

United Nations Convention against Corruption

Self-assessment Name : *Self-assessment checklist on the implementation of chapters II (Preventive measures) and V (Asset recovery) of the United Nations Convention against Corruption*

Country : *Sri Lanka*

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Assessor : *Team of National Experts and Consultants*

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Revised draft self-assessment checklist on the
implementation of chapters II (Preventive measures) and
V (Asset recovery) of the United Nations Convention against Corruption***

Summary

A conference room paper containing the first revised draft of the self-assessment checklist for the second cycle of the Implementation Review Mechanism was made available to the Conference of the States Parties to the United Nations Convention against Corruption at its fifth session (CAC/COSP/2013/CRP.6).

Taking into account the comments received on that first draft, an updated second version of the draft was prepared, and it was subsequently shared with States parties and signatories for comments in December 2014. The comments received on the second draft were incorporated in the third draft of the self-assessment checklist for the second cycle of the Implementation Review Mechanism (CAC/COSP/IRG/2015/CRP.1), which was made available to the Implementation Review Group at its sixth session in all official languages of the United Nations.

Pursuant to resolution 6/1 of the Conference of the States Parties, a fourth draft was produced for discussion and made available to State parties and signatories for further comments in December 2015. The fourth draft contained further amendments aimed at continuing to improve the comprehensive self-assessment checklist for the second cycle of the Implementation Review Mechanism without prejudice to its comprehensiveness and to the methodology applied during the first cycle.

The substantive feedback received on the fourth draft was, to the greatest extent possible, incorporated in the fifth draft, which was shared with States parties in February 2016. Further comments received on the fifth draft have been incorporated in the sixth draft, which appears in the present document.

General information

Focal point

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Institutions consulted

The following 26 Institutions were consulted. Attorney General's Department, The Commission to Investigate Allegations of Bribery or Corruption, Ministry of Justice, Judicial service Commission, Ministry of Finance, The Governor- Central Bank, Ministry of Home Affairs, Elections Commission of Sri Lanka, National Procurement Commission, Auditor General's Department, Inland Revenue Department, Ministry of Public Administration and Management, The Institute of Chartered Accountants Sri Lanka, National Chamber of Commerce, Financial Intelligence Unit (FIU), Sarvodaya, Organization of Professional Associations of Sri Lanka (OPA), Law Commission of Sri Lanka, Transparency International-Sri Lanka, Law & Society Trust, BAR Association of Sri Lanka, Finance Commission of Sri Lanka, Public Service Commission, National Witnesses Protection Authority, Ministry of Foreign Affairs.

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

Sri Lanka advances the dualist legal regime relating to the applicability of international treaties. A signatory to the United Nations Convention against Corruption since 15th March 2004 , Sri Lanka was the second state to have ratified the Convention on 31st of March 2004 which came into force on 14th December 2005.

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

2. 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 which remains as the foundation of the 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 existed laws. This led the Roman Dutch law to gain 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 was in 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 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 and 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 and most other legislations commercial and company matters etc. are based on English law principles.

The Sri Lankan judicial system has 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 Court) Additionally, there are numerous tribunals such as the labour tribunals, Arbitration, University Appeals Boards, tax tribunals etc. The Supreme Court exercises the final appellate jurisdiction, writ jurisdiction, supervisory jurisdiction and original jurisdiction on Fundamental Rights Applications whilst the Court of Appeal exercises the appellate jurisdiction and writ jurisdiction. The High Court exercises both appellate and original criminal jurisdictions whereas the Magistrate Court exercises original jurisdiction for minor criminal offences. The District Court exercise original civil jurisdiction.

In 2009, Sri Lanka regained 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. In this backdrop, soon after the last Presidential election and the General Elections, the 19th Amendment to the Constitution was enacted on 15th May 2015 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 UNCAC and other International conventions relating to the prevention of corruption to curb corruption. The

Constitutional Council recommends to the President on 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 nominated by the agreement of 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 to.

The Thirteenth Amendment to the Constitution is also a significant milestone in the legal history of Sri Lanka. This amendment introduced the Provincial Councils and 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 UNCAC includes the 19th Amendment to the Constitution, Bribery Act No.11 of 1954 [Cap. 26], Commission to Investigate Allegations of Bribery or Corruption (CIABOC) Act No. 19 of 1994, Prevention of Money Laundering Act No. 5 of 2006 as amended by Act No. 40 of 2011, 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, Financial Transactions Reporting Act No. 6 of 2006, 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 2005, Assistance to and Protection of Victims of Crime and Witnesses Act No. 4 of 2015 and Right to Information Act No.12 of 2016 etc.

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,) the Attorney General's Department, Financial Intelligence Unit, Department of Inland Revenue, Parliamentary Committee on Public Enterprises (COPE), 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, Elections Commission, Finance Commission, Special Presidential Task Force for Recovery of Illegally Acquired State Assets, Special Presidential Commission of Inquiry into Large Scale Corruption and Fraud.

The offences relating to Bribery was first introduced to the Sri Lankan legal system in 1883, under the Penal Code. Thereafter, between the periods of 1931 to 1948 three (3) different Commissions were appointed by the successive governments under 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 the 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. The investigations

continued in the same form and with regard to the prosecutions, gratification below Rs. 200/= cases were handled by the Bribery Commissioners Department and the remaining cases where gratification over Rs.200/= were handled by the Attorney General's Department . 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 1994. With the enactment of CIABOC, both investigations and prosecutions were vested with the Commission, which is headed by 3 Commissioners. 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 could only be made by Parliament. [s.2(3) of Commission to Investigate Allegations of Bribery or Corruption Act No. 19 of 1994]. Their appointment is tenable for a period of 5 years [s.2(4)] and the Commissioners are not eligible for reappointment.

The President appoints and removes the Director General for Prevention of Bribery and Corruption. The Commission consists of a secretariat, investigation unit, legal unit and an administrative unit. The investigators are serving 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 division 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, transferable and are subject to the PSC for disciplinary control. The Commission as an institution is not under any Ministry or Department. The establishment matters are dealt with through the Presidential Secretariat. The body that has disciplinary control over the Director General is unclear.

