-border transfers exceeding \$15,000 (\$10,000 if outgoing) are subject to mandatory declaration. Any cash and negotiable instruments imported into or exported from Sri Lanka may be seized or detained if there is a suspicion that they have been derived from, or are intended for use in, the commission of an unlawful activity (sects. 24 and 25).

2.2. Successes and good practices

- *Measures to promote the participation of society, including through the Open Government Partnership and National Anti-Corruption Action Plan (arts. 5 and 13).*
- *Introduction of cyberkiosks throughout the country to facilitate electronic access to public services (art. 10 (a)).*
- *The ongoing activities of CIABOC in the area of education, including school integrity clubs, dedicated syllabuses and competitions (art. 13 (1) (c)).*

2.3. Challenges in implementation

It is recommended that Sri Lanka:

- *Implement an effective, coordinated anti-corruption policy with clearly stated goals, means to achieve them, responsible bodies and coordination (art. 5 (1) of the Convention).*
- *Continue efforts to adopt a more structured approach towards the prevention work of CIABOC, including through the establishment and effective functioning of a dedicated prevention unit (art. 5 (2) and art. 6 (1)).*
- *Enhance the independence and effectiveness of CIABOC, including by adopting clear rules on the Director General's tenure and removal, specifying the procedure for disciplinary control over the Director General, providing CIABOC with sufficient material resources and providing specialized training for staff and exercising administrative and disciplinary control over its officers (art. 6 (2)).*
- *Consider identifying positions in the public sector that are especially vulnerable to corruption and adopting adequate procedures for the selection and training of public officials holding such positions (art. 7 (1) (b)).*
- *Consider adopting a comprehensive law on the funding of candidates for elected public office and of political parties (art. 7 (3)).*

- *Strengthen measures to prevent and detect conflicts of interest, including by adopting clear rules on what constitutes a conflict of interest, and penalties for non-compliance, creating a monitoring mechanism and providing training to public officials (art. 7 (4), art. 8 (5)).*
- *Strengthen the application of the Establishments Code, including by providing training to public officials, and consider reviewing and modernizing the Code taking into account international good practices (art. 8 (1)–(3)).*
- *Strengthen measures to facilitate the reporting by public officials of corruption, including by providing guidance to public officials and ensuring confidentiality (art. 8 (4)).*
- *Reform and strengthen the asset declaration system in line with the amendments proposed by CIABOC, including by assessing the possibility of introducing effective monitoring and verification, considering the adoption of electronic filing systems, permitting competent authorities to share information with foreign counterparts, and effectively applying deterrent penalties for non-compliance, also to heads of offices who do not observe the Declaration of Assets and Liabilities Act and to elected officials; and consider expanding the scope of declarations to include potential conflicts of interest (art. 8 (5), art. 52 (5)).*
- *Consider strengthening the measures concerning gifts, secondary employment and outside activities of public officials with a view to providing clear duties and rules for compliance (art. 8 (5)).*
- *Ensure that the sanctions set out in the Establishments Code are effectively applied in practice (art. 8 (6)).*
- *For the sake of institutional clarity, formally abolish the National Procurement Agency, which is no longer operational and has been replaced by the National Procurement Commission (art. 9 (1)).*
- *Continue efforts to amend the Procurement Guidelines 2006: Goods and Works and the Procurement Manual of 2006 in line with the Convention and consider introducing screening procedures and more structured training for procurement officials (art. 9 (1)).*
- *Fully operationalize the Right to Information Act, including through the designation and training of information officers and raising awareness among public officials and the public (art. 10 (a)).*
- *Consider publishing periodic reports assessing the risks of corruption in public administration (art. 10 (c)).*
- *Continue to strengthen judicial integrity, including by adopting rules on disciplinary violations committed by judges of the Supreme Court and the Court of Appeal and adopting a code of judicial conduct (art. 11 (1)).*
- *Consider adopting a code of conduct for prosecutors and ensure that sufficient training is available to prosecutors (art. 11 (2)).*
- *Take further measures to prevent corruption in the private sector, including by strengthening procedures regarding subsidies and licenses, consider imposing restrictions on activities open to former public officials, developing standards of conduct for the private sector and effectively identifying the identity of persons involved in the establishment and management of businesses (art. 12 (1) and (2)).*
- *Consider the possibility of regulating in law the current practice of publishing draft legislation to allow the public to express its views (art. 13 (1) (a)).*

- Continue taking measures to encourage the public to report instances of corruption, including through the full implementation of the Assistance to and Protection of Victims of Crime and Witnesses Act and the envisaged adoption of a national policy on whistle-blowing (art. 13 (2)).
- Continue to strengthen the implementation of a comprehensive risk-based approach to the fight against money-laundering (art. 14).
- Strengthen the ability of the Financial Intelligence Unit of Sri Lanka to exchange information at the international level and provide it with sufficient resources to carry out its supervisory functions (art. 14 (1) (b)).
- Strengthen the monitoring and implementation of measures requiring financial institutions, including money remitters, to identify and scrutinize funds transfers (art. 14 (3)).
- Continue efforts to address the remaining issues of the Financial Action Task Force evaluation, including in the areas of customer due diligence, wire transfers, money value transfer services and internal controls (art. 14 (4), art. 52).

2.4. Technical assistance needs identified to improve implementation of the Convention

- Legislative assistance (arts. 7, 8 and 9);
- Institution-building (arts. 7 and 12);
- Policymaking (art. 7);
- Capacity-building (arts. 7, 8, 10, 12, 13 and 14); and
- Research/data-gathering and analysis (art. 7).

3. Chapter V: asset recovery

3.1. Observations on the implementation of the articles under review

General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)

Sri Lanka relies on the Prevention of Money Laundering Act, the Mutual Assistance in Criminal Matters Act and the Criminal Procedure Code for the confiscation and recovery of the proceeds of crime. Steps towards the adoption of proceeds of crime legislation were under way at the time of the review.

Mutual legal assistance in criminal matters, including asset recovery, may be provided to requesting States designated as “specified countries” by ministerial order. Such ministerial orders can be issued for Commonwealth countries, or any non-Commonwealth country if it has entered into a mutual legal assistance agreement with Sri Lanka (sect. 17 of the Mutual Assistance in Criminal Matters Act). At the time of the review, there were eight such countries, six of which had signed treaties with Sri Lanka containing asset recovery provisions. Although mutual legal assistance can also be provided to other countries on a case-by-case basis using reciprocity or ad hoc agreements, in practice, the need for a ministerial order presents significant challenges. The Convention’s provisions are not directly applicable.

Sri Lanka spontaneously transmits information based on reciprocity, in particular in connection with the Prevention of Money Laundering Act offences as that Act explicitly obliges the Government to assist other States without a prior request (sect. 32). As a member of the Egmont Group, the Financial Intelligence Unit transmits relevant information to foreign counterparts. Sri

Lanka also cooperates through the Asset Recovery Inter-Agency Network for Asia and the Pacific and the Global Focal Point Network on Asset Recovery of INTERPOL and the joint United Nations Office on Drugs and Crime/World Bank Stolen Asset Recovery (StAR) Initiative.

Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)

The Financial Intelligence Unit, established in 2006 as part of the Central Bank, is the main authority supervising suspicious financial transactions. The Unit is a hybrid body analysing cases and referring suspicious transactions to law enforcement authorities. Its powers and functions are set out in the Financial Transactions Reporting Act (part III).

The Financial Institutions (Customer Due Diligence) Rules of 2016, issued by the Financial Intelligence Unit, apply to all financial institutions as defined in the Financial Transactions Reporting Act. The Rules set out obligations with regard to money-laundering risk management and internal controls, know-your-customer standards, customer due diligence, enhanced scrutiny for persons and accounts, correspondent banking, wire transfers and record-keeping. Staff of financial institutions are trained by their employers and by the Financial Intelligence Unit.

Under the Rules, financial institutions are required to identify and verify the identity of beneficial owners of all accounts (rules 30 and 31). Enhanced scrutiny of both domestic and foreign politically exposed persons, their family members and close associates, is required (rules 59 and 60). Pursuant to the Financial Transactions Reporting Act, the Financial Intelligence Unit issued the Guidelines for Financial Institutions on Identification of Beneficial Ownership, No. 04 of 2018. No centralized bank register is in place.

The Banking Act prohibits banks with no physical presence in Sri Lanka (sect. 2, subsect. (1)). Financial institutions are prohibited from entering into business relations with them and from providing correspondent banking services to financial institutions that permit their accounts to be used by shell banks (rule 67, Financial Institutions (Customer Due Diligence) Rules).

Financial institutions are required to maintain records of transactions, both domestic and international, as well as customer due diligence and know-your-customer records, for a minimum of six years from completion of the transactions or the date on which the business relationship was fulfilled (rules 89–91). All records must be immediately available to the Financial Intelligence Unit and other relevant national authorities (rule 94).

The Declaration of Assets and Liabilities Act requires public officials to declare their assets and liabilities inside and outside Sri Lanka. There are limited resources to monitor and verify their declarations, address non-compliance and raise awareness.

Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)

While no provision prohibits foreign countries from participating in the country's court proceedings and initiating civil action to establish ownership of property or seek compensation, this has never happened in practice.

Confiscation of the proceeds of corruption is limited to the proceeds of money-laundering and bribery (sect. 26A, 28A, subsect. (1) and sect. 39 of the Bribery Act, and sects. 3 and 13 of the Prevention of Money Laundering Act). Freezing is not regulated, although Sri Lanka explained that section 124 of the Criminal Procedure Code on the assistance of magistrates in investigations could be applied.

Sections 15 and 19 of the Mutual Assistance in Criminal Matters Act authorize the central authority, namely the Ministry of Justice, to give effect to search, seizure and confiscation orders issued by courts in specified countries, and section 17 authorizes the central authority to assist specified countries in tracing proceeds of crime. No requests for asset confiscation under section 19 of Mutual Assistance in Criminal Matters Act had been received by Sri Lanka at the time of the country visit.

Section 13 of the Prevention of Money Laundering Act empowers the courts to issue confiscation orders for movable or immovable property derived or realized from unlawful activity. However, there have been no cases in which section 13 was applied to property of foreign origin. Non-conviction-based confiscation is not possible.

The Mutual Assistance in Criminal Matters Act provides for a partial preservation of property for confiscation (sect. 15, subsects. 9 and 10). The envisaged proceeds of crime legislation will convert the Special Presidential Task Force on Recovery of State Assets to a statutory body with a mandate to manage proceeds of crime.

The Mutual Assistance in Criminal Matters Act specifies requirements for requests for mutual legal assistance and grounds for refusal (sects. 5 and 6). Sri Lanka does not apply any *de minimis* threshold for assistance (sect. 6). Before lifting any provisional measure, consultations with requesting States are a standard practice.

Return and disposal of assets (art. 57)

The central authority, in consultation with the Minister of Finance, may order either the whole or any part or value of confiscated property to be given to a requesting State where deemed appropriate in the interests of comity or based on an international arrangement (sect. 22 of the Prevention of Money Laundering Act). The central authority may specify suitable steps to give effect to a request, which include disposal of confiscated property as the central authority may specify (sect. 19, subsect. 7 of the Mutual Assistance in Criminal Matters Act). These provisions do not establish an obligation to return and dispose of assets in accordance with the Convention.

3.2. Successes and good practices

- The Special Presidential Task Force on Recovery of State Assets, established to coordinate efforts to investigate, identify, trace, seize and transfer State assets and revenue (art. 51).
- The provision of sample forms for requests for mutual legal assistance (art. 51).

3.3. Challenges in implementation

It is recommended that Sri Lanka:

- Continue to strengthen international cooperation mechanisms as a basis for asset recovery by addressing the limitations on mutual legal assistance in line with the findings of the country's first-cycle country review report and the results of the 2015 APG review, enhance data collection mechanisms and expedite the adoption of proceeds of crime legislation (arts. 51 and 54).
- Take measures to allow for the provision of assistance and the enforcement of foreign confiscation, freezing and seizing orders from non-specified countries (arts. 51 and 54).
- Introduce a system to notify financial institutions of the identity of particular persons to whose accounts enhanced scrutiny should be applied (art. 52 (2) (b)).

- Consider extending the six-year period for maintenance of records, which has been identified as a potential obstacle to successful investigations (art. 52 (3)).
- Address the recommendation referred to under 2.3, ninth bullet point (art. 8 (5) and art. 52 (5)).
- Consider requiring public officials to declare foreign financial accounts, to maintain appropriate records related to such accounts and providing for appropriate sanctions for non-compliance (art. 52 (6)).
- Ensure that measures for direct recovery, as outlined in art. 53 of the Convention, are available to other States (art. 53 (a)–(c)).
- Adopt measures to authorize freezing, seizure and confiscation of proceeds derived from all Convention offences, as recommended in the first-cycle review, including by adopting a proceeds of crime law, and ensure that such measures may be taken for purposes of international cooperation (art. 54 (1) (a), (2)).
- Consider introducing non-conviction-based confiscation (art. 54 (1) (c)).
- Strengthen measures to preserve property for confiscation and continue efforts to designate a central asset management authority as recommended in the first-cycle review (art. 54 (2) (c)).
- Ensure that non-coercive mutual legal assistance may be provided to all States parties and consider using the Convention as a legal basis in that regard (art. 55 (6)).
- Continue to ensure that consultations with requesting States are carried out before lifting any provisional measures (art. 55 (8)).
- Take measures to enable the central authority to return confiscated property to its prior legitimate owners (art. 57 (1) (2)).
- Take legislative and other measures to ensure the return of property as specified in article 57 (3) of the Convention.
- Clarify the matter of costs in the context of ongoing revision of the legislation (art. 57 (4)).
- Provide sufficient resources to the Financial Intelligence Unit of Sri Lanka to effectively carry out its supervisory and analytical functions (art. 58).
- Consider concluding bilateral or multilateral agreements or arrangements to address the requirements of chapter V of the Convention (art. 59).

3.4. Technical assistance needs identified to improve implementation of the Convention

- Legislative assistance (arts. 52–54).

IV. Implementation of the Convention

List of institutions consulted

The following 26 institutions were consulted during the preparation of the self-assessment.

1. Attorney General's Department,
2. The Commission to Investigate Allegations of Bribery or Corruption,

3. Ministry of Justice,
4. Judicial Service Commission,
5. Ministry of Finance,
6. The Governor-Central Bank,
7. Ministry of Home Affairs,
8. Sri Lanka Police
9. Financial Crimes Investigation Division (FCID) (Police)
10. Election Commission of Sri Lanka,
11. National Procurement Commission,
12. Auditor General's Department,
13. Inland Revenue Department,
14. Ministry of Public Administration and Management,
15. The Institute of Chartered Accountants Sri Lanka,
16. National Chamber of Commerce,
17. Ceylon Chamber of Commerce,
18. Financial Intelligence Unit (FIU),
19. Sarvodaya (civil society organization),
20. Organization of Professional Associations of Sri Lanka (OPA),
21. Law Commission of Sri Lanka,
22. Transparency International-Sri Lanka,
23. Law & Society Trust,
24. Bar Association of Sri Lanka,
25. Finance Commission of Sri Lanka,
26. Public Service Commission,
27. National Witnesses Protection Authority,
28. Ministry of Foreign Affairs.

A. Ratification of the Convention

Please provide information on the ratification/acceptance/approval/accesion process of the United Nations Convention against Corruption in your country (date of ratification/acceptance/approval of/accesion to the Convention, date of entry into force of the Convention in your country, procedure to be followed for ratification/acceptance/approval of/accesion to international conventions, etc).

Sri Lanka signed the Convention on 15 March 2004 and ratified it on 31 March 2004. The Convention entered into force for Sri Lanka on 14 December 2005.

Sri Lanka applies the dualist legal regime relating to the applicability of international treaties. Since 15 May 2015, under Article 156A of the 19th Amendment to the Constitution, the Convention was constitutionally recognized to be implemented in Sri Lanka. Accordingly, the Commission to Investigate Allegations of Bribery or Corruption (CIABOC) is empowered to take necessary measures to implement the Convention and any other international conventions relating to the prevention of corruption, to which Sri Lanka is a party. The dualist requirement was satisfied with regard to the implementation of the Convention with the constitutional recognition stated above.

B. Legal system of Sri Lanka

Please briefly describe the legal and institutional system of your country.

Between the period of 1505 to 1948, Sri Lanka was ruled by the Portuguese, Dutch and the British. The Portuguese did not introduce their laws to the existing legal system. However, with the invasion of the Dutch in 1600s, the Roman Dutch Law gained its presence in the country, and it remains as the foundation of Sri Lanka's present day general and common law. In 1796, with the British invasion, the British adopted a unitary administrative and judicial system for the entire country and decided to continue with the then existing laws. This led to the Roman Dutch law gaining firm presence and the continuation of the indigenous laws that existed before the foreign invasions. However, the British judges introduced British legal principles when constructing cases. As a consequence, a body of English law principles was also introduced and came into force along with Roman-Dutch law and the indigenous personal laws, such as Muslim law, Kandiyani law and Thesawalamai law. The indigenous laws are based on ancient customs of the Sinhalese and Muslims, whose ancestors hailed from specific regions in the country. Thesawalamai law governs the Tamil inhabitants of Jaffna. The common law has been modified, both expressly and by implication by statutory law and judicial decisions.

The substantial penal provisions are set out in the Penal Code No. 02 of 1883. The law relating to criminal procedure is set out in the Code of Criminal Procedure Act No. 15 of 1979. Criminal procedure is practiced adhering to the Common Law adversarial system of adjudication. The substantive civil laws are set out in various statutes and the civil procedure is set out in the Civil Procedure Code No. 12 of 1895. The law of Delict (akin to Tort) is based on Roman Dutch law. Most other legislations, commercial and company matters etc., are based on English law principles.

The Sri Lankan judicial system comprises the Supreme Court at the apex, followed by the Court of Appeal, Provincial High Court, District Courts, Magistrates' Court and Primary Courts, respectively. (The Primary Court currently functions as part of the Magistrate's Court.) Additionally, there are numerous tribunals, such as tribunals related to labour, arbitration, university appeals boards, tax tribunals, etc. The Supreme Court exercises final appellate jurisdiction, writ jurisdiction, supervisory jurisdiction and original jurisdiction on fundamental rights applications, whilst the Court of Appeal exercises appellate jurisdiction and writ jurisdiction. The High Court exercises both appellate and original criminal jurisdictions, whereas the Magistrate's Court exercises original jurisdiction for minor criminal offences. The District Courts exercise original civil jurisdiction.

In 2009, Sri Lanka emerged from a 30-year-old civil conflict in the Northern and Eastern Provinces. The institutional weaknesses that are commonly found in post-conflict environment were also found in Sri Lanka. Against this backdrop, soon after the last Presidential election and the General Elections, the 19th Amendment to the Constitution was enacted on 15 May 2015¹ which, amongst several other progressive reforms, introduced a number of constitutional safeguards to uphold the rule of law. Among the significant reforms remain the establishment of the Constitutional Council and the constitutional recognition of this Convention and other international conventions relating to the prevention of corruption and to curb corruption.

The Constitutional Council recommends to the President the appointment of Heads of state institutions. The composition of the said Council is stipulated in Article 41A(1) of the Constitution and includes the Prime Minister, the Speaker, the Leader of the Opposition, one member of Parliament appointed by the President, five persons appointed by the President based on the nomination of the Prime Minister and the Leader of the Opposition, and one member of Parliament

¹ <http://www.parliament.lk/files/pdf/constitution.pdf>

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nominated by the agreement of a majority of the members of Parliament representing political parties/independent groups other than the political parties to which the Prime Minister and the Leader of the Opposition belong.

The Thirteenth Amendment to the Constitution is also a significant milestone in the legal history of Sri Lanka. This amendment introduced the Provincial Councils. Much of the power that was exercised by the Central government was devolved on the Provincial Councils. Additionally, the local governments are established under the several local government statutes and the respective regions are governed through by-laws.

The significant legislations with regard to the implementation of this Convention include, inter alia:

- The 19th Amendment to the Constitution²,
- Bribery Act No. 11 of 1954 [Cap. 26],
- Commission to Investigate Allegations of Bribery or Corruption (CIABOC) Act No. 19 of 1994³,
- Prevention of Money Laundering Act No. 5 of 2006, as amended by Act No. 40 of 2011⁴,
- Penal Code [Cap. 25],
- Code of Criminal Procedure Act No. 15 of 1979 [Cap. 26],
- Judicature Act No. 2 of 1978,
- Declaration of Assets and Liabilities Law No. 1 of 1975, as amended by Act No. 29 of 1985 and Act No. 74 of 1988⁵,
- Financial Transactions Reporting Act No. 6 of 2006⁶,
- Companies Act No. 07 of 2007,
- Establishments Code,
- Financial Regulations,
- Bail Act No. 30 of 1997,
- Extradition Law No. 8 of 1977 as amended by Act 48 of 1999,
- Mutual Assistance in Criminal Matters Act No. 25 of 2005⁷,
- Assistance to and Protection of Victims of Crime and Witnesses Act No. 4 of 2015
- Right to Information Act No. 12 of 2016⁸.

The institutional network of agencies involved in the fight against corruption include:

- The Commission to Investigate Allegations of Bribery or Corruption (CIABOC),
- The Sri Lanka Police,
- Financial Crimes Investigation Division (FCID) (Police),
- The Attorney General's Department,
- Financial Intelligence Unit,
- Department of Inland Revenue,
- Parliamentary Committee on Public Enterprises (COPE),

² <http://www.parliament.lk/files/pdf/constitution.pdf>

³ <http://www.lawnet.lk/process.php?st=1994Y0V0C19A&hword=%27%27&path=2>

⁴ <http://www.parliament.lk/uploads/acts/gbills/english/5851.pdf>

⁵ http://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Sri%20Lanka_Declaration%20of%20Assets%20and%20Liabilities%20Act_1975_amended%201988_en.pdf

⁶ <http://www.parliament.lk/uploads/acts/gbills/english/5709.pdf>

⁷ <http://www.lawnet.gov.lk/wp-content/uploads/2016/12/Sri-Lanka-Mutual-Assistance-in-Criminal-Matters-Act-No.-25-of-2002-.pdf>

⁸ <http://www.parliament.lk/uploads/acts/gbills/english/6007.pdf>

- The Judicial Service Commission,
- The Public Service Commission,
- Audit Service Commission,
- The National Police Commission,
- The National Procurement Commission,
- Auditor General,
- National Witness Protection Authority,
- Ministry of Justice,
- Election Commission,
- Finance Commission,
- Special Presidential Task Force for Recovery of Illegally Acquired State Assets,
- Special Presidential Commission to Investigate and Inquire into Serious Acts of Fraud, Corruption and Abuse of Power (PRECIFAC).

The offences relating to bribery were first introduced to the Sri Lankan legal system in 1883, in the Penal Code. Thereafter, between 1931 and 1948, three (3) different Commissions were appointed by successive governments under the Commissions of Inquiry Ordinance No. 9 of 1872. The Commission's decisions led to the introduction of the Public Bodies (Prevention of Corruption) Act No. 49 of 1943 and the Bribery Act No. 11 of 1954. During this period, the Criminal Investigation Department investigated offences of bribery and the Attorney General's Department prosecuted the offences. In 1958, a Bribery Commissioner's Department was established, headed by a Commissioner, but the investigations and prosecutions continued in the same form.

With the enactment of the 17th Amendment to the Constitution, the present day independent anti-corruption body, referred to as the Commission to Investigate Allegations of Bribery or Corruption (CIABOC) was established by Act No. 19 of 1994⁹. With the establishment of CIABOC, both investigations and prosecutions were vested with the Commission, which is headed by three (3) Commissioners and a Director-General (DG). To maintain the independence of the Bribery Commission, the Commissioners are appointed by the President on the recommendation of the Constitutional Council and their removal can only be made by Parliament (section 2(3) of the Commission to Investigate Allegations of Bribery or Corruption (CIABOC) Act No. 19 of 1994). Their appointment is tenable for a period of 5 years (section 2(4)), and the Commissioners are not eligible for reappointment.

The President appoints and removes the Director-General for the Prevention of Bribery and Corruption. The Commission consists of a secretariat, investigation unit, legal unit and an administrative unit. The investigators serve the Commission on secondment from the Sri Lanka Police and are reappointed as authorized officers of the CIABOC. However, the Sri Lanka Police controls their administrative and disciplinary matters. The officers of the legal unit serve as a direct intake to the CIABOC, appointed by the Public Service Commission (PSC) after an interview process and are not in a transferable service. They are subject to the disciplinary control of the Public Service Commission. The administration unit consist of public officers from the Combined Services; these staff are transferable and are subject to the PSC for disciplinary control. The Commission as an institution is not situated within, or subject to the control of, any Ministry or Department. Establishment matters are dealt with through the Presidential Secretariat. The procedure for disciplinary control over the Director-General of the CIABOC is unclear, as disciplinary matters are handled by the appointing authority (i.e., the President of the country).

⁹ <http://www.lawnet.lk/process.php?st=1994Y0V0C19A&hword=%27%27&path=2>

The Commission mandate expands to bribery, corruption and matters related to the Declaration of Assets and Liabilities law. Investigations and prosecutions can only be carried out on the specific direction of the Commission. However, the Commission is not statutorily empowered to investigate and prosecute offences of money-laundering, even when the predicate offence is bribery or corruption.

Thus, legislatively, even before the adoption of this Convention, Sri Lanka had taken measures as a policy to prevent and counter corruption.

Sri Lanka provided the following information on assessments of measures to combat corruption and mechanisms to review the implementation of such measures as good practices.

01. The Constitutional recognition of this Convention - Article 156A of the 19th Amendment to the Constitution.

The 19th Amendment to the Constitution, which came into operation on 15 May 2015, provides for the establishment of a new Commission to Investigate Allegations of Bribery or Corruption (CIABOC). This Constitutional status ensures that successive Parliaments cannot abolish the Commission by a subsequent legislation. Additionally, it gives specific recognition to this Convention and its implementation, along with other international conventions relating to the prevention of corruption to which Sri Lanka is a party.

Both these constitutional measures would amount to good practices. They provide a strong legislative framework that is in place to fight corruption internally and promotes the partnership that is advanced by Sri Lankan government in International Cooperation.

Hyperlink to the Nineteenth Amendment to the Constitution-
http://www.documents.gov.lk/files/act/2015/5/00-2015_E.pdf.

02. The Assistance to and Protection of Victims of Crime and Witnesses Act, No. 4 of 2015 was enacted in March 2015.

The preamble of the Act stipulates that the Act provides for the setting out of rights and entitlements of victims of crime and witnesses, and the protection and promotion of such rights and entitlements; giving effect to appropriate international norms, standards and best practices relating to the protection of victims of crime and witnesses; the establishment of the national authority for the protection of victims of crime and witnesses; constitution of a board of management; the victims of crime and witnesses assistance and protection division of the Sri Lanka police Department; payment of compensation to victims of crime; establishment of the victims of crime and witnesses assistance and protection fund and for matters connected therewith or incidental thereto.

This could also be identified as a good practice in the fight against corruption. The Act was assented to by the Speaker on 7 March 2015.

03. The Right to Information Act No. 12 of 2016 came into force in August 2016¹⁰.

This Act is the latest legislation that was assented to by the Speaker on 4 August 2016. Some parts of the law came into operation with effect from 4 February 2017, as per section 1(3) thereof.

Article 14A of the Constitution guarantees the right to information to foster a culture of transparency and accountability in public authorities by giving effect to the right of access to

¹⁰ <http://www.parliament.lk/uploads/acts/gbills/english/6007.pdf>

information, subject to the conditions stated therein. The article aims to promote a society in which the people of Sri Lanka would be able to more fully participate in public life through combating corruption and promoting accountability and good governance.

04. Declaration of Assets and Liabilities Law No. 1 of 1975, as amended by Act No. 29 of 1985 and Act No. 74 of 1988¹¹

Under this Law certain specified categories of persons are required to make periodic declarations of their assets and liabilities in and outside Sri Lanka. The Act provides for reference to be made to such declarations by appropriate authorities and for investigations to be conducted upon the receipt of any communication against a person to whom the law applies. It also imposes penalties for non-declaration of assets and liabilities and for false declarations, and provides for matters connected therewith or incidental thereto.

The Act is available online:

http://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Sri%20Lanka_Declaration%20of%20Assets%20and%20Liabilities%20Act_1975_amended%201988_en.pdf

05. Prevention of Money Laundering Act No. 5 of 2006, as amended by Act No. 40 of 2011¹²

The preamble to the Act stipulates that this is an Act to prohibit money laundering in Sri Lanka; to provide the necessary measures to combat and prevent money laundering; and to provide for matters connected therewith or incidental thereto.

06. Financial Transactions Reporting Act No. 6 of 2006¹³

The preamble to the Act stipulates that the purpose of the Act is to provide for the collection of data relating to suspicious financial transactions to facilitate the prevention, detection, investigation and prosecution of the offences of money-laundering and financing of terrorism, respectively; to require certain institutions to undertake due diligence measures to combat money-laundering and the financing of terrorism; to identify the authority responsible for monitoring the activities of all institutions to whom this Act applies; and to provide for matters connected therewith or incidental thereto.

Please provide the relevant information regarding the preparation of your responses to the self-assessment checklist.

(a) Details of the 26 institutions identified for consultation and input, and the areas considered by them are as follows.

1. CIABOC, [Part A,B,C Article 6],

¹¹http://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Sri%20Lanka_Declaration%20of%20Assets%20and%20Liabilities%20Act_1975_amended%201988_en.pdf

¹²<http://www.parliament.lk/uploads/acts/gbills/english/5851.pdf>

¹³<http://www.parliament.lk/uploads/acts/gbills/english/5709.pdf>

2. Attorney General's Department, [Part A,B,C],
3. Ministry of Justice, [Part A,B,C],
4. Judicial Service Commission, [Part A Article 11],
5. Ministry of Finance, [Part A, Article 8,9],
6. The Governor-Central Bank, [Part A Article 8,9],
7. Ministry of Home Affairs,
8. Election Commission Sri Lanka, [Part A Article 7],
9. National Procurement Commission, [Part A Article 8,9],
10. Auditor General's Department, [Part A Article 9],
11. Inland Revenue Department, [Part A Article 9],
12. Ministry of Public Administration and Management,[Part A Article 7,8],
13. The Institute of Chartered Accountants Sri Lanka, [Part A Article 9,12],
14. National Chamber of Commerce, [Part A Article 12],
15. Ceylon Chamber of Commerce, [Part A Article 12],
16. Financial Intelligence Unit (FIU), [Part B,C Articles 14,52,58],
17. Sarvodaya (civil society organization), [Part A Article 13],
18. Organization of Professional Associations of Sri Lanka (OPA), [Part A Article 13],
19. Law Commission of Sri Lanka, [Part A Article 10],
20. Transparency International Sri Lanka, [Part A Article 13],
21. Law & Society Trust, [Part A Article 13],
22. Bar Association of Sri Lanka, [Part A Article 13],
23. Finance Commission of Sri Lanka,[Part A Article 09],
24. Public Service Commission,[Part A Article 7,8],
25. National Witnesses Protection Authority, [Part A],
26. Ministry of Foreign Affairs [Part B,C]

(b) Letters with copies of the self-assessment checklist were sent to all 26 institutions calling for their input and observations. Moreover, invitations were sent to all 26 institutions to present their observations at a workshop on 13 September 2016 on the country review.

(c) The expert team at CIABOC, as focal agency, gathered all relevant laws, regulations and other material.

(d) The expert team scrutinized the observations received from the respective institutions and prepared a working draft of the self-assessment checklist.

(e) CIABOC organized a full-day workshop on 13 September 2016 at CIABOC with the participation of the referenced institutions. The self-assessment checklist was projected on a screen where participants' comments were added. This exercise included consultations and discussions among the different participants from the relevant institutions, and gathering of further information from the respective participants, article by article of both chapters II and V of the Convention under review.

Please describe three practices that you consider to be good practices in the implementation of the chapters of the Convention that are under review.

(a) Review of existing laws and introduction of new legislations to combat corruption.

In this regard, the Commission to Investigate Allegations of Bribery or Corruption (CIABOC) has submitted a Memorandum to the Cabinet of Ministers suggesting relevant amendments necessary to the Declaration of Assets and Liabilities Law No. 1 of 1975, as amended (see art. 52(5) below). The suggested amendments include, inter alia, the following recommendations.

a) Presently, only public officers above a certain salary scale are liable to provide declarations. Additionally, all persons who intend to contest elections are required to submit a declaration to the Commissioner General of Elections before contesting for the elections. The recommendations would require all public officers, including the President, all Parliamentarians, judicial officers, local government members, Provincial council members, and Pradeshiya Saba members to submit declarations yearly setting out their assets and liabilities (amendment of section 5 (2)).

Currently, the state-owned media and the editors of the state-owned media are required to declare their assets. However, there are complaints that the media is being bribed with expensive gifts, sometimes even houses. The same type of allegations also exist against civil society organizations. Both the media and civil society are significant and essential stakeholders in the fight against corruption. In such situation, their integrity should also be in line with public servants and should not be open to doubt by citizens. Nor should the media and civil society, who are the voices against corruption, have an advantage over public servants. It is the duty of the government to create and maintain a level playing field for all. Therefore, like public servants who are liable by law to declare their assets and liabilities, to demonstrate their integrity as custodians of the state machinery to execute public service, the media and the civil society should also be bound to declare their assets and liabilities, as the voices against corrupt public servants. It is only then that the full effect of the asset declarations could be achieved. Therefore, all media personnel, whether state-owned or otherwise, and members of civil society organizations should be required to tender declarations under the Declaration of Assets and Liabilities Law.

b) Article 16 of this Convention requires the introduction of bribery as a criminal offence with regard to foreign public officials and officials of public international organizations in order to prevent and combat bribery in international business. In order to prevent bribery by foreign public officers and officials of public international organizations, it is recommended that such persons and entities should also be brought under the operation of the Declaration of Assets and Liabilities Law No. 1 of 1975 before engaging in business in the country. The declaration is expected to act as a catalyst for a transparent process and to act as a deterrent to the bribe givers. A special form would have to be developed for this purpose.

Currently, Sri Lanka does not recognize foreign bribery as an offence in its legal system.

c) To increase the number of current entities that are entitled to call for asset declarations for purposes of investigations, new provisions are recommended (to amend section 5 (2) of the Declaration of Assets and Liabilities Law) to enable the Attorney General, Commission to Investigate Allegations of Bribery or Corruption (CIABOC), Commissioner General of the Inland Revenue Department, Commissioner of Elections, and Heads of all State institutions carrying out investigations, including the Head of the Exchange Control Department, to call for declarations directly for investigative purposes.

d) Although any person is entitled to obtain a declaration of assets and liabilities by a public official, that information is prohibited from being used for any purpose other than that stipulated in sections 7 (4), 7 (5) and 8 of the Act. It is suggested that this provision should be removed, as the provision is clearly contrary to the purpose of the Act.

e) To include legislative provisions to enable the filing of declarations electronically

f) To include new provisions compelling the declarant to disclose his or her conflicts of interests and prevent nepotism and cronyism if any, when engaged in official commitments.

g) Establish the Commission to Investigate Allegations of Bribery or Corruption (CIABOC) as the central authority in respect of declarations of assets and liabilities, since CIABOC is currently handling all matters relating to such declarations.

h) To increase the maximum fine under section 9 of the Act from Rs. 1,000.00 to Rs. 10,000.00

i) To include new provisions into Law No. 1 of 1975, whereby criminal liability is imposed if such information provided under the Act is used to defame the declarant or used for commercial or any other purpose, other than providing such information to the public.

(b) Study the global best practices regarding organizational structures. CIABOC is currently studying such practices: a) to change the current organizational structure of CIABOC; b) to establish a new prevention unit; c) to appoint an integrity officer in all government departments and institutions etc.

(c) Awareness programmes. CIABOC and the Ministry of Education have commenced several long-term and short-term projects to educate the youth. Short-term projects include: the month of October being declared as the anti-corruption month in all schools; creative competitions in seven segments; and introducing regulations to curb corruption in the school administration. Long-term projects include: introducing anti-corruption measures to school syllabi; establishing integrity clubs in all schools, etc.

Please describe (cite and summarize) the measures/steps, if any, your country needs to take, together with the related time frame, to ensure full compliance with the chapters of the Convention that are under review, and specifically indicate to which articles of the Convention such measures would relate.

- Establishing a prevention unit – 2017 – Article 6 of the Convention
- Reviewing existing bribery and corruption laws – 2017 – Article 5
- E-procurement system – 2018 – Article 9
- Declaration of Assets and Liabilities law Amendment – 2018 – Article 8
- Enacting laws on sports manipulation – 2018 – Articles 5, 6, 14
- Developing proceeds of crime legislation – 2017 – Chapter V

C. Implementation of selected articles

II. Preventive measures

Article 5. Preventive anti-corruption policies and practices

Paragraph 1 of article 5

1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the

participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.

(a) Summary of information relevant to reviewing the implementation of the article

Sri Lanka has not adopted a single, specialized anti-corruption strategy, but has taken several significant steps and measures to preventing corruption.