The Commission mandate expands to bribery, corruption and Declaration of Assets and Liabilities law. The investigations and prosecutions could 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 UNCAC, the country had taken measures as a policy to prevent and discourage corruption.

3. In a separate communication addressed and e-mailed to the secretariat (uncac.cop@unodc.org), please provide a list of relevant laws, policies and/or other measures that are cited in the responses to the self-assessment checklist along with, if available online, a hyperlink to each document and, if available, summaries of such documents. For those documents not available online, please include the texts of those documents and, if available, summaries thereof in an attachment to the e-mail. If available, please also provide a link to, or the texts of, any versions of these documents in other official languages of the United Nations (Arabic, Chinese, English, French, Russian or Spanish).

Please revert to this question after finishing your self-assessment to ensure that all legislation, policies and/or other measures you have cited are included in the list.

4. Please provide a hyperlink to or copy of any available assessments of measures to combat corruption and mechanisms to review the implementation of such measures taken by your country that you wish to share as good practices.

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

The 19th Amendment to the Constitution which came into operation on 15th May 2015 provides for the establishment of CIABOC. This Constitutional status ensures that the successive Parliaments cannot abolish the Commission by a subsequent legislation. Additionally, it gave specific recognition to UNCAC 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. It provides 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.

Hyper link to the Nineteenth Amendment to the Constitution-

http://documents.gov.lk/files/act/2015/5/00_2015_E.pdf

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; to give 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 7th of March 2015.

02. *Right to Information Act No. 12 of 2016 came into force in August 2016.*

This Act is the latest legislation that was assented to by the Speaker on 4th August 2016 and came into operation with effect from 3rd February 2017. 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 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.”

03. *Declaration of Assets and Liabilities Law No. 1 of 1975 –*

Under this Law *certain specified categories of persons to make periodic declarations of their assets and liabilities in and outside Sri Lanka. It 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 this law applies. It also imposes penalties for non-declaration of assets and liabilities and for false declarations; and to provide for matters connected therewith or incidental thereto.*

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

04. *Prevention of Money Laundering Act No 5 of 2006*

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.

05. *Financial Transactions Reporting Act No. 6 of 2006*

The preamble of the Act stipulates that an act 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 ; to require certain institutions to undertake with due diligence measures to combat money laundering and the financing of terrorism ; to identify the authority which will be responsible for monitoring the activities of all institutions to whom this act applies ; and to provide for matters connected therewith or incidental thereto.

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

- a) *Identify the division of labor in the preparation of the self-assessment check list. Accordingly, identified 26 institutions and the areas that such institutions must consider. Details of the institutions and the areas considered by them are as follows. .*

CIABOC, [Part A,B,C Article 6], Attorney General's Department, [Part A,B,C],Ministry of Justice, [Part A,B,C],Judicial service Commission, [Part A Article 11], Ministry of Finance, [Part A, Article 8,9], The Governor-Central Bank, [Part A Article 8,9], Ministry of Home Affairs, Election Commission Sri Lanka, [Part A Article 7], National Procurement Commission,[Part A Article 8,9], Auditor General's Department, [Part A Article 9], Inland Revenue Department,[Part A Article 9], Ministry of Public Administration and Management,[Part A Article 7,8], The Institute of Chartered Accountants Sri Lanka, [Part A Article 9,12], The Ceylon Chamber of Commerce, [Part A Article 12], National Chamber of Commerce, [Part A Article 12], FIU, [Part B,C Articles 14,52,58], Sarvodaya, [Part A Article 13], OPA, [Part A Article 13], Law Commission of Sri Lanka, [Part A Article 10], Law Commission of Sri Lanka, Transparency International Sri Lanka, [Part A Article 13], Law & Society Trust, [Part A Article 13], BAR Association of Sri Lanka, [Part A Article 13], Finance Commission of Sri Lanka,[Part A Article 09], Public Service Commission,[Part A Article 7,8], National Witnesses Protection Authority, [Part A], Ministry of Foreign Affairs [Part B,C]

- b) *Wrote letters with copies of the self-assessment checklist to all the 26 institutions calling for their observations. Meanwhile, sent invitations to all the 26 institutions to be present with their observations for a workshop on 13th September 2016.*
- c) *Gathered all relevant Laws regulations and other material.*
- d) *Scrutinized the observations received from the respective institutions and prepared a working draft of the self-assessment checklist. .*
- e) *Organized a full day workshop on 13th September 2016 at CIABOC Auditorium with the participation of the institutions. The self-assessment checklist was projected in a screen where participants' comments were added. This exercise included consulting views, discussions and gathering of further information of the respective participants from the relevant institutions article by article of both Chapters.*

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

- (i) **Review of the existing laws and introduce new legislations to combat corruption.**

In this regard, the Commission to Investigate Allegations of Bribery or Corruption has already submitted a Memorandum to the Cabinet suggesting the relevant amendments necessary to the

existing “Declaration of Assets and Liabilities law No 1 of 1975”. The suggested amendments included 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 bribed with expensive gifts sometimes even houses. The same type of allegations also exists against civil society organizations. Both the media and the civil society are significant and essential stakeholders in the fight against corruption. In such situation their integrity should also be in line with the public servants and should not be doubted by the citizens. Nor should the media and civil society who are the voices against corruption have an advantage over the public servants. It is the duty of the government to create and maintain a level playing field for all. Therefore, like the public servants who are liable under the law to declare their assets and liabilities to demonstrate their integrity as custodians of 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 the full effect of the asset declaration 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 Liability law.*
- (b) *Article 16 of the UNCAC requires the introduction of bribery as a criminal offence with regard to foreign public officials or officials of public international organizations in order to prevent bribery in international business. In order to prevent bribery by foreign public officers and public international organizations, it is recommended that such persons and entities should also be brought under the operation of this Act 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. Currently, Sri Lanka does not recognize foreign bribery as an offence in its legal system. (a special form would have to be developed for this purpose)*
- (c) *To increase the number of the current entities that are entitled to call for asset declarations for investigations [To amend section 5 (2)] new provisions are recommended to enable the Attorney General, Commission to Investigate Allegations of Bribery or Corruption, Commissioner General of the Inland Revenue Department, Commissioner of Elections, Heads of all State Institutions carrying out investigations, inclusive of 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 of a public official that information is prohibited from being used for any purpose other than what is*