In 2007, the National Anti-Corruption Action Plan was developed by the Consultative Council of the Sri Lanka Anti-Corruption Program (ACP) of the United States Agency for International Development. The Action Plan was developed through an inclusive and participatory process, and input was obtained from a broad range of experts and organizations that had participated in the ACP's activities.

The Action Plan identifies priority actions to be taken by various sectors (e.g. Government, civil society, media, the private sector and donors) to reduce corruption and enhance integrity in Sri Lanka. It focuses on specific measurable actions, and includes time-bound outputs to permit monitoring of achievement.

The Action Plan called for the creation of an Anti-Corruption Coordinating Committee, a body bringing together government, civil society and the private sector and responsible for monitoring progress towards achieving the objectives set forth in the Action Plan. While the Committee has not been created, Cabinet approval was granted on 24 October 2017 for CIABOC to lead in the development of a new National Action Plan that is wider in scope and application and covering more areas than the previous one.

Some of the actions envisaged by the Action Plan include:

- Make a clear commitment to anti-corruption principles, and ensure necessary financial, administrative and political support;
- Enact and implement the Freedom of Information Act;
- Wider dissemination of anti-corruption surveys, analyses and reports;
- Aggressive promotion of e-Governance;
- Dissemination of existing laws, regulations, procedures, and related explanatory material;
- Create and foster voluntary coalitions to fight against corruption, at both national and local levels;
- Develop civic education and related integrity action programs for children;
- Enact the proposed Audit Act and related Constitutional amendments;
- Expand the mandate, provide necessary resources, and enhance the capacity of the Bribery Commission;
- Improve public procurement policies, procedures and practices;
- Amend the Assets and Liabilities Declaration Law;
- Enact witness and whistleblower protection statutes;
- Develop public interest litigation capacity;
- Establish a central anti-corruption information helpdesk and complaints center;
- Implement the United Nations Convention against Corruption;
- Improve internal audit capabilities in public agencies and enterprises;
- Develop public service code of ethics/conflict of interest provisions, establish an enforcement system, increase awareness and provide relevant training;
- Increase transparency and accountability of non-governmental and private sector organizations;
- Public service reform; and
- Increase transparency and accountability of political parties and election finance.

Apart from the National Action Plan, CIABOC's three-year strategy named "Seven Steps to Zero Tolerance" was launched in December 2015. The strategy serves as a workplan for CIABOC in its efforts against corruption. The original purpose of this strategy was to be a precursor to a more comprehensive national anti-corruption policy; however, such policy has not been adopted to date. The CIABOC three-year strategy is based on two pillars, i.e., enforcement and prevention and encompasses the following areas:

1. First step – Watch & Catch: The Commission intends to nominate an "integrity officer" in each institution who will monitor the processes of each institution and act as a whistleblower and informant to the Commission if he or she detects any act of bribery or corruption.
2. Second step – Map & Display: All service level government institutions that directly interact with public will be required to map and display, simply and clearly, the steps and requirements to obtain public services together with timelines and costs (if any) for each step.
3. Third step – Change & Build: With a view to educating the next generation, the Commission will implement special initiatives for children and young persons of different age categories with the assistance of civil society organizations.
4. Fourth step – Voice for Zero Tolerance: The Commission will spread effective anti-corruption messages through media and social media.
5. Fifth step – Walk the Talk: Given that prevention is key to 'zero tolerance', a dedicated Corruption Preventive Unit will be established within the Commission to design, implement and monitor methods to minimize opportunities and incentives to engage in bribery and corruption.
6. Sixth step – Take the Lead: The Commission will take the lead in implementing Chapter XIXA introduced by the 19th Amendment to the Constitution, review and revise the law within the UNCAC framework, assess and develop Commission's human and other resources, and develop and implement a comprehensive medium term Anti-Corruption Strategic Action Plan.
7. Seventh step – Connect the Dots: The Commission will engage with key partners in the National Integrity System to build a coalition of institutions for system wide anti-corruption, together with civil society, community and private sector organizations.

The CIABOC started implementing the strategy, such as through the conduct of a pilot project on integrity officers in 2016, the creation of citizens charters aimed at mapping existing public services, the establishment of integrity clubs in schools and the provision of anti-corruption training to various institutions. However, some elements of the strategy have not yet been fully implemented. For example, while initial steps have been taken with regard to the establishment of a dedicated prevention unit within the CIABOC, the unit will most likely become operationalized only in 2018. The implementation of the strategy continues to be monitored by dedicated CIABOC officers.

In addition, the 2015-2017 Open Government Partnership National Plan¹⁴ includes several commitments to promote transparency, accountability and public participation in the thematic areas of health, education, information and communication technology, environment, local government, right to information, women's issues as well as anti-corruption. The anti-corruption component in the Plan was developed based on the CIABOC Seven Steps to Zero Tolerance strategy. The plan was developed with the participation of civil society organizations and government stakeholders. Although the Plan was originally envisaged to be implemented by 2017, the timeframe for its implementation has been extended beyond 2017.

Sri Lanka's anti-corruption policy is also reflected in the Constitution. In particular, the Constitution sets out the fundamental principles of law in the country. The sovereignty is vested with the people of Sri Lanka and is exercised through the executive, legislature and the judiciary reflecting a democratic setup of government. According to the Public Trust Doctrine, since people are the repositories of sovereignty, the entrusted power should be exercised by the government in good faith for the benefit of the people. Consequently, people have an entrenched right to freedom from corruption in any shape or form. The laws, as well as government practices and procedures, are based on the fundamental principle of the rule of law. In addition, Article 12 (1) of the Constitution states that "all persons are equal before the law and are entitled to the equal protection of the law". This Article requires the government to act under a framework of recognized rules and principles restricting the discretionary powers of public bodies and officials.

Chapter VI of the Constitution contains directive principles of state policy and fundamental duties. Although these rights and obligations are not enforceable, every public officer who mandatorily takes an oath of allegiance is bound by these principles.

Constitution

CHAPTER - VI

DIRECTIVE PRINCIPLES OF STATE POLICY AND FUNDAMENTAL DUTIES

Article 27. Directive Principles of State Policy.

27. (1) The Directive Principles of State Policy herein contained shall guide Parliament, the President and the Cabinet of Ministers in the enactment of laws and the governance of Sri Lanka for the establishment of a just and free society.

(2) The State is pledged to establish in Sri Lanka a Democratic Socialist Society, the objectives of which include –

(a) the full realization of the fundamental rights and freedoms of all persons;

(b) the promotion of the welfare of the People by securing and protecting as effectively as it may, a social order in which justice (social, economic and political) shall guide all the institutions of the national life;

(c) the realization by all citizens of an adequate standard of living for themselves and their families, including adequate food, clothing and housing, the continuous improvement of living conditions and the full enjoyment of leisure and social and cultural opportunities;

(d) the rapid development of the whole country by means of public and private economic activity and by laws prescribing such planning and controls as may be expedient for directing and co-ordinating such public and private economic activity towards social objectives and the public weal;

(e) the equitable distribution among all citizens of the material resources of the community and the social product, so as best to subserve the common good;

¹⁴ Accessible at: www.opengovpartnership.org/sites/default/files/Sri-Lanka_NAP_2015-2017.doc

(f) the establishment of a just social order in which the means of production, distribution and exchange are not concentrated and centralised in the State, State agencies or in the hands of a privileged few, but are dispersed among and owned by, all the People of Sri Lanka;

(g) raising the moral and cultural standards of the People and ensuring the full development of human personality; and

(h) the complete eradication of illiteracy and the assurance to all persons of the right to universal and equal access to education at all levels.

(3) The State shall safeguard the independence, sovereignty, unity and the territorial integrity of Sri Lanka.

(4) The State shall strengthen and broaden the democratic structure of government and the democratic rights of the People by decentralizing the administration and by affording all possible opportunities to the People to participate at every level in national life and in government.

(5) The State shall strengthen national unity by promoting co-operation and mutual confidence among all sections of the People of Sri Lanka, including the racial, religious, linguistic and other groups and shall take effective steps in the fields of teaching, education and information in order to eliminate discrimination and prejudice.

(6) The State shall ensure equality of opportunity to citizens, so that no citizen shall suffer any disability on the ground of race, religion, language, caste, sex, political opinion or occupation.

(7) The State shall eliminate economic and social privilege and disparity and the exploitation of man by man or by the State.

(8) The State shall ensure that the operation of the economic system does not result in the concentration of wealth and the means of production to the common detriment.

(9) The State shall ensure social security and welfare.

(10) The State shall assist the development of the cultures and the languages of the People.

(11) The State shall create the necessary economic and social environment to enable people of all religious faiths to make a reality of their religious principles.

(12) The State shall recognize and protect the family as the basic unit of society.

(13) The State shall promote with special care the interests of children and youth, so as to ensure their full development, physical, mental, moral, religious and social, and to protect them from exploitation and discrimination.

(14) The State shall protect, preserve and improve the environment for the benefit of the community.

(15) The State shall promote international peace, security and co-operation, and the establishment of a just and equitable international economic and social order and shall endeavour to foster respect for international law and treaty obligations in dealings among nations.

Article 28. Fundamental duties.

The exercise and enjoyment of rights and freedoms are inseparable from the performance of duties and obligations and accordingly it is the duty of every person in Sri Lanka –

(a) to uphold and defend the Constitution and the law;

(b) to further the national interest and to foster national unity;

(c) to work conscientiously in his chosen occupation;

(d) to preserve and protect public property and to combat misuse and waste of public property;

(e) to respect the rights and freedoms of others; and

(f) to protect nature and conserve its riches.

Article 29. Principles of State Policy and fundamental duties not justifiable.

The provisions of this Chapter do not confer or impose legal rights or obligations and are not enforceable in any court or tribunal. No question of inconsistency with such provisions shall be raised in any court or tribunal.

Chapter IX of the Constitution establishes the Public Service Commission and sets out the basic structure of the public service, together with basic standards guaranteeing its proper management, transparency, disciplinary procedures, etc. State fiscal policy and the auditing process are stipulated under Chapter XVII, guaranteeing transparency, continuous monitoring and accountability. Election policies ensuring free and fair elections for the public to elect their representatives are set out under chapters VII and XIV.

The 19th Amendment to the Constitution provides greater recognition to the principles of rule of law, proper management of public affairs, transparency and civil society participation. Importantly, the United Nations Convention against Corruption and other relevant international conventions to which Sri Lanka is a party were given Constitutional recognition under Article 156A (1)(c) of the Constitution.

Nineteenth Amendment to the Constitution

CHAPTER XIX

COMMISSION TO INVESTIGATE ALLEGATIONS OF BRIBERY OR CORRUPTION

156A. Commission to Investigate Bribery or Corruption.

(1) Parliament shall by law provide for the establishment of a Commission to investigate allegations of bribery or corruption. Such law shall provide for—

(a) the appointment of the members of the Commission by the President on the recommendation of the Constitutional Council;

(b) the powers of the Commission, including the power to direct the holding of a preliminary inquiry or the making of an investigation into an allegation of bribery or corruption, whether of its own motion or on a complaint made to it, and the power to institute prosecutions for offences under the law in force relating to bribery or corruption;

(c) measures to implement the United Nations Convention Against Corruption and any other international Convention relating to the prevention of corruption, to which Sri Lanka is a party.

(2) Until Parliament so provides, the Commission to investigate Allegations of Bribery or Corruption Act, No. 19 of 1994 shall apply, subject to the modification that it shall be lawful for the Commission appointed under that Act, to inquire into, or investigate, an allegation of bribery or corruption, whether on its own motion or on a written complaint made to it.

The 19th Amendment to the Constitution also established two additional independent commissions, i.e., the Audit Service Commission and the National Procurement Commission. Accordingly, since the Amendment, the following nine Commissions function as independent commissions:

- (a) Audit Service Commission
- (b) National Procurement Commission
- (c) The Election Commission
- (d) The Public Service Commission

- (e) The National Police Commission
- (f) The Audit Service Commission
- (g) The Human Rights Commission of Sri Lanka
- (h) The Commission to Investigate Allegations of Bribery or Corruption
- (i) The Finance Commission

Additionally, to maintain the independence of the courts of first instance, the Judicial Service Commission is established under Chapter XV of the Constitution. The Powers and functions of the Judicial Service Commission are set out under Article 112. The 19th Amendment to the Constitution further strengthened the appointment of its Commissioners.

Part IV of the Right to Information Act No. 12 of 2016 provides for the establishment of a Right to Information (RTI) Commission.

A number of Supreme Court decisions have reflected the nature and extent of the ‘Public Trust Doctrine’, which holds persons, acts and omissions to be subject to this Doctrine. These cases concern the decisions made by decision-making state officers to the Cabinet of Ministers implicating the right to freedom from corruption in the exercise of legislative, executive and judicial power. These court decisions have also interpreted the notion of ‘Rule of Law’ as requiring the observance of minimum standards of openness, fairness, and responsibility in administration.

Rule of Law

Perera v Ranatunga [1993] 1 SLR 39 – unequal treatment in promotion of public officials

Priyangani v Nanayakkara [1996] 1 SLR 399, 404 -

Jayawardena v Wijayatilake [2001] 1 SLR 126, 143 - minimum standards of openness, fairness and responsibility

Fundamental Rights

Hettiarachchi v Mahaweli Authority [2000] 3 SLR 334,342 - misuse of corporation premises for pending elections

Deshapriya v Rukmani [1999] 2 SLR 412, 418 -

Mediwake v Dissanayake [2001] 1 SLR 177 - freedom from corruption at elections

Public Trust Doctrine

Sugathapala Mendis and Others v Chandrika Bandaranaike Kumaratunga and others [2008] 2 SLR 339 –

Wasudewa Nanayakkara v N.K.Chocksy, Minister of Finance and others SCFR 209/2007 decided on 13 October 2009 –

(b) Observations on the implementation of the article

Sri Lanka has not adopted a single, specialized anti-corruption strategy. Rather, provisions relevant to preventing corruption are found in several sources.

In 2007, Sri Lanka adopted the National Anti-Corruption Action Plan. The Plan includes measurable and time-bound actions; however, it has never been systematically implemented or updated.

In 2015, CIABOC adopted an anti-corruption strategy, “Seven Steps to Zero Tolerance” to guide its work in the areas of enforcement and prevention, together with a three-year implementation action plan. Among others, the strategy calls for the nomination of integrity officers in public

institutions, increased transparency of public services and strengthened partnership with civil society. The strategy serves as a workplan for the Commission and cannot be considered a comprehensive national anti-corruption strategy. Its implementation remains ongoing, especially in regards to the CIABOC's prevention functions. The strategy has been incorporated into the 2015-2017 National Action Plan for the Open Government Partnership.

The Constitution of Sri Lanka sets out the basic principles of rule of law, transparency and public trust. For example, according to the Directive Principles of State Policy in the Constitution, the State will promote and strengthen measures to prevent and combat corruption, and the institutions of government will promote integrity, accountability and proper management of public affairs, public property and public resources. The 19th amendment of the Constitution, among others, strengthened the work of the independent commissions, including CIABOC, and gave a constitutional recognition to the Convention against Corruption.

During the country visit, national authorities reported that Sri Lanka was in the process of developing a comprehensive national anti-corruption strategy. The strategy would be developed for 20 years ahead and updated every two years. At the time of the country visit, a concept paper on the national strategy had been developed and handed over to the prime minister for consideration.

Based on the information provided by Sri Lanka, the reviewers could not conclude that Sri Lanka has adopted effective, coordinated anti-corruption policies, as envisaged in article 5 paragraph 1 of the Convention. Although the Convention does not call for the adoption of a single written anti-corruption policy, the reviewers did not find any comprehensive, coordinated anti-corruption policy with clearly stated goals, means to achieve them, responsible bodies and coordination. **Sri Lanka is therefore recommended to implement an effective, coordinated anti-corruption policy with clearly stated goals, means to achieve them, responsible bodies and coordination, for example by updating the 2007 National Anti-Corruption Action Plan or adopting a new national anti-corruption strategy.**

(c) Successes and good practices

Sri Lanka has adopted measures to promote the participation of society, including through the Open Government Partnership and National Anti-Corruption Action Plan which calls for enhancing civil society's participation in governance.

Paragraph 2 of article 5

2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.

(a) Summary of information relevant to reviewing the implementation of the article

Sri Lanka cited numerous practices aimed at the prevention of corruption.

- (a) Measures already taken to promote the participation of society

- (i) CIABOC launched a three-year action plan for combating bribery and corruption on 9 December 2015 based on “Seven Steps to Zero Tolerance”¹⁵. This action plan was prepared with the participation of civil society.
 - (ii) The CIABOC, for the first time since its establishment, actively joined hands with civil society in 2015 on prevention work. Since then several projects have been carried out with the active participation of civil society, as set out below.
 - (iii) Established Y-MaC (Youth Movement against Corruption) in October 2016.
 - (iv) Conducted several awareness programs educating society on prevention.
 - (v) CIABOC has adopted several measures to enable citizens to conveniently make complaints on bribery and corruption, such as establishing a reporting hotline, facsimile, postal and an email address.
 - (vi) Since 2015, all complaints are acknowledged with a reference number and the public can inquire on the status of their complaints using the reference number.
 - (vii) The proposed amendments to the Declaration of Assets and Liabilities Law were developed with the participation of civil society and tendered to the President.
 - (viii) CIABOC’s website publicly disseminates and provides access to information on its activities.
- (b) Measures to be taken to promote the participation of society
- (i) Currently, the public has to follow a tedious process to obtain copies of the asset declarations of public officials, even after making a payment. The amendment seeks to facilitate access by the public to electronic copies without payment.
 - (ii) CIABOC is working with different groups, anti-corruption activists and CSOs as members to establish a prevention unit with the participation of civil society.
 - (iii) The government is committed to promoting transparency, accountability and public participation in the thematic areas of health, education, information and communication technology, the environment, anti-corruption, local government, right to information and women’s issues in a measurable, time bound and specific manner. This encourages CSOs to act as watchdogs to ensure that government organizations follow the rule of law.
 - (iv) On 11 October 2016, the Cabinet of Ministers approved the Open Government Partnership National Action Plan. Its implementation is ongoing.
- (c) Measures taken aimed to reflect the principles of the rule of law
- (i) Every citizen has the right to invoke the jurisdiction of the Supreme Court on violations of fundamental rights.
 - (ii) There is ample media freedom and criminal defamation is no longer an offence. Aggrieved citizens have recourse to the press council.
 - (iii) All administrative actions are amenable to writ jurisdiction.
 - (iv) Every citizen has a right to make complaints to a statutory body relating to corruption.
 - (v) Any abuse of power by a public officer can be investigated by the Ombudsman (Chapter XIX of the Constitution).
 - (vi) Recommendations have been proposed by CIABOC and CSOs to the President on the necessary amendments to the Declaration of Assets and Liabilities Law.

¹⁵http://www.ciaboc.gov.lk/web/index.php?option=com_content&view=article&id=303%3Aseven-steps-to-zero-tolerance-&catid=3%3Anews-a-events&Itemid=50&lang=en.

- (d) Measures taken regarding proper management of public affairs and public property
- (i) The Establishments Code and Public Service Commission (PSC) Rules govern the appointment, code of conduct, and disciplinary matters of public officers.
 - (ii) Financial regulations and government procurement guidelines govern the government financial and procurement procedures.
 - (iii) The first e-government policy in Sri Lanka was initially approved by the Cabinet of Ministers on 16 December 2009. The policy is being reviewed periodically for implementation.
 - (iv) Offences relating to public property are set out in the Offences against Public Property Act No. 12 of 1982, as amended. Alienation of public property is governed by several statutes.
- (e) Measures taken aimed at enhancing integrity, transparency, and accountability.
- (v) Article 13 of the Constitution ensures due process and requires fair trial. The Establishments Code and PSC Rules govern the appointment, code of conduct, and disciplinary control of public officers.
 - (vi) 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 (Article 156C(1) of the Constitution).
 - (vii) The Right to Information Act No. 12 of 2016 provides an opportunity for transparency and accountability.
 - (viii) Cabinet approval has already been granted for the Open Government Partnership National Action Plan.
 - (ix) The National Audit bill has been placed before Cabinet for approval.

As per the e-government policy, the Information and Communication Technology Agency (ICTA) of Sri Lanka has initiated service oriented e-government projects with several government authorities, such as the Department of Immigration and Emigration, Department of Customs, Registrar General's Department, etc.

The effect of the Establishments Code, Financial regulations and procurement guidelines has been spelled out in several Supreme Court judgements¹⁶.

Bandara and another v. Premachandra, Secretary, Ministry of Lands, Irrigation and Mahaweli Development and others [1994] 1 SLR 301, available at:

http://www.lawnet.lk/docs/case_law/slr/HTML/1994SLR1V301.htm

Nandadasa v. Jayasinghe, M.S., Secretary, Ministry of Justice and Constitutional Affairs and others [2001] 1 SLR 14, available at:

http://www.lawnet.lk/docs/case_law/slr/HTML/2001SLR1V14.htm

Noble Resources International Pte. Ltd. v. Hon. Ranjith Siyambalapatiya, Minister of Power and Renewable Energy SCFR 394/2015 decided on 24.06.2016, available at:

http://www.supremecourt.lk/images/documents/sc_fr_394_2015.pdf

¹⁶ Case law available at: http://www.lawnet.lk/list_page_full.php?page=10&id=15&cat=f

(b) Observations on the implementation of the article

Various preventive measures and practices have been implemented in Sri Lanka, in particular through the work of CIABOC and with the participation of civil society. These include the organization of training and awareness-raising activities, establishment of a mechanism to report corruption incidents to CIABOC and other measures. However, it was explained during the country visit that awareness raising and prevention work is still undertaken on an ad-hoc basis and that CIABOC plans to adopt and implement a structured programme on preventive measures in 2017 and to establish a dedicated prevention unit in CIABOC. It was explained that the full implementation of paragraph 2 of article 5 would depend to a large extent on the successful implementation of these measures.

In light of the above, **Sri Lanka is encouraged to continue its efforts to adopt a more structured approach towards preventive work, including through the establishment and effective functioning of a dedicated prevention unit.**

Paragraph 3 of article 5

3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.

(a) Summary of information relevant to reviewing the implementation of the article

The Law Commission was established by Act No. 3 of 1969¹⁷ as a Department under the Ministry of Justice. It is statutorily required to periodically review laws, to advise on anomalies, repeal obsolete laws and modernize the applicable law. To date, the Law Commission has proposed amendments to various anti-corruption laws, some of which have been adopted and others which are at the stage of consideration for adoption. These can be summarized as follows:

- **Bribery Act Amendment No. 22 of 2018.** By this amendment cases involving corruption matters can now be filed in the High Courts of Colombo, whereas prior to the amendment such cases could only be filed in the Magistrate Courts.
- **Judicature Amendment Act.** According to this amendment, provision is made to set up a permanent trial-at-bar, comprising of three high court judges to hear serious financial crimes and corruption cases on a day-to-day basis.
- **Amendment to the Mutual Legal Assistance in Criminal Matters Act, No. 25 of 2002,** which was passed on 9 August 2018, has widened the scope of application of MLA requests.

Amendments Under Consideration:

- **Amendment to the Commission to Investigate Allegations of Bribery or Corruption Act, No. 19 of 1994** to make the law compatible with the provisions of the Convention and prevention laws.
- **Amendment to the Bribery Act** considering issues such as private sector bribery, joint investigations, gift rules, conflict of interest rules, permission to seek AG's legal opinion, whistle-blower protection, etc.
- **Commission of Inquiry Act Amendment.** This amendment brings major changes to the investigation into financial crimes and corruption cases.

¹⁷ The full law can be found at: <http://lawcom.gov.lk/web/images/stories/pdf/eng.pdf>

- **Amendment to the Declaration of Assets and Liabilities Law, No. 01 of 1975** to widen the list of declarants covered by the Act, to enhance penal sanctions for non-declaration, to introduce an e-declaration system, to create a monitoring centre, etc.
- **Amendment to the Financial Transactions Reporting Act, No. 6 of 2006** to fill lacunas in the law on money laundering and related offences.
- **Companies Act Amendment No. 07 of 2007** to include the verification of information pertaining to beneficial ownership, amongst others.

In addition to the work of the Law Commission, the CIABOC has also initiated several legislative amendments to enhance compliance with the Convention, including development of a Cabinet paper to amend the Declaration of Assets and Liabilities Act No. 1 of 1975 (mentioned above) and proposed amendments to the new Right to Information Act No. 12 of 2016. The CIABOC has also carried out periodic law reviews in cooperation with USAID and the United Nations Development Programme.

The 2016 Open Government Partnership National Action Plan specifically provides for periodic evaluation of government openness.

(b) Observations on the implementation of the article

The Law Commission of the Ministry of Justice is statutorily responsible to periodically review laws. To date, it has proposed several amendments to the Bribery Act, the Prevention of Money Laundering Act and the Mutual Assistance in Criminal Matters Act (MACMA), inter alia to align Sri Lanka's legislation with international standards. CIABOC and relevant ministries and institutions have also initiated several legislative amendments to enhance compliance with the Convention, including with regard to the Declaration of Assets and Liabilities Act (DALA), CIABOC Act, Commission of Inquiries Act, Judicature Act, MACMA and the Right to Information Act (RIA). It was explained during the country visit that other bodies were also active in proposing legislative amendments with regard to corruption, including Ministry of Finance and FIU (anti-money laundering), Ministry of Defence (extradition) and Ministry of Foreign Affairs (mutual legal assistance in criminal matters).

It was concluded that Sri Lanka is in compliance with the provision under review.

Paragraph 4 of article 5

4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption.

(a) Summary of information relevant to reviewing the implementation of the article

In 2004, Sri Lanka ratified the Convention against Corruption and has since participated in many regional and international programmes aimed at the prevention of corruption. These measures include, inter alia, the following:

- (i) On 26 March 2007, Sri Lanka endorsed the Anti-Corruption Action Plan for Asia and the Pacific, which was a result of the ADB/OECD Anti-corruption initiative:
<http://www.oecd.org/dataoecd/51/28/36759373.pdf>

- (ii) The South Asian Association for Regional Cooperation (SAARC), of which Sri Lanka is a member, held discussions on a concept paper to establish a regional police force, SAARCPOL, for the Prevention of organized crimes, combating corruption, drug abuse, drug trafficking and money laundering, and for training requirements of police officers and networking among police authorities in the region.
- (iii) Sri Lanka is a member of the Commonwealth of Nations, INTERPOL, the Open Government Partnership, the Forum of Election Management Bodies of South Asia, and the Asset Recovery Inter Agency Network-Asia Pacific.

(b) Observations on the implementation of the article

Sri Lanka participates in several regional and international fora, including the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific and the South Asian Association for Regional Cooperation (SAARC). Sri Lanka is a member of the Commonwealth of Nations, INTERPOL, the Open Government Partnership, the Forum of Election Management Bodies of South Asia, and the Asset Recovery Inter Agency Network-Asia Pacific.

It was concluded that Sri Lanka is in compliance with the provision under review.

Article 6. Preventive anti-corruption body or bodies

Paragraph 1 of article 6

1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:

(a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;

(b) Increasing and disseminating knowledge about the prevention of corruption.

(a) Summary of information relevant to reviewing the implementation of the article

The Commission to Investigate Allegations of Bribery or Corruption (CIABOC) was established by Act No. 19 of 1994¹⁸. It is the statutory body empowered by law to carry out enforcement and the implementation of preventive measures in the drive against corruption.

Its three-year strategy to curb corruption, named the ‘Seven Steps to Zero Tolerance’, was launched on 9 December 2015 and handed over to H.E. the President on International Anti-Corruption day. The strategy is based on two pillars, i.e., enforcement and prevention, underpinned by a revised and updated legal and institutional framework. The strategy is implemented through three-year action plans. In particular, the 2016 Action Plan was developed based on the seven steps and considering the need to strengthen the enforcement units.

Consequent to the Presidential election on 8 January 2015 and the Parliamentary elections on 17 August 2015, the new government established two other mechanisms to expedite bringing the offenders of bribery or corruption to justice and recovering the proceeds of crime. Accordingly, in addition to the Criminal Investigations Department (CID) under the Sri Lanka Police, which was

¹⁸ http://www.ciaboc.gov.lk/web/images/pdf/publications/Commission_Act_english.pdf

investigating, inter alia, money-laundering matters, a new unit under the name Financial Investigations Division (FCID) was established under the Police to investigate grand corruption and money-laundering offences. Additionally, to expedite the investigations, a Presidential Commission to Investigate and Inquire into Serious Acts of Fraud, Corruption and Abuse of Power (PRECIFAC) was established. The Presidential Commission is assisted by a small secretariat consisting of two sitting High Court judges, one appellate court judge, two prosecutors of the Attorney General's Department and several investigators from the Sri Lanka Police. The Presidential Commission investigates and transmits files to the respective agencies to institute action. Investigation material that is readily available to investigators includes, among others, declarations made under the Declaration of Assets and Liabilities Act No. 1 of 1975 (as amended), tax returns, bank statements and search and seizure powers. The enforcement mechanism in Sri Lanka is complemented by the Auditor General's Department; Financial Intelligence Unit (FIU); Parliamentary Committee on Public Enterprises (COPE); Parliamentary Committee on Public Accounts (COPA); anti-corruption secretariat¹⁹ and the Parliamentary Commissioner for Administration (Ombudsman).

CIABOC currently carries out the prevention work by conducting workshops and awareness programmes on an ad hoc basis. In 2017, a structured programme on preventive measures is envisaged. This includes establishing a prevention unit for each province in Sri Lanka, developing a syllabus to teach anti-corruption to public servants and creating a pool of resource persons to conduct lectures and workshops, both within CIABOC and with the participation of civil society and citizens. This pool of resource personnel will conduct rigorous awareness programmes throughout the country.

(b) Observations on the implementation of the article

CIABOC is the main preventive anti-corruption body in Sri Lanka and designated authority under article 6(3) of the Convention. Its work is guided by the "Seven Steps to Zero Tolerance" strategy and three-year action plans. CIABOC has started the implementation of the strategy, including through encouraging the nomination of integrity officers in public institutions, developing youth education programmes and syllabi and promoting partnerships with the public and civil society. At the time of review, CIABOC was in the process of creating a dedicated CIABOC prevention unit. It has also signed a memorandum of understanding with the United Nations Development Programme in November 2015 to enhance preventive measures in Sri Lanka.

Other bodies with corruption prevention mandates include the now dissolved Anti-Corruption Secretariat, Auditor General's Department, Financial Intelligence Unit, Parliamentary Committee on Public Enterprises, Parliamentary Committee on Public Accounts, and Parliamentary Commissioner for Administration (Ombudsman).

The question of effectiveness was discussed during the country visit, in particular because there appeared to be some overlap in terms of responsibilities among the identified anti-corruption bodies. One example was the existence of the Anti-Corruption Secretariat whose functions were very similar to those of CIABOC and there appeared to be a limited cooperation between the two bodies.

Sri Lanka is recommended to continue efforts to adopt a more structured approach towards CIABOC's prevention work, including through the establishment and effective functioning of a dedicated prevention unit.

¹⁹ The anti-corruption secretariat stopped its operations in early 2017 due to questions relating to its role and effectiveness.

Paragraph 2 of article 6

2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.

(a) Summary of information relevant to reviewing the implementation of the article

In 1994, with the enactment of the 17th Amendment to the Constitution, the CIABOC was established by Act No. 19 of 1994. Today, it is this statutory body that exists as the independent body to combat corruption pursuant to the 19th Amendment to the Constitution, which came into operation on 15 May 2015.

CIABOC is headed by three Commissioners. To maintain the independence of the CIABOC, the appointment is made by the President on the recommendation of the Constitutional Council and their removal could only be made by Parliament and only on the grounds of misconduct and incapacity. Their appointment is for a period of five years and the Commissioners cannot be reappointed. The Commission is not under any Ministry or Department, except for establishment purposes where the Commissioners and the Director-General coordinate with the Presidential Secretariat. The salaries are paid directly from the Consolidated Fund.

The CIABOC Act provides for the appointment of a Director-General (DG). The DG is the chief financial and administrative officer of the institution and is responsible to provide the necessary resources to both investigators and prosecutors. The DG can only investigate complaints that are directed for investigation by the Commission. Both appointment and removal of the Director-General are solely in the hands of the President. This measure has hampered successive Commissions since its inception and does not provide the necessary independence to carry out the functions effectively and free from any undue influence. In order to maintain independence, it is necessary to protect the office of Director-General with constitutional safeguards. In addition, pursuant to section 18 of the CIABOC Act, the DG is a public servant generally subject to the Establishments Code. However, the disciplinary procedure over the Director-General is unclear, as the disciplinary mechanism is under the control of the appointing authority (i.e., the President) and not the Public Service Commission.

The Commission consists of a legal unit, an investigation unit and an administration unit. The Commission, under the supervision of the Public Service Commission (PSC), carries out interviews for recruitment of legal officers. However, the appointing authority and the disciplinary powers of the legal officers are vested with the PSC.

Investigators are seconded from the Sri Lanka Police and act as authorized officers of the Commission. Investigations and prosecutions can only be carried out on the specific direction of the Commission. However, for the Commission to maintain its true independence, it is necessary for the investigators to be employees of the Commission. For this reason, a cabinet paper was submitted on 15 September 2016 to H.E. the President, to obtain government approval to recruit and train 300 investigators solely for the Commission.

Additionally, CIABOC is in the process of identifying specialized staff for the Commission, such as accountants, surveyors, information technology specialists, staff to establish an intelligence unit, etc.

Section 5 of the CIABOC Act provides extensive investigative powers to the Commission, including the power to seize bank accounts and impound passports. The Commissioners are

immune from prosecution for any official act performed in good faith (Section 19(1) of the CIABOC Act).

The Commission's mandate expands to bribery, corruption and matters under the Declaration of Assets and Liabilities law. The Commission is statutorily empowered to investigate and prosecute all complaints.

(b) Observations on the implementation of the article

The independence of CIABOC is prescribed by the 19th Amendment to the Constitution and the provisions on appointment, tenure and removal of its commissioners (section 2 of the CIABOC Act). CIABOC is headed by a Director-General (DG) and three commissioners. The commissioners are appointed by the President for a non-renewable five-year period. Their independence is safeguarded through the fact that they must first be recommended by the Constitutional Council and can be removed only with Parliament's approval. The DG's appointment, tenure and removal is solely in the hands of the President and no rules are in place regarding disciplinary matters. Sri Lankan authorities reported that it would be beneficial to establish stronger constitutional safeguards regarding the DG's appointment in an effort to remove any actual or perceived undue influence from the President. However, it was explained during the country visit that further constitutional safeguards may not be needed given that any Presidential decision can be subject to subsequent judicial review (article 126 of the Constitution) and the appointment is done in consultation with the commissioners.

In addition, the investigators who work for the CIABOC come from the Sri Lanka Police, but the CIABOC does not have control over administrative or disciplinary issues concerning these investigators. Sri Lanka may consider a change to its current scheme to bring all investigators and related staff under its umbrella not only for investigative purposes but also for administrative and disciplinary matters (recruitment, discipline and removal). This may assist in minimizing external influences on particular officers/investigators who are engaged in sensitive investigations. Sri Lanka appears to have already taken some steps towards this endeavour evidenced by the cabinet paper which was submitted on 15 September 2016 to the President in order to obtain government approval to recruit and train 300 investigators solely for the Commission.

In light of the above Sri Lanka is recommended to enhance CIABOC's independence and effectiveness, including by adopting clear rules on the DG's tenure and removal, specifying the procedure for disciplinary control over the DG, providing CIABOC with sufficient material resources and providing specialized training for staff and exercising administrative and disciplinary control over its officers.

Paragraph 3 of article 6

3. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.

(a) Summary of information relevant to reviewing the implementation of the article

Sri Lanka has taken steps towards communicating the requisite information through diplomatic channels.

(b) Observations on the implementation of the article

Sri Lanka was reminded of its obligation to notify the Secretary-General of its officially designated preventive body.

Article 7. Public sector

Paragraph 1 of article 7

1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials:

- (a) That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;*
- (b) That include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;*
- (c) That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;*
- (d) That promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions. Such programmes may make reference to codes or standards of conduct in applicable areas.*

(a) Summary of information relevant to reviewing the implementation of the article

As per Article 41B(1) of the Constitution, the Chairman and members, inter alia, of the CIABOC, the Election Commission, Public Service Commission (PSC), National Police Commission, Audit Service Commission, National Procurement Commission and the Finance Commission are appointed by the President, on the recommendation of the Constitutional Council.

In addition to the above, as per Article 41C(1) of the Constitution, the Chief Justice and the Judges of the Supreme Court, the President and the Judges of the Court of Appeal, members of the Judicial Service Commission, the Attorney General, the Auditor General, the Inspector General of Police, the Parliamentary Commissioner for Administration (Ombudsman) and the Secretary General of Parliament are appointed by the President, upon such appointment being approved by the Constitutional Council.

As per Article 61E of the Constitution, the Heads of the Army, Navy and the Air Force are also appointed by the President.

The members of the Public Service Commission are appointed by the President on the recommendation of the Constitutional Council, as stipulated in Article 54(1) of the Constitution.

As per Article 55(1) of the Constitution, the appointment, transfer, dismissal and disciplinary control of public officers is vested in the Cabinet of Ministers.

The appointment, transfer, disciplinary control and dismissal of Heads of Department is vested in the Cabinet of Ministers as per Article 55(2) of the Constitution.

The appointment, transfer, disciplinary control and dismissal of public officers is delegated by the Cabinet of Ministers to the Public Service Commission, as per Article 55(3) of the Constitution.

As per Articles 56(1) and 57(1) of the Constitution, the powers of appointment, transfer, disciplinary control and dismissal of public officers can be delegated by the Public Service Commission to a Committee or to a public officer, which delegation is required to be published in the Gazette.

As per Article 58(2) of the Constitution, a public officer aggrieved by an order made by a Committee or a Public Officer under Articles 56 and 57 of the Constitution can prefer an appeal to the Public Service Commission.

The Administrative Appeals Tribunal has been established in terms of Article 59(1) of the Constitution, facilitating a public officer to prefer an appeal to the said Tribunal, against an order made by the Public Service Commission.

A public officer aggrieved by an order made by the Public Service Commission can invoke the Writ jurisdiction of the Court of Appeal in terms of Article 140 of the Constitution or invoke the jurisdiction of the Supreme Court in terms of Article 126 of the Constitution, in respect of any violation of a Fundamental Right or Language Right by executive or administrative action.

To maintain accountability, as per Article 55(5) of the Constitution, the Public Service Commission is answerable to the Parliament and is also required to submit a report pertaining to its activities annually.

Unless the Public Service Commission provides otherwise, such rules, regulations and procedure pertaining to Public Service as are in force are deemed to continue and be in force.

In 2009 the Public Service Commission introduced Procedural Rules in respect of the Public Service, which govern, inter alia, the procedure pertaining to appointment, transfer, and promotion. Accordingly, recruitment to the Public Service is carried out through a transparent process as set out in Gazette No. 1589/30 dated 20 February 2009 (<http://www.gic.gov.lk/gic/pdf/gazette18en.pdf>), and schemes of recruitment and service minutes are approved by the Public Service Commission. Vacancy announcements are advertised through the Government Gazette, websites and at times through newspapers. Selections are based upon interviews and at times upon written examinations.

Schemes of recruitment and service minutes, which are prepared by the relevant Government Departments and Ministries in consultation with stakeholders, as approved by the Public Service Commission, provide for, inter alia, the recruitment and promotion to a particular service.

Chapter V of the Procedural Rules lists the persons who are not qualified for appointment to the Public Service.

Chapter V

39. A person who has been in the public service or in a public corporation and has been compulsorily retired for general inefficiency or retired as a merciful alternative to dismissal or retired as a punishment or who has been dismissed after a formal inquiry or who has vacated his post is disqualified for appointment to the public service.

40. A person convicted by a court of law for a criminal offence committed against the Democratic Socialist Republic of Sri Lanka is disqualified to be appointed to the public service.

41. Any person convicted by a court of law in any criminal proceedings or convicted by a court of law after summary inquiry in terms of Section 449 of the Criminal Procedure Code is disqualified for appointment to the public service.

42. Any person who had been declared as bankrupt is disqualified to be appointed to the Public Service.

43. A person who is not a citizen of Sri Lanka or who does not have citizenship rights is disqualified for appointment to the public service.

Chapter VI and VII set out the terms and conditions governing appointments of public officials and the procedure relating to appointments. As mentioned above, appointments can be made by the PSC or authorities with delegated power. The appointing authority appoints boards of interview in accordance with the service minute or the scheme of recruitment, usually consisting of three to five members. The appointing authority or Head of Department keeps a personnel file for each appointee.

Promotions of public officials are regulated in Chapter XVII.

Transfers of public officials are covered by Chapter XVIII of the Procedural Rules which establish that every public official is subject to transfer.

195. A public Officer is transferred to achieve, as the case may be, all or several or any one of the following objectives:

- (i) Fill a vacancy in an institution;*
- (ii) Meet the administrative needs of an institution;*
- (iii) Promote the efficiency and productivity of the institution;*
- (iv) Meet the needs of a disciplinary process;*
- (v) Implement a disciplinary order;*
- (vi) Provide the officer with an opportunity to gain experience in a wider field;*
- (vii) Provide the officer with an opportunity for professional development and improvement of his skills;*
- (viii) Provide relief from personal difficulties experienced by the officer.*

196. Transfers are fourfold as indicated below:

- (i) Transfers done annually;*
- (ii) Transfers done on exigencies of service;*
- (iii) Transfers done on disciplinary grounds;*
- (iv) Mutual transfers on requests made by officers.*

Chapter XX of the Procedural Rules deals with the procedure on appeals against promotions and transfers.

230. In terms of Article 58 (1) of the Constitution any Public Officer aggrieved by an order relating to a promotion or transfer made by an Authority with Delegated Power in respect of the officer so aggrieved may appeal to the Commission against such order.

231. A Public Officer making an appeal against an order relating to a transfer or promotion to the Commission shall do so only as per Appendix 23. He shall also submit certified copies of the documents in support of his representation along with the appeal.

232. A Public Officer shall submit an appeal to the Commission only through the Authority with Delegated Power with copies to Head of Institution, Head of Department and the Secretary to the respective Ministry. It shall be the duty of the Authority with Delegated Power to submit such appeals forthwith to the Commission with his observation. The officer, if he so desires, may submit an advance copy of the appeal direct to the Commission.

233. A Retired Public officer making an appeal relating to a promotion due during the period he was in the public service on which a decision has been made by a Authority with Delegated Power after his retirement shall submit such appeal direct to the Commission. However, he shall send the copy of the appeal to his former Head of Department or Head of Institution.

234. An appeal against an order relating to a promotion made by the Authority with Delegated Power shall be made by the relevant Public Officer within 30 days of making the decision in question and appeal

against an order relating to a transfer made by the Authority with Delegated Power shall be made within 14 days of the receipt of the transfer order by the Public Officer. Appeal not within the stipulated time shall be rejected by the Commission.

235. The Head of Institution, Head of Department, Appointing Authority and Secretary to the Ministry shall ensure that an appeal handed over by an officer for transmission to the Commission is delivered to it within 15 days of the receipt of the appeal together with all relevant files, documents and reports and respective observations and recommendations. However, in case of transfers made under the annual transfer scheme referred to in Chapter XVIII the appeal together with relevant files, documents, reports, observations and recommendations shall be delivered to the Commission on or before 01st of December.

236. It is the responsibility of every Public Officer to submit his appeal in accordance with the requirements in this Chapter and any appeal that does not conform to these requirements will not be considered by the Commission.

237. The Commission may make a determination on an appeal made against a promotion within 45 days of the receipt of the documents referred to in Section 235 by the Commission. The Commission may make a determination on an appeal made against a transfer within 15 days of the receipt of the documents referred to in Section 235 by the Commission.

238. The Commission shall send its decision on an appeal made as aforesaid direct to the appellant Public Officer with copies to the Authority with Delegated Power, Head of the Department and Head of the Institution.

239. A Public Officer aggrieved by an order or decision made by the Commission has the right to prefer an appeal to the Administrative Appeals Tribunal in accordance with the provisions of the Administrative Appeals Tribunal Act. No. 4 of 2002.

Article 55(4) of the Constitution empowers the Cabinet of Ministers to make a code of conduct for public officers.

The Establishments Code contains detailed provisions relating to the services of public officers and various aspects pertaining to the Public Service, including the appointment and disciplinary control of public officers. Enforcement of the Establishments Code is vested with the PSC.

Policy decisions applicable to public officers are introduced by way of government Circulars by, inter alia, the Ministry of Public Administration, and are published in all three national languages, as provided in Article 18 of the Constitution.

The Provincial Public Service has its own laws relating to appointment and other disciplinary control of public servants serving the Provincial Councils. However, most of the executive officers are transferred from the combined services.

The Police Commission has powers of appointment and disciplinary controls of all police officers.

The Judicial Service Commission controls the appointment, promotion and disciplinary control of judicial officers.

(b) Observations on the implementation of the article

In accordance with the Constitution, the appointment, transfer, disciplinary control and dismissal of public officials is delegated by the Cabinet of Ministers to the Public Service Commission (PSC) (art. 55), which may further delegate its powers to designated public officials or committees (arts. 56 and 57). The members of the PSC are appointed by the President on the recommendation of the

Constitutional Council (art. 54). The PSC is answerable to the Parliament and required to submit a report pertaining to its activities annually.

Provisions in the Procedural Rules on the Appointment, Promotion and Transfer of Public Officers (PRs) and the Establishments Code (EC) set out rules for recruitment, appointment, remuneration, promotion, termination, resignation, and general duties and rights of public officials. Vacancy announcements are published in the Government Gazette, newspapers and on the internet. The selection of candidates is based on written exams and interviews. All appointments are made in accordance with 'service minutes' and 'schemes of recruitment', developed for each post by relevant government departments and approved by the PSC (chapter IV PRs, chapter II EC). On appointment, public officials take an oath of office (art. 85 PRs). A system of rotation of public officials is in place (chapter XVIII). Complaints regarding the recruitment process, disciplinary action or any other grievances may be lodged with the PSC or the Administrative Appeals Tribunal (arts. 58, 59 Constitution, chapter XX PRs), subject to judicial review under articles 138 and 126 of the Constitution.

Sri Lanka does not explicitly define which public positions are especially vulnerable to corruption. As such, no specialized training or the rotation system exists for these positions.

Sri Lanka is recommended to consider identifying positions in the public sector that are especially vulnerable to corruption and adopting adequate procedures for the selection and training of public officials holding such positions.

Paragraph 2 of article 7

2. Each State Party shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to public office.

(a) Summary of information relevant to reviewing the implementation of the article

Chapter XIV of the Constitution deals with the franchise and elections, and as per Article 88 of the Constitution, "every person shall, unless disqualified as hereinafter provided, be qualified to be an elector at the election of the President and of members of Parliament or to vote at any referendum".

Article 89 of the Constitution provides that a person who is subject to the disqualifications stipulated in Articles 89(a) – (d) is not qualified to be an elector.

89. No person shall be qualified to be an elector at an election of the President, or of the Members of Parliament or to vote at any Referendum, if he is subject to any of the following disqualifications, namely

–

(a) if he is not a citizen of Sri Lanka;

(b) if he has not attained the age of eighteen years on the qualifying date specified by law under the provisions of Article 101;

(c) if he is under any law in force in Sri Lanka found or declared to be of unsound mind;

(d) if he is serving or has during the period of seven years immediately preceding completed serving of a sentence of imprisonment (by whatever name called) for a term not less than six months imposed after conviction by any court for an offence punishable with imprisonment for a term not less than two years or is under sentence of death or is serving or has during the period of seven years immediately preceding completed the serving of a sentence of imprisonment for a term not less than six months awarded in lieu of execution of such sentence:

[e-j...]

Provided that if any person disqualified under this paragraph is granted a free pardon such disqualification shall cease from the date on which the pardon is granted;

In terms of Article 91 of the Constitution, every person who is qualified to be an elector is qualified to be elected as a member of Parliament, unless such person is subject to the disqualifications stipulated in Article 91 (a) – (g) of the Constitution.

Elections are 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, the Referendum Act, No. 7 of 1981 and the Local Authorities Elections Ordinance, Chapter 262.

See web link at <http://www.slelections.gov.lk/web/index.php/en/electoral-process>.

Respective electoral statutes govern election to public office. Minimum qualifications that are required to be elected a member are set out in respective electoral legislation and the Constitution. Existing conflicts of interest or existing contracts with local government or provincial council bodies disqualify a person from running for public office. Furthermore, office-bearers of recognized political parties and candidates nominated for elections are required to declare their assets and liabilities to the Commissioner General of Elections with their nominations.

The Declaration of Assets and Liabilities Law No. 1 of 1975 as amended (DALA) – (section 4ia) requires that:

1. office-bearers of recognized political parties for the purposes of elections under the Presidential Elections Act, No. 15 of 1981, Parliamentary Elections Act, No. 1 of 1981, the Provincial Councils Elections Act, No. 2 of 1988 or the Local Authorities Elections Ordinance:

2. candidates nominated for elections, 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 or the Local Authorities Elections Ordinance

Shall declare their assets and liabilities to the commissioner of elections.

Pursuant to section 9 of the Act, a person who fails to make a declaration of assets and liabilities, or who makes a false statement in a declaration, is liable on conviction to a fine of up to 1,000 rupees, or imprisonment for a term up to one year, or to both.

(b) Observations on the implementation of the article

General criteria concerning candidature for and election to public office are stipulated in the Constitution (Chapter XIV). Detailed criteria are set out in specialized laws, including the Presidential Elections Act, the Parliamentary Elections Act, the Provincial Elections Act, the Referendum Act and the Local Authorities Elections Ordinance.

Existing conflicts of interest or contracts with local government or provincial council bodies disqualify a person from running for public office. The Establishments Code in chapters 29 and 30 also provides guidelines on conflicts of interest. While office-bearers of recognized political parties and candidates nominated for elections must declare their assets and liabilities (sections 2-4 DALA), non-compliance with this requirement is not a hindrance to be elected to public office. A public official who seeks election as a member of Parliament must resign from the public service (chapter 32 EC and section 9, chapter 47).

Paragraph 3 of article 7

3. Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.

(a) Summary of information relevant to reviewing the implementation of the article

Sri Lanka does not have laws relating to the funding of candidatures for elected public office or funding of the political parties. However, the subject was under discussion at the national anti-corruption summit which was held in Sri Lanka on 9 December 2016. A draft code of conduct for Parliamentarians has also been prepared.

In terms of Article 104GG of the Constitution breach of circulars and directions issued by the Election Commissioner has been recognized as a constitutional offence. Before an election, a circular is issued by the Election Commissioner not to use public property for election use.

Section 127 of the Parliamentary Elections Act also provides for recognized political parties to receive financial grants from the State for general elections.

Under the Declaration of Assets and Liabilities Law No. 1 of 1975, as amended by Act No. 74 of 1988, candidates running for public office and secretaries of political parties are required to submit a declaration of their assets at the time of handing over their nomination, or within three months of the election results. However, non-compliance with this requirement is no hindrance to be elected to public office. The penalties for violations of the Act are spelled out in section 9.

(b) Observations on the implementation of the article

No law is in place regarding funding of candidates for elected public office or funding of political parties. However, discussions on the adoption of legislation on this issue were underway at the time of review. The Parliamentary Elections Act provides for public subsidies of recognized political parties for general elections (section 127).

Sri Lanka is recommended to consider adopting a comprehensive law on the funding of candidates for elected public office and of political parties.

Paragraph 4 of article 7

4. Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.

(a) Summary of information relevant to reviewing the implementation of the article

The Establishments Code in chapters 29 and 30 includes the prevention of conflict of interests among the principles of general conduct of public officials:

Chapter 47

General Conduct and Discipline

1:5 An officer shall not do anything which will bring his private interest into conflict with this public duty or which compromises his office. He should so conduct himself at all times as to avoid giving rise to any

appearance of such conflict or of being so compromised. He should in particular observe carefully the provisions of Chapter XXIX of the Establishments Code.

Chapter 29

1. General

1:1 Where an officer, such as a Head of Department or Government Agent is the sanctioning or deciding authority under this Section, he should refer any application in which he is personally interested, to the Secretary to the Ministry concerned.

1:2 Correspondence on a matter referred to in this Chapter or copies of such correspondence should ordinarily be filed in the Personal Record File, or, where a Personal Record File is not maintained, in the Personal File of the officer (See Section 3 of the Chapter VI). Copies of all such correspondence should also be sent, in respect of an officer of staff grade in a Combined Service and in respect of an officer not of the staff grade in a Combined Service, to the Director, Combined Services and in respect of others, to the Secretary.

1:3 Papers relating to the acquisition of land, etc. by a Secretary and Head of Department not grouped under any Ministry should be forwarded by them to the Secretary to the Ministry of Public Administration.

1:4 This chapter will not apply to a casual labourer.

2. Declaration of Assets and Liabilities

2:1 Upon first appointment, every officer should furnish to the Head of his Department, on Form General 261 (revised) for inclusion in his Personal Record File or Personal File, particulars of all assets owned and liabilities incurred by him or his spouse in her own right or transferred or assigned to her in consideration of her marriage.

2:2 If the officer is unmarried at the time of his first appointment, he should immediately after marriage, furnish the particular required by the preceding sub-section.

2:3 Every officer should, whenever he or his spouse acquires subsequently any new interest or asset (of the description in sub-section 2:1), furnish in writing to the Head of his Department, for inclusion in his Personal Record File or Personal File, full particulars of the asset or interest as acquired. Any failure to do so promptly will be regarded as a breach of discipline.

3. Acquisition of Land

3:1 Acquisition of land or share in land by purchase, lease, gift, inheritance, dowry or device does not require the prior approval of the Government Agent of the District, but it must be reported within three months through the Head of the Department to the Government Agent of the District in which the land is situated who will, if the acquisition appears improper, or if he otherwise considers it undesirable, refer the matter to the Secretary to the Ministry in which the officer is serving, for such action as may be necessary.

[...]

4. Investments, shares and other interests

4:1 A non Sri-Lankan officer should not directly or indirectly acquire any asset or interest of the description in sub-section 2:1.

4:2 Particulars of every investment made, or share or interest acquired, of the description in sub-section 2:1 by or on behalf of an officer or his or her spouse must be reported to the Secretary to the Ministry through the Head of the Department.

4:3 If an officer has reason to anticipate that any real or apparent conflict between his public duty and private interest may be caused by the fact that he owns or holds or proposes to acquire any shares, assets or interests of the description in sub-section 2:1, he should report the facts of the case to the Secretary through the Head of the Department and stay all action in that case until the order of the Secretary is received.

On the receipt of such an order he should comply with it forthwith.

4:4 If the Secretary has any doubt as to the order he should make in any matter referred to him under this section, he should consult the Secretary to the Ministry of Public Administration.

Chapter 30

1. Services outside an officer's regular employment or office

1:1 The Government has a total claim to the time, knowledge, talents and skills of its officers and their salary is fixed on that assumption, unless specifically provided for otherwise.

1:2 No officer may take part in the affairs of any Commercial or Business undertaking or of any firm carrying on any description of professional work.

1:3 An officer may not undertake any service for a Local Government Body, Public Corporation or other public body, or for any private party, without previously obtaining the sanction of the Secretary. An officer will be permitted to undertake such work only if he is

- Possessed of special knowledge or skill which is not elsewhere available; or employed in Government work which can, with advantage, be amalgamated with the work of a local body; or
- Temporarily required to fill a vacancy in the staff of a local body, which demands a degree of ability not adequately possessed by the other members of its staff.

1:4 The permission of the Secretary is required before an officer may undertake for a fee any work outside his normal official duties. Permission will not be given unless it is shown that no other means of getting the work done are reasonably available.

[...]

1:6 An officer should not receive any grant, reward, fee, bonus or gift from any Association or Fund either receiving assistance from public funds or which has ex-officio on its Committee or Board of Management any public officer, without the prior approval of the Secretary.

[...]

1:7 No officer on leave of absence may accept any paid employment without previously obtaining the approval of the Secretary.

[...]

1:10 No officer may undertake any private agency in any matter connected with the exercise of his public duties.

Chapter 32 of the Establishments Code governs the exercise of political rights, which, inter alia, requires an officer elected as a member of Parliament to resign from public service.

Legislative provisions prevent public officials from running for elections where there is a conflict of interest.

Case law:

Dilan Perera vs. Rajitha Senaratne (2000) 2 SLR, pg 79

Sugathapala Mendis & Another vs Chandrika Cumarathunga & Others (Waters Edge Case) (2008) 2 SLR, pg 339

Vasudeva Nanayakkara vs Choksey & Others (Jhone Keels Case) (2008) 1 SLR, pg 134.

(b) Observations on the implementation of the article

The Establishments Code governs the issue of conflict of interest in chapters 29, 30, 32 and 47. While the Code calls on public officials to avoid and report conflicts of interest, it does not comprehensively outline obligations and procedures in this regard. In addition, very little

information was provided about the implementation of these provisions in practice, in particular with regard to measures taken in cases where conflicts of interest were discovered. No statistics have been provided in regards to the number of reported declarations or detected and sanctioned violations. It appears that no training is provided to public officials with regard to their obligations to disclose conflicts of interest.

Sri Lanka self-identified the area of conflicts of interest as an area where technical assistance would be beneficial.

Sri Lanka is recommended to strengthen measures to prevent and detect conflicts of interest, including by adopting clear rules on what constitutes conflict of interest and penalties for non-compliance, creating a monitoring mechanism and providing training to public officials (arts. 7(4), 8(5)).

The proposed amendments to the Declaration of Assets and Liabilities Act (DALA) are a step in this direction and would establish a reporting obligation concerning conflicts of interests and nepotism. See article 8(5) below.

(c) Technical assistance needs

Assistance is required in the following areas for the full implementation of the article:

- Legislative assistance: to draft laws, including on asset declarations.
- Institution-building: Public Service Commission and other relevant bodies.
- Policymaking: Cabinet of Ministers.
- Capacity-building: Awareness raising.
- Research/data-gathering and analysis: global best practices.

Article 8. Codes of conduct for public officials

Paragraph 1 of article 8

1. In order to fight corruption, each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system.

(a) Summary of information relevant to reviewing the implementation of the article

Chapter 47 of the Establishments Code sets out the Rules relating to General Conduct and Discipline of Public Officers. These Rules, inter alia, address matters relating to conflict of interests, canvassing promotions, exchange duties for pecuniary consideration, collection of money, private use of Government labour and property, supplies to government, use of liquor and narcotic drugs, gifts and subscriptions, pecuniary embarrassment, use of government funds for private purposes etc. All officers are required to adhere to the Establishments Code, Financial Regulations, Public Administration and Treasury Circulars, etc. whilst discharging their duties.

Chapter 47 governs the rules of disciplinary procedure for violations of the Code. Punishments are listed in section 24 and include minor punishments (reprimand; severe reprimand; censure; suspension of the increment for a period not exceeding one year; stoppage of the increment for a

period not exceeding one year; order a disciplinary transfer on the officer at his own expense; a fine not exceeding a week's pay) and major punishments (dismissal; termination of service of an officer serving a period of probation; retirement for general inefficiency; compulsory retirement as a merciful alternative for dismissal; rejection of extension of service beyond the optional age of retirement; reduction in seniority; reduction in rank; reduction of salary; deferment of salary increment; disqualification from sitting any promotional examination for a specific period, etc.)

Under section 3 of the Declaration of Assets and Liabilities Law No. 1 of 1975, all members of Parliament, judges, all public officers of government departments and local authorities, as well as the Chairman and staff of public corporations are required to declare their assets and liabilities within three months of their appointment to the public office and thereafter annually. Failure to make such a declaration makes the person liable for prosecution. Non-submission of the declaration is also a ground for disciplinary control under Chapter 29 of the Establishments Code.

Section 29 of Chapter 47 of the Establishments Code deals with the procedure that is required to be followed in respect of 'offences disclosed in an Audit Report' regarding public officers.

(b) Observations on the implementation of the article

All public officials have to comply with the requirements of the Establishments Code, which prescribes rules relating to the general conduct and discipline of public officials (chapters 47 and 48) and deals, inter alia, with matters relating to conflicts of interest (chapters 29 and 30), bribery, misconduct, outside activities, secondary employment and gifts (chapter 47). The Code further requires public officials to comply with the requirements of the financial regulations, public administration and treasury circulars (section 8, chapter 47). No training is provided to public officials on the requirements of the Code.

Sri Lanka is recommended to strengthen the application of the Establishment Code, including through providing training to public officials on their duties; and consider reviewing and modernizing the Code taking into account international good practices.

Paragraph 2 and 3 of article 8

2. In particular, each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.

3. For the purposes of implementing the provisions of this article, each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in the annex to General Assembly resolution 51/59 of 12 December 1996.

(a) Summary of information relevant to reviewing the implementation of the article

Chapters 47 and 48 of the Establishments Code provide for and regulate the general conduct and discipline of public officers. Further, under section 8.1 of chapter 47, adherence to the Establishments Code, financial regulations, public administration and treasury circulars is mandatory for all public servants.

Chapter 47 of the Establishments Code identifies principles governing the general conduct and discipline of public officers. The provisions therein are in line with General Assembly Resolution 51/59.

However, Sri Lanka has not conducted a study or a comparison of such codes in the region.

Additional standards of conduct are in place for personnel in the statutory bodies such as the military, police and most professions (e.g., lawyers).

(b) Observations on the implementation of the article

All public officials have to comply with the requirements of the Establishments Code, which prescribes rules relating to the general conduct and discipline of public officials (chapters 47 and 48) and deals, inter alia, with matters relating to conflicts of interest (chapters 29 and 30), bribery, misconduct, outside activities, secondary employment and gifts (chapter 47). The Code further requires public officials to comply with the requirements of the financial regulations, public administration and treasury circulars (section 8, chapter 47). No training is provided to public officials on the requirements of the Code.

Sri Lanka is recommended to strengthen the application of the Establishment Code, including through providing training to public officials on their duties; and consider reviewing and modernizing the Code.

Paragraph 4 of article 8

4. Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.

(a) Summary of information relevant to reviewing the implementation of the article

There are no general or specific laws that require public servants to report corruption. However, several specialized laws have provisions requiring institutions to refer information to the respective authorities, for example: Section 211 of the Inland Revenue Act, Sections 4 and 9 of the Commission to Investigate Allegations of Bribery or Corruption Act, and the directive principles of the Constitution.

Article 9 of the CIABOC Act:

(1) No person shall, in respect of any statement made, information or answer given, or any document or other thing produced, to or before the Commission, be liable to any action, prosecution or other proceeding, civil or criminal, in any court.

(2) No evidence of a statement made, or answer or information given, by any person, to, or before, the Commission shall be admissible against such person in any action, prosecution or other proceeding, civil or criminal, in any court.

CIABOC has taken several measures to permit the public to access CIABOC, including anonymously. The hotline '1954' is well known to the public and provides the first information on most of the raids conducted by CIABOC. Sting operations are also notified by the public through this hotline. The public has access to CIABOC through telephone, website, email, walk-in complaints and general post. CIABOC noted that most complaints are received through the post. In addition, CIABOC conducts programmes on corruption awareness regularly for public servants. Close interaction with the media also assists in raising public awareness of CIABOC.

With regard to the protection of reporting persons, Sri Lanka referred to the Assistance to and Protection of Victims of Crime and Witnesses Act No. 04 of 2015 (APVCWA) which also covers reporting persons. Among others, the Act protects against any form of harassment, including any adverse changes in conditions of employment which may be associated with the evidence provided to the law enforcement agencies. The implementation of the APVCWA is vested with the National

Authority for the Protection of Victims of Crime and Witnesses (Part IV APVCWA) and the Victims of Crime and Witnesses Assistance and Protection Division in the Police (Part V APVCWA).

Article 6 APVCWA:

6. A person who is neither a victim nor a witness, shall be entitled to claim protection against:

(a) any harassment, intimidation, coercion, violation or suffering from loss or damage in mind, body or reputation; or

(b) any adverse change to his condition of employment, due to or as a result of such person having provided information, lodged a complaint or made a statement to any law enforcement authority or to any Court or Commission or of having given a testimony in any Court or before a Commission, pertaining to the commission of an offence or an infringement of any fundamental right or the violation of a human right, at such persons' place of employment or in the employment environment of such person.

Moreover, Sections 6 and 7 of the Financial Transaction Reporting Act No. 06 of 2006 facilitate the reporting of suspicious transactions by any institutions, which include State as well as non-State entities, to the Financial Intelligence Unit of Sri Lanka.

No concrete examples of corruption reporting by public officials were provided.

More information on CIABOC's hotline and awareness raising activities is provided under article 13(1) and (2).

(b) Observations on the implementation of the article

While no specific duty to report alleged corruption exists for public officials, they are encouraged to use the general reporting mechanism within CIABOC. During the country visit, Sri Lanka explained the existing challenges in this area, in particular the fact that the provisions of the Establishments Code on confidentiality discourage in practice public officials from disclosing confidential information and reporting alleged corruption. As such, **Sri Lanka is recommended to strengthen measures to facilitate the reporting of corruption by public officials, including by providing guidance to public officials and ensuring confidentiality.**

Paragraph 5 of article 8

5. Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

(a) Summary of information relevant to reviewing the implementation of the article

Sections 2, 3, 4, 5, 6 and 7 of the Declaration of Assets and Liabilities Law No. 1 of 1975, as amended, set out the persons to whom this law applies, duty of such persons to make declarations of assets and liabilities, and to whom the declarations of assets and liabilities are to be made. Further, the sections empower the Bribery Commissioner to call for additional information.

Section 2 (Application of the Law):

(1) The provisions of this Law shall apply to every person belonging to any one of the following classes or descriptions of persons:"

(a) Members of Parliament;

(b) Judges and public officers appointed by the President, public officers appointed by the Cabinet of Ministers, judicial officers and scheduled public officers appointed by the Judicial Service Commission and staff officers in Ministries and Government Departments;

(c) Chairmen, Directors, members of the Boards and staff officers of public corporations; (d) elected members and staff officers of local authorities; and

(da) office-bearers of recognized political parties for the purposes of elections under the Presidential Elections Act, No. 15 of 1981, the Parliamentary Elections Act, No. 1 of 1981 or the Provincial Councils Elections Act, No. 2 of 1988 or the Development Councils (Elections) Act, No. 20 of 1981 or the Trade Unions Ordinance;

(db) the executive of trade unions registered under the Trade Unions Ordinance:

(dc) candidates nominated for election at elections to be held 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, the Development Councils (Elections) Act, No. 20 of 1981 or the Local Authorities Elections Ordinance:

(dd) proprietors, editors and members of the editorial staff of newspapers in respect of which declarations have been made under section 2 of the Newspapers Ordinance;

(de) Chairman, Directors and staff officers of companies registered under the Companies Act, No. 17 of 1932, in which the majority of shares are held by the State or by a public corporation.

(e) such categories of other officers as may be specified by regulations.

Section 3 (Duty of persons to whom this law applies to make declarations of assets and liabilities):

(1) Every person to whom this Law applies shall, within three months after the appointed date, make, in such form as may be prescribed, a declaration, hereinafter in this Law referred to as a " declaration of assets and liabilities ", of all"

(a) his assets and liabilities;

(b) the assets and liabilities of his spouse; and

(c) the assets and liabilities of each of his children, as on such date as may be prescribed by resolution of the National State Assembly,

(2) Where a person who on the appointed date is not a person to whom this Law applies becomes thereafter a person to whom this Law applies, he shall, within three months of the date on which he becomes a person to whom this Law applies, make a declaration of assets and liabilities as on the last mentioned date. Provided that a person to whom the Law applies referred to in paragraph (de) of subsection (1) of section 2 shall be deemed to have complied with the provisions of this subsection if he makes a declaration of his assets and liabilities as at the date of his nomination as a candidate for election under any of the Acts referred to in that paragraph on the date of such nomination or before he functions, or sits or votes, as President, a Member of Parliament, a member of a Provincial Council, member of a Development Council or any other Local authority, as the case may be, and in the case of an unsuccessful candidate at an election within a period of three months after the date of nomination.

(3) Every person who is required to make the first declaration of assets and liabilities under subsection (1) or subsection (2) shall, unless such person ceases to be a person to whom this Law applies, by the thirtieth day of June in each year, make in the prescribed form, a declaration of his assets and liabilities as at the thirty-first day of March of such year and include in such declaration the assets and liabilities he held on the date on which he was first required to make a declaration of his assets and liabilities under this Law;

Provided that, where a person who is required to make a declaration of assets and liabilities under subsection (2) has made the first declaration as at any date within six months preceding the thirty-first day of March in any year, he shall not be required to make another declaration for such year.

Section 4 (To whom declaration of assets and liabilities are to be made):

The declaration of assets and liabilities Shall be made in the following manner;"

(a) to the President"

(i) by the Speaker of Parliament,

(ii) by Ministers of the Cabinet of Ministers, other Ministers and Deputy Ministers,

(iii) by Judges and other public officers appointed by the President;

(b) to the Speaker of Parliament, by all other Members of Parliament not referred to in paragraph (a);

(c) be the Judicial Service Commission by judicial officers and by scheduled public officers within the meaning of Article 114 or the Constitution:

(d) to the Secretary to the Ministry"

(i) by Heads of Government Departments,

(ii) by Chairmen and Directors of public corporations,

(iii) by staff officers in the Ministry;

(e) to the Head of the Department, by staff officers of such Department;

(f) to the Chairman of the Corporation, by staff officers in such Corporation;

(g) to the Secretary to the Ministry charged with the subject of Local Government, by Mayors and Chairmen of local authorities;

(h) to the Commissioner of Local Government, by other elected members of local authorities;

(i) to the Director of Local Government Service, by staff officers of local authorities who are members of the Local Government Service; and

(ia) to the Commissioner of Elections

(i) by office-bearers of recognized political parties for the purposes of elections under the Presidential Elections Act, No. 15 of 1981, Parliamentary Elections Act, No. 1 of 1981, the Provincial Councils Elections Act, No. 2 of 1988, the Development Councils (Elections) Act, No. 20 of 1981 or the Local Authorities Elections Ordinance:

(ii) by candidates nominated for election at elections to be held 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, the Development Councils (Elections) Act, No. 20 of 1981 or the Local Authorities Elections Ordinance.

(ib) to the Secretary to the Ministry of the Minister in charge of the subject of Labour by the executive of trade unions registered under the Trade Unions Ordinance;

(ic) to the Secretary to the Ministry of Minister in charge of the subject of papers by proprietors, editors and members of the editorial staff of newspapers, in respect of which declarations have beer-made under section 2 of the Newspaper Ordinance;

(id) to the Registrar of Companies, by Chairman, Directors and staff officers of companies registered under the Companies Act, No. 17 of 1982, in which the majority of the share are held by the State or by a public corporation;

(j) to the persons specified by regulations made by the Minister, by officers of the categories specified by such regulations.

Section 9 (Offences):

(1) A person-

(a) who fails without reasonable cause to make any declaration of assets and liabilities which he is required to make under section 3; or

(b) who makes any false statement in any such declaration; or

(bb) who Wilfully omits any asset or liability from any "such declaration: or

(c) who fails without reasonable cause to give such additional information as the Bribery Commissioner may require under this Law; or

(d) who otherwise contravenes any provisions of this Law, shall be guilty of an offence and shall, unless any other penalty is otherwise provided, on conviction after trial before a Magistrate, be liable to a fine not exceeding one thousand rupees, or imprisonment of either description for a term not exceeding one year or to both such fine and imprisonment.

(2) A person who is convicted of an offence under paragraph (a) of subsection (1) shall, within a period of fourteen days after the date of conviction, or in the event of an appeal against such conviction, within a period of fourteen days after the date of affirmation of such conviction, make the declaration of assets and liabilities referred to in section 3. The provisions of section 3 and the provisions of the other preceding sections of this Law shall, mutatis mutandis, apply to any declaration of assets and liabilities made by such person under this subsection in like manner and to the same extent as they apply to any declaration of assets and liabilities made under section 3.

(3) Any person who fails to comply with the provisions of subsection (2) shall be guilty of an offence and shall, on conviction after trial before a Magistrate, be liable to a fine not exceeding one thousand rupees or to imprisonment of either description for a term not exceeding one year or to both such fine and imprisonment and to a further fine of fifty rupees for each day of continuation of that offence.

(3A) Where any person is convicted of an offence under paragraph (bb) of subsection (1) the asset in respect of which the offence was committed shall by virtue of such conviction be vested in the State free of all incumbrances. (3B) The vesting of any assets in the State under subsection (3A) shall take effect"

(a) where an appeal has been preferred to the court of Appeal or the Supreme Court against the order of forfeiture, upon the determination of the appeal, conforming or upholding the order of forfeiture;

(b) where no appeal has been preferred to the Court of Appeal against the order of forfeiture after the expiration of the period within which an appeal may be preferred to the Court of Appeal against the order of forfeiture.

(4) Where any person has been convicted by a court of any offence under paragraph (a) or paragraph (b) of subsection (1), it shall be the duty of the court to bring the fact of such conviction to the notice of the person to whom such convicted person was bound to make the declaration of assets and liabilities under this Law.

(5) No prosecution for any offence under this Law shall be instituted except with the prior sanction of the Attorney-General.

All public officials have to comply with the requirements of the Establishments Code, which prescribes rules relating to the general conduct and discipline of public officials (chapters 47 and 48) and deals, inter alia, with matters relating to conflicts of interest (chapters 29 and 30), bribery, misconduct, outside activities, secondary employment and gifts (chapter 47). The EC further requires public officials to comply with the requirements of the financial regulations, public administration and treasury circulars (section 8, chapter 47).