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 as the central authority in respect of Declarations of Assets and Liabilities since CIABOC is currently handling all matters relating to the declaration of Assets and Liabilities.*
- (h) To increase the maximum fine under section 9 of the Law from Rs. 1000.00 to Rs. 10,000.00*
- (i) To include new provisions of law into Law No 1 of 1975 whereby criminal liability is imposed if such information given under Law No 1 of 1975 is made use to defame the declarant or made use of for commercial or any other purpose other than, providing such information to the public.*
- (ii) **Study the global best practices** – CIABOC is currently studying the organizational structures; (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.*
- (iii) **Awareness programs-** CIABOC and the Ministry of Education have commenced several long term and short-term projects to educate the next generation. Short term projects include month of October being declared as the anti-corruption month in all schools, creative competitions in 7 segments, introducing regulations to curb corruption in the school administration. Long-term projects include introducing anti-corruption measures to school syllabuses, establishing Integrity clubs in all schools, etc.*

7. 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***
- 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 – Article 5,6,14***

Thematic areas

A. Prevention (arts. 5-13)

Article 5. Preventive anti-corruption policies and practices

Article 5, paragraph 1

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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes, in part

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

State policy reflected in the Constitution

1. Sovereignty

The Constitution of Sri Lanka sets out the fundamental principles of law in the country. Accordingly, the sovereignty is vested with the people of Sri Lanka and the same is exercised through the executive, legislature and the judiciary reflecting a democratic setup of government.

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 as it is a trust. Consequently, people have an entrenched right to freedom from corruption in any shape or form. The government practices and procedures are based on this fundamental rule of law.

2. Fundamental Rights

Fundamental rights under chapter III of the Constitution paves way for the state policy on the exercise of sovereign power. Fundamental rights, an aspect of sovereignty are not delegated and entrusted with any organ of the government and hence must be given precedence over governmental powers.

3. Rule of Law

'All persons are equal before the law and are entitled to the equal protection of the law'
(Article 12 (1))

This Article requires the government to act under a framework of recognized rules and principles restricting the discretionary powers of public bodies and officials. All statutes are based on rule of law.

4. *Directive principles of state policy and fundamental duties – chapter VI*

This chapter requires all persons to refrain from corruption and also to expose corruption of which he becomes aware in order to protect public property etc. Though these rights or obligations are not enforceable, every public officer who mandatorily takes an oath of allegiance is bound by these principles.

It further enshrines corrupt-free guiding principles for the “state “ in carrying out its duties.

5. *Public service*

Basic structure of the public service with basic standards guaranteeing its proper management, transparency in the system, disciplinary procedures, etc. are set out under chapter IX of the Constitution.

6. *Management of public funds and fiscal transparency*

State fiscal policy and auditing process is stipulated under Chapter XVII of the Constitution guaranteeing its transparency, continuous monitoring, accountability etc.

7. *Election policies ensuring free and fair elections for the public to elect their representatives are set out under chapters VII and XIV of the Constitution.*

8. *The 19th Amendment to the Constitution provides greater recognition to the principles of rule of law, proper management of public affairs and transparency etc.*

9. *The 19th Amendment to the Constitution recognizes society participation.*

10. *UNCAC and other relevant international conventions bearing upon the prevention of corruption, to which Sri Lanka is a party were given Constitutional recognition under Article 156A (1)(c).*

11. *The establishment of Constitutional Council with the participation of 3 citizens, strengthening of 10 independent Commissions under the Constitution, enactment of Right to Information Act are significant contributions to the legal system of the country to address Article 5(1) of the UNCAC. Right to information is enshrined under Article 14A of the Constitution.*

12. *Several legislations and guidelines are in place to prevent corruption in the private sector. Eg. Companies Act No. 07 of 2007.*

13. In October 2015, Sri Lanka endorsed the Open Government Declaration in order to enhance society's participation in governance.

14. Specific legislations prevent money laundering. Eg. Prevention of Money Laundering Act No. 05 of 2006

3. Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

1. 19th Amendment to the Constitution established two additional independent commissions. i.e., the Audit Service Commission and the National Procurement Commission. Accordingly, since the 19th Amendment to the Constitution, the following 9 Commissions function as independent commissions;

(a) The Election Commission

(b) The Public Service Commission

(c) The National Police Commission

(d) The Audit Service Commission

(e) The Human Rights Commission of Sri Lanka

(f) The Commission to Investigate Allegations of Bribery or Corruption

(g) The Finance Commission

Part IV of the Right to Information Act No. 12 of 2016 provides for the establishment of a Right to Information (RTI) 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 of the Constitution. The 19th Amendment to the Constitution further strengthen the appointments of the Commissioners to the Commission.

A number of Supreme Court decisions have reflected the nature and extent of 'Public Trust Doctrine' which hold persons, and acts and omissions, to be subject to this Doctrine. These cases discuss the decisions made by grass root level decision making state officers to the Cabinet of Ministers implicating the right to freedom from corruption in any and every exercise of legislative, executive and judicial power.

Court decisions also have interpreted 'Rule of Law' as requiring the observance of minimum standards of openness, fairness, and responsibility in administration.

Rule of Law

Perera v Ranatunga [1993] ISLR 39 - Absence of arbitrary power under rule of law

Priyangani v Nanayakkara [1996] ISLR 399, 404 -do

Jayawardena v Wijayatilake [2001] ISLR 126, 143 - minimum standards of openness, fairness & responsibility

Fundamental Rights

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

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

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

Public Trust Doctrine

Sugathapala Mendis and Others v Chandrika Bandaranaike Kumaratunga and others 2008 2SLR 339 – Public Trust doctrine

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

Open Government Partnership National Action Plan was finalized with the participation of the CSOs and government stakeholders.

Article 5, paragraph 2

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

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes, in part

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

(a) Promote the participation of society measure currently taken-

- (i) In 2007 the national anti-corruption action plan was prepared following a consensus process and with the assistance of USAID.*
- (ii) The CIABOC launched a three (3) year action plan for combating Bribery and Corruption on 9th December 2015 on a strategy based on “Seven Steps to Zero Tolerance of Corruption”. This action plan was prepared with the participation of the Civil Society.*
- (iii) The CIABOC for the first time since its establishment, actively joined hands with the civil society in 2015 on prevention work and since then several projects as set out below are been carried out with the active participation of the civil societies.*

- (iv) *Establishing Y-MaC- (Youth Movement against Corruption) Oct 2016*
- (v) *Conducted several awareness programs educating the society on prevention.*
- (vi) *CIABOC has provided several measures to enable the citizens to conveniently make complaints on bribery and corruption such as introducing a hotline, facsimile, postal and an email address.*
- (vii) *Since 2015, all complaints are acknowledged with a reference number and the public could inquire the status of their complaints using the reference number.*
- (viii) *The amendments to the Declaration of Assets and Liabilities Law was developed with the participation of the civil society and tendered to the President.*
- (ix) *CIABOC web site provides access to public disseminating information on its activities.*

(b) Promote the participation of society measure to be taken-

- (i) *Currently, the public has to follow a tedious process to obtain a copy of the asset declaration of a public official even after making a payment. The amendment seeks to facilitate the public to obtain electronic copies without payment.*
- (ii) *CIABOC to establish a prevention unit with the participation of the Civil Society, working groups, anti-corruption activists and CSO as members.*
- (iii) *The government is committed to promote transparency, accountability and public participation (TAP) in the thematic areas of health, education, information and communication technology, 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 the government organizations follow the rule of law.*
- (iv) *On 11th October 2016 the Cabinet approved the Open Government Partnership National Action Plan.*

(c) 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 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 the CSOs to the President on the necessary amendments to the Declarations of Asset and Liabilities Law.*
- (d) **Proper management of public affairs and public property**
 - (i) *Establishments Code and PSC rules govern the appointment, code of conduct, 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 16th December 2009. Same is being reviewed periodically for implementation*
 - (iv) *Offences relating to the public property are set out in Offences against Public Property Act No, 12 of 1982 as amended. Alienation of public property is governed by several statutes.*
- (e) **Integrity, transparency, and accountability.**

Article 13 of the constitutions requires due process and fair trial. Establishments Code and PSC rules govern the appointment, code of conduct, disciplinary control of public officers.

Government financial and procurement procedures are governed by Financial Regulations and government procurement guidelines. National procurement Commission is constitutionally required to formulate guidelines on rule of Law principles on procurement. [Article 156 C (1)]

- (i) *Right to Information Act No 12 of 2016 provides an opportunity for transparency and accountability.*
- (ii) *Cabinet approval is already been granted for OGP National Action Plan.*
- (iii) *The National Audit bill has been placed for the cabinet approval.*
- (iv) ***Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.***

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. Eg. Department of Immigration and Emigration, Department of Customs, Registrar General's Department etc.

Effect of Establishments Code, Financial regulations and procurement guidelines have been spelt out in several Supreme Court judgements.

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

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

http://www.lawnet.lk/list_page_full.php?page=10&id=15&cat=f

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

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

Article 5, paragraph 3

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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes in part

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

- (i) *The Law Commission was established by Act No 3 of 1969. The Law Commission is a Department under the Ministry of Justice. It statutorily requires to periodically review the laws, to advise on anomalies, repeal obsolete laws and modernize the applicable law.*

see <http://www.lawnet.lk/process.php?st=1981YIV16C&hword=%27%27&path=5> for Law commission act of 1969

2. Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

In 2006, the Law Commission proposed amendments to both the Bribery Act as well as the Commission to Investigate Allegations of Bribery or Corruption Act.

see <http://www.lawnet.lk/process.php?st=1981Y1V16C&hword=%27%27&path=5> for Law commission act of 1969

Several legislations were amended in order to fill the lacunas in existed laws.

Eg. Prevention of Money Laundering Act No. 5 of 2006 was amended by Act No. 40 of 2011 New Companies Act was enacted as Act No. 07 of 2007 abolishing the previous Companies Act No. 17 of 1982

Article 5, paragraph 4

4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal systems, 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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes, in part

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Sri Lanka in 2004 has ratified the UNCAC and has participated in many regional and international programmes aimed at the preventing of corruption. These measures include;

- (i) *On 26th 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 (of which Sri Lanka is a member) held discussions on a concept paper to establish SAARCPOL for the Prevention of organized crimes, combating corruption, drug abuse, drug trafficking and money laundering and training requirements of police officers and networking among Police authorities in the region.*

- (iii) *CIABOC has carried out periodical law reviews with the USAID and UNDP.*
- (iv) *Since 2015, CIABOC has been organizing several awareness workshops all over the country to educate the public and government officers.*
- (v) *In November 2015 CIABOC signed and MOU with UNDP to enhance preventive measures in Sri Lanka.*
- (vi) *The CIABOC launched three year action plan for combating Bribery and corruption in Sri Lanka namely “SEVEN STEPS TO ZERO TOLERANCE”*

SEVEN STEPS TO ZERO TOLERANCE

The Commission will work towards a culture of zero tolerance of corruption of any kind. To make this a meaningful endeavor, it is imperative that different stakeholders work together. The Commission, as the main focal institution established by statute for the fight against corruption, will forge partnerships with civil society, the larger public and the ‘National Integrity System’ (NIS) to work towards the goal of zero tolerance.