Chapter 47

General Conduct and Discipline

1:5 An officer shall not do anything which will bring his private interest into conflict with this public duty or which compromises his office. He should so conduct himself at all times as to avoid giving rise to any appearance of such conflict or of being so compromised. He should in particular observe carefully the provisions of Chapter XXIX of the Establishments Code.

[...]

1:7 Arranging an interchange of duties or attempting do so for a pecuniary consideration will render the officer concerned liable to disciplinary action.

3. Gifts and Subscriptions

3:1 An officer or a member of his family shall not accept any presents, gifts or other benefits other than the ordinary gifts of relatives and personal friends, whether in a direct or indirect form, and whether in the shape of money, goods, free passages, services, unusual discounts on the cost of goods supplied or services rendered, etc.

3:2 The officer will be held responsible for the observance of the rule in the preceding section by the members of his family.

3:3 Gifts received by an officer from a Head or a representative of a Foreign State should be regarded as received by him solely in his capacity as representative of the State.

3:4 Gifts given by persons such as visiting Heads of States, which cannot be refused may be accepted subject to the following sub-sections:

3:4:1 A gift so received should be reported to the Secretary, Ministry of Foreign Affairs

3:4:2 Gifts valued at less than Rs. 5,000 by the Director General of Customs will be returned to the recipient. If the officer does not intend to purchase the gifts valued at over Rs 5,000 after paying the customs duties, the gift will be disposed of as directed by the Secretary, Ministry of Foreign Affairs.

3:5 Money which has been subscribed with a view to marking public appreciation of an officer may be used for a public purpose in the name of the person who has merited such public esteem.

3:6 The collection of subscriptions from subordinate officials to defray the cost of testimonials and presentations to superior officers is prohibited.

[...]

6 Release of Official Information to the Mass Media or the Public

6:1 A Secretary or Head of Department may use his discretion in supplying to the Mass Media or the Public, information regarding Government and Departmental activities, coming within his purview, which may be of interest and value to the public.

[...]

7. Publication of Books, Articles, Broadcast Talks, etc.

7:1 An officer shall not contribute articles, creative writings or furnish information anonymously or under a pseudonym to the mass media in Sri Lanka, or elsewhere.

7:2 An officer shall not publish any books or articles, or give broadcast talks or express opinions in public on any matter which can properly be called administrative, without the prior approval of the Secretary. Application for such approval should be accompanied by the script of the proposed article or talk in duplicate. The Secretary, unless otherwise directed by the Minister, should submit such scripts for the approval of his Minister before sanctioning the application.

7:3 An officer may furnish to the mass media or to any other publication, signed articles, or give broadcast talks, or other material over his own name on other subjects of general interest provided, however, that it may not embarrass the Government, other Government Departments or Government officers.

7:4 An officer who desires to consult or make use of official records for the purpose of publishing a book or other work must obtain the prior permission of the Head of the Department responsible for the custody of these records.

[...]

9. Political Activities by Public Officials

9:1 Officers who are privileged to enjoy political rights under Chapter 32 of Part One of the Establishments Code shall enjoy such rights in accordance with the provisions of that Chapter. Any public employee who acts in excess of such provisions and limits shall be deemed to be guilty of serious misconduct which will be punishable under the First Schedule of this Code.

9:2 Any public officer who is deprived of political rights under Chapter 32 of Part One of this Code engaging in political activities shall be deemed guilty of misconduct of a serious nature punishable under the First Schedule of this Code.

Chapter 29

1. General

1:1 Where an officer, such as a Head of Department or Government Agent is the sanctioning or deciding authority under this Section, he should refer any application in which he is personally interested, to the Secretary to the Ministry concerned.

1:2 Correspondence on a matter referred to in this Chapter or copies of such correspondence should ordinarily be filed in the Personal Record File, or, where a Personal Record File is not maintained, in the Personal File of the officer (See Section 3 of the Chapter VI). Copies of all such correspondence should also be sent, in respect of an officer of staff grade in a Combined Service and in respect of an officer not of the staff grade in a Combined Service, to the Director, Combined Services and in respect of others, to the Secretary.

1:3 Papers relating to the acquisition of land, etc. by a Secretary and Head of Department not grouped under any Ministry should be forwarded by them to the Secretary to the Ministry of Public Administration.

1:4 This chapter will not apply to a casual labourer.

2. Declaration of Assets and Liabilities

2:1 Upon first appointment, every officer should furnish to the Head of his Department, on Form General 261 (revised) for inclusion in his Personal Record File or Personal File, particulars of all assets owned and liabilities incurred by him or his spouse in her own right or transferred or assigned to her in consideration of her marriage.

2:2 If the officer is unmarried at the time of his first appointment, he should immediately after marriage, furnish the particular required by the preceding sub-section.

2:3 Every officer should, whenever he or his spouse acquires subsequently any new interest or asset (of the description in sub-section 2:1), furnish in writing to the Head of his Department, for inclusion in his Personal Record File or Personal File, full particulars of the asset or interest as acquired. Any failure to do so promptly will be regarded as a breach of discipline.

3. Acquisition of Land

3:1 Acquisition of land or share in land by purchase, lease, gift, inheritance, dowry or device does not require the prior approval of the Government Agent of the District, but it must be reported within three months through the Head of the Department to the Government Agent of the District in which the land is situated who will, if the acquisition appears improper, or if he otherwise considers it undesirable, refer the matter to the Secretary to the Ministry in which the officer is serving, for such action as may be necessary.

[...]

4. Investments, shares and other interests

4:1 A non Sri-Lankan officer should not directly or indirectly acquire any asset or interest of the description in sub-section 2:1.

4:2 Particulars of every investment made, or share or interest acquired, of the description in sub-section 2:1 by or on behalf of an officer or his or her spouse must be reported to the Secretary to the Ministry through the Head of the Department.

4:3 If an officer has reason to anticipate that any real or apparent conflict between his public duty and private interest may be caused by the fact that he owns or holds or proposes to acquire any shares, assets or interests of the description in sub-section 2:1, he should report the facts of the case to the Secretary through the Head of the Department and stay all action in that case until the order of the Secretary is received.

On the receipt of such an order he should comply with it forthwith.

4:4 If the Secretary has any doubt as to the order he should make in any matter referred to him under this section, he should consult the Secretary to the Ministry of Public Administration.

Chapter 30

1. Services outside an officer's regular employment or office

1:1 The Government has a total claim to the time, knowledge, talents and skills of its officers and their salary is fixed on that assumption, unless specifically provided for otherwise.

1:2 No officer may take part in the affairs of any Commercial or Business undertaking or of any firm carrying on any description of professional work.

1:3 An officer may not undertake any service for a Local Government Body, Public Corporation or other public body, or for any private party, without previously obtaining the sanction of the Secretary. An officer will be permitted to undertake such work only if he is

- Possessed of special knowledge or skill which is not elsewhere available; or employed in Government work which can, with advantage, be amalgamated with the work of a local body; or
- Temporarily required to fill a vacancy in the staff of a local body, which demands a degree of ability not adequately possessed by the other members of its staff.

1:4 The permission of the Secretary is required before an officer may undertake for a fee any work outside his normal official duties. Permission will not be given unless it is shown that no other means of getting the work done are reasonably available.

[...]

1:6 An officer should not receive any grant, reward, fee, bonus or gift from any Association or Fund either receiving assistance from public funds or which has ex-officio on its Committee or Board of Management any public officer, without the prior approval of the Secretary.

[...]

1:7 No officer on leave of absence may accept any paid employment without previously obtaining the approval of the Secretary.

[...]

1:10 No officer may undertake any private agency in any matter connected with the exercise of his public duties.

(b) Observations on the implementation of the article

The Establishments Code prescribes rules relating to public officials' conduct and discipline (chapters 47 and 48). Public officials must refrain from secondary employment, but exceptional permission may be granted (chapter 30). No cooling-off period is in place for public officials moving to the private sector. While the EC calls on public officials to avoid conflicts of interest (chapters 29-30), it does not comprehensively outline obligations and procedures in this regard. Gifts are generally prohibited, but courtesy gifts of a value less than LKR 5,000 (about USD 30) may be permissible if reported to the Secretary of the Ministry of Foreign Affairs (chapter 47).

In accordance with the DALA, all members of Parliament, judges and judicial officers, public officials of government departments, ministries, and local authorities, chairmen and staff of public

corporations, candidates for elected public office and elected officials are required to declare their and their family members' assets and liabilities (sections 2 and 3). Declarations must be submitted within three months after appointment and thereafter annually (section 3). Failure to declare, and any false statements or omissions, result in prosecution or disciplinary action (section 9 DALA, chapter 29 EC). Asset declarations are stored at the Head of each office and may be requested by an investigative body for inspection. Disclosures can also be made available to public for a fee (section 5(3) DALA). However, no penalties are in place for the Heads of offices in case the asset declarations are not collected. In addition, no formal monitoring or verification system is in place, which renders the asset declarations system only partially effective. No random checks of declarations are made and declarations are only looked at if an investigative body (i.e. CIABOC, FCID or CID) requests them. However, CIABOC has proposed several amendments to the DALA to address the existing limitations. For example, it is envisaged the CIABOC will be given a formal monitoring power over declarations of assets as well as the review of conflicts of interest declarations. In this context the proposal would introduce new provisions in the DALA compelling the declarant to disclose his or her conflicts of interests and nepotism.

As noted above under article 7(4), it is recommended that Sri Lanka strengthen measures to prevent and detect conflicts of interest, including by adopting clear rules on what constitutes conflict of interest and penalties for non-compliance, creating a monitoring mechanism and providing training to public officials.

It is further recommended that Sri Lanka consider strengthening the measures concerning gifts, secondary employment and outside activities of public officials with a view to providing clear duties and rules for compliance (art. 8(5)).

It is further recommended that Sri Lanka reforms and strengthens the asset declarations system in line with the amendments proposed by the CIABOC, including by: assessing the possibility of introducing effective monitoring and verification; considering the adoption of electronic filing systems; permitting competent authorities to share information with foreign counterparts; effectively applying deterrent penalties for non-compliance, also to Heads of offices who do not abide by the DALA and to elected officials; and consider expanding the scope of declarations to include potential conflicts of interest (art. 8(5), 52(5)).

Paragraph 6 of article 8

6. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.

(a) Summary of information relevant to reviewing the implementation of the article

Chapter 48 of the Establishments Code governs the rules of disciplinary procedure for violations of the Code. Punishments are listed in section 24 and include minor punishments (reprimand; severe reprimand; censure; suspension of the increment for a period not exceeding one year; stoppage of the increment for a period not exceeding one year; order a disciplinary transfer on the officer at his own expense; a fine not exceeding a week's pay) and major punishments (dismissal; termination of service of an officer serving a period of probation; retirement for general inefficiency; compulsory retirement as a merciful alternative for dismissal; rejection of extension of service beyond the optional age of retirement; reduction in seniority; reduction in rank; reduction of salary; deferment of salary increment; disqualification from sitting any promotional examination for a specific period, etc.)

Furthermore, as provided by sections 2, 3, and 4 of the Declarations of Asset and Liabilities Law, if there is non-compliance by the officers referred to therein, such officers can be prosecuted for committing an offence under section 9.

Section 9 (Offences):

(1) A person-

(a) who fails without reasonable cause to make any declaration of assets and liabilities which he is required to make under section 3; or

(b) who makes any false statement in any such declaration; or

(bb) who Wilfully omits any asset or liability from any "such declaration: or

(c) who fails without reasonable cause to give such additional information as the Bribery Commissioner may require under this Law; or

(d) who otherwise contravenes any provisions of this Law, shall be guilty of an offence and shall, unless any other penalty is otherwise provided, on conviction after trial before a Magistrate, be liable to a fine not exceeding one thousand rupees, or imprisonment of either description for a term not exceeding one year or to both such fine and imprisonment.

(2) A person who is convicted of an offence under paragraph (a) of subsection (1) shall, within a period of fourteen days after the date of conviction, or in the event of an appeal against such conviction, within a period of fourteen days after the date of affirmation of such conviction, make the declaration of assets and liabilities referred to in section 3. The provisions of section 3 and the provisions of the other preceding sections of this Law shall, mutatis mutandis, apply to any declaration of assets and liabilities made by such person under this subsection in like manner and to the same extent as they apply to any declaration of assets and liabilities made under section 3.

(3) Any person who fails to comply with the provisions of subsection (2) shall be guilty of an offence and shall, on conviction after trial before a Magistrate, be liable to a fine not exceeding one thousand rupees or to imprisonment of either description for a term not exceeding one year or to both such fine and imprisonment and to a further fine of fifty rupees for each day of continuation of that offence.

(3A) Where any person is convicted of an offence under paragraph (bb) of subsection (1) the asset in respect of Which the offence was committed shall by virtue of such conviction be vested in the State free of all incumbrances.

(3B) The vesting of any assets in the State under subsection (3A) shall take effect"

(a) where an appeal has been preferred to the court of Appeal or the Supreme Court against the order of forfeiture, upon the determination of the appeal, conforming or upholding the order of forfeiture;

(b) where no appeal has been preferred to the Court of Appeal against the order of forfeiture after the expiration of the period within which an appeal may be preferred to the Court of Appeal against the order of forfeiture.

(4) Where any person has been convicted by a court of any offence under paragraph (a) or paragraph (b) of subsection (1), it shall be the duty of the court to bring the fact of such conviction to the notice of the person to whom such convicted person was bound to make the declaration of assets and liabilities under this Law.

(5) No prosecution for any offence under this Law shall be instituted except with the prior sanction of the Attorney-General.

(b) Observations on the implementation of the article

Chapter 48 of the Establishments Code regulates disciplinary procedures and sets out sanctions for non-compliance with the Code, which include reprimand, disciplinary transfer, reduction in rank or of salary, and dismissal.

No cases nor statistics were provided by Sri Lanka with regard to the practical application of chapter 48.

Sri Lanka is recommended to ensure that the sanctions set out in the Establishments Code are effectively applied in practice.

(c) Technical assistance needs

Assistance is required in the following areas for the full implementation of the article:

- Legislative assistance: to draft law on asset declarations.
- Capacity-building: Awareness raising.

Article 9. Public procurement and management of public finances

Paragraph 1 of article 9

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:

(a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;

(b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;

(c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;

(d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;

(e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.

(a) Summary of information relevant to reviewing the implementation of the article

In 2006, the National Procurement Agency was set up by Presidential Directive, with the approval of the Cabinet of Ministers and the concurrence of the General Treasury, to oversee public procurement and to develop national procurement guidelines. In the same year, the Agency developed Procurement Guidelines, which are still in force to date and according to which all government procurement must be carried out. In addition, the Agency also published a Procurement Manual, which explains in more detail how specific aspects of procurement should be handled in line with the Guidelines.

In 2015, the 19th Amendment to the Constitution introduced a new national procurement body, namely the National Procurement Commission (NPC) (Article 156B(1) of the Constitution). While

the Agency has not been formally abolished, it no longer functions and only the NPC is operational. According to the Constitution (Chapter XIXB), the Commission is in charge of formulating procurement procedures and guidelines and monitoring their implementation by appropriate authorities. As of April 2017, the Commission is in the process of revising the 2006 Procurement Guidelines to ensure that they meet the present day challenges pertaining to procurement.

The NPC consists of five members appointed for a period of three years by the President on the recommendation of the Constitutional Council. At least three members of the NPC need to have proven experience in procurement, accountancy, law or public administration (156B Constitution). Members are considered public officials, and as such are required to submit annual asset declarations and are governed by the Establishments Code.

The 2006 Procurement Guidelines establish institutions and procurement committees necessary for the implementation of the Guidelines and contain their respective functions (chapter 2).

The Guidelines set out various procurement methods, namely the international competitive bidding, national competitive bidding, limited/restricted international/national competitive bidding, shopping, direct contracting, repeat orders, force account, emergency procurement, community participation in procurement, two stage bidding, two envelope system and pre-qualification of bidders (chapter 3).

According to the Guidelines (chapters 5-7), procuring entities must prepare bidding documents for each procurement with a view to inform and instruct potential bidders, suppliers and contractors of the requirements expected from them. Bidding documents should clearly define the scope of works, goods or services to be supplied, the rights and obligations of the procuring entities and of suppliers and contractors, and the conditions to be met in order for a bid to be declared valid and responsive. They should also set out fair and non-discriminatory criteria for selecting the winning bid. The detail and complexity of these documents may vary with the size and nature of the proposed procurement. Procurement entities are requested to use the appropriate standard bidding documents approved by the National Procurement Agency with minimum changes, if there are any, to address contract specific issues.

Procurement entities are requested to advertise procurement notices and for this purpose are advised to use their website or the website of the National Procurement Commission.

The Guidelines also cover the issue of bid evaluation. All criteria to be used in the bid evaluation and the method of their application must be specified in the bidding documents. The basic sequence for bid evaluation consists of the following steps: a) preliminary examination of bids; b) detailed evaluation and comparison of bids; c) post qualification verification; and d) writing bid evaluation report.

A letter of acceptance is sent to the successful bidder after the evaluation and after obtaining approval from the relevant authorities. The letter of acceptance should be free from any new conditions and should essentially state the sum that will be paid to the contractor by the employer in consideration of the execution and completion of work as prescribed in the contract.

Monetary thresholds determine which governmental authority supervises the procurement process and the approval of which is needed in order to carry out procurements. While contracts of a value lower than 100 million Rs only need an approval by the Head of Department, contracts of a value between 100-250 million Rs require a special approval by the Ministerial Procurement Committees and those higher than 250 million require an approval by the Cabinet of Ministers. There is a threshold of 250,000 Rs for *de minimis* procurements not subject to public tenders.

The responsibility of procurement actions is vested with the Secretaries of the respective line Ministries, who are deemed to be the Chief Accounting Officers of such Ministries (rule 2.2.1. of

the PRs). The Officers are obliged to report on a monthly, quarterly and yearly basis to the National Procurement Commission. In addition, for contracts of a value higher than 250 million Rs, the Officers report directly to the Ministry of Finance.

The PRs set out the ethical principles for officers involved in procurement actions (rule 1.4). For example, officials need to disassociate themselves from the process in case of any conflict of interest (rule 1.4.3), ensure confidentiality (rule 1.4.1) and refrain from corruption (rule 1.4.2 and 1.4.4). Training is provided to procurement officials on a limited basis by the NPC and the Sri Lanka Institute of Development Administration (SLIDA). However, it is currently provided on an ad-hoc basis and efforts are being made to have a more structured approach to training of procurement personnel.

Any complaints with regard to the procurement process can be addressed to the National Procurement Commission. In addition, appeals can be filed against Procurement Committee decisions to the Procurement Appeals Board, an independent body under the Presidential Secretariat, within seven days after the Procurement Committee's decision (Procurement Guideline 8.3). Each Chief Accounting Officer has a duty to inform unsuccessful bidders of the possibility of appeal. After investigating into representations made in the appeal, the Appeals Board submits its independent report to the Cabinet of Ministers, containing the reasons for endorsement or rejection of the original decision together with its independent recommendation (Procurement Guideline 8.4). The report must be submitted to the Cabinet of the Ministers within three weeks of the appeal being lodged (Procurement Guideline 8.4). The Procurement Appeals Board's decisions can be further challenged in the Supreme Court (see, e.g., *Smithkline Beecham Biologicals S.A. and Another v. State Pharmaceutical Corporation of Sri Lanka and Others*, Supreme Court S.C. (F.R.) No. 89/97 (March 27, 1997) (April 18, 1997)).

Financial Regulations issued by the Government of Sri Lanka were published in 1992 by the President in his capacity as Minister of Finance. The Regulations lay out the rules relating to the management of public finances in the State sector. Additionally, circulars are issued from time to time relating to the procurement process.

It is envisaged that the new Guidelines, currently being developed by the Commission, will bring new requirements for public procurement in line with existing international standards as well as different procurement thresholds. The new rules would revise the applicable monetary thresholds and address equal treatment of bidders and notification requirements.

The 2006 Procurement Guidelines are available at: www.npa.gov.lk and www.treasury.gov.lk. (http://www.treasury.gov.lk/documents/57687/174939/ProcurementGuidelines2006_amed12June.pdf/4417f549-2a8d-45d1-b3a6-0560db79a87f).

The 2006 Procurement Manual is available at: http://www.treasury.gov.lk/documents/57687/174939/ProcurementManual2006_20060817_withSup8.pdf/5d0563ed-05b1-4629-9937-db8e160aac29.

(b) Observations on the implementation of the article

Sri Lanka applies a de-centralized procurement system, where the responsibility of procurement actions is vested with secretaries of respective line ministries. The National Procurement Commission (NPC) formulates procurement procedures and guidelines and monitors their implementation (Chapter XIXB, Constitution). All government procurement must be carried out in line with the 2006 Procurement Guidelines, which set out various procurement methods (chapter 3), procurement preparedness and planning rules (chapter 4), bidding procedures (chapter 5-7) and rules for awarding of contracts (chapter 8), as well as the 2017 Guide to Project Management and Contract Management for Infrastructure Development Projects. In addition, the 2006 Procurement

Manual provides detailed rules on various aspects of public procurement. Complaints can be lodged with the NPC, the Procurement Appeals Board or the Supreme Court. At the time of the review, both the Guidelines and the Manual were being revised by the NPC to fully comply with international standards. The NPC, Sri Lanka Institute of Development Administration and MILODA Academy of Financial Studies provide training to procurement officials.

Prior to the establishment of the NPC, the National Procurement Agency acted as the main national procurement body. While the Agency has not been formally abolished, it does not operate anymore and all procurement-related functions are carried by the NPC. Given the obsolete nature of the Agency, **Sri Lanka is recommended, for the sake of institutional clarity, to formally abolish the National Procurement Agency, which is no longer operational and has been replaced by the NPC. Sri Lanka is also recommended to continue efforts to amend the Procurement Guidelines and Manual in line with the Convention and to consider introducing screening procedures and more structured training for procurement officials.**

Paragraph 2 of article 9

2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia:

- (a) Procedures for the adoption of the national budget;*
- (b) Timely reporting on revenue and expenditure;*
- (c) A system of accounting and auditing standards and related oversight;*
- (d) Effective and efficient systems of risk management and internal control; and*
- (e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.*

(a) Summary of information relevant to reviewing the implementation of the article

In terms of Articles 148-152 of the Constitution, Parliament has full control over public finances. The Department of National Budget of the Ministry of Finance is set up with the objective of facilitating the performance of the responsibility conferred on the Legislature for controlling public finances. The functions and responsibilities of the Department of National Budget include:

- (a) Formulation of the National Budget which includes the preparation of annual budget estimates for Ministries, Government Departments and Statutory Boards in consultation with the Spending Agencies and the relevant Treasury Departments to achieve the fiscal targets stipulated in the Fiscal Management (Responsibility) Act;
- (b) Preparation of Medium Term Budgetary Framework (MTBF) for a period of three years;
- (c) Public Expenditure Management;
- (d) Issuance of Budget Circulars;
- (e) Enforcement of controls to ensure that funds are used exclusively for the declared purposes within the approved limits;
- (f) Interacting with the Spending Agencies to ensure the effectiveness of spending;
- (g) Analysis of expenditure for monitoring of financial as well as physical progress.;
- (h) Committee on Public Expenditure Control (CPEC);

- (i) Coordination of Opening of Letters of Credit (LCs) under the Ministry of Defence;
- (j) Participation of Staff on Boards and Committees. Preparation of Observations on Cabinet Memoranda; and Financial Administration of the Department;
- (k) Development of systems;
- (l) Introduction of Project Profiles. Monitoring of Projects;
- (m) Activities Related to Statutory Boards (Non-commercial Public Institutions);
- (n) Preparation of Budget Estimates for Statutory Boards in consultation with the Department of Public Enterprises;
- (o) Advance Accounts Activities;
- (p) Determination of limits for the Commercial, stores and Public Officer's Advance Accounts and consider the requests for revision of the limits;
- (q) Representing the Treasury at the COPA meetings on non-compliance of Advance Accounts Limits.

Budget proceedings in the Parliament are publicly available. The annual budget formulation process is completed by the adoption of a yearly Appropriation Bill by Parliament.

In line with the above-mentioned articles 148-152 of the Constitution, the annual budget formulation process for 2018 looks as follows:

	Task	Target
1	Meeting among the Treasury Department on Budget Planning Process	4 th week of July 2017
2	Preparation of Macro Economic Framework for the Budget	4 th week of July 2017
3	Obtaining the Approval of the Cabinet of Ministers for the Macro Economic Framework of the Budget	2 nd week of July 2017
4	Issuance of Budget Call	1 st week of August 2017
5	Preparation of Draft Estimates in Consultation with the Spending Agencies	1 st week of August 2017
6	Legal Clearance for the Draft Appropriation Bill from the Legal Draftsman and the Attorney General	2 nd week of August 2017
7	Budget Discussions / Consultative Meetings with Spending Agencies	3 rd week of September 2017
8	Finalization of Estimates for the Appropriation Bill	3 rd week of September 2017
9	Obtaining the Approval of the Cabinet of Ministers for the Submission of the Appropriation Bill in the Parliament	4 th week of September 2017
10	Publishing the Appropriation Bill in Government Gazette	4 th week of September 2017
11	Presentation of the Appropriation Bill in Parliament (First Reading)	2 nd week of October 2017
12	Printing of Draft Estimates in Sinhala, Tamil and English and Submission of same to Parliament	2 nd week of November 2017

13	Consultation with the Cabinet of Ministers on Budget Proposals	2 nd week of November 2017
14	Presentation of the Budget Proposals to Parliament (Second Reading)	3 rd week of November 2017
15	Second Reading Debate, Vote and Approval	4 th week of November 2017
16	Proposed Amendments to the Appropriation Bill and to the Draft Estimates submitted to Parliament	4 th week of November 2017
17	Third Reading of the Budget – Committee Stage Debate, Vote and Approval	3 rd week of December 2017
18	Authorization by the Hon. Speaker for the Appropriation Bill	4 th week of December 2017
19	Preparation of Warrants and approval by the Hon. Minister of Finance (before 31 st December)	4 th week of December 2017
20	Expenditure Authorization Circular to be sent to the Spending Agencies	4 th week of December 2017

Financial resources to the Provincial Councils are recommended by the Finance Commission through the Treasury (article 155 of the Constitution).

Financial Regulations issued by the Government of Sri Lanka were published in 1992 by the President in his capacity as Minister of Finance. The Regulations lay out the rules relating to the management of public finances in the State sector.

The Financial Management (Responsibility) Act of 2003 (FMRA) aims to ensure that the financial strategy of the Government is based on principles of responsible fiscal management and to facilitate public scrutiny of fiscal policy and performance.

The fiscal strategy is set out in a ‘Fiscal Strategy Statement’, which is released by the Ministry of Finance on the day of the second reading of the Appropriation Bill in Parliament (article 4 FMRA). With a view to increasing public awareness of the Government’s fiscal policy and to establish standards for evaluating the Government’s conduct, the Statement specifies the medium term fiscal policy, explains the broad strategic priorities, specifies the key fiscal measures and specifies the Government’s fiscal objectives and targets (articles 5 and 6 FMRA). In addition, the Ministry of Finance also produces the “Budget Economic and Fiscal Position Report” to provide a basis for the evaluation of the Government’s fiscal performance as against the fiscal strategy formulated in the Statement (articles 7-9 FMRA). In respect of every year, the Ministry of Finance releases “Mid-Year Fiscal Position Reports” (articles 10-11 FMRA). If there is a shortfall in the estimated revenue or cash flow, or an excess in the estimated expenditure or borrowings, the Report will state the reasons for such shortfall (article 12 paragraph 2 FMRA). Importantly, the Ministry of Finance also releases the “Final Budget Position Report” for each financial year (articles 13-15 FMRA). The Report contains a statement of the estimated and actual expenditure, revenue, cash flows and borrowings for that year (article 15 FMRA). In order to prepare the above-mentioned documents, the Ministry of Finance requests all the necessary information from individual Ministries, Departments, Public Corporations of Companies (article 22 FMRA).

The Audit Service Commission was established under Article 153(A) of the 19th Amendment to the Constitution, with effect from 15 May 2015. An Audit bill is currently before the Cabinet.

Financial Regulations and Treasury Circulars are available with regard to the preservation of accounting books, financial statements and public records.

The Sri Lankan Accounting and Auditing Standards Act No. 15 of 1995 requires revenue-earning statutory bodies and public enterprises to report in accordance with Sri Lanka Accounting Standards.

Ministries, departments and institutional bodies, including the Auditor General's Department, and non-revenue-earning statutory bodies and public enterprises are required to report in accordance with the Financial Regulations (1992) issued by the Public Finance Department of the Ministry of Finance.

The Auditor General is required under Article 154 of the Constitution to audit the accounts of all government institutions. The Auditor General is entitled to access all books, records, returns and other documents during the audits.

(b) Observations on the implementation of the article

Chapter XVII of the Constitution deals with the management of public finances, including the adoption of the national budget. While Parliament has full control over public finances (art. 148 Constitution), the Department of National Budget of the Ministry of Finance formulates the national budget, including the preparation of budget estimates and a three-year budgetary framework. It also monitors budgetary expenditures, including allocation of financial resources for public programmes and projects, assisting the implementation of the national budget and monitoring the implementation of budgetary provisions. The Fiscal Management (Responsibility) Act (FMRA) regulates the reporting on revenue and expenditure by public bodies and requires the Ministry of Finance to prepare regular budget position reports (arts. 10-15 FMRA). The Audit Service Commission, consisting of the Auditor-General and four other members, oversees compliance by public authorities with the Accounting and Auditing Standards Act. The Financial Regulations and the Treasury Circulars issued by the Ministry of Finance lay out the rules regarding the preservation of accounting books, financial statements and public records. Ministries, departments and institutional bodies, as well as non-revenue-earning statutory bodies and public enterprises are required to report in accordance with these regulations and are audited by the Auditor General. Forgery or falsification of public accounts is a criminal offence (arts. 452-453, Penal Code; art. 5(2), Offences against Public Property Act).

It was concluded that Sri Lanka is in compliance with the provision under review.

Paragraph 3 of article 9

3. Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.

(a) Summary of information relevant to reviewing the implementation of the article

The Audit Service Commission was established under Article 153(A) of the 19th Amendment to the Constitution, with effect from 15 May 2015. An Audit bill is currently before the Cabinet.

Financial Regulations and Treasury Circulars are available with regard to the preservation of accounting books, financial statements and public records.

The Sri Lankan Accounting and Auditing Standards Act No. 15 of 1995 requires revenue-earning statutory bodies and public enterprises to report in accordance with Sri Lanka Accounting Standards.

Ministries, departments and institutional bodies, including the Auditor General's Department, and non-revenue-earning statutory bodies and public enterprises are required to report in accordance with the Financial Regulations (1992) issued by the Public Finance Department of the Ministry of Finance.

The Auditor General is required under Article 154 of the Constitution to audit accounts of all government institutions. The Auditor General is entitled to access all books, records, returns and other documents during the audits.

In addition, the Offences Against Public Property Act of 1982 is also relevant. Article 5 states that:

- (2) *Any person who commits the offence of cheating, forgery or falsification of accounts in relation to public property shall be guilty of an offence and shall upon conviction be punished with imprisonment of either description for a term not less than one year but not exceeding twenty years and with a fine of one thousand rupees or three times the amount in relation to which such offence was committed, whichever amount is higher.*

(b) Observations on the implementation of the article

The Financial Regulations published in 1992 and the Treasury Circulars issued by the Ministry of Finance lay out the rules relating to the management of public finances, including with regard to the preservation of accounting books, financial statements and public records. Ministries, departments and institutional bodies, as well as non-revenue-earning statutory bodies and public enterprises are required to report in accordance with these regulations and are audited by the Auditor General. Forgery or falsification of public accounts is a criminal offence (art. 5 para. 2, Offences Against Public Property Act).

It was concluded that Sri Lanka was in compliance with the provision under review.

(c) Technical assistance needs

Assistance is required in the following areas for the full implementation of the article:

- Legislative assistance: To review the existing laws on procurement and administration of public finances and make recommendations of improvements.

None of this technical assistance has been provided previously.

Article 10. Public reporting

Subparagraph (a) of article 10

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

(a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;

(a) Summary of information relevant to reviewing the implementation of the article

Most government departments have their own websites setting out most of their activities. The public has easy access to these websites in view of special government projects that were initiated even in the most remote areas in Sri Lanka through cyber kiosks. Presently the government is on an e-drive mission to introduce most of government services electronically. Within the next two years, most public services will be provided using e-government systems.

The Constitution of Sri Lanka guarantees the right of access to information as stipulated under Article 14A of the Constitution, which invokes the fundamental rights jurisdiction. However, there are other mechanisms also available to enforce this right, such as making complaints to Ombudsman and Human Rights Commission.

In August 2016, Parliament enacted the Right to Information Act (RIA), No. 12 of 2016 (http://www.media.gov.lk/images/pdf_word/2016/12-2016_E.pdf), with the objective to foster a culture of transparency and accountability by giving effect to the right of access to information, thereby promoting a society in which the people of Sri Lanka would be able to more fully participate in public life through combating corruption and promoting accountability and good governance in public authorities. The adoption of the RIA is a result of years-long efforts of the Government to comprehensively regulate access to information. Broad consultations with civil society were held during the process of the adoption of the new Act. While the RIA came into force on 4 February 2017, only some of its parts are already operational. The plan is to fully operationalize the Act by 2018.

The preamble of the RIA stipulates:

“WHEREAS the Constitution guarantees the right of access to foster a culture of transparency and accountability in public authorities by giving effect to the right of access to information and thereby promote a society in which the people of Sri Lanka would be able to more fully participate in public life through combating corruption and promoting accountability and good governance”.

The RIA regulates various aspects of the right to information, including the procedure for obtaining information, the denial of the right of access, appeals against rejections, duties of public authorities, the establishment of the Right to Information Commission and the appointment of information officers within public authorities.

The Act establishes the Right to Information Commission. Its functions are set out in section 14 and 15 of the Act:

Section 14:

The duties and functions of the Commission shall be, to –

- (a) monitor the performance and ensure the due compliance by public authorities, of the duties cast on them under this Act;*
- (b) make recommendations for reform both of a general nature and those in regard to any specific public authority;*
- (c) issue guidelines based on reasonableness, for determining fees to be levied by public authorities for the release of any information under this Act;*
- (d) prescribe the circumstances in which information may be provided by an information officer, without the payment of a fee;*
- (e) prescribe the fee Schedule based on the principle of proactive disclosure, in regard to providing information;*
- (f) co-operate with or undertake training activities for public officials on the effective implementation of the provisions of this Act;*

(g) publicise the requirements of this Act and the rights of individuals under the Act;

(h) issue guidelines for the proper record management for public authorities.

Section 15:

For the purpose of performing its duties and discharging of its functions under this Act, the Commission shall have the power-

(a) to hold inquiries and require any person to appear before it;

(b) to examine such person under oath or affirmation and require such person where necessary to produce any information which is in that person's possession, provided that the information which is exempted from disclosure under section 5 shall be examined in confidence;

(c) to inspect any information held by a public authority, including any information denied by a public authority under the provisions of this Act;

(d) to direct a public authority to provide information, in a particular form;

(e) to direct a public authority to publish any information withheld by a public authority from the public, subject to the provisions of section 5;

(f) to hear and determine any appeals made to it by any aggrieved person under section 32; and

(g) to direct a public authority or any relevant information officer of the authority to reimburse fees charged from a citizen due to any information requested for not been provided in time.

The Act further prescribes that every public authority shall appoint for the purpose of giving effect to the provisions of this Act one or more officers as information officers of such public authority and a designated officer to hear appeals (section 23). The role of the information officers is to deal with requests for information made to the public authority of which he or she has been appointed and to render all necessary assistance to any citizen making such request to obtain the information. At the time of the country visit, most of the government authorities had already appointed their information officers; however, many of them had not yet been provided with specialized training on the RIA. Furthermore, efforts to raise awareness of the RIA and its procedures were ongoing

The procedure for obtaining information is described in section 24 of the Act:

Section 24:

(1) Any citizen who is desirous of obtaining any information under this Act shall make a request in writing to the appropriate information officer, specifying the particulars of the information requested for:

Provided that where any citizen making a request under this subsection is unable due to any reason to make such request in writing, such citizen shall be entitled to make the request orally and it shall be the duty of the appropriate information officer to reduce such request to writing on behalf of the citizen.

(2) Where a citizen –

(a) wishes to make a request to a public authority; or

(b) has made a request to a public authority which does not comply with the requirements of this Act,

the information officer concerned shall take all necessary steps to assist the citizen, free of charge, to make the request in a manner that complies with this Act.

(3) On receipt of a request, an information officer shall immediately provide a written acknowledgement of the request to the citizen.

(4) Where an information officer is able to provide an immediate response to a citizen making a request and such response is to the satisfaction of the requester, the information officer shall make and retain a record of the request and the response thereto.