As a first step, the Commission has engaged with civil society and the larger public to launch a series of activities. The Commission believes that the fight against corruption must be strategic, broad-based, and must start here and now. The ‘Seven Steps to Zero Tolerance’ marks the start of the process which the Commission is committed to take forward over the next three (3) years.

The Seven Steps are based on two pillars; enforcement and prevention, underpinned by a revised and updated legal and institutional framework

***Enforcement** of anti-bribery and anti-corruption laws is the core mandate of the Commission. The 19th Amendment to the Constitution has empowered the Commission to investigate acts of bribery or corruption on its own initiative.*

The Commission considers the effective and speedy investigation of complaints and allegations as one of its core responsibilities. This Commission will pursue with great vigour. Bribery and corruption has grown in sophistication and the Commission will develop new techniques and methods of investigation to match this sophistication. Close coordination with national and international agencies is crucial to enhance the quality of investigations and to strengthen the global alliance against bribery and corruption. Currently, enforcement under the Bribery Act is limited to the public sector. The Commission will explore how the legal framework can be strengthened so that private sector can also be investigated and prosecuted.

Prosecutions relating to bribery and corruption are conducted through the existing criminal justice process. The Commission is conscious of the complexities of contemporary crimes of bribery and corruption and will pay special emphasis in developing innovative methods at

discharging its duties, including having effective mechanisms to protect whistle blowers and witnesses. The Commission will take steps to enhance its capacity with regard to surveillance to enable it to proactively monitor anticipated cases of bribery and corruption. The current legal and institutional framework will be reviewed to establish an effective legal foundation.

***Prevention** requires eliminating opportunities and incentives for people to engage in bribery and corruption. This requires a behavioural and attitudinal change in society. The Commission, based on its experiences, recognizes that in order to implement a policy of zero tolerance, it must make prevention one of its core goals. Developing and strengthening the Commission's partnership with the public, civil society and community-based organizations will be a critical part of mainstreaming and broad basing prevention.*

The efficacy of the Commission, especially in prevention, depends on the wider institutional and legal framework, the 'National Integrity System' that consists of institutions, laws, regulations and circulars that have a direct and an indirect bearing on the Commission's mandate.

The seven steps encompass the following;

*First step – **Watch & Catch**: "Integrity officer" in each institution to be a whistleblower, informant, watchdog and the Commission's representative.*

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.

*Second step – **Map & Display**: Processes mapping of public services*

Lack of knowledge and clarity of public service processes results in abuse. 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.

*Third step – **Change & Build**: Educate the next generation*

It is the society that ultimately will be the most effective force against bribery and corruption. Engaging with children and young persons to inculcate the values of integrity is essential to achieve zero tolerance in the years to come. The Commission will implement special initiatives for children and young persons of different age categories with the assistance of civil society organizations.

*Fourth step – **Voice for Zero Tolerance**: anti-corruption message through media and social media*

Media is a powerful tool to spread the message of anti corruption to the society to constantly remind of corruption costs to society and consequences to offenders. The Commission will

utilize its resources and use its partners to spread an effective message via media and social media.

*Fifth step - **Walk the Talk:** Dedicated unit for prevention*

Prevention is key to zero tolerance in addition to investigation and prosecution of credible complaints. A dedicated Corruption Preventive Unit will be established to design, implement and monitor methods to minimize opportunities and incentives to engage in bribery and corruption. The Unit will mainstream prevention activities and achieve 100% compliance with Asset Declaration requirements.

*Sixth step - **Take the Lead:** Implement the 19th Amendment to the Constitution, revise the law, develop Strategic Action Plan and strengthen the Commission.*

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.

*Seventh step - **Connect the Dots:** use the NIS and partner with CSOs*

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.

- 3. Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**
 - (a) Seven steps to zero tolerance
 - (b) 2016 action plan

Sri Lanka OGP National Action Plan approved under Open Government Declaration leads to periodical evaluation of government openness.

Technical assistance

[At the end of each article, the following set of questions on technical assistance will be included.]

1. Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

2. Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required.

For example:

No assistance would be required

Legislative assistance: please describe the type of assistance – To review the present existing laws

Institution building: please describe the type of assistance – The models that have a proven track record.

Policymaking: please describe the type of assistance

Capacity building: please describe the type of assistance – Basic and advance investigation techniques, Forensic auditing

Research/data-gathering and analysis: please describe the type of assistance – monitoring techniques

Facilitation of international cooperation with other countries: please describe the type of assistance

Others: please specify

3. *Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.*

Article 6. Preventive anti-corruption body or bodies

Article 6, paragraph 1

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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

(Y) Yes

The Commission to Investigate Allegations of Bribery or Corruption was established by Act No 19 of 1994 (CIABOC). It is the statutory body empowered by law to carry out enforcement and implementation of preventive measures in the drive against corruption. The three-year strategy to curb corruption is reflected in the 'seven steps to zero tolerance' that was launched on 9th December 2015 and handed over to the HE the President on the International Anti-Corruption day. Accordingly, the Sri Lanka's anti-corruption strategy is based on two pillars. i.e., enforcement and prevention. The 2016 Action Plan was developed based on the seven steps and considering the needs to strengthen the enforcement units.

Consequent to the Presidential election on 8th January 2015 and the Parliamentary elections on 17th August 2015, the new government established two other mechanisms to expedite to bringing the offenders of bribery or corruption before justice and recover the proceeds of crime. Accordingly, in addition to the Criminal Investigation Department (CID) that was investigating inter alia money-laundering matters, a new unit under the name Financial Investigations Division (FCID) was established under the Sri Lanka Police to investigate grand corruption and money laundering offences. Additionally, to expedite the investigations a Presidential Commission of Inquiry to Investigate an Inquire into Serious Acts of Frauds and Corruption was also established with a small secretariat. Two sitting High Court Judges, one appellate court judge and two prosecutors of the Attorney General's Department and several investigators from Sri Lanka Police assist this Commission. The Presidential Commission investigate and transmit the file to the respective agency to institute action. The readily available investigation material available to investigators includes declarations made under the Declaration of Assets and Liabilities Act No 1 of 1975, Tax returns, Bank statements, and search and seizure powers to name a few.

The enforcement mechanism in Sri Lanka is complemented by the Auditor General's Department; FIU- Financial Intelligence Unit ; COPE (Parliamentary Committee on Public Enterprises; COPA- Parliamentary Committee on Public Accounts; Anti-corruption Secretariat and the OMBUDSMAN (The Parliamentary Commissioner for Administration).

Legal officers of CIABOC currently conduct prevention work by conducting workshops and awareness programs on an ad hoc basis. In 2017, a structured programme on preventive measures is envisaged. This includes establishing a prevention unit for each Province, development of a syllabus to teach anti-corruption to public servants, create 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 programs island wide.

3. Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

1. *The Commission to Investigate Allegations of Bribery or Corruption Act No 19 of 1994*
<http://www.lawnet.lk/process.php?st=1994Y0V0C19A&hword=%27%27&path=2>
2. *FCID – Gazette*
3. *CID- Police Ordinance No. 16 of 1865 as amended*
4. *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 1988)*
<http://www.lawnet.lk/process.php?st=1981Y3V63C&hword=%27%27&path=5>
5. *Financial transactions reporting act no 6 of 2006*
6. <http://www.lawnet.lk/process.php?st=2006Y0V0C6A&hword=%27%27&path=5>
7. [Annual report 2015](#)

Article 6, paragraph 2

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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes in part

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

3. Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

In 1994, with the enactment of the 17th Amendment to the Constitution, the Commission to Investigate Allegations of Bribery or Corruption was established by Act No 19 of 1994.(CIABOC) Today, it is this statutory body that exists as the independent body to combat corruption. It is headed by 3 Commissioners. To maintain the independence of the Bribery Commission, 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 5 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 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 could only investigate complaints that are directed for investigation by the Commission. Both appointment and removal of the Director General is 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.

The Commission consists of a legal unit, investigation unit and administration unit. The Commission under the supervision of the Public Service Commission (PSC) carries out the interviews for recruitments of the legal officers. 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. The investigations and prosecutions could only be carried out on the specific direction of the Commission. However, for the Commission to maintain its true independency, it is necessary for the investigators to be employees of the Commission. For this reason, a cabinet paper was submitted on 15th 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, IT specialists, establishing an intelligence unit etc.

Section 5 of the Commission to Investigate Allegations of Bribery or Corruption 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 mandate expands to bribery, corruption and Declaration of Assets and Liabilities law. It is statutorily empowered to investigate and prosecute all complains.

Article 6, paragraph 3

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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes

2. Has your country provided the information as prescribed above? If so, please also provide the appropriate reference.

Yes

1. *The Director General – Point of contact for UNCAC- The Commission to Investigate Allegations of Bribery or Corruption.*
2. *The Secretary - Ministry of Justice for Mutual Legal Assistance requests.*
3. *The Secretary -Ministry of Defence for Extradition*
4. *The Director -FIU for financial intelligence unit work.*
5. *Inspector General of Police -for informal police assistance.*

Technical assistance

[At the end of each article, the following set of questions on technical assistance will be included.]

1. Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

2. Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required.

For example:

No assistance would be required

Legislative assistance: please describe the type of assistance

Institution-building: please describe the type of assistance

Policymaking: please describe the type of assistance

Capacity-building: please describe the type of assistance

Research/data-gathering and analysis: please describe the type of assistance

Facilitation of international cooperation with other countries: please describe the type of assistance

Others: please specify

3. Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Article 7. Public sector

Article 7, paragraph 1

1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavor 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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

As per Article 41B(1) of the Constitution, the Chairman and members inter alia of the Public Service Commission, National Police Commission, Audit Service 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 'policy' relating Public Officers, including the policy relating to appointment, promotion, transfer and disciplinary control of Public Officers are determined by the Cabinet of Ministers.

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

The appointment, promotion, transfer, disciplinary control and dismissal of Public Officers is vested in 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, promotion, 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. Administrative Appeal Tribunal.

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.

Until the Public Service Commission otherwise provides, such rules, regulations and procedure pertaining to Public Service as are in force are deemed to continue and be in force. The Public Service Commission introduced the Procedural Rules in respect of Public Service in the year 2009, which governs 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 20th February 2009, schemes of recruitment and service minutes approved by the Public Service Commission. Vacancy announcements are advertised through the Government Gazette, websites and at times through newspapers. Selections are based on interviews and at times on written examinations.

(Gazette No 1589/30 on 20th February 2009

(<http://www.gic.gov.lk/gic/pdf/gazette18en.pdf>)

Schemes of Recruitment and Service Minutes, which are prepared by the relevant Government Departments and Ministries, in consultation with all the stake-holders, as approved by the Public Service Commission, provides for inter alia the recruitment and promotion regarding a particular Service.

Article 55(4) of the Constitution empowers the Cabinet of Ministers to make a code of Conduct for the public officers. The Establishment Code has detailed provisions relating to the services of a public officer, various aspects pertaining to Public Service, including the appointment and disciplinary control of Public Officers. However, all provisions of the Code are not strictly enforced at all times.

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

Then 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 the powers of appointment and disciplinary controls of all police officers.

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

3. Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

- *Constitution of the Democratic Socialist Republic of Sri Lanka (Chapter ix)*
<http://www.parliament.lk/files/pdf/constitution.pdf>
- *Nineteenth Amendment to the Constitution – Articles 49, 54,56, 57, 61*
- *Gazette No 1589/30 on 20th February 2009 (<http://www.qic.gov.lk/qic/pdf/qazette18en.pdf>)*
- *Establishments Code*
- *Right to Information Act No 12 of 2016 -*

Article 7, paragraph 2

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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes,

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

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. 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, Parliamentary Elections Act, No. 1 of 1981, Provincial Councils Elections Act No. 2 of 1988, 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.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

- *The Constitution of the Democratic Socialist Republic of Sri Lanka 1978 – Chapters XIV and XIVA – Articles 88 to 104 (J) –*

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

- *Declaration of Assets and Liabilities Law No 1 of 1975 as amended – <http://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Sri%20Lanka%20Declaration%20of%20Assets%20and%20Liabilities%20Act%201975%20amended%201988%20en.pdf>*

Section 4(ia) 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 1988) which 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

Article 7, paragraph 3

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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes, in part

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Presently Sri Lanka doesn't have laws relating to funding of candidatures for elected public office or funding of the political party how the subject was under discussion at the anti-corruption summit which was held on 9th December 2016. A draft has also been made for the code of conduct of Parliamentarians. 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 of the nomination or within three months of the election results. However, non-compliance with this requirement is no hindrance to be elected to public office.