(5) A citizen making a request for information shall:

(a) provide such details concerning the information requested as is reasonably necessary to enable the information officer to identify the information;

(b) identify the nature of the form and language in which the citizen prefers access;

(c) where the citizen making the request believes that the information is necessary to safeguard the life or liberty of a person, include a statement to that effect, including the basis for that belief; and

(d) not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him or her.

[...]

Grounds for denial of access to information are set out in section 5 of the Act and include: unwarranted invasion of privacy; threat to national security; serious prejudice to the economy by disclosing prematurely decisions to change or continue government economic or financial policies; information relating to commercial confidence, trade secrets and intellectual property; medical records, etc.

Every public authority is required to maintain all its records duly catalogued and indexed in such form as is consistent with its operational requirements which would facilitate the right of access to information (section 7).

Subsequent sections of the Act deal with the decisions on requests submitted under section 24, the obligation of authorities to display details of information officers and fees to be charged, the manner in which information is to be provided, etc. (sections 25-30) All information officers have a duty to disclose reasons for their decision (section 35).

Any citizen whose access to information has been denied can lodge an appeal with a designated officer within fourteen days (section 31). In addition, citizens can further appeal to the Right to Information Commission (section 32), and even that decision can be further challenged in the Court of Appeal (section 34).

Article 156 of the Constitution provides for the creation of the office of the Parliamentary Commissioner for Administration (Ombudsman). He is charged with the duty of investigating and reporting on complaints or allegations of the infringement of fundamental rights and other injustices by public officials and institutions.

The Human Rights Commission (www.hrcsl.lk) is empowered with a similar mandate where public reporting is permissible. Additionally, members of Parliament are entitled to raise questions on matters relating to workings in the government departments from the respective subject Minister.

Information on CIABOC's hotline and awareness raising activities is provided under article 13.

(b) Observations on the implementation of the article

The Constitution guarantees the right of access to information (art. 14A). Any violations can be reported to the Ombudsman and the Human Rights Commission.

In 2017, following years-long consultations with civil society, Sri Lanka adopted the RIA to comprehensively regulate access to information. The RIA came into force on 4 February 2017 but its provisions were not fully implemented at the time of the review. Among others, the Act describes procedures for obtaining information (sections 24-30), grounds for denial of access (section 5 and 35) and duties of public bodies to maintain records (section 7). It also requires public authorities to appoint dedicated information officers, as well as appeal officers (sections 23, 31). The Right to

Information Commission monitors public bodies' compliance, issues guidelines and serves as a second instance body for appeals (sections 14-15, 31-34).

Most government departments maintain their own websites, and Sri Lanka aims to build an e-government system to provide public services electronically. CIABOC is in the process of developing citizens charters for local government and public administration to provide citizens with detailed information on existing public services, including their costs and timeframes for execution.

Sri Lanka is recommended to fully operationalize the RIA, including through the designation and training of information officers and raising awareness among public officials and the public.

(b) Successes and good practices

Introduction of cyber kiosks throughout the country to facilitate access to electronic public services was seen by the reviewers as a good practice.

Subparagraph (b) of article 10

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

...

(b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and

(a) Summary of information relevant to reviewing the implementation of the article

There is provision for the periodic review of Public Administration Circulars under the supervision of the Cabinet of Ministers. The Government websites link ministries and departments through departmental websites, which provide information on the public organization, its functions and decision making hierarchy, thereby making it accessible to the public.

Additionally, the CIABOC is in the process of making citizens charters for local government and public administration. These charters will provide the public with detailed information of the services that would be provided by the government and the costs and the time period that it would take to provide such services.

(b) Observations on the implementation of the article

Most government departments maintain their own websites, and Sri Lanka aims to build an e-government system to provide public services electronically. CIABOC is in the process of making citizens charters for local government and public administration to provide citizens with detailed information on existing public services, including their costs and timeframes for execution.

It was concluded that Sri Lanka is in compliance with the provision under review, although it has requested technical assistance as described below to more fully implement the provisions of this article.

Subparagraph (c) of article 10

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

...

(c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.

(a) Summary of information relevant to reviewing the implementation of the article

In terms of article 154(1) of the Constitution, the Auditor General is responsible to audit each government department and submit annual audit reports. As stipulated in Article 154(3) of the Constitution, the Auditor General is also required to “perform and discharge such duties and functions as may be prescribed by Parliament”. While the Auditor General’s reports are not published, they are tabled in Parliament and anyone can request access to them.

(b) Observations on the implementation of the article

In its response Sri Lankan authorities only referred to the annual reports of the Auditor General.

Sri Lanka is recommended to consider publishing periodic reports assessing the risks of corruption in public administration.

(c) Technical assistance needs

Assistance is required in the following areas for the full implementation of the article:

- Capacity-building: Sri Lanka needs assistance to prepare the Citizens’ Charter for both local government and public administration relating to curbing corruption and in identifying the legislative framework to curb corruption in the process. This would also include capacity building of public servants and awareness programmes for the general public.

Article 11. Measures relating to the judiciary and prosecution services

Paragraph 1 of article 11

1. Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.

(a) Summary of information relevant to reviewing the implementation of the article

The judicial branch in Sri Lanka comprises the Supreme Court, the Court of Appeal, High Court and First Instance Courts (e.g., District Courts, Magistrate’s Courts, Primary Courts), as well as tribunals (e.g., Labour Tribunals, Agricultural Tribunals and Workmen’s Compensation Tribunals).

Independence of the judiciary is guaranteed in the Constitution (Arts. 107-111C). The 19th Amendment to the Constitution, with effect from 15 May 2015, amongst several other progressive reforms, introduced a number of constitutional safeguards to strengthen the independence of the judiciary and the bar.

Safeguards to the process of appointment of senior judges

Prior to the 19th Amendment to the Constitution, the President had the authority to appoint the Chief Justice and other judges of the superior courts on the observations of the Parliamentary Council. With the enactment of the 19th Amendment, the following safeguards have been introduced to the appointment process:

(i) The Chief Justice, the President of the Court of Appeal and every other judge of the Supreme Court and of the Court of Appeal are appointed by the President only upon the approval of the said appointments by the Constitutional Council. The Constitutional Council consists of 10 members, i.e., the Prime Minister, the Speaker, the Leader of the Opposition, a member of Parliament nominated by the President, two members of Parliament and three civil society members (reflecting the pluralistic nature of the Sri Lankan society) nominated by the Prime Minister and the Leader of the Opposition, and a member of Parliament nominated by other political parties/groups represented in Parliament which the Prime Minister and the Leader of the Opposition do not represent. The Council is headed by the Speaker.

(ii) In the discharge of its functions relating to the appointment of judges to the Supreme Court and the Court of Appeal, the Constitutional Council is required to obtain the views of the Chief Justice.

Appointment of the members of the Judicial Services Commission (JSC)

The infusion of independence to the JSC is important because, under the Constitution, the JSC is vested with authority over the appointment, transfer, dismissal and disciplinary control of judicial officers in the lower courts. The 19th Amendment clearly stipulates the composition of the JSC, i.e. that it shall comprise the Chief Justice and the two most senior judges of the Supreme Court appointed by the President subject to the approval by the Constitutional Council. The Chief Justice is required to be the Chairman of JSC. The President is required to obtain the approval of the Council to remove any members of the JSC for cause assigned. Under the previous constitutional provisions, the President had the sole discretion to appoint any two judges of the Supreme Court to function as members of the JSC alongside the Chief Justice (also appointed by him), who was to be the Chairman of the Commission. The President on the recommendation of the JSC and the Attorney General appoints judges of the High Court.

In addition to the safeguards introduced through the 19th Amendment, provisions contained in Chapter XV of the Constitution uphold the independence of the judiciary by stipulating the following:

- The tenure of office of the judges of the Supreme Court and the Court of Appeal is guaranteed under the Constitution.
- Judges of the Supreme Court and the Court of Appeal hold office during good behaviour and cannot be removed, except by an Order of Parliament made after an address to Parliament supported by a majority of the total number of members of Parliament has been presented to the President for removal on the ground of proved misbehaviour and incapacity.
- The salaries and the pension of the Judges of the Supreme Court and Court of Appeal are paid from the Consolidated Fund and cannot be reduced after they are appointed. The same rule applies with regard to the salaries of members of the JSC.
- Interference with the judiciary is a punishable offence. Judges are also vested with a degree of immunity from suit for acts performed in their judicial capacity. In addition to these, Sri

Lankan courts have varying powers to deal with persons for contempt of court to prevent unwarranted attacks on the authority of the judiciary and to ensure the sanctity of its orders.

- Interference with the decisions and the members of the JSC is a punishable offence, and immunity has been constitutionally granted to members of the JSC for acts done in good faith in the performance of their duties.

While judges have judicial immunity from liability in the good faith exercise of their judicial actions, they do not have an absolute immunity and can be subject to prosecution, including for bribery and corruption.

Different disciplinary mechanisms exist for judges of the Supreme Court and the Court of Appeal on one hand, and judges of the High Court and lower instances on the other hand.

With regard to the Supreme Court and the Court of Appeal, judges cannot be removed from office except by an order of the President made after an address of Parliament supported by a majority of the total number of members of parliament has been presented to the President for such removal on the ground of proved misbehaviour or incapacity (Art. 107 para. 2 Constitution). It was explained during the country visit that the removal of judges through the impeachment process before Parliament is lengthy and tedious. In addition, only serious violations (including corruption and bribery) trigger the impeachment process and no other disciplinary mechanism exists for ordinary, less serious violations that do not meet the seriousness threshold. It is envisaged that an amendment to the Constitution will introduce a new impeachment mechanism, with the aim to address the existing challenges and concerns that misdemeanors not rising to the level of impeachment remain unaddressed.

With regard to judges of the High Court and lower courts, the disciplinary oversight is carried out by JSC. The JSC Rules and the EC are applicable and govern the conduct of judges and judicial officers. Disciplinary penalties include a reprimand, warning and suspension. For some statistics, in 2016, five judicial officers were suspended due to disciplinary violations. Decisions of the JSC can be challenged before the Court of Appeal and the Supreme Court. The Supreme Court is responsible for deciding on the removal of judges of lower instances.

The age of retirement is 65 years for judges of the Supreme Court, 63 years for judges of the Court of the Appeal, and 61 for judges of the lower instances.

No written code of conduct exists for judges. Several provisions of the Constitution, the Supreme Court Rules, the Court of Appeal Rules, the JSC Rules, and the JSC's circulars touch upon the issues of integrity, conflict and interest, gifts and secondary employment. The JSC Rules take into consideration the Bangalore Principles of Judicial Conduct. Sri Lanka is currently in the process of developing a written judicial code of conduct to address the fact that many of the rules for judges are at the moment unwritten or scattered in various sources.

The Judicial Service Commission through the Judges Institute conducts training programmes for judges, with a view to strengthening their integrity and preventing opportunities for corruption. Judges are sometimes sent abroad for comparative studies. In addition, senior judges can be requested to conduct unannounced visits to courts and make recommendations to lower-instance judges. Respective provincial bars also serve as oversight entities.

(b) Observations on the implementation of the article

Independence of the judiciary is guaranteed in the Constitution (chapter XV) and interference with the judiciary is a punishable offence (art. 111C). Judges of the Supreme Court and the Court of Appeal are appointed by the President subject to the approval of the Constitutional Council, and can only be removed by an order of the President with the support of the majority of the Parliament

on the ground of proved misbehavior or incapacity (art. 107). However, only serious violations trigger this impeachment process and ordinary, less serious disciplinary violations are not subject to any disciplinary action and sanctions. A proposed amendment to the Constitution would introduce a new procedure to address instances of misconduct not rising to the level of impeachment. Judges of the High Court are appointed by the President on the recommendation of the Judicial Service Commission (JSC) (art. 111 Constitution). The JSC is vested with authority over the appointment, transfer, dismissal and disciplinary control of judges in the High Court and lower courts and scheduled public officials (art. 111H Constitution). The JSC Rules and JSC circulars, the EC, the Supreme Court Rules and the Court of Appeal Rules govern the conduct of judges. Sri Lanka is in the process of developing a comprehensive judicial code of conduct. The JSC, through the Judges Institute, provides training to judges aimed at strengthening their integrity.

Sri Lanka is recommended to continue strengthening judicial integrity, including through adopting rules on disciplinary violations of judges of the Supreme Court and Court of Appeal and adopting a judicial code of conduct.

Paragraph 2 of article 11

2. Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.

(a) Summary of information relevant to reviewing the implementation of the article

Prosecutors of the Attorney General's Department, CIABOC (only relating to bribery, corruption and asset declaration related offences) and the Sri Lanka police (for minor offences) as well as other government departments, respectively, carry out prosecutions. Members of the prosecution services are public officers and the Establishments Code and the rules governing the public service are applicable to them.

In terms of the 19th Amendment, the appointment of the Attorney General (who is considered the Leader of the Bar) is by the President, subject to the approval of the Constitutional Council. Prior to 19th Amendment, the President had the authority to appoint the Attorney General on the observations of the Parliamentary Council.

The Attorney General is the custodian of the rule of law and of the public interest in Sri Lanka. The functions of the Attorney General have always been performed subject to no other factor or consideration than upholding the public interest and the rule of law.

Coupled with the pressures on judicial independence has been the move to have the Attorney General Department under the purview of the Ministry of Justice for establishment purposes. Accordingly, the Attorney General's Department is presently under the purview of the Ministry of Justice. The Attorney General is also the leader of the Bar, not only the Official Bar but the entire Bar. The Attorney General therefore ensures the protection of judicial independence which is indispensable to the proper functioning of the Bar.

The appointment and removal processes of the Attorney General under the current law confirm the independence of the office of the Attorney General. The appointment of the Attorney General falls within the purview of the 19th Amendment to the Constitution, which states that the President has to obtain the approval of the Constitutional Council to appoint the Attorney General. The removal of the Attorney General has to be done under the terms of the Removal of Officers (Procedure) Act No. 5 of 2002. Accordingly, the Attorney General serves on good behaviour (as opposed to at "pleasure") and can be removed only by Parliament on specific grounds after inquiry.

The officers of the Attorney General's Department are public officials and the Establishments Code and the rules governing the public service are applicable to them. In terms of the Constitution, the appointment, promotion, disciplinary control and dismissal of the officers of the Attorney General's Department are dealt with by the Public Service Commission.

No written Code of Conduct exists for prosecutors. Prosecutors are governed by established practice and occasional circulars developed by the Attorney General. In addition, the conduct of prosecutors is governed by the rules of conduct and etiquette governing all attorneys at law and regulated by the Supreme Court in accordance with Article 136 of the Constitution.

Training activities are organized for prosecutors, such as workshops on various topics. Sri Lanka has also partnered with the Australian government, resulting in several prosecutors attending a study visit to Australia.

(b) Observations on the implementation of the article

The Attorney-General is appointed by the President, subject to the approval of the Constitutional Council. In line with the Removal of Officers (Procedure) Act, the Attorney-General can only be removed by Parliament on specific grounds after inquiry. Prosecutors (including those who are not attorneys or officers of the Attorney General's Department, such as police officers and those in other government departments) are considered public officials and therefore must comply with the EC, PRs and the rules of conduct and etiquette governing all attorneys as regulated by the Supreme Court. Disciplinary matters concerning officers of the Attorney-General's Department are handled by the Public Service Commission.

Sri Lanka is recommended to consider adopting a code of conduct for prosecutors and ensure sufficient training to prosecutors.

Article 12. Private sector

Paragraphs 1 and 2 of article 12

1. *Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.*

2. *Measures to achieve these ends may include, inter alia:*

(a) Promoting cooperation between law enforcement agencies and relevant private entities;

(b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;

(c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;

(d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;

(e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;

(f) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.

(a) Summary of information relevant to reviewing the implementation of the article

Information is being provided in the following three areas:

- (1) Measures to prevent corruption involving the private sector
- (2) Measures taken to enhance accounting and auditing standards
- (3) Measures taken appropriate to providing effective, proportionate and dissuasive, administrative or criminal penalties for failure to comply with these measures.

(1) Measures taken to Prevent Corruption involving the private sector

While blue chip companies have stringent codes of conduct, medium-sized companies also have their own codes of conduct to carry out their operations.

The following statutes are currently available to prevent corruption in private entities.

1. The Sri Lanka Accounting and Auditing Standards Act No. 15 of 1995²⁰. This includes companies registered under the Securities and Exchange Commission Act No. 36 of 1987, as unit trusts; stock exchange and other companies stipulated in the schedule to section 5 of the said Act.
2. The Companies Act No. 07 of 2007²¹
3. Securities and Exchange Commission Act No. 36 of 1987²²
4. Monetary Law Act No. 58 of 1949²³
5. Banking Act No. 30 of 1988, as amended
6. Insurance Act No. 25 of 1962, as amended
7. Finance Companies Act No. 78 of 1988
8. Finance Leasing Act No. 56 of 2000

(2) Measures taken to enhance accounting and auditing standards

²⁰ http://www.commonlii.org/lk/legis/num_act/slaaasa15o1995425/index.html

²¹ Sections 191 to 200 available at:

[http://www.drc.gov.lk/app/comreg.nsf/200392d5acdb66c246256b76001be7d8/\\$FILE/Act%207%20of%202007%20\(English\).pdf](http://www.drc.gov.lk/app/comreg.nsf/200392d5acdb66c246256b76001be7d8/$FILE/Act%207%20of%202007%20(English).pdf)

²² <http://www.sec.gov.lk/wp-content/uploads/SEC-Act-Revised-Edition-2009.pdf>

²³ http://www.cbsl.gov.lk/pics_n_docs/09_lr/docs/acts/mla_7th_rev_latest.pdf

The above legislations have measures pertaining to record-keeping, preparation of financial statements, as well as auditing and monitoring of the activities of the private sector. A summary of the respective legislations is set out below.

1. The Sri Lanka Accounting and Auditing Standards Act No. 15 of 1995 (A&A Act)²⁴

The A&A Act identifies parties responsible for:

- a. Setting of accounting and auditing standards
- b. Adopting and implementing accounting and auditing standards, and
- c. Monitoring the implementation of accounting and auditing standards

In terms of sections 2 and 3 of the A&A Act, the Institute of Chartered Accountants of Sri Lanka (ICASL) (statutorily established under Act No. 23 of 1959) is empowered to adopt “Sri Lanka Accounting Standards” and “Sri Lanka Auditing Standards”, to maintain high standards in the preparation and presentation of the accounts of business enterprises. In terms of section 6 of the said Act, a statutory duty is cast on business enterprises to audit accounts, with the object of presenting a true and fair view of the financial performance and financial conditions of such enterprises. The said accounting standards and auditing standards are gazetted and can be found at https://casrilanka.com/casl/index.php?option=com_content&view=article&id=1186&Itemid=338&lang=en.

In terms of sections 5 of the A&A Act, the standards stated above are only applicable to “Specified Business Enterprises” (SBEs). These enterprises are identified based on criteria stipulated in the schedule of the Act and currently consist of 1,410 enterprises. Apart from private entities which fall within the respective statutes governing them, or have been identified by the Act based on their respective industry, such as banks, finance, insurance, leasing and quoted public entities, other economically significant entities too have to comply with the standards under the A&A Act. The minimum threshold applicable at present to identify such entities can be found at: <http://slaasmb.gov.lk/regulations/>

Two Committees, i.e. (i) the Accounting Standards Committee; and (ii) the Auditing Standards Committee, established under sections 8 and 9 of the A&A Act, are required to make recommendations relating to the adoption of accounting and auditing standards.

For monitoring compliance of the Sri Lanka Accounting Standards and Sri Lanka Auditing Standards, a Board is established in accordance with section 11 of the Act, referred to as the Sri Lanka Accounting and Auditing Standards Monitoring Board (SLAASMB). This Board is established as a body corporate with perpetual succession and a common seal with statutory power to sue and to be sued in its corporate name. Under section 22 of the A&A Act, the Board has the power to appoint its own staff to carry out its mandate, and specific offences are set out in the Act for non-compliance with the provisions of the Act. The mandate of the Board is limited to the SBEs, as set out in the schedule. Currently, there are 1,410 business enterprises that fall within the ambit of the Board. Significant cases of non-compliances detected by SLAASMB, where the entities have agreed to correct their financial statements, can be found at: <http://slaasmb.gov.lk/significant-cases-detected/>.

Since 1 January 2012, Sri Lanka’s Accounting Standards are on par with the International Financial Reporting Standards (IFRSs). When the International Accounting Standards Board (IASB) issues IFRSs or Interpretations, the Accounting Standards Committee in Sri Lanka reviews the Standards and related technical materials and recommends them to the Council of Institute of Chartered

²⁴ http://www.commonlii.org/lk/legis/num_act/slaaasa15o1995425/index.html

Accountants of Sri Lanka for adoption as the Sri Lanka Accounting Standards (Section 8, read together with Section 2).

A similar process is followed in setting and adopting auditing standards, as stipulated in section 9, read together with section 3. When the International Federation of Accountants (IFAC) issues International Standards on Auditing (ISAs) or other pronouncements through the International Auditing and Assurance Standards Board (IAASB), the Auditing Standards Committee in Sri Lanka reviews the Standards and related technical materials and recommends them to the Council of ICASL for adoption as the Sri Lanka Auditing Standards.

The Council of ICASL adopts such recommendations made by the Accounting and Auditing Standards Committees in Sri Lanka. ICASL is responsible for the education of relevant parties and the implementation of standards.

There are two separate accounting standards for the small and medium-sized entities (Sri Lanka Accounting Standards for Small and Medium Sized Entities) and for the smaller sized entities (Sri Lanka Accounting Standard for Smaller Entities):

https://casrilanka.com/casl/index.php?option=com_content&view=article&id=235&Itemid=339&lang=en

These three levels of standards guide almost all private entities of the country in the preparation of financial statements.

Applicable measures and penalties for non-compliance with the A&A Act are stated in sections 6, 7 and 27. As per section 27(2), the court may sentence the offender to a fine of Rs. 500,000, to imprisonment for a term not exceeding five years, or both.

The Sri Lanka Accounting and Auditing Standards Act is currently in the process of being amended.

2. The Companies Act No. 07 of 2007²⁵

Sections 150 to 153 of the Companies Act set out the obligations of all companies formed under the Companies Act to prepare financial statements. The Act also mandates the appointment of an auditor (sections 154, 158, 159 and 160). Audit-related provisions are set out in the sections 164 to 165 of the Act. Sections 166 to 169 set out the provisions related to the registration of financial statements. Section 120 of the Act regulates the company records which should be kept and available for public inspection by all companies formed under the Companies Act.

Applicable measures and penalties for non-compliance with the Companies Act are stated in the Part XXI of the Act and offenders shall be liable on conviction to a fine not exceeding one million rupees or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment.

3. The Securities and Exchange Commission of Sri Lanka Act No. 36 of 1987²⁶

The Securities and Exchange Commission Act ensures that the Sri Lankan regulatory environment is effective and that securities law is tailored to meet the needs of the market and international best practices.

²⁵ Sections 191 to 200 available at:

[http://www.drc.gov.lk/app/comreg.nsf/200392d5acd66c246256b76001be7d8/\\$FILE/Act%207%20of%202007%20\(English\).pdf](http://www.drc.gov.lk/app/comreg.nsf/200392d5acd66c246256b76001be7d8/$FILE/Act%207%20of%202007%20(English).pdf)

²⁶ <http://www.sec.gov.lk/wp-content/uploads/SEC-Act-Revised-Edition-2009.pdf>

The Colombo Stock Exchange (CSE) Listing Rules (April 2011)²⁷ provide additional compliance and disclosure requirements for all listed companies when preparing financial statements. Listed companies are bound by a Code of Best Practice on Corporate Governance: <https://www.cse.lk/#/home/listingRules>.

The Listing Rules and the Code of Best Practice on Corporate Governance require listed entities to establish independent Audit Committees (Corporate Governance Section D.3), a Related Party Transactions Review Committee (Listing Rules Section 9.2) and a Remuneration Committee (Corporate Governance Section B.1). The regulatory requirements of maintaining an independent audit function, in compliance with the Code of Best Practice on Corporate Governance, are enforced through several enactments, i.e. under the Banking Act, Finance Business Act, Insurance Industry Act, Microfinance Act and Securities and Exchange Commission Act.

As per the A & A Act, the audits of SBEs can be carried out only by members of the Institute of Chartered Accountants of Sri Lanka. Based on the Companies Act, audits of other entities can be carried out by auditors registered with the Registrar of Companies.

According to the Acts stated above and the Constitution of Sri Lanka, the term ‘Qualified Auditor’ is interpreted as:

- (a) an individual who, being a member of the ICASL, or of any other Institute established by law, possesses a certificate to practice as an Accountant issued by the Council of such Institute; or
- (b) a firm of Accountants each of the resident partners of which, being a member of the ICASL or of any other Institute established by law, possesses a certificate to practice as an Accountant issued by the Council of such Institute.

Members of the ICASL are governed by the Code of Ethics issued by ICASL and other regulations issued by the Institute. Apparent failure to comply may result in an investigation into the member’s conduct by the Ethics Committee and Council of the ICASL.

The Code of Ethics issued by the ICASL is based on the publications issued by the International Ethics Standards Board for Accountants (IESBA). ICASL has adopted the ‘Non-Compliance with Laws and Regulations (NOCLAR)’ issued by the IFAC into the current Code of Ethics, which will be effective from 2017. Once the NOCLAR is adopted in Sri Lanka, the Code of Ethics of ICASL will be fully in line with the International Code of Ethics.

Applicable measures and penalties for non-compliance with the Securities and Exchange Commission Act are stated in the sections 33A and 51. Offenders shall be liable on conviction after summary trial by a Magistrate to a term of imprisonment of either description for a period not exceeding five years or to a fine not less than fifty thousand rupees and not exceeding ten million rupees, or to both such imprisonment and fine.

The Sri Lanka Accounting and Auditing Standards Act and the Securities and Exchange Commission Act are currently in the process of being amended.

4. Monetary Law Act No. 58 of 1949²⁸

The Financial Intelligence Unit of the Central Bank of Sri Lanka²⁹ has issued directions on Know Your Customer rules and Customer Due Diligence, to be followed by specific sector institutions and associated professionals. The chambers of commerce, industry associations as well as

²⁷ <https://www.cse.lk/#/home/listingRules>

²⁸ http://www.cbsl.gov.lk/pics_n_docs/09_lr/docs/acts/mla_7th_rev_latest.pdf

²⁹ Rules and Directions of the Financial Intelligence Unit: http://fiusrilanka.gov.lk/rules_directions.html

professional institutes and associations have issued codes of ethics and conduct binding on their membership.

Regulatory bodies like the Central Bank of Sri Lanka, Securities Exchange Commission and Insurance Board have set up specific in-house departments to conduct supervision and on site reviews of supervised entities coming within their scope on a regular on-going basis.

The current framework relating to the monitoring and implementation of regulatory requirements can be further strengthened by improving the relevant legislations and by capacity-building within the relevant organizations. The Sri Lanka Accounting and Auditing Standards Act and the Securities and Exchange Commission Act are currently in the process of being amended.

There are several requirements for a company to disclose conflicts of interests, for example, section 162 of the Companies Act, which requires an auditor to declare the interest, and section 192 which requires a director to declare interests. The Auditing and Accounting standards have specific provisions for identification and disclosure of related parties.

In order to promote the use of good commercial practices among businesses and to develop contractual relations of businesses, ICASL and several associations of corporate bodies, such as the Chamber of Commerce, conduct annual competitions on corporate reporting and corporate best practices.

Further, in Sri Lanka, there are no provisions to incorporate 'dummy' companies (off the shelf companies) and only natural persons can be directors.

Since 2012, Sri Lanka follows international accounting standards to maintain integrity in business enterprises. Additionally, publicly listed enterprises are required to follow their own codes of best practices on cooperate governance.

Applicable measures and penalties for non-compliance with the Monetary Law Act are stated in Sections 122(2), (2A) and (3).

Section 122 (2)

(a) On conviction after summary trial before a Magistrate to imprisonment of either description for a term not exceeding six months or to a fine not exceeding five hundred thousand rupees, or to both such imprisonment and such fine; or

(b) on conviction before a District Court to imprisonment of either description for a term not exceeding three years or to a fine not exceeding one million rupees, or to both such imprisonment and such fine.

Section 122 (2A)

Every person who is guilty of an offence by reason of the contravention of subsection (1) or subsection (2) of section 58A shall be liable on conviction after summary trial before a Magistrate to a fine not exceeding five hundred thousand rupees or to imprisonment of either description for a term not exceeding two years or to both such fine and imprisonment. A Magistrate may, on conviction of any person for an offence under subsection (1) or subsection (2) of section 58A, make order that any coin in respect of which the offence was committed or any metal or other article derived therefrom be forfeited to the State.

Section 122 (3)

Every person who is guilty of an offence for which no punishment is prescribed by subsection (2) or subsection (2A) shall be liable on conviction after summary trial before a Magistrate to a fine not exceeding one hundred thousand rupees or to imprisonment of either description for a term not exceeding one month, or to both such fine and such imprisonment.

5. Miscellaneous

Additional codes of corporate governance have been adopted for licensed banks (Banking Act, Direction Nos. 11 and 12 of 2007 on Corporate Governance for Licensed Banks) and finance companies (Finance Companies (Corporate Governance) Direction No. 3 of 2008 for Licensed Finance Companies).

Instances where non-compliance with the accounting standards by SBEs have been identified as significant issues and have led to the correction of financial statements by the relevant entities can be found at: <http://slaasmb.gov.lk/significant-cases-detected/>.

In one very significant case where the SLAASMB had concluded that the issue required filing an action for misleading shareholders, the entity under discussion appealed against the decision of SLAASMB in the Court of Appeal. The judgment of the Court of Appeal was in favour of the entity and SLAASMB filed an appeal against such judgement in the Supreme Court. Even though the final judgement was in favour of SLAASMB, the entire legal process took nine years to conclude. Presently, SLAASMB is in the process of filing action against the directors and auditors of such entity.

Private entities found guilty of corruption can be blacklisted from public tenders.

With regard to activities of former public officials, see information provided under article 8 paragraph 5.

No special whistle-blowing mechanism is in place for the private sector and alleged cases of corruption can be reported to CIABOC using the general reporting line (see information provided under article 13).

(b) Observations on the implementation of the article

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 (AASA), Companies Act (CA), Securities and Exchange Commission Act, Monetary Law Act, Banking Act, Insurance Act and Finance Companies Act.

The AASA is applicable to “specified business enterprises” (section 5 and the schedule of AASA), that currently comprise 1,410 enterprises, including private companies and banks. Business enterprises are required to audit their accounts (section 6 AASA) and non-compliance is punishable (sections 6-7, 27 AASA). The Institute of Chartered Accountants of Sri Lanka (ICASL) has adopted Accounting and Auditing Standards in accordance with AASA sections 2-3 and to comply with international standards. The Accounting and Auditing Standards Monitoring Board monitors compliance with the AASA and the Standards and refers suspected cases of corruption to law enforcement authorities. The Accounting Standards Committee and the Auditing Standards Committee make recommendations relating to the Standards (sections 8- 9 AASA).

According to the CA, all companies formed under the CA are obliged to keep correct accounting records (section 148), prepare financial statements (sections 150-153) and appoint an auditor (sections 154-160). Company records should be kept and available for public inspection (section 120). Applicable measures and penalties for non-compliance are stated in Part XXI.

According to the AASA, audits of specified business enterprises must be carried out by ICASL members. In line with the CA, audits of other entities can be carried out by auditors registered with the Company Registrar.

In order to promote the use of good commercial practices, ICASL, the Chamber of Commerce and other associations conduct annual competitions on corporate reporting and corporate best practices.

Codes of corporate governance have been adopted for licensed banks and finance companies.

No special whistle-blowing mechanism exists for the private sector.

Sri Lanka is recommended to take further measures to prevent corruption in the private sector, including through strengthening procedures regarding subsidies and licenses, consider imposing restrictions on activities of former public officials, developing standards of conduct for the private sector and effectively identifying the identity of legal and natural persons involved in the establishment and management of businesses.

Sri Lanka has requested technical assistance as described below for the full implementation of the article.

Paragraph 3 of article 12

3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:

- (a) The establishment of off-the-books accounts;*
- (b) The making of off-the-books or inadequately identified transactions;*
- (c) The recording of non-existent expenditure;*
- (d) The entry of liabilities with incorrect identification of their objects;*
- (e) The use of false documents;*
- (f) The intentional destruction of bookkeeping documents earlier than foreseen by the law.*

(a) Summary of information relevant to reviewing the implementation of the article

Section 148 of the Companies Act No. 7 of 2007 provides for companies to maintain correct accounting records and, therefore, "off-the book accounts" are illegal. The existing provisions require true and accurate reporting and record keeping. Violations thereof attract punitive sanctions.

Companies Act, 07 of 2007

Section 148

(1) Every company shall keep accounting records which correctly record and explain the company's transactions, and will;

(a) at any time enable the financial positions of the company to be determined with reasonable accuracy;

(b) enable the directors to prepare financial statements in accordance with this Act; and

(c) enable the financial statements of the company to be readily and properly audited.

(2) Without limiting the provisions contained in subsection (1), the accounting records shall contain;

(a) entries of money received and expended each day by the company and the matters in respect of which such money was spent;

(b) a record of the assets and liabilities of the company;

(c) if the company's business involves dealing in goods;

(i) a record of goods bought and sold, except goods sold for cash in the ordinary course of carrying on a retail business that identifies both the goods and buyers and sellers and the relevant invoices;

(ii) a record of stock held at the end of the financial year together with records of any stock takings during the year;

(d) if the company's business involves providing services, a record of services provided and relevant invoices.

(3) Where a company fails to comply with the requirements of this section:

(a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees; and

(b) every officer of the company who is in default shall be guilty of an offence, and be liable on conviction to a fine not exceeding two hundred thousand rupees.

The A&A Act requires an entity to prepare its financial statements under accounting standards and to take all measures to ensure that the financial statements are audited as per the auditing standards. Accordingly, the maintenance of proper books of account becomes a responsibility of all specified business enterprises. In the process of amending the A&A Act, SLAASMB had identified the requirement to maintain proper books of accounts to facilitate the audit to be stated as a specific requirement to be followed by such entities.

Further, the amendments to the Act also identified the requirement to include firm-wide inspections of auditors to monitor compliance with quality control standards for auditors. Accordingly, the quality control standards will become a law to the auditors and SLAASMB would be able to take corrective action if non-compliances are detected in firm-wide policies and procedures.

The Auditing Standard Committee is in the process of adopting the new International Auditing Standards, which require entities to report key audit matters detected during the normal course of an audit on the face of the audit report. The said Auditing Standards will be effective from 31 March 2018.

The Inland Revenue Act specifies that all income generated should be disclosed in a return and thereby discourages the maintenance of off the book accounts.

(b) Observations on the implementation of the article

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

The Institute of Chartered Accountants of Sri Lanka (ICASL) has developed Accounting and Auditing Standards in accordance with the mandate provided in AASA sections 2-3 and to comply with existing international standards. At the time of the review, the Standards were being amended. The Standards are applicable to "specified business enterprises" (section 5 and the schedule of AASA), which currently comprise 1,410 enterprises, including private companies and banks. Business enterprises are required to audit their accounts (section 6 AASA) and non-compliance is punishable (sections 6-7, 27 AASA). The Accounting and Auditing Standards Monitoring Board monitors compliance with the Standards and refers suspected cases of corruption to law enforcement authorities. The Accounting Standards Committee and the Auditing Standards Committee make recommendations relating to the Standards (sections 8- 9 AASA).

According to the CA, all companies formed under the CA are obliged to keep correct accounting

records (section 148), prepare financial statements (sections 150-153) and appoint an auditor (sections 154-160). Company records should be kept and available for public inspection (section 120). Applicable measures and penalties for non-compliance are stated in Part XXI.

It was concluded that Sri Lanka is in compliance with the provision under review.

Paragraph 4 of article 12

4. Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.

(a) Summary of information relevant to reviewing the implementation of the article

There are allowable deductions and non-allowable deductions under sections 10-19 of the Inland Revenue Act No. 24 of 2017. Expenses constituting bribes cannot be construed to be permissible deductions.

When complaints are received on making of such payments by a specified business enterprise, SLAASMB inspects or conducts inquiries and takes steps under the A&A Act for non-compliance. Although making such payments is not a non-compliance with the accounting standards, non-disclosure of such payment in the financial statements will be a non-compliance.

Section 30 (b) of the A&A Act enables the Inland Revenue Department to be informed of such non-compliances.

(b) Observations on the implementation of the article

Expenses constituting bribes cannot be construed to be permissible tax deductions (sections 10-19 of the Inland Revenue Act 2017).

Sri Lanka is in compliance with the provision under review.

(c) Technical assistance needs

Assistance is required in the following areas for the full implementation of the article:

- Institution-building and capacity-building: There is a need for technical assistance for the relevant institutions, as a form of financial and non-financial support to strengthening the implementation of governance and monitoring-related activities in Sri Lanka, and for capacity building of such institutions. The Asian Development Bank has a Capital Market Development Project under which the A&A Act and the Securities and Exchange Act would be amended. However, whether the requirements mentioned in this document have been considered in such amendments has to be studied and considered with legal expertise.

Article 13. Participation of society

Paragraph 1 of article 13

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and

groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

(a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;

(b) Ensuring that the public has effective access to information

(c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;

(d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:

(i) For respect of the rights or reputations of others;

(ii) For the protection of national security or ordre public or of public health or morals.

(a) Summary of information relevant to reviewing the implementation of the article

Since its establishment, CIABOC has worked with several international organizations on strengthening the framework in place for enabling measures on anti-corruption to be more effective. Since 2015, CIABOC has taken numerous measures to involve civil society organizations (CSOs) in its activities. For example, CIABOC organized a walk in collaboration with the CSOs, the general public, politicians and the international community on the International Anti-Corruption Day on 9 December 2015.³⁰ This was a great success where many stakeholders, including politicians and high-ranking governmental authorities, pledged their commitment to support CIABOC and the cause. The interaction that was created between CIABOC and the civil society organizations greatly improved the confidence of the CSOs to work with the CIABOC on prevention related work. For example, CIABOC's consultation with the CSOs (including Transparency International Sri Lanka and the Law and Society Trust) on ways of amending the Asset Declaration Act enabled a positive and collaborative environment and led to the development of a timely and relevant end product which was in turn submitted to the Cabinet for consideration.

CIABOC has invited and received the assistance of many international non-governmental organizations, national non-governmental organizations and local community based organizations for a number of civil society centered activities and consultations. Some of these organizations include: the Asian Development Bank (ADB); United Nations Development Programme (UNDP); Transparency International Sri Lanka; Sarvodaya; Centre for Policy Alternatives (CPA); Law and Society Trust (LST); Anti-Corruption Front, Rights Now Collective for Democracy; and a number of trade unions. These organizations were also invited and later actively participated in the formation of the new CIABOC strategy "Seven Steps to Zero Tolerance".

CIABOC also conducted a public consultation to seek input from the general public, institutions and agencies on its gap analysis and self-assessment checklist for the first UNCAC review cycle in August 2011.

The CIABOC maintains a website in English and two other local languages, i.e., Sinhala and Tamil (<http://www.ciaboc.gov.lk/web/>), providing access to several categories of information. Frequent

³⁰ For more information about the Anti-Corruption day 2015, please see: http://www.ciaboc.gov.lk/web/index.php?option=com_content&view=article&id=329%3Aanti-corruption-day-2015&catid=3%3Anews-a-events&Itemid=50&lang=en

press conferences by CIABOC improved its public face, and the commitment to answer questions from the media improved public access to information and on certain instances, ensured smooth progression of investigations. In this regard, the CIABOC is supported by civil society with their work and power of advocacy at various levels.

CIABOC presently maintains a Hotline (1954) and email (ciaboc@eureka.lk), providing access to file complaints electronically.

CIABOC conducts regular public awareness-raising campaigns at different levels and in different regions of the country. In addition, CIABOC has submitted a Cabinet paper to create a prevention unit. Also, CIABOC has already taken measures and initiated discussions with the National Institute of Education regarding the incorporation of education related to fighting bribery and corruption into school curricula.

CIABOC and the Ministry of Education have commenced several long-term and short-term projects to educate the next generation. Short term projects include the month of October being declared as an anti-corruption month in all schools, creative competitions in seven segments, and introducing regulations to curb corruption in the school administration. Long-term projects include introducing anti-corruption measures and syllabi to schools, establishing integrity clubs in all schools, educating children through television programmes, conducting annual art and poster competitions and creating handbooks and manuals.

The Right to Information Act No. 12 of 2016 is the latest legislation that was assented to by the Speaker on 4 August 2016, and some parts came into operation on 4 February 2017, as per section 1(3) thereof. Article 14A of the Constitution guarantees the right to information to foster a culture of transparency and accountability in public authorities by giving effect to the right of access to information, subject to the conditions stated therein. The article provides as one of its purposes to promote a society in which the people of Sri Lanka would be able to more fully participate in public life through combating corruption and promoting accountability and good governance.

Article 14 of the Constitution guarantees the freedom of expression and its limitations are recognized under Article 15 (7). The limitations include restrictions, as may be prescribed by law, in the interests of national security, public order and the protection of public health or morality, or for the purpose of securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society

Article 14 (1)

"every citizen is entitled to the freedom of speech and expression including publication;"

Article 15(7)

"The exercise and operation of all the fundamental rights declared and recognized by Articles 12, 13(1), 13(2) and 14 shall be subject to such restrictions as may be prescribed by law in the interests of national security, public order and the protection of public health or morality, or for the purpose of securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society.

For the purposes of this paragraph "law" includes regulations made under the law for the time being relating to public security."

For more information about the Right to Information Act, please refer to article 10.

Section 5(3) of the Declaration of Assets and Liabilities Law (Act No. 1 of 1975, as amended by Act No. 29 of 1985 and Act No. 74 of 1988³¹) gives a right to any person, on the payment of a fee, to call for and refer to any declaration of assets and liabilities, and on payment of a further fee, yet to be determined, to obtain a copy of that declaration.

"(3) Any person shall on payment of a prescribed fee to the appropriate authority have the right to call for and refer to any declaration of assets and liabilities and on payment of a further fee to be prescribed shall have the right to obtain that declaration.

In this subsection the 'appropriate authority' in relation to a declaration of assets and liabilities means the person to whom that declaration of assets and liabilities has been made under section 4."

Civil society has been consulted as a matter of practice in drafting laws, such as the Asset Declarations Act (DALA), the Audit Act and the new RIA.

Proposed changes to the Constitution (in draft form at the time of the country visit) contain a requirement for all draft legislation to be published during the drafting stage to allow members of public to consider the draft and express their views.

(b) Observations on the implementation of the article

Several measures have been taken by CIABOC to involve civil society organizations in the fight against corruption, such as the organization of a walk on the international anti-corruption day in 2015. In addition, while no legal basis exists for involving civil society in legislative drafting, there is a practice of consulting civil society, such as on the amendments to the DALA, Audit Act and the RIA.

CIABOC works with the Ministry of Education and the National Institute of Education to incorporate anti-corruption into school curricula, and is developing regulations to curb corruption in the school administration, creative competitions and school integrity clubs.

Sri Lanka is recommended to consider the possibility of regulating in law the current practice of publishing draft legislation to allow the public to express their views.

(c) Successes and good practices

Sri Lanka has adopted measures to promote the participation of society, including through the Open Government Partnership and National Anti-Corruption Action Plan which calls for enhancing civil society's participation in governance.

Paragraph 2 of article 13

2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

³¹http://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Sri%20Lanka_Declaration%20of%20Assets%20and%20Liabilities%20Act_1975_amended%201988_en.pdf

CIABOC, which was established in 1994, is well known to the public as the statutory body established to curb corruption. It maintains a website www.ciaboc.gov.lk. Over the years there have been several awareness-raising programmes that have been carried out by the CIABOC with the assistance of UNDP, ADB and UNODC.

Article 9 of the CIABOC Act states that:

- (1) No person shall, in respect of any statement made, information or answer given, or any document or other thing produced, to or before the Commission, be liable to any action, prosecution or other proceeding, civil or criminal, in any court.*
- (2) No evidence of a statement made, or answer or information given, by any person, to, or before, the Commission shall be admissible against such person in any action, prosecution or other proceeding, civil or criminal, in any court.*

CIABOC has taken several measures to permit the public to access CIABOC. The hotline '1954' is well known to the public and provides the first information on most of the raids conducted by CIABOC. Sting operations are also notified to the public through this hotline.

The public has access to CIABOC through telephone, website, email, walk-in complaints and general post. CIABOC noted that most complaints are received through the post.

In addition, CIABOC conducts programmes on corruption awareness regularly for public servants. Close interaction with the media also assists in raising public awareness of CIABOC.

In the year 2015, CIABOC received complaints through the following mediums:

Hotline- 1954

Email- ciaboc@eureka.lk

Post – No.36, Malalasekara Mawatha, Colombo 07, Sri Lanka

Fax -+94112595045, +94112595054, +941122058627

Telephone- +94112596365, +94112596363, +94112586857

With regard to the protection of reporting persons, Sri Lanka referred to the Assistance to and Protection of Victims of Crime and Witnesses Act 2015 (APVCWA) which also covers reporting persons. Among others, the Act protects against any form of harassment, including any adverse changes in conditions of employment which may be associated with the evidence provided to the law enforcement agencies. The implementation of the APVCWA is overseen by the National Authority for the Protection of Victims of Crime and Witnesses (Part IV APVCWA) and the Victims of Crime and Witnesses Assistance and Protection Division in the Police (Part V APVCWA).

Article 6 APVCWA

6. A person who is neither a victim nor a witness, shall be entitled to claim protection against:

(a) any harassment, intimidation, coercion, violation or suffering from loss or damage in mind, body or reputation; or

(b) any adverse change to his condition of employment, due to or as a result of such person having provided information, lodged a complaint or made a statement to any law enforcement authority or to any Court or Commission or of having given a testimony in any Court or before a Commission, pertaining to the commission of an offence or an infringement of any fundamental right or the violation of a human right, at such persons' place of employment or in the employment environment of such person.

(b) Observations on the implementation of the article

Anyone can report corruption incidents to CIABOC in person, through the general post, a dedicated

hotline and by email, and the CIABOC Act provides immunity from civil and criminal liability to such persons (s. 9). The Assistance to and Protection of Victims of Crime and Witnesses Act further provides for the protection of reporting persons against any form of harassment at work.

Sri Lanka is recommended to continue taking measures to encourage the public to report instances of corruption, including through the full implementation of the APVCWA and the adoption of an envisaged national policy on whistleblowing.

(c) Successes and good practices

CIABOC's ongoing activities in the area of education, including school integrity clubs, dedicated syllabi and competitions, were seen by the reviewers as a good practice.

(d) Technical assistance needs

Assistance is required in the following areas for the full implementation of the article:

- Capacity-building: to better implement the APVCWA and to encourage the general public to report instances of corruption

Article 14. Measures to prevent money-laundering

Subparagraph 1 (a) of article 14

1. Each State Party shall:

(a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions;

(a) Summary of information relevant to reviewing the implementation of the article

The legal regime of anti-money laundering includes:

- Prevention of Money Laundering Act No. 5 of 2006, as amended by Act No. 40 of 2011³²,
- Financial Transactions Reporting Act No. 6 of 2006 (FTRA) and
- Convention on the Suppression of Terrorist Financing Act, No. 25 of 2005.

The offence of money-laundering is defined in section 3 of Act No. 5 of 2006 and includes, inter alia, engaging in any transaction with property realized from an "unlawful activity". The definition of "unlawful activity" includes any offence under the Bribery Act and other corruption related offences in the Penal Code.

All institutions carrying out finance businesses or designated non-finance businesses, as defined under section 33 of the FTRA, are required to comply with the provisions of the FTRA. Verification and establishment of the identity of customers, maintenance of records, conducting on-going due

³² <http://www.parliament.lk/uploads/acts/gbills/english/5851.pdf>

diligence and scrutiny of customers are among the obligations specified under the Act. In addition, it is obligatory for such institutions to file "Suspicious Transaction Reports" with the FIU, under the circumstances identified by the Act.

For further information, please see article 52 of the Convention below.

More specifically, the Financial Transactions Reporting Act No. 6 of 2006 (FTRA) sets out in Part I the AML obligations of covered institutions.

The term "Institution", as defined in section 33, "means any person or body of persons engaged in or carrying out any finance business or designated non-finance business within the meaning of this Act".

PART I

DUTIES OF INSTITUTIONS

2. Identification essential to conduct of business of Institution.

(1) No Institution shall open, operate or maintain an account, where the holder of such account cannot be identified, including any anonymous account or any account identified by number only, or any account which to the knowledge of the Institution is being operated in a fictitious or false name.

(2) An Institution shall, subject to any rules issued by the Financial Intelligence Unit under subsection (3), identify each customer and verify their customer identification data or information relating to a customer as is reasonably capable of identifying a customer on the basis of any official document or other reliable and independent source document verifying the identity of the customer, in cases where the Institution—

(a) enters into a continuing business relationship, or in the absence of such a relationship, conducts any transaction, with any customer;

(b) detects the carrying out of an electronic funds transfer by a customer, other than any prescribed transactions;

(c) entertains a suspicion relating to the commission of an unlawful activity; or

(d) entertains doubts about the veracity or adequacy of the customer identification and verification documentation or information it had previously obtained.

(3) The Financial Intelligence Unit may issue rules prescribing—

(a) the official or identifying document or documents, or the reliable and independent source documents, data or information or other evidence that is required for identification or verification of any particular customer or class of customers;

(b) the timing of the identification and verification requirements under this section; and

(c) the threshold for, or the circumstances in which, the provisions of this section shall apply to transactions carried on by the customers of an Institution.

(4) The terms and conditions imposed by rules issued under subsection (3) may vary in respect of different categories of Institutions, different categories of transactions or different categories of customers.

(5) The provisions of subsection (2) shall not apply—

(a) if the transaction is part of an existing and regular business relationship with a person who has already produced satisfactory evidence of identify unless the Institution has reason to suspect that the transaction is suspicious or unusual;

(b) if the transaction is an occasional transaction not exceeding a prescribed sum unless the Institution has reason to suspect that the transaction is suspicious or unusual;

(c) if any person has been a customer of the Institution prior to the enactment of this Act, subject to a phase-in period which shall not exceed three years:

Provided that by the end of such period each Institution shall apply the provisions of subsection (2) hereof to such persons subject to such regulations as may be prescribed in that behalf; and

(d) in such other circumstances as may be prescribed by regulations made in that behalf.

(6) For the purpose of subsection (5), “occasional transactions” means any transaction, in relation to cash and electronic fund transfer, that is conducted by any person other than through an account in respect of which the person is the customer.

3. Procedure if identity is not satisfactorily established.

If satisfactory evidence of identity is not submitted to an Institution as required in terms of the provisions of section 2, the Institution shall not proceed any further with the transaction unless directed to do so by the Financial Intelligence Unit established in terms of this Act, and shall report the attempted transaction to the Financial Intelligence Unit as a suspicious transaction under section 7.

4. Institutions to maintain and retain records.

(1) Every Institution shall be required to maintain —

(a) records of transactions and of correspondence relating to transactions and records of all reports furnished to the Financial Intelligence Unit for a period of six years from the date of the transaction, correspondence or the furnishing of the report, as the case may be; and

(b) records of identity obtained in terms of section 2 for a period of six years from the date of closure of the account or cessation of the business relationship, as the case may be, unless directions have been issued by the Financial Intelligence Unit that such records or correspondence should be retained for a longer period, in which case the records or correspondence should be retained for such longer period.

(2) Records required to be maintained under subsection (1) shall contain particulars sufficient to identify the—

(a) name, address and occupation (or where appropriate business or principal activity) of each person —

(i) conducting the transaction; and

(ii) where applicable, on whose behalf the transaction is being conducted;

(b) nature and date of the transaction;

(c) type and amount of currency involved;

(d) parties to the transaction;

- (e) the name and address of the employee who prepares the record; and
- (f) such other information as may be specified in rules issued by the Financial Intelligence Unit.

(3) Where any record is required to be maintained under this Act—

(a) it shall be maintained in a manner and form that will enable an Institution to comply immediately with

requests for information from the Financial Intelligence Unit or a law enforcement agency; and

(b) a copy of it may be kept—

(i) in a machine-readable form if a paper copy can be readily produced from it; or

(ii) in an electronic form, if a paper copy can be readily produced from it and an electronic signature of the person who keeps the records is retained for purposes of verification.

(4) The records maintained under subsection (1) shall be made available upon request to the Financial Intelligence Unit for purposes of ensuring compliance with this Act.

5. Institutions to conduct ongoing due diligence and scrutiny of customers.

An Institution shall—

(a) conduct ongoing due diligence on the business relationship with its customer;

(b) conduct ongoing scrutiny of any transaction undertaken throughout the course of the business relationship with a customer to ensure that any transaction that is being conducted is consistent with the Institution's knowledge of the customer, the customer's business and risk profile, including, where necessary, the source of funds, in order to ensure that its obligations under section 2 are satisfied and that the transactions conducted are consistent with the information that the Institution has of its customer and the profile of the customer's business.

6. Institution to report financial transactions.

An Institution shall report to the Financial Intelligence Unit—

(a) any transaction of an amount in cash exceeding such sum as shall be prescribed by the Minister by Order published in the Gazette, or its equivalent in any foreign currency (unless the recipient and the sender is a bank licensed by the Central Bank); and

(b) any electronic funds transfer at the request of a customer exceeding such sum as shall be prescribed by regulation, in such form, manner, and within such period as may be prescribed by rules issued by the Financial Intelligence Unit.

Sri Lanka provided the following examples of the implementation.

Regulations, rules and guidelines have been issued by the FIU and are available on its website: <http://fiusrilanka.gov.lk>. The following is a list of directions/guidelines/rules issued from 2006 to 2015 (see FIU Annual Report 2015):

Year 2015

1. Reporting of Foreign Inward Remittances

Year 2014

1. Prevention and Suppression of Terrorism and Terrorist Financing Obligations of Reporting Institutions - Authorized Money Changers

2. Prevention and Suppression of Terrorism and Terrorist Financing Obligations of Reporting Institutions (UNSCR 1373) - Licensed Banks and Licensed Finance Companies

3. Prevention and Suppression of Terrorism and Terrorist Financing (UNSCR 1373) - Obligations of Insurance Companies

4. Prevention and Suppression of Terrorism and Terrorist Financing (UNSCR 1373) - Obligations of Stock Brokers

5. Reporting of Foreign Inward Remittances

YEAR 2013

1. Circular to Directors of All Authorized Money Changing Companies, January 31 of 2013

2. Public Statement by the Financial Action Task Force (FATF)

3. Prevention and Suppression of Terrorism and Terrorist Financing Obligation of Reporting Institutions - All Licensed Banks & Licensed Finance Companies

4. Prevention and Suppression of Terrorism and Terrorist Financing Obligation of Reporting Institutions - Insurance Companies

5. Prevention and Suppression of Terrorism and Terrorist Financing Obligation of Reporting Institutions - Stock Brokering Companies

YEAR 2012

1. Revisions to 40+9 Recommendations of the FATF

2. Notification from the FIU of the St. Vincent and the Grenadines

3. Amendments to the KYC/ CDD Rules, No.1 of 2011 for Licensed Banks and Licensed Finance Companies - Extraordinary Gazette No 1756/27, May 04 of 2012

YEAR 2011

1. KYC/ CDD Rules for Licensed Banks and Licensed Finance Companies - Extraordinary Gazette No 1699/10, March 28 of 2011

2. Auditor's declaration on the establishment of Audit Functions

3. Compliance with the reporting requirement under Section 7 of the FTRA

4. Revisions to the Extraordinary Gazette Notification No. 1699/10 - KYC/CDD Rules No. 01 of 2011

YEAR 2010

1. Web based information reporting system to the Insurance Companies

2. Web based information reporting system to the Stock Brokers

YEAR 2009

1. Compliance with Section 2 of the FTRA - (for LBs)

2. Compliance with Section 2 of the FTRA - (for RFCs)

3. Inclusion of the Tamil Foundation among the list of Terrorist Organizations in the US
4. AML/CFT Compliance Functions of the Insurance Industry
5. Web Based Reporting System for LCBs & LSBs
6. Web Based Reporting System for RFCs

YEAR 2008

1. KYC/ CDD Rules for the Insurance Industry
2. Compliance with Rules on CDD for Financial Institutions
3. Compliance with Reporting Requirement (Amended)
4. Inclusion of the World Tamil Movement among the list of Terrorist Organizations in Canada
5. Use of the Banking System by Institutions and Persons not authorised to accept deposits
6. Compliance with reporting requirement of FTRA - Securities Industry
7. Compliance with the reporting requirement of the FTRA - Insurance Industry

YEAR 2007

1. KYC/CDD Rules for the Securities Industry
2. Compliance with KYC/CDD Rules for New Customers and existing Customers
3. Compliance with the reporting requirements under the FTRA
4. Light a million candles campaign - Offences against Children
5. Mandatory reporting requirements - Electronic Fund Transfers

YEAR 2006

1. Compliance with the reporting requirement under the FTRA No. 6 of 2006
2. Section 312 & Section 319 of the Patriot Act
3. FTRA No. 06 of 2006 Submission of Data
4. Financial Transactions Reporting Act (FTRA) No. 06 of 2006
5. CDD for Inward Remittance

In line with FATF requirements and based on the findings of its National Risk Assessment, Sri Lanka developed the country's first National AML/CFT Policy for the 2015-2020 period³³, in consultation with all key stakeholders and it was adopted with the approval of the Cabinet of Ministers.

(b) Observations on the implementation of the article

Sri Lanka has established regulations in three main areas:

1. Beneficial Ownership/Effective Customer Identification: A know your customer (KYC) regime
2. Accurate record keeping

³³ http://fiusrilanka.gov.lk/docs/Other/National_AML_CFT_Policy-2015-2020.pdf

3. A procedure for concerned institutions and professionals to report suspicious transactions.

The regime covers both banks and non-bank financial institutions. At present, other Reporting Institutions (RIs) include, Licensed Banks (LBs), Licensed Finance Companies (LFCs), Stock Brokers (SBs), Insurance Companies (ICs) and Authorized Money Changers (AMCs). Sections 15 and 18 of the FTRA empower the FIU to conduct on-site and off-site supervision to ensure that the RIs comply with such rules, regulations and guidelines. The FIU imposes administrative penalties, issues directives and refers matters for court proceedings.

However, issues in relation to non-financial businesses and professions, as well as legal persons, and in relation to beneficial owners, were noted in the 2015 Mutual Evaluation Report (MER)³⁴ of the APG Group on Money Laundering. The MER concluded the following:

- Regarding the use of legal persons and arrangements, there are significant deficiencies in respect to obtaining and making available beneficial ownership information on a timely basis.³⁵ Sri Lanka should introduce mechanisms to ensure that information on the beneficial owners of legal persons is maintained and accessible to competent authorities in a timely manner, and made publicly available.
- Not all the constituents of the DNFBP sector (casinos, real estate agents, dealers in precious stones and metals, lawyers, notaries, accountants and trust and company service providers) are brought within the ambit of the AML/CFT regulatory framework.
- The FIU receives STRs, cash transaction reports and electronic funds transfer reports from FIs, but not from DNFBPs. In general, information from reporting entities is limited to banks.
- The FIU does not use available police data in its operational analysis of STRs, which has had a negative impact on the quality of intelligence products disseminated to the police. Although the FIU develops intelligence from information reported by FIs, it fails to use systematic information on known or suspected criminals in Sri Lanka.
- With respect to supervision, apart from banks, the relevant supervisory authorities lack clear powers to prevent criminals from participating as beneficial owners in FIs and DNFBPs. Apart from financial sectors and institutions, significant gaps remain with respect to DNFBPs. The scope of supervision does not extend to assessment of FIs' effectiveness in identifying and addressing ML/TF risks. With respect to DNFBPs, the lack of detailed know-your-customer (KYC) and CDD rules and the absence of supervisory resources further constrain effectiveness of overall AML/CFT supervision.
- FIs' level of understanding of ML/TF risks and obligations is variable across sectors and, within a sector, across institutions. There is a need for a stronger application of the RBA across sectors. Further, significant gaps remain with respect to understanding of ML/TF risks in the DNFBP sector.

During the country visit, Sri Lankan authorities provided an update on the implementation of the recommendations of the APG evaluation. It was reported that the recommendations related primarily to KYC/CDD requirements; resources of the FIU for supervising banks and non-bank financial institutions; limitations in Sri Lanka's international cooperation framework such as the absence of an effective request management system; and proliferation financing. Steps have been initiated to address these recommendations and to strengthen application of the risk-based approach to anti-money laundering, such as by conducting regular compliance inspections of high-risk institutions, the development of a Cabinet memorandum to strengthen arrangements concerning legal persons and international cooperation mechanisms; the establishment of FCID in February 2015; and capacity

³⁴ <http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/APG-Mutual-Evaluation-Report-Sri-Lanka-2015.pdf>

³⁵ Sri Lanka's dependence on using existing information, including information held by financial institutions (FIs) and designated non-financial businesses and professions (DNFBPs) to mitigate the abuse of legal persons and arrangements, is not an effective mechanism as there are gaps in this information, including on beneficial ownership.

building for supervisory authorities on application of these measures including on a sectoral basis. The next progress report was planned for early 2018.

Based on the information provided, it is recommended that Sri Lanka continue to strengthen the implementation of a comprehensive risk-based approach to anti-money laundering (art. 14).

Subparagraph 1 (b) of article 14

1. Each State Party shall: ...

(b) Without prejudice to article 46 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

(a) Summary of information relevant to reviewing the implementation of the article

The Financial Intelligence Unit (FIU) has been established under the Financial Transaction Reporting Act No. 6 of 2006³⁶.

The powers and functions of the FIU are set out in Part III of the said Act.

The FIU is empowered, inter alia, to collect material relating to unlawful activity, issue rules and guidelines on customer identification, record keeping, reporting obligations, identification of suspicious transactions etc.

Section 15 of the FTRA (Functions of the Financial Intelligence Unit) lays out the powers of the FIU to share information with domestic authorities, including the obligation to “refer any matter or any information derived from any report or information it receives to the appropriate law enforcement agency if, on the basis of its analysis and assessment, the Financial Intelligence Unit has reasonable grounds to suspect that the transaction would be relevant to the investigation or prosecution under this Act or of an act constituting an unlawful activity, and in connection therewith, the Financial Intelligence Unit may send a copy of such referral or information to the relevant supervisory authority”.

At the international level, sections 16 and 17 of the FTRA are referred to:

16. Disclosure to foreign institutions and agencies.

The Financial Intelligence Unit may disclose any report or information to an institution or agency of a foreign state or of an international organization or body or other institution or agency established by the Government of a foreign State that has powers and duties similar to those of the Financial Intelligence Unit on such terms and conditions as are set out in the agreement or arrangement between Financial Intelligence Unit and an institution, agency or organization or authority regarding the exchange of such information under section 17.

17. Agreements and arrangements by the Financial Intelligence Unit.

³⁶ <http://www.parliament.lk/uploads/acts/gbills/english/5709.pdf>

(1) The Financial Intelligence Unit may, with the approval of the Minister, enter into an agreement or arrangement, in writing, with—

(a) an institution or agency of a foreign State or foreign States or an international organization established by the Governments of a foreign State that has powers and duties similar to those of the Financial Intelligence Unit; and

(b) a foreign law enforcement agency or a foreign supervisory authority, regarding the exchange of information between the Financial Intelligence Unit and the institution, authority or agency.

(2) The information exchanged under subsection (1) shall be information that the Financial Intelligence Unit, the Institution or agency has reasonable grounds to suspect would be relevant to the investigation or prosecution of an offence constituting an unlawful activity or an offence that is substantially similar to such an offence.

(3) Agreements or arrangements entered into under subsection (1) shall include the following :—

(a) restrictions on the use of information to purposes relevant to investigating or prosecuting any act constituting an unlawful activity or an offence that is substantially similar to such offence ;and

(b) the stipulation that the information be treated in a confidential manner and not be further disclosed without the express consent of the Financial Intelligence Unit.

The following statistics on cooperation through INTERPOL were provided by the FIU.

	2010	2011	2012	2013	2014	2015	2016
<u>Provided by Sri Lanka:</u>							
ML	7	4	0	0	1	0	0
TF	4	8	7	4	8	1	2
Other predicate offences	156	151	171	199	169	327	228
<u>Requested by Sri Lanka:</u>							
ML	10	3	3	1	1	0	0
TF	0	2	4	8	5	15	14
Other predicate offences	226	240	246	227	276	133	93

The following statistics on FIU-to-FIU information exchange were provided by the FIU.

Year	2012	2013	2014	2015	2016
Request received and replied	11	18	10	13	25
Request made	12	2	8	19	33

The following statistics on STR reporting were provided by the FIU.

STR Reporting Entity	2014	2015	2016	Total
Financial Institutions	452	581	511	1,544
Law Enforcement Agencies	242	176	106	524

Regulator/Supervisory Authority	16	19	4	39
Public Complaints	8	7	12	27
Total	718	783	633	2,134

The following statistics on dissemination of information to Law Enforcement Agencies for further investigation were provided by the FIU.

LEAs	2014	2015	2016 (through 30.11.16)
Criminal Investigations Department	100	201	138
Financial Crimes Investigations Department	-	49	16
Terrorist Investigations Department	31	23	65
Police Narcotics Bureau	3	4	8
Other Police Units	20	59	101
Total	154	336	328

CID provided the following statistics on number and progress of money-laundering/TF investigations originated from STRs and CID units (as of April 2017)

	Total investigations	Under investigation	Pending with AG	Pending with court	Number of convictions	Closed files (no offence disclosed)
STR-FIU (1)	236	160	10	3	-	63
STR-FIU (2)	65	56	3	-	-	6
STR-FIU (3)	13	11	1	-	-	1
STR-CCB	-	-	-	-	-	-
Total STR	314	227	14	3	-	70
M/L-FIU (1)	51	37	12	1	1	
M/L-FIU (2)	27	21	4	-	-	-
M/L-FIU (3)	-	-	-	-	-	-
M/L-CCB	19	10	4	2	1	2
Total M/L	97	68	20	3	2	4
STR Total	314	227	14	3	-	70
M/L Total	97	68	20	3	2	4
Total	411	295	34	6	2	74

(b) Observations on the implementation of the article

Sri Lanka has designated law enforcement and judicial authorities which are responsible for combatting money laundering. These include, principally, the FIU and the police, as well as the supervisory authorities, that is the Central Bank of Sri Lanka, Securities and Exchange Commission, and Insurance Board of Sri Lanka.

The cooperation mechanism among national authorities is established in domestic laws and circulars, such as the PMLA and FTRA (sections 22-23). The FTRA lays out the powers of the FIU to transmit information to domestic law enforcement authorities, including CIABOC (section 15) and foreign institutions (sections 15-17). Policy is set by the National Coordinating Committee on AML/CFT chaired by the Governor of the Central Bank.

At the international level, Sri Lankan authorities cooperate through various platforms, including INTERPOL, the Egmont Group, and memorandums of understanding (MOUs) between the FIU and its foreign counterparts, including with members of the South Asian Association for Regional Cooperation (SAARC) and through the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC). There are limitations to Sri Lanka's international cooperation mechanisms, as described in the country review report for chapter IV of the Convention³⁷ and in the 2015 MER (see article 51 below).

Based on the information provided, it is recommended that Sri Lanka strengthen the FIU's ability to exchange information at the international level, and provide it with sufficient resources to carry out its supervisory functions.

Paragraph 2 of article 14

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

(a) Summary of information relevant to reviewing the implementation of the article

All entry and exit points to the country are under the surveillance and control of customs and immigration authorities. The Controller of Exchange, through regulations made under the Exchange Control Act, imposes limitations on cash movements across the border. At present, the cash allowance without a declaration is US\$ 15,000 and US\$10,000 for outgoing transfers, as per Foreign Exchange Act Regulations of 2017. According to the new Regulations,

A person shall make a declaration to the Sri Lanka Customs, if that amount exceeds USD 15,000 or its equivalent in any other foreign currency; or if he/she is arriving in Sri Lanka and intends to take back foreign currency notes exceeding USD 10,000 or its equivalent in any other foreign currency.

Persons in or resident in, Sri Lanka may take out, or bring into Sri Lanka, respectively, Sri Lanka currency up to the value of Sri Lanka Rupees 20,000.

Department of Foreign Exchange of Central Bank of Sri Lanka –
http://dfe.lk/web/index.php?option=com_content&view=article&id=86&Itemid=469&lang=en.

³⁷https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2016_04_11_Sri_Lanka_Final_Country_Report.pdf

Tax clearance from the Inland Revenue Department is required for the remittance of money overseas.

Sections 24, 25 and 26 of the FTRA also relate to cash movements across the border.

PART V

CURRENCY REPORTING AT THE BORDER

24. Currency reporting at border.

(1) Where a person —

(a) is about to leave Sri Lanka or has arrived in Sri Lanka; or

(b) is about to board or leave, or has boarded or left, any ship or aircraft,

an authorised officer may, with such assistance as is reasonable and necessary, and with use of force as is necessary,

(i) examine any article which a person has with him or her or in his or her luggage; and

(ii) if the officer has reasonable grounds to suspect that an offence under section 27 of this Act may have been or is being committed, search the person;

for the purpose of determining whether the person has in his or her possession, any cash or negotiable bearer instruments in respect of which a report under subsection 5 is required.

(2) A person shall not be searched except by a person of the same sex.

(3) An authorised officer, and any person assisting such officer may stop, board and search any ship, aircraft or conveyance for the purposes of exercising the powers conferred by subsections (1) or (2) of this section.

(4) Where an authorised officer has reasonable grounds to believe that cash or negotiable bearer instruments found in the course of an examination or search, conducted under subsections (1) or (2) above, may afford evidence as to the commission of an unlawful activity, the officer may seize the cash or negotiable bearer instruments, within twenty-four hours of such seizure.

(5) An authorised officer who has seized cash and negotiable bearer instrument under subsection (4) shall report such seizure to the Unit.

25. Seizure or detention of cash &c.,

An authorised officer may seize and, in accordance with the provisions of this part detain, any cash or negotiable bearer instruments which is being imported into, or exported from Sri Lanka in any form or manner if he or she has reasonable grounds for suspecting that it is —

(a) derived from the commission of any unlawful activity; or

(b) intended by any person for use in the commission of an unlawful activity;

(c) intended to be used for or in connection with an offence connected with the financing of terrorism in term of the Convention on the Suppression of Terrorist Financing Act, No. 25 of 2005.

26. Procedure on seizure of cash &c.,

(1) Cash and negotiable bearer instruments seized under subsection (4) of section 24 or section 25 shall not be detained for more than five working days after seizure, unless the High Court for the Western Province holden in Colombo, on application made to it, grants an Order of continued detention for a period not exceeding three months from the date of seizure, upon being satisfied that

(a) there are reasonable grounds to suspect that it was derived from the commission of any unlawful activity or is intended by any person for use in the commission of an offence or in connection with an offence connected with the financing of terrorism under the Convention on the Suppression of Terrorist Financing Act, No. 25 of 2005; and

(b) its continued detention is justified while its origin or derivation is further investigated.

(2) The Court may subsequently Order, after hearing, with notice to parties it determines are relevant, the continued detention of the cash and negotiable bearer instruments if satisfied of the matters mentioned in subsection (1) but the total period of detention shall not exceed two years from the date of the Order.

(3) Subject to subsection (4), cash and negotiable bearer instruments detained under this section shall be released in whole or in part to the person from whom it was seized or to

any person establishing a claim thereto-

(a) by Order of a Court that its continued detention is no longer justified and upon application by or on behalf of that person;

(b) by an authorized officer, if satisfied that its continued detention is no longer justified.

(4) No cash or negotiable bearer instruments detained under this section shall be released where it is relevant to an investigation, prosecution or proceeding under Prevention of Money Laundering Act, No. 5 of 2006 or the Convention on the Suppression of Terrorist Financing Act, No. 25 of 2005.

(5) Where the cash or negotiable bearer instruments have not been claimed by any person within one year of it being seized or detained, an authorised officer may make an application to the Court that such cash or negotiable instrument or its equivalent in Sri Lanka rupees upon sale to the Central Bank, as the case may be, be forfeited to the Consolidated Fund.

27. Offences

Any person who leaves or arrives in Sri Lanka with more than the prescribed sum in cash or negotiable bearer instruments on his or her person or in his or her luggage without first having reported the fact to the relevant authority is guilty of an offence and shall be punishable on conviction with a fine not exceeding one hundred thousand rupees or imprisonment of either description for a term not exceeding one year, or to both such fine and imprisonment.

(b) Observations on the implementation of the article

Sri Lanka has a disclosure-based regime to monitor the movement of currency and bearer negotiable instruments across its borders (sections 24-27 FTRA). The regime covers incoming and outgoing cross-border transportation, as well as physical cross-border transportation (by travellers, through mail, through cargo). Cross-border transfers exceeding USD 15,000 (incoming) and USD 10,000 (outgoing) are subject to mandatory declaration (section 24 FTRA). Any cash and negotiable instruments imported into or exported from Sri Lanka may be seized or detained if there is a suspicion that they are derived from, or intended for use in, the commission of an unlawful activity

(sections 24-25 FTRA).

Paragraph 3 of article 14

3. States Parties shall consider implementing appropriate and feasible measures to require financial institutions, including money remitters:

- (a) To include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;
- (b) To maintain such information throughout the payment chain; and
- (c) To apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

(a) Summary of information relevant to reviewing the implementation of the article

Regulations are in place requiring financial institutions to obtain information on the originator. Relevant forms are available on the FIU website www.fiusrilanka.gov.lk.

The Financial Transactions Reporting Act No. 6 of 2006³⁸

Financial Institutions (CDD, Customer Due Diligence) Rules No. 01 and 88 of 2016-
http://www.fiusrilanka.gov.lk/docs/Rules/2016/1951_13/1951_13_E.pdf.

(b) Observations on the implementation of the article

The Financial Institutions (CDD, Customer Due Diligence) Rules No. 01 of 2016 require financial institutions, including money remitters (see Rule 86), to identify the originator of a transaction (Part II, Customer Due Diligence), preserve this information for a period of six years (Part V, Record Keeping) and monitor transactions which contain insufficient information (see Rule 45³⁹). Specific rules apply to money remitters and their agents, who are also covered by the AML policies (see Rule 85).

Challenges were reported in terms of enforcing sanctions on institutions or individuals who violate these provisions, and only one example of enforcement action involving an ongoing case by the Narcotics Bureau was provided. Sri Lanka has requested technical assistance in this context (see below).

As noted in the 2015 MER, Sri Lanka's NRA assesses the informal money remittance sector as being highly vulnerable to money-laundering and terrorist financing. Sri Lanka has issued Guidelines on AML/CFT Compliance Obligations for Money Value Transfer Service (MVTS) Providers No. 1 of 2017, which also cover the informal value transfer system "Hawala".

It is recommended that Sri Lanka strengthen monitoring and implementation of measures requiring financial institutions, including money remitters, to identify and scrutinize funds transfers.

³⁸ <http://www.parliament.lk/uploads/acts/gbills/english/5709.pdf>

³⁹ Rule 45 provides "45. If an existing customer provides unsatisfactory information relating to CDD, the relationship with such customer shall be treated as a relationship posing a high risk and be subject to enhanced CDD measures."

Paragraph 4 of article 14

4. In establishing a domestic regulatory regime and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

(a) Summary of information relevant to reviewing the implementation of the article

Sri Lanka is a member of The Asia Pacific Group on Money Laundering (APG) and the FIU of the Central Bank of Sri Lanka is a member of the Egmont Group.

(b) Observations on the implementation of the article

As noted under para. 1(a) above, Sri Lanka has taken steps to address the recommendations of the APG evaluation and to strengthen application of the risk-based approach to anti-money laundering. However, deficiencies still exist, in particular in relation to CDD (including for non-financial businesses and professions, as well as legal persons), wire transfer and money value transfer service and internal controls. **It is recommended that Sri Lanka continue efforts to address the remaining issues of the FATF evaluation, including, among others, in the areas of CDD, wire transfers, money value transfer services and internal controls (arts. 14, 52).**

Paragraph 5 of article 14

5. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

(a) Summary of information relevant to reviewing the implementation of the article

Sri Lanka is a member of the APG on Anti-Money Laundering. The FIU has entered into MOUs with 34 foreign counterparts.

1. Financial Intelligence Unit of the Kingdom of Bhutan- 16.07.2017
2. China AML Monitoring and Analysis Centre- 16.07.2017
3. Thailand FIU- 01.02.2017
4. Suspicious Transaction Reporting Office of Singapore- 01.09.2016
5. Israel Money Laundering and Terror Financing Prohibition Authority- 05.08.2016
6. State Financial Monitoring Service of Ukraine- 02.08.2016
7. The Financial Analysis Unit of Panama- 02.02.2016
8. The Financial Intelligence Unit of Kyrgyz Republic- 11.06.2015

9. The Financial Intelligence Unit of the Republic of Union of Myanmar- 17.07.2014
10. Financial Intelligence Unit of the Republic of Peru - 05.06.2014
11. General Directorate of Prevention of Money Laundering of the Republic of Albania - 05.06.2014
12. Financial Intelligence Unit of Denmark- 30.09.2013
13. Financial Intelligence Unit of Costa Rica- 08.07.2013
14. Lebanon Special Investigations Commission (SIC) - 03.07.2013
15. Japan Financial Intelligence Center - 11.03.2013
16. Saudi Arabian Financial Investigation Unit (SAFIU) - 11.07.2012
17. Federal Financial Monitoring Service (Russian Federation) - 11.07.2012
18. Financial Information Unit of the Bank of Mongolia - 11.07.2012
19. Financial Crime Enforcement Network (FinCEN) USA - 10.07.2012
20. Financial Intelligence Unit of Slovenia - 09.08.2011
21. Transaction Reports and Reports Analysis Centre of Canada - 02.08.2011
22. Fiji Financial Intelligence Unit - 21.07.2011
23. Financial Intelligence Centre of South Africa - 02.12.2010
24. Financial Intelligence Unit of Bangladesh - 28.10.2010
25. Financial Intelligence Unit of Solomon Island - 15.07.2010
26. Financial Intelligence Unit of Belgium - 18.06.2010
27. Australian Financial Transactions and Analysis Centre - 07.05.2010
28. Financial Intelligence Unit of India - 30.03.2010
29. Cambodian Financial Intelligence Unit of National Bank of Cambodia - 26.10.2009
30. The Anti Money Laundering Council of Philippines - 09.07.2009
31. Financial Information Unit of Nepal Rastra Bank - 09.07.2009
32. Indonesian Financial Transaction Reports and Analysis Centre - 27.05.2009
33. Korean Financial Intelligence Unit - 18.12.2008
34. Financial Intelligence Unit of Bank Negara Malaysia - 18.01.2008

The provisions for sharing of information with foreign FIUs are found in sections 16 and 17 of the Financial Transaction Reporting Act, No. 6 of 2006 (FTRA).

16. Disclosure to foreign institutions and agencies

The Financial Intelligence Unit may disclose any report or information to an institution or agency of a foreign state or of an international organization or body or other institution or agency established by the Government of a foreign State that has powers and duties similar to those of the Financial Intelligence Unit on such terms and conditions as are set out in the agreement or

arrangement between Financial Intelligence Unit and an institution, agency or organization or authority regarding the exchange of such information under section 17.

17. Agreements and arrangements by the Financial Intelligence Unit

(1) The Financial Intelligence Unit may, with the approval of the Minister, enter into an agreement or arrangement, in writing, with-

(a) an institution or agency of a foreign State or foreign States or an international organization established by the Governments of a foreign State that has powers and duties similar to those of the Financial Intelligence Unit; and

(b) a foreign law enforcement agency or a foreign supervisory authority,

(2) The information exchanged under subsection (1) shall be information that the Financial Intelligence Unit, the Institution or agency has reasonable grounds to suspect would be relevant to the investigation or prosecution of an offence constituting an unlawful activity or an offence that is substantially similar to such an offence.

(3) Agreements or arrangements entered into under subsection (1) shall include the following :-

(a) restrictions on the use of information to purposes relevant to investigating or prosecuting any act constituting an unlawful activity or an offence that is substantially similar to such offence ;and

(b) the stipulation that the information be treated in a confidential manner and not be further disclosed without the express consent of the Financial Intelligence Unit.

At the international level, Sri Lankan authorities cooperate through various platforms, including INTERPOL, the Egmont Group, the South Asian Association for Regional Cooperation (SAARC) and the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC).

(b) Observations on the implementation of the article

It was concluded that Sri Lanka is in compliance with the provision under review.

(c) Technical assistance needs

Sri Lanka requested the following technical assistance for the full implementation of the article:

- Capacity-building: to strengthen monitoring and enforcement (para. 3 of article 14).

V. Asset recovery

Article 51. General provision

Article 51

1. The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.

(a) Summary of information relevant to reviewing the implementation of the article

Section 17 of the Mutual Assistance in Criminal Matters Act No. 25 of 2002⁴⁰ applies in respect of specified countries and on the basis of reciprocity to other non-specified countries. Section 17 provides that:

Where –

- (a) a person has been charged with, or convicted of, or is suspected on reasonable grounds of having committed, a serious offence in a specified country;*
- (b) there are reasonable grounds to believe that any property derived or obtained, directly or indirectly, from the commission of that offence, is in Sri Lanka;*
- (c) the appropriate authority in such specified country requests the Central Authority for assistance in identifying, locating or assessing the value of, such property.*

the Central Authority may in his discretion, give the assistance requested wherever it is practicable to do so.

In the case of outgoing requests, Section 18 of the Mutual Assistance in Criminal Matters Act No. 25 of 2002 further provides that:

Where –

- (a) a person has been charged with, or convicted of, or is suspected on reasonable grounds of having committed, a serious offence in Sri Lanka;*
- (b) there are reasonable grounds to believe that any property derived or obtained, directly or indirectly, from the commission of that offence, is in a specified country;*

the Central Authority may, in his discretion, require the appropriate authority in such specified country for assistance in identifying, locating, or assessing the value, of such property.

(b) Observations on the implementation of the article

Sri Lanka has taken steps towards the legislative implementation of paragraph 1 of article 51. Specifically, Sri Lanka identified that the return of assets pursuant to Chapter V of the Convention is governed by Section 17 of the Mutual Assistance in Criminal Matters Act No. 25 of 2002.

Pursuant to the Mutual Assistance in Criminal Matters Act No. 25 of 2002, mutual legal assistance with respect to any request, including asset recovery pursuant to Section 17, is first determined based on whether a requesting State is “a specified country” or on the basis of reciprocity. Notably, a specified country is a State which either (1) is a Commonwealth country and the Minister orders that the Mutual Assistance in Criminal Matters Act No. 25 of 2002 is applicable or (2) any Non-Commonwealth country where Sri Lanka has entered into agreement regarding mutual legal

⁴⁰ <http://www.lawnet.gov.lk/wp-content/uploads/2016/12/Sri-Lanka-Mutual-Assistance-in-Criminal-Matters-Act-No.-25-of-2002-.pdf>

assistance on criminal matters (at the time of review 8 countries, 6 with treaties containing asset recovery provisions) and again the Minister orders that the Mutual Assistance in Criminal Matters Act No. 25 of 2002 is applicable. Although assistance can be provided to other countries on a case-by-case basis on the basis of reciprocity or ad-hoc agreements, it was explained that the need for a Ministerial order presents significant challenges in practice. Importantly, each order made by the Minister must receive approval from Parliament.

Furthermore, Sections 19, 20 and 21 of the Mutual Assistance in Criminal Matters Act No. 25 of 2002 evidence steps towards the legislative implementation of article 51. Notably, Section 19 covers requests by specified countries for enforcement of orders of court and Section 21 highlights the requirements for authentication of documents which would likely be important evidence in actions before Sri Lanka's courts.

For requests from both Commonwealth and treaty partners, the execution of the request is subject to the domestic laws of Sri Lanka. Dual criminality is a requirement for mutual legal assistance (see Section 6 of the Act), which may be provided for "serious offences" punishable by death or imprisonment of not less than one year. The Act does not provide for non-coercive assistance to be rendered in the absence of dual criminality or for offences that do not qualify as "serious offences".

Furthermore, the provision of assistance by Sri Lanka is subject to the discretion of the central authority: "the Central Authority may in his discretion, give the assistance requested wherever it is practicable to do so" (Section 17 of the Mutual Assistance in Criminal Matters Act).

Sri Lankan authorities provided the following statistics in regards to asset recovery requests sent and received by Sri Lanka for offences related to corruption.

Asset Recovery Requests related to Corruption, 2015 -2017:

Type of Request	Number of Requests
Total number of requests sent by Sri Lanka for asset recovery (i.e., confiscation and interim measures of tracing, freezing and seizure) related to corruption offences, including money-laundering	43
Total number of requests received by Sri Lanka for asset recovery (as specified above), related to corruption offences, including money-laundering	03
Number of requests formally refused by Sri Lanka	0
Number of requests executed by Sri Lanka or pending	03

There has been limited experience in the identification, seizure, confiscation or return of criminal proceeds to requesting countries. It was confirmed that Sri Lanka has never refused any asset

recovery requests to date. There have been no completed asset recovery cases (incoming or outgoing) to date.

The reviewers further observe that there is no stand-alone legislation on the confiscation and recovery of criminal proceeds in Sri Lanka. Consideration could be given to adopting such legislation, in the context of ongoing legal reforms to strengthen asset tracing, confiscation and recovery measures.

Challenges were also evidenced in the collection by the Central Authority, tracking and availability of statistics related to MLA and asset recovery in corruption-related matters.

Accordingly, it is recommended that Sri Lanka continue to strengthen international cooperation mechanisms as a basis for asset recovery by addressing the limitations in its framework on mutual legal assistance in line with the findings of Sri Lanka's first cycle country review report for chapter IV of the Convention⁴¹ and the results of the 2015 APG review, enhance data collection mechanisms, and expedite the adoption of proceeds of crime legislation (arts. 51, 54).

Furthermore, it is recommended that Sri Lanka take measures to allow for the provision of assistance and the enforcement of foreign confiscation, freezing and seizing orders from 'non-specified' countries (arts. 51, 54).

(c) Successes and good practices

The operations of the Special Presidential Task Force on Recovery of State Assets (START), established by Cabinet decision to investigate, identify, trace, seize and transfer to Sri Lanka, state assets and revenue due to the Government of Sri Lanka which have been illegally or unlawfully acquired and are concealed or kept outside the country.

The provision of sample forms for requests to the Central Authority as appendices in the MACMA are also positively noted.

Article 52. Prevention and detection of transfers of proceeds of crime

Paragraph 1 of article 52

1. Without prejudice to article 14 of this Convention, each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.

(a) Summary of information relevant to reviewing the implementation of the article

⁴¹https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2016_04_11_Sri_Lanka_Final_Country_Report.pdf

Pursuant to the provisions of the Financial Transactions Reporting Act No. 06 of 2006⁴² (FTRA) customer identification has been made mandatory. The FIU that has been set up at the Central Bank of Sri Lanka is identified as the supervisory authority for all suspicious financial transactions (STRs). The FIU is also vested with the responsibility of collecting data and any information relevant to an act constituting an unlawful activity. Up to date keeping with the requirements stipulated under the Financial Transactions Reporting Act, the FIU has issued guidelines covering all financial institutions including licensed banks and registered finance companies, Security and Exchange Commission and the insurance industry.

The FIU has issued relevant guidelines to financial institutions with regard to Know Your Customer (KYC) procedures and customer due diligence (CDD).

Financial Institutions (CDD, Customer Due Diligence) Rules No. 01 of 2016 are available at http://www.fiusrilanka.gov.lk/docs/Rules/2016/1951_13/1951_13_E.pdf.

Guidelines have been introduced requiring the identification of the beneficial owners of accounts maintained in financial institutions.

Even though the FTRA does not lay down the meaning of High Value Accounts, the Regulations require institutions to report any suspicious transaction, as well as cash or electronic fund transfers if the value is over one million Sri Lanka Rupees. The requirements for beneficial owner verification apply to all accounts maintained in financial institutions, not just High Value Accounts.

Section 5 of the FTRA requires institutions to conduct ongoing due diligence and scrutiny of customers in order to ensure that its delegations under Section 2 are satisfied and that the transactions conducted are consistent with the information that the institution has of its customer.

Enhanced scrutiny of Politically Exposed Persons (PEPs), or their family members and close associates, is required under Rules 59 and 60 of the Financial Institutions (CDD, Customer Due Diligence) Rules No. 01 of 2016. As defined, "politically exposed person" means:

an individual who is entrusted with prominent public functions either domestically or by a foreign country, or in an international organization and includes a Head of a State or a Government, a politician, a senior government officer, judicial officer or military officer, a senior executive of a State owned Corporation, Government or autonomous body but does not include middle rank or junior rank individuals.

The FIU issued Guidelines for Financial Institutions on Identification of Beneficial Ownership (No. 04 of 2018).

(b) Observations on the implementation of the article

The 2016 Financial Institutions (Customer Due Diligence) Rules (FIRs) have been issued by the FIU and apply to all financial institutions as defined therein. The FIRs establish obligations with regard to money-laundering risk management and internal controls, know-your-customer (KYC), customer due diligence (CDD), enhanced scrutiny for persons and accounts, correspondent banking, wire transfers and record keeping. Training of staff is provided at the internal level of institutions, and the FIU organizes ad-hoc workshops.

Financial institutions are required to identify and verify the identity of beneficial owners of all accounts maintained in such institutions (FIRs, rules 30-31). Enhanced scrutiny of both domestic and foreign politically exposed persons (PEPs), their family members and close associates, is required (rules 59-60).

⁴² <http://www.parliament.lk/uploads/acts/gbills/english/5709.pdf>

No centralized bank register is in place, although financial institutions are required to maintain account ownership information pursuant to the KYC/CDD requirements (FIRs).

As noted under article 14(4) above, Sri Lanka is recommended to continue efforts to address the remaining issues of the FATF evaluation, including, among others, in the areas of CDD, wire transfers, money value transfer services and internal controls, which are also relevant to the implementation of article 52.

Subparagraph 2 (a) of article 52

2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

(a) Issue advisories regarding the types of natural or legal person to whose accounts financial institutions within its jurisdiction will be expected to apply enhanced scrutiny, the types of accounts and transactions to which to pay particular attention and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts; and

(a) Summary of information relevant to reviewing the implementation of the article

In Sri Lanka the FIU has the responsibility of issuing advisories to institutions regarding the types of natural or legal persons who maintain financial relationships with institutions to which enhanced due diligence measures shall be applied.

Under the FTRA, "institution" means any person or body of persons engaged in or carrying out any finance business or designated non finance business within the meaning of the Act.

Specific instructions are required to maintain "enhanced scrutiny" on a risk based approach, pertaining to particular types of accounts, under Financial Institutions (CDD) Rules No. 01 of 2016. All financial institutions are required to conduct ongoing due diligence and scrutiny of customers. CDD requirements for legal persons and legal arrangements are spelled out in Rules 48-54. Authorization of the senior management is required when opening accounts for "Politically Exposed Persons" (PEP). Also, all cash deposits of over Rs. 200,000 by third parties should have the identity of the depositor on record.

In terms of the FTRA, all institutions are expected to maintain records of transactions and correspondence relating to transactions and records of all reports furnished to FIU for a period of six years.

Also, in terms of Section 5 of the FTRA institutions are expected to conduct ongoing due diligence on the business relationship with the customer and conduct ongoing scrutiny of any transaction.

(b) Observations on the implementation of the article

The FIU, established in 2006 and set up at the Central Bank, is the main supervisory authority for suspicious financial transactions. The FIU is a hybrid-type body, analyzing cases and referring suspicious transactions to law enforcement authorities. Its powers and functions are set out in the FTRA (Part III).

The FIU-Sri Lanka, as a focal point for the implementation of the AML/CFT framework in the country, conducts awareness programmes for key stakeholders and the general public. During the year 2015, 16 awareness programmes were conducted for more than 1000 participants from RIs, SAs and LEAs. The FIU also organized awareness programmes for officers from the police and law enforcement agencies involved in prevention, detection and investigation of ML/TF. Further details are found in the FIU Annual Report.

Through its issuance of Customer Due Diligence Rules in 2016 and other circulars issued by the FIU, Sri Lanka has taken steps to advise the financial sector on its requirements to apply enhanced scrutiny to certain types of persons and accounts commensurate with their risk profile, especially regarding Politically Exposed Persons (PEPs) and customers and financial institutions from high risk countries (rules 57-63).

Subparagraph 2 (b) of article 52

2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

...

(b) Where appropriate, notify financial institutions within its jurisdiction, at the request of another State Party or on its own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify.

(a) Summary of information relevant to reviewing the implementation of the article

Financial Transactions Reporting Act No. 6 of 2006

Guidelines issued by the FIU on financial institutions. See list of guidelines issued from 2006 to 2015 under article 14.

(b) Observations on the implementation of the article

No examples were given where Sri Lankan authorities have notified financial institutions of the identity of any particular natural or legal person to whose account such institutions should apply enhanced scrutiny.

In the absence of any apparent mechanism or practice, it is recommended that Sri Lanka introduce a system to notify financial institutions of the identity of particular persons to whose accounts enhanced scrutiny should be applied.

Paragraph 3 of article 52

3. In the context of paragraph 2 (a) of this article, each State Party shall implement measures to ensure that its financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.

(a) Summary of information relevant to reviewing the implementation of the article

Rules are issued with regard to accounts that require enhanced scrutiny. Financial institutions (CDD) Rules No. 01 of 2016 provide for opening of accounts belonging to the PEP category, required authorization of the senior management, and minimum information required relating to the identity of customers and beneficial owners. The FIU can give directions to any financial institution to maintain records pertaining to any account for longer than the stipulated period of time if the situation requires.

In terms of the provisions of section 4(1) (a) of the FTRA, financial institutions are required to maintain records of transactions and of correspondence relating to transactions and records of all reports furnished to FIU for a period of six years. See also Part V (Record Keeping) of the Financial Institutions (CDD, Customer Due Diligence) Rules No. 01 of 2016.

(b) Observations on the implementation of the article

Financial institutions are required to maintain records of transactions, both domestic and international, and including CDD and KYC records, for a minimum period of six years from completion of such transactions or the date on which the business relationship was fulfilled (FIRs, rule 89-91). All records must be immediately available to relevant domestic authorities and the FIU (FIRs, rule 94).

Pursuant to the FTRA and FIRS, records are to be held for six years, and the FIU is authorized to direct the maintenance of records for a longer period of time.

It is recommended that Sri Lanka consider extending the six-year period for maintenance of records, which has been identified as a potential obstacle to successful investigations.

Paragraph 4 of article 52

4. With the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, each State Party shall implement appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

(a) Summary of information relevant to reviewing the implementation of the article

In terms of the provision of the Banking Act No. 30 of 1988 and subsequent amendments, a Commercial Bank cannot maintain operations without a license issued by the Central Bank of Sri Lanka (CBSL).

Banks that have no physical presence cannot operate in Sri Lanka, because Section 2(1) of the Banking Act specifically states that no banking business shall be carried and except by a company under the authority of a license issued by the Monetary Board.

Also, extra vigilance is expected from financial institutions to distinguish between formal money transmission services and alternative remittance systems such as Hawala. Sri Lanka has issued Guidelines on AML/CFT Compliance Obligations for Money Value Transfer Service (MVTs) Providers No. 1 of 2017, which also cover the informal value transfer system “Hawala”.

According to the rules and guidelines issued by the FIU (FIRS, part III), no accounts for "shell" financial institutions should be opened. It is also mandatory requirement for financial institutions to gather sufficient information with regard to the business activities, management of any legal persons (FIRS, rules 48-54). Provisions also contain guideline relation to correspondent banking, wire transfers, PEPs.

Furthermore, FIU has advised financial institutions to refuse to enter in to, or conduct business and provide services to financial institutions that are located in jurisdictions that have poor KYC standards or have been identified as "non co-operative" (FIRs, rule 64, 66). FIRs rule 67 further prohibits banks from providing correspondent banking services to any “shell bank” and requires the correspondent bank to take appropriate measures to satisfy itself that the respondent financial institutions does not permit its accounts to be used by shell banks.

(b) Observations on the implementation of the article

Sri Lanka is in substantial compliance with this provision. Pursuant to the Banking Act, banks with no physical presence in Sri Lanka are prohibited (section 2(1)) and financial institutions are prohibited from entering into business relations with them and from providing correspondent banking services to financial institutions that permit their accounts to be used by shell banks (FIRs, rule 67). Special attention is paid to informal remittance systems such as Hawala and the expectation that financial institutions exercise scrutiny to prevent criminal proceeds from being transferred through informal channels.

Statistics pertaining to investigations by the CID relating to “shell banks” were provided during the country visit.

Paragraph 5 of article 52

5. Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

In terms of the provisions of the Declaration of Assets and Liabilities Law No. 1 of 1975, as amended by Act No. 29 of 1985 and Act No. 74 of 1988⁴³, public officers, judges, members of

⁴³http://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Sri%20Lanka_Declaration%20of%20Assets%20and%20Liabilities%20Act_1975_amended%201988_en.pdf

Parliament, directors of public corporations, etc. are compelled to make periodic declarations of their assets and liabilities in and outside Sri Lanka.

Provisions have been introduced to penalize public officers for non-compliance. Please see Sections 2, 3 and 9 of the Declaration of Assets and Liabilities Law No. 1 of 1975.

(b) Observations on the implementation of the article

Sri Lanka's longstanding disclosure laws pertaining to disclosure of financial interests by public officials are noted as an important means to prevent public corruption. Provisions for sanctions to be imposed in the event of a public official's non-compliance also form part of the legal framework which aligns with this paragraph.

However, challenges were reported in terms of adequate resources to monitor and verify disclosures, to take appropriate action to address instances of non-compliance and to raise awareness of existing disclosure obligations. Furthermore, there are limitations in the ability of Sri Lankan authorities to share such disclosure information internationally.

As noted in the introduction to this report, the Commission to Investigate Allegations of Bribery or Corruption (CIABOC) has submitted a Memorandum to the Cabinet of Ministers suggesting relevant amendments necessary to the Declaration of Assets and Liabilities Law No. 1 of 1975, as amended, including to expand the scope of officials subject to reporting. The proposed draft would amend section 5 (2) of DALA to enable the Attorney General, CIABOC, Commissioner General of the Inland Revenue Department and Heads of all State institutions carrying out investigations (including the Head of the Exchange Control Department), to call for declarations made under the Act, and would also introduce a new electronic filing system to declare assets and liabilities under the e-government concept. It was explained that the CIABOC would furthermore be given a formal monitoring power over declarations of assets as well as the review of conflicts of interest declarations. In this context the proposal would introduce new provisions in the DALA compelling the declarant to disclose his or her conflicts of interests and nepotism.

Based on the information provided, it is recommended that Sri Lanka continue efforts to strengthen the asset declarations system in line with the amendments proposed by the CIABOC, including by: assessing the possibility of introducing effective monitoring and verification; considering the adoption of electronic filing systems; permitting competent authorities to share information with foreign counterparts; effectively applying deterrent penalties for non-compliance, also to Heads of offices who do not abide by the DALA and to elected officials; and consider expanding the scope of declarations to include potential conflicts of interest (art. 8(5), 52(5)).

Paragraph 6 of article 52

6. Each State Party shall consider taking such measures as may be necessary, in accordance with its domestic law, to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts. Such measures shall also provide for appropriate sanctions for non-compliance.

In terms of Declaration of Assets and Liabilities Law No. 1 of 1975, as amended, all public officials are required to make periodic declarations of their assets and liabilities in and outside Sri Lanka.

(b) Observations on the implementation of the article

Sri Lanka has adopted provisions in the Declaration of Assets and Liabilities Law which require that disclosures of assets held by public officials include assets and liabilities inside and outside of Sri Lanka. However, there are limited resources to monitor and verify disclosures, address non-compliance and raise awareness.

Given the limitations noted above it is recommended that Sri Lanka consider requiring public officials to declare foreign financial accounts, to maintain appropriate records related thereto and providing for appropriate sanctions for non-compliance.

(c) Technical assistance needs

Assistance is required in the following areas for the full implementation of the article:

- Legislative assistance: to draft law on asset disclosures.

Article 53. Measures for direct recovery of property

Subparagraph (a) of article 53

Each State Party shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

A specific provision has not been introduced permitting another State party to initiate civil action in Sri Lanka to establish title to or ownership of property acquired through the Commission of an offence.

(b) Observations on the implementation of the article

While there is no provision in the law that would prohibit a foreign country from participating in domestic court proceedings or initiating civil action to establish ownership of property or seek compensation, this has never happened in practice. During the country visit the authorities explained that steps are underway to develop proceeds of crime legislation, which could also address the issue and provide legal certainty. Technical assistance was requested to develop such legislation.

By implementing a provision which would allow foreign State actions to recover corruption proceeds, an added benefit to Sri Lanka will be that, in the event that Sri Lanka might seek to recover assets taken by a violator to a foreign country, Sri Lanka can assert reciprocity of treatment while making the civil claim in a foreign country.

It is recommended that Sri Lanka ensure that measures for direct recovery, as outlined in article 53 of the Convention, are available to other States, in particular by amending its

domestic laws to enable foreign States to initiate actions to establish ownership of property acquired through the commission of an offence under the Convention.

Subparagraph (b) of article 53

Each State Party shall, in accordance with its domestic law: ...

(b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and

(a) Summary of information relevant to reviewing the implementation of the article

There is no specific law in Sri Lanka permitting courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State party that has been harmed by such offences.

(b) Observations on the implementation of the article

Sri Lanka's current legal framework does not contain a provision which would offer its judiciary the ability to order compensation to another country.

As is the case with article 53, subparagraph (a), Sri Lanka should nevertheless impose such an ability within its legal system. Beyond compliance with the Convention or benefits from reciprocity of treatment, Sri Lanka can further ensure that Sri Lanka is not used as a haven for individuals or entities which would seek to corruptly influence other countries. By empowering its own judiciary, Sri Lanka can offer the maximum range of opportunities for effective law enforcement and international cooperation against corruption.

It is recommended that Sri Lanka ensure that measures for direct recovery, as outlined in article 53 of the Convention, are available to other States, in particular to permit its courts to order the payment of compensation or damages to another State Party.

Subparagraph (c) of article 53

Each State Party shall, in accordance with its domestic law: ...

(c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

While section 14 of the PMLA addresses the rights of bona fide third parties in cases relating to money-laundering offences, no provision in the domestic law recognizes the rights of foreign States as legitimate owners of property or primary claimants in confiscation proceedings relating to offences under the Convention.

Prevention of Money Laundering Act, No. 40 of 2011

14. Restoring the rights of bona fide claimants.

(1) Any person, being a person to whom the provisions of paragraph (a) of section 2 do not apply, who owns, possesses or is in control of, any account, property or investment to which the Freezing Order made under section 7 relates, may within thirty days of the making of such Order apply to the Court making the same, seeking the intervention of Court to exclude from such Order any account, property or investment he owns, possesses or is in control of.

(2) Where an application is made under subsection (1), the Court shall upon being satisfied on the information before Court that—

(a) the account, property or investment which the applicant owns, possesses or is in control of, is not derived or realized directly or indirectly, from any unlawful activity or from the proceeds of any unlawful activity or the account, property or investment is not an instrumentality used in the commission of such unlawful activity;

(b) the applicant was not in any way involved in the commission of the offence of money laundering in relation to which the Freezing Order was made;

(c) the applicant had acquired an interest in the account, property or investment at any time prior to the commission of the offence of money laundering and the applicant was unaware of the fact that the defendant had used or had intended to use such account, property or investment in or in connection with the commission of such offence; or

(d) the applicant had acquired an interest in the account, property or investment at the time of or after the commission or alleged commission of the offence, that such interest was acquired in circumstances which would not give rise to a reasonable suspicion that such account, property or investment was proceeds or instrumentalities of such offence,

make Order for the release of the account, property or investment which is the subject of the application before it, from the Freezing Order made under section 7, and restore the right of the applicant in respect of the same.

(b) Observations on the implementation of the article

The article requires States parties to provide legal standing to other States parties to claim, as legitimate owner in a confiscation procedure, ownership over assets acquired through the commission of a Convention offence.

It is recommended that Sri Lanka ensure that measures for direct recovery, as outlined in article 53 of the Convention, are available to other States, in particular to recognize another State's claim as a legitimate owner of property in confiscation proceedings for offences under the Convention.

(c) Technical assistance needs

Assistance is required in the following areas for the full implementation of the article:

- Legislative assistance: To develop proceeds of crime legislation.

Article 54. Mechanisms for recovery of property through international cooperation in confiscation

Subparagraph 1 (a) of article 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party;

(a) Summary of information relevant to reviewing the implementation of the article

Confiscation of proceeds of money-laundering and bribery offences is regulated in the Bribery Act (sections 26A, 28A(1) and 39) and PMLA (sections 3 and 13).

Bribery Act No. 11 of 1954

26A. Additional fine to be imposed.

Where the High Court convicts any person of an offence under section 23A, it shall, in addition to any other penalty that it is required to impose under this Act, impose a fine of not less than the amount which such court has found to have been acquired by bribery or by the proceeds of bribery or converted to property by bribery, or by the proceeds of bribery and not more than three times such amount.

28A. Forfeiture of property in relation to which an offence has been committed.

(1) Notwithstanding anything to the contrary in any other provision of this Act, where a court convicts a person of an offence under this Part of this Act, the court may in lieu of imposing a penalty or fine under section 26 or section 26A, make order that any movable or immovable property found to have been acquired by bribery or by the proceeds of bribery, be forfeited to the State free from all encumbrances:

Provided however that, in determining whether an order of forfeiture should be made, the court shall be entitled to take into consideration whether such an order is likely to prejudice the rights of a bona fide purchaser for value or any person who has acquired, for value a bona fide interest in such property.

(2) An order made under subsection (1) shall take effect –

(a) where an appeal has been made to the Court of Appeal or the Supreme Court against the order of forfeiture, upon the determination of such appeal confirming or upholding the order of forfeiture;

(b) where no appeal has been preferred to the Court of Appeal against the order of forfeiture, after the expiration of the period within which an appeal may be preferred to the Court of Appeal against such order of Court.

39. Assessment of value of gratification where commission of inquiry finds person guilty of bribery by having accepted a gratification.

(1) Where a commission of inquiry finds that any person is guilty of bribery by having accepted a gratification –

(a) the commission shall, if that gratification is a sum of money, state that sum, or, if the value of that gratification can be assessed, assess and declare that value, in its report, and

(b) the Attorney-General shall in writing communicate such finding to that person and, if a sum is specified in that report as the amount or the value of that gratification, direct that person to pay that sum to the Attorney-General within such time as may be specified in the direction.

(2) If a person fails to pay the sum directed by the Attorney-General under subsection (1) to be paid, the Attorney-General may apply to the High Court for an order, and the High Court shall upon such application make an order, for the payment of that sum by that person, and, if that person fails to pay that sum within the time allowed by the order, that sum may be recovered in like manner as if the order were a decree entered by a District Court in favour of the State and against that person.

(3) If the person liable to pay the sum referred to in subsection (2) was a public servant on the date of his acceptance of the gratification, the provisions of subsection (3) of section 28 shall, for the purpose of the recovery of that sum, apply in like manner as if that sum were a penalty imposed by the High Court under section 26.

Prevention of Money Laundering Act, No. 40 of 2011

3. Offence of money laundering

(1) Any person, who—

(a) engages directly or indirectly in any transaction in relation to any property which is derived or realised, directly or indirectly, from any unlawful activity or from the proceeds of any unlawful activity;

(b) receives, possesses, conceals, disposes of, or brings into Sri Lanka, transfers out of Sri Lanka, or invests in Sri Lanka, any property which is derived or realised, directly or indirectly, from any unlawful activity or from the proceeds of any unlawful activity,

knowing or having reason to believe that such property is derived or realized, directly or indirectly from any unlawful activity, or from the proceeds of any unlawful activity shall be guilty of the offence of money laundering and shall on conviction after trial before the High Court be liable to a fine which shall be not less than the value of the property in respect of which the offence is committed and not more than three times the value of such property, or to rigorous imprisonment for a period of not less than five years and not exceeding twenty years, or to both such fine and imprisonment.

(1A) The assets of any person found guilty of the offence of money laundering under this section shall be liable to forfeiture in terms of Part II of this Act.

(2) Any person who attempts or conspires to commit the offence of money laundering, or aids or abets, the commission of the offence of money laundering shall be guilty of an offence under this Act and shall be liable after trial before the High Court to be punished with the same punishment as is specified for the offence of money laundering.

In this subsection "abet" shall have the same meaning as in sections 100 and 101 of the Penal Code.

(3) For the avoidance of doubts, it is hereby declared that a conviction for the commission of the unlawful activity shall not be necessary for the proof of the offence under the provisions of this Act.

13. Forfeiture of property in relation to which offence of money laundering has been committed.

(1) Subject to the provisions of subsection (2), where a person is convicted of an offence under section 3 of this Act, the Court convicting such person shall, make order that any account, property or investment, owned, possessed or under the control of such person which has been derived or realized directly or indirectly from any unlawful activity, any income or profit earned on such account, property or investment and any instrumentalities used in the commission of such unlawful activity, be forfeited to the State free from all encumbrances.

(1A) Where such account, property, investment, income, profit or instrumentalities cannot be found or traced the Court convicting such person shall order him to pay to the State the equivalent value of such account, property, investment, income, profit or instrumentalities.

(1B) Where such person fails to pay such equivalent value, the Court shall, in accordance with the provisions of the Code of Criminal Procedure Act, No. 15 of 1979, order him to pay such value as a fine within such period as may be specified by Court.

(2) In determining whether an Order of forfeiture should be made under subsection (1), the Court shall be entitled to take into consideration the fact whether such an Order is likely to prejudice the rights of a bona fide purchaser for value or any other person who has acquired, for value, a bona fide interest in such property, or investment or any income or profit earned on such property or investment.

(3) An Order made under subsection (1) shall take effect—

(a) where an appeal has been preferred to the Court of Appeal or the Supreme Court against the Order of forfeiture, upon the determination of such appeal confirming or upholding the Order of Forfeiture;

(b) where no appeal has been preferred to the Court of Appeal against the Order of Forfeiture within the period allowed therefor, after the expiration of the period within which an appeal may be preferred to the Court of Appeal, against such Order of Forfeiture.

(4) For the purposes of subsection (1), the Court making the Order of Forfeiture may presume that any property belonging to the person convicted of the offence of money laundering, is derived or realised, directly or indirectly from any unlawful activity if such property is not commensurate with the known sources of income of such person, and the holding of which cannot be explained on a balance of probabilities, to the satisfaction of the Court.

Under Part VI of the Mutual Assistance in Criminal Matters Act No. 25 of 2002, a procedure is laid down to provide assistance to another State party to search and to seize anything authorized to be seized by the warrant.

Moreover, in terms of section 19 of the Mutual Assistance in Criminal Matters Act, a procedure has been laid down to give effect to a request made by a country for enforcement of orders issued by a competent court, including forfeiture of property.

The Mutual Assistance in Criminal Matters Act No. 25 of 2002

Section 19. Request by a specified country for enforcement of orders of court.

(1) *Where-*

- (a) *a court in a specified country has, in a proceeding relating to a criminal matter, made an order- forfeiting any property or having the effect of forfeiting or confiscating any property;*
- (i) *imposing a fine or order pecuniary penalty on any person or requiring that person to pay compensation to any other person;*
- (ii) *restraining any person or all persons from dealing with any property; and*
- (b) *there are reasonable grounds to believe that the property with respect to which such order is made is located in Sri Lanka is available for the satisfaction of that order;*
- (c) *the appropriate authority of such specified country has requested the Central Authority for assistance in enforcing such order in Sri Lanka; and*
- (d) *the Central Authority is satisfied that such order is in force and not subject to any further appeal in the specified country.*

The Central Authority may, in his discretion, require the Attorney-General to apply for the registration of the order in the High Court established under Article 154P of the Constitution for the province in which such property is located.

(2) *Where the Attorney-General applies to the High court for the registration of an order in pursuance of an authorization under subsection (1), the court shall register such order.*

(3) *Where an order is registered in the High Court in pursuance of an application under subsection (2), a copy of the amendments to the order (whether made before or after the registration) shall be registered in the same manner as the order and the amendments shall have effect only upon such registration.*

(4) *An order or an amendment of an order shall be registered in the High Court, by the registrar in accordance with any rules of court made in that behalf, with a copy of that order or amendment duly authenticated in accordance with the provisions of section 21.*

(5) *An order and any amendments thereto registered in the High Court under subsection (4) shall have effect, and may be enforced in all respects, as if it were an order made by that court.*

(6) *Where the High Court is satisfied that any order registered under subsection (2) has ceased to have effect in the specified country in which it was made, it shall cancel such registration.*

(7) *Any property forfeited or confiscated or any fine or pecuniary penalty or compensation recovered, by reason of the enforcement of an order registered under this section shall notwithstanding anything in any other law, be default with in such manner as the Central Authority may specify for the purposes of giving effect to the request.*

There have been no cases of requests for assistance received by Sri Lanka under section 19 of MACMA.

(b) Observations on the implementation of the article

Confiscation of corruption proceeds is limited to the proceeds of money-laundering and bribery offences (sections 26A, 28A(1) and 39 of the Bribery Act; sections 3 and 13 PMLA).

Section 19 of the MACMA allows the Central Authority (i.e. Ministry of Justice) to give effect to confiscation orders issued by courts in 'specified countries'. No requests for asset confiscation have been received by Sri Lanka under section 19 of MACMA. It was explained that the requests Sri Lanka has received (as listed under article 51) have been provisionally identified as involving the tracing of criminal proceeds.

In light of the limitations in the domestic confiscation regime to proceeds of money-laundering and bribery offences, it is recommended that Sri Lanka adopt measures to allow the confiscation of proceeds derived from all Convention offences, including through the adoption of a proceeds of crime law.

As noted under article 51, Sri Lanka should further strengthen international cooperation mechanisms as a basis for asset recovery by addressing the limitations in its framework on mutual legal assistance, in line with the findings of Sri Lanka's first cycle country review report for chapter IV of the Convention and the results of the 2015 APG review (arts. 51, 54).

Furthermore, it is recommended that Sri Lanka take measures to allow for the provision of assistance and the enforcement of foreign confiscation, freezing and seizing orders from 'non-specified' countries (arts. 51, 54).

Subparagraph 1 (b) of article 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

...

(b) Take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law; and

(a) Summary of information relevant to reviewing the implementation of the article

Section 13(1) of the Prevention of Money Laundering Act No. 5 of 2006, as amended by Act No. 40 of 2011⁴⁴ (quoted above) allows the Courts to make an Order confiscating any movable or immovable property of a person derived or realized, directly or indirectly from any unlawful activity. This includes the proceeds of foreign predicate offences, defined under section 35(p) of PMLA, so long as the property is located in Sri Lanka:

“an act committed within any jurisdiction outside Sri Lanka, which would either constitute an offence in that jurisdiction or which would if committed in Sri Lanka amount to an unlawful activity within the meaning of this Act”).

(b) Observations on the implementation of the article

Section 13 of the PMLA allows Sri Lankan courts to issue confiscation orders for movable or immovable property derived or realized from unlawful activity, including the proceeds of foreign predicate offences (section 35(p) of PMLA). However, no cases exist that have applied section 13 to property of foreign origin.

It was concluded that Sri Lanka is in compliance with the provision under review.

⁴⁴ <http://www.parliament.lk/uploads/acts/gbills/english/5851.pdf>

Subparagraph 1 (c) of article 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

...

(c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

(a) Summary of information relevant to reviewing the implementation of the article

Sri Lanka's legislation does not provide for non-conviction based confiscation except in the limited case where the offender has absconded.

If the offender is absconding, then steps could be taken under Section 241 of the Code of Criminal Procedure Act, No. 15 of 1979, to proceed in absentia; and if there is a conviction at the conclusion of the trial then the court can make an order confiscating the property of the offender.

Under Section 19 of the Mutual Legal Assistance in Criminal Matters Act, No. 25 of 2002 (quoted above), provisions have been introduced to give effect to an order issued by a competent court in a foreign country forfeiting any property after a proper adjudication. Hence according to this provision the Sri Lankan Central Authority may, in his discretion, take necessary steps to give effect to an order issued by a foreign court, disregarding the fact that the Accused was not present at the trial provided there is an order made by a competent court in a foreign country and that the order is not subject to any further appeal in the aforementioned foreign country.

Section 241 of the Code of Criminal Procedure Act, No. 15 of 1979 provides for proceeding against an accused in his absence if the court is satisfied -

- a. that the Accused is absconding or has left the island; or
- b. he is unable to attend or remain in court by reason of illness and has consented to the commencement or continuance of the trial in his absence; or
- c. that such person is absconding or has left the island and it has not been possible to serve the indictment.

(b) Observations on the implementation of the article

It was explained during the country visit that while non-conviction based confiscation is not currently covered in the Sri Lankan legislation, a policy decision had been taken to include such measures in the proceeds of crime law to be developed. The reviewers welcome these efforts.

It is recommended that Sri Lanka consider introducing non-conviction based confiscation.

Subparagraph 2 (a) of article 54

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article;

(a) Summary of information relevant to reviewing the implementation of the article

Under the provisions of section 15 of the Mutual Assistance in Criminal Matters Act, there is provision to trace or seize property upon executing a search or seizure order issued by a competent authority of a requesting State, after following the required steps explained in the said section.

Freezing is not regulated, although section 124 CPC on the assistance of magistrates in investigations could be applied.

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

Section 15

(1) *Where-*

(a) *a proceeding or investigation relating to a criminal matter involving a serious offence has commenced in a specified country;*

(b) *there are reasonable grounds to believe that a thing relevant to the proceeding or investigation is located in Sri Lanka; and*

(c) *the appropriate authority of such specified country requests the Central Authority to arrange for the issue of a search warrant in relation to that thing,*

the Central Authority may, in his discretion, authorize a police officer in writing, to make an application to the Magistrate within whose jurisdiction that thing is believed to be located, for the search warrant requested by the appropriate authority of such specified country.

(2) *Where a police officer authorized under subsection (1) has reason to believe that the thing to which the request relates is, or shall, at a specified time, be-*

(a) *in the clothing that is worn by a person: or*

(b) *otherwise in a person's immediate control;*

the police officer may-

(i) *lay before such Magistrate such information on oath setting out the grounds for such belief; and*

(ii) *apply for the issue of a warrant under this section to search the person for that thing.*

(3) *Where an application is made under subsection (2), the Magistrate may subject to subsection (6), issue a warrant authorizing a police officer (whether or not named in the warrant), with such assistance, and by such force, as is necessary and reasonable-*

(a) *to search the person for such thing; and*

(b) to seize anything authorized to be seized by the warrant and found in the course of the search that the police officer believes, on reasonable grounds, to be relevant to the proceeding or investigation.

(4) Where a police officer authorized under subsection (1) has reason to believe that the thing to which the request relates is, or shall, at a specified time, be, upon any land, or upon or in any premises, the police officer may-

(a) lay before such Magistrate such information on oath setting out the grounds for such belief; and

(b) apply for the issue of a warrant under this section to search the land or premises for that thing.

(5) Where an application is made under subsection (1) the Magistrate may, subject to subsection (6), issue a warrant authorizing a police officer (whether or not named in the warrant), with such assistance, and by such force, as is necessary and reasonable-

(a) to enter upon the land, or upon or into the premises;

(b) to search the land or premises for such thing; and

(c) to seize anything authorized to be seized by the warrant and found in the course of the search that the police officer believes, on reasonable grounds, to be relevant to the proceeding or investigation.

(6) A Magistrate shall not issue a warrant under this section unless-

(a) the informant or some other person has given to the Magistrate either orally or by affidavit, such further information if any, as the Magistrate requires concerning the grounds on which the issue of the warrant is sought; and

(b) the Magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(7) There shall be stated in a warrant issued under this section-

(a) the purpose for which the warrant is issued, including a reference to the nature of the criminal matter in relation to which the search is authorized;

(b) Whether the search is authorized at any time of the day or night or during specified hours of the day or night;

(c) a description of the kind of things authorised to be seized; and

(d) the date (not being later than one month after the issue of the warrant) on which the warrant ceases to have effect.

(8) If, during a search under a warrant issued under this section, for anything of the kind specified in the warrant the police officer finds any other thing that such police officer believes on reasonable grounds-

(a) to be relevant to the proceeding or investigation in the specified country or to afford evidence as to the commission of an offence in Sri Lanka; and

(b) is likely to be concealed, lost or destroyed if it is not seized;

the warrant shall be deemed to authorize such police officer to seize such other thing.

(9) Where a police officer finds as a result of a search in accordance with a warrant issued under this section any other thing which such police officer believes on reasonable grounds, to be relevant to the proceeding or investigation in the specified country, such police officer shall deliver such other thing into the custody and control of the Inspector General of police in Sri Lanka.

(10) Where a thing is delivered into the custody and control of the inspector-General of police under subsection (9), the Inspector-General of police shall arrange for such thing to be kept for a period not exceeding one month from the day on which the thing was seized, pending a direction in writing from the Central Authority as to the manner in which the thing is to be dealt with, which may include a direction that the thing be sent to an authority of a specified country.

(11) The provisions of the Criminal Procedure Code Act, No. 15 of 1979 relating to the execution of search warrants issued under that Act shall, in so far as they are not inconsistent with the preceding provisions of this section, apply to the execution of warrants issued under this section.

(12) The Magistrate issuing a warrant under this section shall, subject to the provisions of subsection (9), cause any thing seized in the course of a search in accordance with such warrant together with a certificate setting out the place and circumstances of the seizure and the custody of such things after its seizure, to be forwarded to the Central Authority for transmission to the appropriate authority of the specified country making the request for such search warrant.

Code of Criminal Procedure Act (No. 15 of 1979)

124. Magistrate to assist investigation

Every Magistrate to whom application is made in that behalf shall assist the conduct of an investigation by making and issuing appropriate orders and processes of court, and may, in particular hold, or authorize the holding of, an identification parade for the purpose of ascertaining the identity of the offender, and for such purpose require a suspect or any other person to participate in such parade, and make or cause to be made a record of the proceedings of such parade.

(b) Observations on the implementation of the article

Section 15 of the MACMA allows the Central Authority (i.e. Ministry of Justice) to give effect to search and seizing orders issued by courts in ‘specified countries’, and section 17 allows the Central Authority to assist ‘specified countries’ in tracing proceeds of crime.

In light of the limitations in the legal framework to proceeds of money-laundering and bribery offences, it is recommended that Sri Lanka adopt measures to allow freezing and seizure of proceeds derived from all Convention offences, as recommended in Sri Lanka’s first cycle review, including through the adoption of a proceeds of crime law, and ensure that such measures may be taken for purposes of international cooperation.

Subparagraph 2 (b) of article 54

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

...

(b) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article; and

(a) Summary of information relevant to reviewing the implementation of the article

Under the provisions of Section 15 of the Mutual Legal Assistance in Criminal Matters Act, No. 25 of 2002 (quoted above), where a proceeding or an investigation relating to a criminal matter has commenced in a specified country, and if there are reasonable grounds to believe that a thing relevant to the proceeding or investigation is located in Sri Lanka, then a request made by the appropriate authority of the requesting State to search for or seize property can be considered and necessary steps can be implemented under the provisions of Section 15 of the Mutual Assistance in Criminal Matters Act to freeze or seize the property.

Freezing is not regulated, although section 124 CPC on the assistance of magistrates in investigations (quoted above) could be applied.

(b) Observations on the implementation of the article

The observations and recommendation made under the previous subparagraph are reiterated.

Subparagraph 2 (c) of article 54

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

...

(c) Consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.

(a) Summary of information relevant to reviewing the implementation of the article

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

Section 15 (quoted above)

(b) Observations on the implementation of the article

The MACMA provides for a partial preservation of property for confiscation (sections 15(9)-(10)). The envisaged proceeds of crime legislation will convert the Presidential Task Force (START) into a statutory body with a mandate to manage proceeds of crime.

It is recommended that Sri Lanka strengthen measures to preserve property for confiscation and continue efforts to designate a central asset management authority, as recommended in Sri Lanka's first cycle review.

(c) Technical assistance needs

Assistance is required in the following areas for the full implementation of the article:

- Legislative assistance: To develop proceeds of crime legislation.

Article 55. International cooperation for purposes of confiscation

Paragraph 1 of article 55

1. A State Party that has received a request from another State Party having jurisdiction over an offence established in accordance with this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with articles 31, paragraph 1, and 54, paragraph 1 (a), of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, situated in the territory of the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

Pursuant to the Mutual Assistance in Criminal Matters Act (section 19), Sri Lanka acts on requests for confiscation by requesting States only if they have obtained a foreign forfeiture order issued by their court. As per Section 19 of the Mutual Assistance in Criminal Matters Act No 25 of 2002, requests received are processed by the Secretary to the Ministry of Justice. The Secretary can request the Attorney General for its registration in the Provincial High Court, which has a discretion on enforcement.

(b) Observations on the implementation of the article

The Mutual Assistance in Criminal Matters Act (section 19) provides that Sri Lanka may act on requests for confiscation by requesting States only if they have obtained a foreign forfeiture order issued by their court. No requests for asset confiscation under section 19 of MACMA have been received by Sri Lanka to date. However, it was explained that, upon receipt of a request from another State party, Sri Lankan authorities would proceed in accordance with subparagraph 1(b) of article 55 to submit the foreign confiscation order to the domestic authorities for enforcement.

It was concluded that Sri Lanka is in compliance with the provision under review.

Paragraph 2 of article 55

2. Following a request made by another State Party having jurisdiction over an offence established in accordance with this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

Section 15 of MACMA (quoted above) provides for 'assistance in relation to seizure', whilst Part VII of the Act provides for 'tracing proceeds of crime and enforcement of orders'.

(b) Observations on the implementation of the article

The cited provisions of the MACMA address the requirements of the paragraph under review. Measures to identify, trace and seize proceeds on the basis of a foreign request are established (sections 15, 17 MACMA).

Paragraph 3 of article 55

3. The provisions of article 46 of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in article 46, paragraph 15, requests made pursuant to this article shall contain:

(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated, including, to the extent possible, the location and, where relevant, the estimated value of the property and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

(b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested, a statement specifying the measures taken by the requesting State Party to provide adequate notification to bona fide third parties and to ensure due process and a statement that the confiscation order is final;

(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested and, where available, a legally admissible copy of an order on which the request is based.

(a) Summary of information relevant to reviewing the implementation of the article

Section 5 of MACMA and forms G/H/I of the schedule address the requirements of this provision.

5. Applications made by a specified country.

An application made to the Central Authority by the appropriate authority of a specified country requesting assistance in relation to a criminal matter falling within a jurisdiction of a criminal court in that country, shall not be entertained by the Central Authority, unless —

(a) such application is made substantially in the appropriate Form set out in the Schedule to this Act; and

(b) such application is accompanied by such documents as may be specified for that purpose by the Central Authority.

6. Refusal of assistance

(1) A request by the appropriate authority of a specified country for assistance under this Act shall be refused, in whole or in part, if, in the opinion of the Central Authority —

(a) the request relates to the prosecution or punishment of a person in respect of an act or omission which, if it had occurred in Sri Lanka would not have constituted an offence under the law of Sri Lanka;

(b) the request relates to the prosecution or punishment of a person for an offence of a political character;

(c) the request relates to the prosecution or punishment of a person in respect of an act or omission which, if it had occurred in Sri Lanka, would have constituted an offence only under the military law of Sri Lanka;

(d) the request relates to the prosecution of a person for an offence where, such person has been acquitted or convicted in accordance with the law of Sri Lanka in respect of that offence or another offence constituted by the same act or omission as that constituting the offence;

(e) compliance with the request would be contrary to the Constitution of Sri Lanka or prejudicial to national security, international relations or public policy;

(f) based on substantial grounds, compliance with the request would facilitate the prosecution or punishment of, or cause prejudice to, any person on account of his race, religion, language, caste, sex, political opinions or place of birth:

Provided that it shall be lawful for the Central Authority to entertain a request relating to an act or omission which would not have constituted an offence under the law of Sri Lanka had it occurred in Sri Lanka, if, in the opinion of the Central Authority, such act or omission is of a serious nature, and is a criminal matter within the meaning of this Act.

(2) For the purposes of subsection (1), an offence shall be deemed not to be an offence of a political character, if it is an offence within the scope of an International Convention to which both Sri Lanka and the specified country making the request are parties and which imposes on the parties thereto an obligation to extradite or prosecute a person accused of the commission of that offence.

(b) Observations on the implementation of the article

The MACMA specifies requirements for MLA requests and grounds for refusal (sections 5-6). Sri Lanka does not apply any *de minimis* threshold for assistance (section 6).

Paragraph 4 of article 55

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

The procedure in criminal cases is governed by the Code of Criminal Procedure Act No. 15 of 1979. Hence, any action instituted in a criminal court under a special statute, subjects to the provisions of the aforesaid Code and the rules of natural justice.

It is important to emphasize that the Mutual Assistance in Criminal Matters Act applies only in respect of the following categories:

- a. Commonwealth countries specified by the Minister in an order published in the Government gazette.
- b. Non-Commonwealth countries, on the basis of an agreement between Sri Lanka and the specific non-Commonwealth country.

Sri Lanka's policy of providing 'informal' mutual legal assistance on the basis of reciprocity when assistance sought is not obnoxious to the provisions of Sri Lankan laws, is emphasized.

Section 7 of the Code of Criminal Procedure Act makes provision for "matters of criminal procedure for which special provisions may not have been made by the code or by any other law for the time being in force such procedure as the justice of the case may require and as is not inconsistent with the code may be followed."

(b) Observations on the implementation of the article

The MACMA specifies requirements for MLA requests and grounds for refusal (sections 5-6). Section 6 provides inter alia for the refusal of a request if compliance with the request would be contrary to the Constitution or public policy of Sri Lanka. Sri Lanka does not apply any *de minimis* threshold for assistance (section 6).

Sri Lanka is in compliance with the provision under review.

Paragraph 5 of article 55

5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

(a) Summary of information relevant to reviewing the implementation of the article

Sri Lanka furnished copies of its legislation to give effect to this article during the course of the review.

(b) Observations on the implementation of the article

Sri Lanka is in compliance with the provision under review.

Paragraph 6 of article 55

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

(a) Summary of information relevant to reviewing the implementation of the article

Sri Lanka does not make the provision of assistance conditional on the existence of a treaty. Assistance may be provided to ‘specified countries’ with which Sri Lanka has entered into MLA agreements (section 17 MACMA) and also to other countries on a case-by-case basis on the basis of reciprocity. However, the need for a Ministerial order presents significant challenges in practice. The Convention’s provisions are not directly applicable.

(b) Observations on the implementation of the article

It is recommended that Sri Lanka ensure that coercive MLA may be provided to all States parties and consider using the Convention as a legal basis in this regard.

Paragraph 7 of article 55

7. Cooperation under this article may also be refused or provisional measures lifted if the requested State Party does not receive sufficient and timely evidence or if the property is of a de minimis value.

(a) Summary of information relevant to reviewing the implementation of the article

The MACMA specifies requirements for MLA requests and grounds for refusal (sections 5-6). Sri Lanka does not apply any *de minimis* threshold for assistance (section 6).

(b) Observations on the implementation of the article

Sri Lanka is in compliance with the provision under review.

Paragraph 8 of article 55

8. Before lifting any provisional measure taken pursuant to this article, the requested State Party shall, wherever possible, give the requesting State Party an opportunity to present its reasons in favour of continuing the measure.

(a) Summary of information relevant to reviewing the implementation of the article

As a matter of practice, Sri Lankan authorities would consult with requesting countries before refusing mutual legal assistance or lifting provisional measures. However, there have been no such cases in matters related to asset recovery to date.

(b) Observations on the implementation of the article

Based on the information provided it is recommended that Sri Lanka continue to ensure that consultations with requesting States are carried out before lifting any provisional measures.

Paragraph 9 of article 55

9. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.

(a) Summary of information relevant to reviewing the implementation of the article

Section 28A of the Bribery Act No. 11 of 1954 and sections 13(2) and 14 of the PMLA.

Bribery Act No. 11 of 1954

28A. Forfeiture of property in relation to which an offence has been committed.

(1) Notwithstanding anything to the contrary in any other provision of this Act, where a court convicts a person of an offence under this Part of this Act, the court may in lieu of imposing a penalty or fine under section 26 or section 26A,

make order that any movable or immovable property found to have been acquired by bribery or by the proceeds of bribery, be forfeited to the State free from all encumbrances:

Provided however that, in determining whether an order of forfeiture should be made, the court shall be entitled to take into consideration whether such an order is likely to prejudice the rights of a bona fide purchaser for value or any person who has acquired, for value a bona fide interest in such property.

(2) An order made under subsection (1) shall take effect –

(a) where an appeal has been made to the Court of Appeal or the Supreme Court against the order of forfeiture, upon the determination of such appeal confirming or upholding the order of forfeiture;

(b) where no appeal has been preferred to the Court of Appeal against the order of forfeiture, after the expiration of the period within which an appeal may be preferred to the Court of Appeal against such order of Court.

Prevention of Money Laundering Act, No. 40 of 2011

13. Forfeiture of property in relation to which offence of money laundering has been committed.

...

(2) In determining whether an Order of forfeiture should be made under subsection (1), the Court shall be entitled to take into consideration the fact whether such an Order is likely to prejudice the rights of a bona fide purchaser for value or any other person who has acquired, for value, a bona fide interest in such property, or investment or any income or profit earned on such property or investment.

14. Restoring the rights of bona fide claimants.

(1) Any person, being a person to whom the provisions of paragraph (a) of section 2 do not apply, who owns, possesses or is in control of, any account, property or investment to which the Freezing Order made under section 7 relates, may within thirty days of the making of such Order apply to the Court making the same, seeking the intervention of Court to exclude from such Order any account, property or investment he owns, possesses or is in control of.

(2) Where an application is made under subsection (1), the Court shall upon being satisfied on the information before Court that—

(a) the account, property or investment which the applicant owns, possesses or is in control of, is not derived or realized directly or indirectly, from any unlawful activity or from the proceeds of any unlawful activity or the account, property or investment is not an instrumentality used in the commission of such unlawful activity;

(b) the applicant was not in any way involved in the commission of the offence of money laundering in relation to which the Freezing Order was made;

(c) the applicant had acquired an interest in the account, property or investment at any time prior to the commission of the offence of money laundering and the applicant was unaware of the fact that the defendant had used or had intended to use such account, property or investment in or in connection with the commission of such offence; or

(d) the applicant had acquired an interest in the account, property or investment at the time of or after the commission or alleged commission of the offence, that such interest was acquired in circumstances which would not give rise to a reasonable suspicion that such account, property or investment was proceeds or instrumentalities of such offence,

make Order for the release of the account, property or investment which is the subject of the application before it, from the Freezing Order made under section 7, and restore the right of the applicant in respect of the same.

(b) Observations on the implementation of the article

The rights of third parties are addressed in the cited provisions.

Article 56. Special cooperation

Article 56

Without prejudice to its domestic law, each State Party shall endeavour to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences established in accordance with this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Sri Lanka has adopted a policy of providing "informal" mutual legal assistance on the basis of reciprocity. Especially in connection with offences that fall within the scope of the "Convention on the Suppression of Terrorist Financing Act (No. 25 of 2005)" and the Prevention of Money Laundering Act (No. 5 of 2006), Sri Lanka is not hesitant to provide information even without a request by a foreign State.

Moreover, in terms of section 32 of the Prevention of Money Laundering Act No. 5 of 2006 (PMLA), a duty is cast upon the Government of Sri Lanka to afford assistance to other States, as may be necessary in connection with criminal proceedings instituted in the State against any person. Hence, since the offences listed under the Bribery Act are considered as predicate offences, by virtue of section 32 of the PMLA the government of Sri Lanka has an obligation to assist another State party without prior request.

The FIU of Sri Lanka also provides information in accordance with its functions (article 15 Financial Transactions Reporting Act No. 6 of 2006) as well as to the Egmont Group.

The full text of the sections is as follows:

Financial Transactions Reporting Act No. 6 of 2006 (FTRA)

15. (1) The Financial Intelligence Unit—

(q) may disclose as set out in section 16 and 17, any report, any information derived from such report or any other information it receives, to an institution or agency of a foreign state or of an international organization established by the governments of foreign states that has powers and duties similar to those of the Financial Intelligence Unit, if on the basis of its analysis or assessment the Financial Intelligence Unit has reasonable grounds to suspect that the information would be relevant to the investigation or prosecution of any act constituting an unlawful activity, a money laundering offence or an offence of financing of terrorism

Prevention of Money Laundering Act (No. 5 of 2006)

Section 32. The Duty of the Government to Provide Assistance to other States.

32. The Government shall afford such assistance (including the supply of any relevant evidence at its disposal) to the relevant authorities of any foreign State as may be necessary in connection with criminal proceedings instituted in the State against any person, in respect of an offence under the law of that State corresponding to the offence of money laundering.

(b) Observations on the implementation of the article

Sri Lanka has clearly taken substantial steps towards the implementation of article 56. This is evidenced by Sri Lanka's adoption of its policy of providing "informal" assistance on the basis of reciprocity pursuant to a number of its domestic laws, i.e. Convention on the Suppression of Terrorist Financing Act, Prevention of Money Laundering Act No. 5 of 2006, and Mutual Assistance in Criminal Matters Act No. 25 of 2002. In addition, Sri Lanka identified its commitment to informal cooperation and information sharing through its membership in the Egmont Group. Examples of dissemination of information on an informal basis by the FIU were discussed during the country visit.

Article 57. Return and disposal of assets

Paragraphs 1 and 2 of article 57

- 1. Property confiscated by a State Party pursuant to article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law.*
- 2. Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to enable its competent authorities to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties.*

(a) Summary of information relevant to reviewing the implementation of the article

Under section 22 of Act No. 5 of 2006, where the Minister in consultation with the Minister of Finance, considers it appropriate, either as an international arrangement so requires or permits or in the interest of comity, he can order either whole or any part of any property forfeited or the value thereof be given or permitted to the requesting State.

In terms of section 19(7) of the Mutual Assistance in Criminal Matters Act No. 25 of 2002, the Central Authority can specify suitable steps giving effect to a request made by a State party which include return of funds.

Moreover, the said section 19(7) also makes provision for any property forfeited or confiscated or any fine, pecuniary penalty or compensation recovered, by reason of enforcement of an order registered under section 19, to be dealt with in such manner as the Central Authority may specify for the purpose of giving effect to the request.

Hence, on the basis of the request made by the State party, the Competent Authority can order the return of confiscated property.

The provisions are set out below.

Prevention of Money Laundering Act

22. Asset sharing.

Where the Minister in consultation with the Minister of Finance considers it appropriate, either because an international arrangement so requires or permits, or in the interests of comity, he may order that the whole or any part of any property forfeited under the provisions of this Part of this Act, or the value thereof, be given or remitted to the requesting State.

Mutual Assistance in Criminal Matters Act No. 25 of 2002

(7) Any property forfeited or confiscated or any fine or pecuniary penalty or compensation recovered, by reason of the enforcement of an order registered under this section shall notwithstanding anything in any other law, be dealt with in such manner as the Central Authority may specify for the purposes of giving effect to the request.

There have been no cases where Sri Lanka returned or disposed of property confiscated or recovered through the enforcement of a foreign request, nor has Sri Lanka entered into any asset sharing agreements or arrangements.

There have been no completed asset recovery cases (incoming or outgoing) to date.

(b) Observations on the implementation of the article

The central authority, in consultation with the Minister of Finance, may order either the whole or any part or value of confiscated property to be given to a requesting State where deemed appropriate in the interests of comity or based on an international arrangement (section 22 PMLA). The central authority may specify suitable steps giving effect to a request, which include, among others, disposal of confiscated property in such manner as the central authority may specify to give effect to the request (section 19(7) MACMA). The referenced measures do not establish an obligation to return and dispose of assets in accordance with the Convention, nor is reference made to returning property to requesting States in cases not related to money-laundering.

It is recommended that Sri Lanka take measures to enable the central authority to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention.

Subparagraph 3 (a) of article 57

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

(a) In the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in articles 17 and 23 of this Convention, when confiscation was executed in accordance with article 55 and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party;

(a) Summary of information relevant to reviewing the implementation of the article

Pursuant to section 19(7) of the Mutual Legal Assistance Act No. 25 of 2000, if such a request is made, the central authority has the discretion to comply with the request of the State Party and to return the confiscated property. However, prior to such decision, compliance with the provision of section 19 of the Mutual Assistance in Criminal Matters Act is mandatory.

(b) Observations on the implementation of the article

The referenced measures do not establish an obligation to return and dispose of assets in accordance with the Convention in cases of embezzlement of public funds or of laundering of embezzled public funds.

It is recommended that Sri Lanka take legislative and other measures to ensure the return of property as specified in article 57(3) of the Convention.

Subparagraph 3 (b) of article 57

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

...

(b) In the case of proceeds of any other offence covered by this Convention, when the confiscation was executed in accordance with article 55 of this Convention and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property;

(a) Summary of information relevant to reviewing the implementation of the article

Whilst highlighting the relevance of the provisions of section 19 of the Mutual Legal Assistance Act No. 25 of 2000, the necessity for a government policy decision in amending the existing legal framework is emphasized.

(b) Observations on the implementation of the article

The referenced measures do not establish an obligation to return and dispose of assets in accordance with the Convention in cases involving the proceeds of offences under this Convention.

It is recommended that Sri Lanka take legislative and other measures to ensure the return of property as specified in article 57(3) of the Convention.

Subparagraph 3 (c) of article 57

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

...

(c) In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.

(a) Summary of information relevant to reviewing the implementation of the article

Although the Mutual Legal Assistance in Criminal Matters Act No. 25 of 2002 provides for the return of confiscated property, return of the property on the basis given is not specifically provided for.

(b) Observations on the implementation of the article

The referenced measures do not establish an obligation to return and dispose of assets in accordance with the Convention.

It is recommended that Sri Lanka take legislative and other measures to ensure the return of property as specified in article 57(3) of the Convention.

Paragraph 4 of article 57

4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to this article.

(a) Summary of information relevant to reviewing the implementation of the article

There is no law, policy or practice on the issue of costs related to asset recovery.

There have been no completed asset recovery cases (incoming or outgoing) to date.

(b) Observations on the implementation of the article

In the absence of any law or practice on the issue, it is recommended that Sri Lanka clarify the matter of costs in the context of ongoing revision of the legislation.

Paragraph 5 of article 57

5. Where appropriate, States Parties may also give special consideration to concluding agreements or arrangements, on a case-by-case basis, for the final disposal of confiscated property.

(a) Summary of information relevant to reviewing the implementation of the article

Sri Lanka has adopted a policy of providing "informal" mutual assistance on the basis of reciprocity. If assistance sought is not contrary to any provision of law, granting of mutual assistance may be possible under the policy practiced in Sri Lanka.

There have been no cases where Sri Lanka returned or disposed of property confiscated or recovered through the enforcement of a foreign request, nor has Sri Lanka entered into any asset sharing agreements or arrangements.

(b) Observations on the implementation of the article

Sri Lanka has not entered into any asset sharing agreements or arrangements to date and there have been no cases where Sri Lanka has returned or disposed of property through international cooperation.

Article 58. Financial intelligence unit

Article 58

States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with this Convention and of promoting ways and means of recovering such proceeds and, to that end, shall consider establishing a financial intelligence unit to be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions.

(a) Summary of information relevant to reviewing the implementation of the article

Sri Lanka has enacted the Financial Transactions Reporting Act, No. 6 of 2006, to establish the Financial Intelligence Unit (FIU) and to provide for the collection of data relating to suspicious financial transactions to facilitate the prevention, detection, investigation and prosecution of the offences of money laundering and the financing of terrorism respectively. www.fiusrilanka.gov.lk

Offences mentioned in the Bribery Act are considered as predicate offences for the purposes of the Prevention of Money Laundering Act as well as the Financial Transactions Reporting Act under the definition of "unlawful activity". Hence, money derived through corruption and bribery will come under the scrutiny of the Financial Transaction Reporting Act as well.

Financial Transactions Reporting Act, No. 6 of 2006

[http://fiusrilanka.gov.lk/docs/ACTs/FTRA/Financial_Transactions_Reporting_Act_2006-6_\(English\).pdf](http://fiusrilanka.gov.lk/docs/ACTs/FTRA/Financial_Transactions_Reporting_Act_2006-6_(English).pdf)

(b) Observations on the implementation of the article

The FIU, established in 2006 and set up at the Central Bank, is the main supervisory authority for suspicious financial transactions. The FIU is a hybrid-type body, analyzing cases and referring suspicious transactions to law enforcement authorities. Its powers and functions are set out in the FTRA (Part III).

Sri Lanka appears to be largely compliant with this article. This is evidenced by the Financial Transactions Reporting Act No. 6 of 2006, which established Sri Lanka's Financial Intelligence Unit (FIU) and provided for the collection of data relating to suspicious financial transactions to facilitate the prevention, detection, investigation and prosecution of the offences of money laundering and the financing of terrorism. Importantly, Sri Lanka's membership in the Egmont Group further evidences the implementation of article 58.

In addition, Sri Lanka identified that offences in the Bribery Act are considered as predicate offences for the purposes of the Prevention of Money Laundering Act as well as the Financial Transactions Reporting Act under the definition of "unlawful activity". Therefore, money derived through corruption and bribery will necessarily come under the scrutiny of the FIU.

Sri Lanka also identified that under section 17 of the Financial Transactions Reporting Act No. 6 of 2006, there is a provision which allows the FIU of Sri Lanka to enter in to written agreements with a variety of foreign stakeholders, including other States parties, foreign law enforcement entities or similar FIUs, as well as international organizations. The list of MOUs that the FIU has entered into is provided under paragraph 5 of article 14.

Examples of dissemination of information from the FIU to the CIABOC and other anti-corruption were discussed during the country visit.

Article 59. Bilateral and multilateral agreements and arrangements

Article 59

States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this chapter of the Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Under section 17 of the Financial Transactions Reporting Act, No. 6 of 2006, there is provision for the FIU of Sri Lanka to enter in to agreements or arrangements in writing with an institution or agency of a foreign State, or foreign States or an international organization established by the Governments of a foreign State that has powers and duties similar to those of the FIU, and a foreign law enforcement agency or a foreign supervisory authority. The list of MOUs that the FIU has entered into is provided under paragraph 5 of article 14.

Moreover, under Section 2 of the Mutual Assistance in Criminal Matters Act, Sri Lanka can enter in to an agreement with any non-Commonwealth country for the purpose of rendering assistance in criminal matters. When it comes to Commonwealth countries, the Minister can publish an order in the government gazette, declaring the applicability of the said Act to the specified commonwealth country in therein.

So far MLA agreements have been signed with 8 countries (6 with provisions pertaining to asset recovery).

(b) Observations on the implementation of the article

In addition to its treaties on mutual legal assistance, Sri Lanka also subscribes to the Commonwealth (Harare) Scheme on MLA and is a member of the South Asian Association for Regional Cooperation (SAARC), which provides a framework for security cooperation on law enforcement matters, in particular related to drug law enforcement, terrorist and drug offences.

The reviewers see this article as being fulfilled by Sri Lanka.