Sections 2 set outs application of laws

[http://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Sri%20Lanka Declaration%20of%20Assets%20and%20Liabilities%20Act 1975 amended%201988 en.pdf](http://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Sri%20Lanka%20Declaration%20of%20Assets%20and%20Liabilities%20Act%201975%20amended%201988%20en.pdf)

3. Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Article 7, paragraph 4

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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes, in part

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Chapter XXXII 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. The Establishment Code chapters 29 and 30 also provide guidelines on conflict of interest.

Dilan Perera Vs Rajitha Senarathne (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

3. Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Technical assistance

[At the end of each article, the following set of questions on technical assistance will be included.]

1. Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

- Political campaign financing-
- Conflict of interest

2. Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required.

- *Assistance required -yes*
- *Legislative assistance: to draft laws*
- *Institution-building: Parliament and other electoral bodies.*
- *Policymaking: Cabinet of Ministers*
- *Capacity-building: Awareness*
- *Research/data-gathering and analysis: global best practices*

3. Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information. As stated above.

Article 8. Codes of conduct for public officials

Article 8, paragraph 1

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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes, in part

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The Secretary to the Ministry of Public Administration under the Authority of the Cabinet of Ministers had issued the "Establishment Code of the Government of the Democratic Socialist Republic of Sri Lanka". Chapter XLVII of the Establishment 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.

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, Chairman and Staff of Public Corporations are required to declare Assets and Liabilities within three months of his appointment to the public office and thereafter annually. Failure to

make such a declaration is liable for prosecution. Non-submission of the declaration is a ground for disciplinary control under Chapter 29 of the Establishment Code too. Section 29 of Chapter XLVIII 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.

3. Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

- *Establishments Code*
- *Declaration of Assets and Liabilities Law No 1 of 1975 as amended*

Article 8, paragraphs 2 and 3

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.

1. Is your country in compliance with these provisions?

Yes/Yes, in part/No

Yes. In part

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with these provisions of the Convention.

Chapter 47 and 48 of the Establishment Code provide for and regulate the General Conduct and Discipline of public officers. Further, under section 8.1 of the said chapter, adherence to the Establishments code, financial regulations, public administration and treasury circulars is mandatory to all public servants.

Chapter XLVII of the Establishment Code of the Government of Socialist Republic of Sri Lanka identifies principles governing the general conduct and discipline of Public Officers. Provisions therein are in line with the GA Resolution 51/59.

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

4. Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Article 8, paragraph 4

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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes, in part

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

There are no general or specific laws that require public servants to report corruption. However, several specialized laws has some provisions requiring institutions to refer information to the respective authorities. (Section 211 of the Inland Revenue Act, Section 4 of the Commission to Investigate Allegations of Bribery or Corruption,) Directive principles of the Constitution.

In terms of Section 6, there is specific provision to protect the informants under the Assistance to and Protection of Victims of Crime and Witnesses Act, No. 04 of 2015.

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.

3. Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Article 8, paragraph 5

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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Declaration of Assets and Liabilities Law No 1 of 1975 as amended.

Section 2,3,4,5,6,and 7 of the Declaration of Assets and Liabilities Law No 1 of 1975 as amended sets out the persons to whom this laws applies, duty of such persons to make declaration of assets and liabilities and to whom declaration of assets and liabilities are to be made. Further, the sections empower the Director General to call for additional information.

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

3. Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Article 8, paragraph 6

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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Chapter 47 and 48 of the Establishment 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 to all public servants.

Furthermore, as provided by sections 2, 3, and 4 of The Declarations of Asset and Liabilities Law 01 of 1975, if there is noncompliance by the officers refer to therein such officer can be prosecuted for committing an offence under Section 9.

3. Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Technical assistance

[At the end of each article, the following set of questions on technical assistance will be included.]

1. Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

2. Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required.

For example:

No assistance would be required

Legislative assistance: please describe the type of assistance

Institution-building: please describe the type of assistance

Policymaking: please describe the type of assistance

Capacity-building: please describe the type of assistance

Research/data-gathering and analysis: please describe the type of assistance

Facilitation of international cooperation with other countries: please describe the type of assistance

Others: please specify

3. Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Article 9. Public procurement and management of public finances

Article 9, paragraph 1

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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes in part

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Consequent to the introduction of the 19th Amendment to the Constitution, the National Procurement Commission was established under Article 156 B(1) of the Constitution. The members of the said Commission have also been appointed. All government procurement must be carried out in terms of the Procurement Guidelines of 2006. The National Procurement Commission is in the process of reviewing it to ascertain whether it is adequate to meet the present day challenges pertaining to procurement.

The procurement guidelines were issued in 2006 by the National Procurement Agency, which was established on a Presidential Directive, with the approval of the Cabinet of Ministers and with the concurrence of the General Treasury. These guidelines make provision for the establishment of Institutions and Procurement Committees necessary for the implementation

of these guidelines and contain their respective functions. It further makes provision relating to different procurement methods, preparedness and planning, bidding procedures, Awarding of Contracts etc;

Financial Regulations of the Government of the Democratic Socialist Republic of Sri Lanka published in 1992 by the President in His capacity as the Minister of Finance lays out Rules relating to the management of Public Finance in the State sector.

Additionally, circulars are issued from time to time relating to the procurement process.

3. Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

*See Procurement Guidelines at www.npa.gov.lk
www.treasury.gov.lk*

Article 9, paragraph 2

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 measure 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.*

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes, in part

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

In terms of Article 148 of the Constitution, Parliament has full control over public finance. The Department of National Budget of the Ministry of Finance is set up with the objective of facilitation of the performance of the responsibility conferred on the legislature for controlling public finance. Functions and Responsibilities of this Department includes:

- (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 03 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.

Financial resources to the Provincial Councils are administered by the Finance Commission through the Treasury.

3. Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Article 9, paragraph 3

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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes, in part

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

- (a) Audit Service Commission was established under Art 153(A) of the 19th Amendment to the Constitution with effect from 15th May 2015. A bill is currently before the Cabinet.
- (b) Financial Regulations and Treasury Circulars are available in the domestic system with regard to the preservation of accounting books, financial statements, and public records.

- (c) *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.*
- (d) *Ministries, departments, and institutional bodies, including the Auditor General's Department; 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.*
- (e) *The Auditor General is required under Art 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.*

3. Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Technical assistance

1. Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

2. Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required.

Yes. To review the existing laws and make recommendations of improvements.

For example:

No assistance would be required

Legislative assistance: please describe the type of assistance

Institution-building: please describe the type of assistance

Policymaking: please describe the type of assistance

Capacity-building: please describe the type of assistance

Research/data-gathering and analysis: please describe the type of assistance

Facilitation of international cooperation with other countries: please describe the type of assistance

Others: please specify

3. Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

No

Article 10. Public reporting

Article 10, subparagraph (a)

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;

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes. In part

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Most of the government departments has its own website and most of its activities are set out on such websites. Public has easy access to these websites in view of special government projects that was initiated where even in the most remote areas in Sri Lanka has cyber kiosks. Presently the government is on an e- drive to introduce the most of the government services electronically. Within the next two years most of the public service will be provide 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, the Parliament enacted the Right to Information Act, No. 12 of 2016, with the objective to foster a culture of transparency and accountability by giving effect to the right of access to information, 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 in public authorities.

As per section 1(3) thereof, the said Act will come into force on a date as may be prescribed by the Minister by Order published in the Gazette. The Government has declared that the Act would come into force on 4th February 2017.

The preamble of the Right to Information 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”.

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 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.

Government website for information.

<http://www.hrcsl.lk/>

<http://www.parliament.lk/en>

3. Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Article 10, subparagraph (b)

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;

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes in part

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

There is provision for periodic review of Public Administration Circulars under the supervision of the Cabinet of Ministers. The Government Web Sites link Ministries and Departments through departmental websites which provide information on the public organization, its functions and the decision making hierarchy thereby making it more 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 detail information of the services that would be provided by the government and the costs and the time period that will take to provide such services.

3. Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Article 10, subparagraph (c)

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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

In terms of article 154(1) of the Constitution, the Auditor General is responsible to audit each government department and submit annual audit reports and is also required to “perform and discharge such duties and functions as may be prescribed by Parliament”, as stipulated in Article 154(3) of the Constitution.

3. Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Technical assistance

[At the end of each article, the following set of questions on technical assistance will be included.]

1. Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

2. Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required.

Yes. 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 the public servants and awareness programs for the general public.

5. Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Article 11. Measures relating to the judiciary and prosecution services

Article 11, paragraph 1

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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes, in Part.

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The enactment of the 19th Amendment to the Constitution, with effect from 15th May 2015 which, amongst several other progressive reforms, introduced a number of constitutional safeguards to uphold the independence of the judiciary and the bar.

*The most significant among these provisions are:
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, 2 Members of Parliament and 3 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)

(i) *The infusion of independence to the JSC is important because, under the Constitution, the Judicial Services Commission is vested with authority over the appointment, transfer, dismissal and disciplinary control of judicial officers in the lower courts.*

(ii) *The 19th Amendment clearly stipulates the composition of the Judicial Services Commission, 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.*

(iii) *The Chief Justice is required to be the Chairman of JSC.*

(iv) *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 2 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.*

(v) *The President on the recommendation of the JSC and the Attorney General appoints judges of the High Court.*

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

- *The tenure of the office of the judges of the Supreme Court and the Court of Appeal are guaranteed under the Constitution.*
- *Judges of the Supreme Court and the Court of appeal hold office during good behavior 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 misbehavior 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.*

The Judicial Service Commission through the Judges Institute conducts training programs for Judges with a view to strengthen the integrity and prevent opportunities for corruption.

Although there is no written Code of Conduct for Judicial Officers, Sri Lanka Judges has informed the judicial officers that they are guided in their judicial activities by judicial ethics. In fact, even in other seminars conducted by other organizations this position has referred to.

3. Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Article 11, paragraph 2

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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes.

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

- (i) Prosecutors of the Attorney General's Department, the Commission to Investigate Allegations of Bribery or Corruption (only relating to bribery, corruption, assets and asset declaration related offenses) and in minor offenses Sri Lanka police and other government departments respectively carry out prosecutions. Members of the prosecution services are public officers and the Establishment Code, the rules governing the public service are applicable to the prosecutors too.*
- (ii) 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.*
- (iii) 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 by no other factor or consideration than upholding of the public interest and the Rule of law.*
- (iv) 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 and accordingly the Attorney General Department is presently under the purview of the Ministry of Justice.*
- (v) The Attorney General is also the leader of the Bar-not only of the Official Bar as one would think but the entire Bar. It thus follows that that the Attorney General ensures the protection of judicial independence which is indispensable to the proper functioning of the Bar.*

- (vi) *The appointment and removal processes of the Attorney General under the current law confirm the independence of the office of the Attorney General of Sri Lanka. The appointment of the Attorney General falls within the purview of the 19th Amendment to the Constitution. 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 good behaviour (as opposed to at pleasure) and can be removed only by Parliament on specific grounds after inquiry.*
- (vii) *The Officers of the Attorney General's Department are public officers and the Establishments Code, 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 Generals Department are by the Public Service Commission. Additionally the rules of conduct and etiquette governing all Attorneys law and regulated by the Supreme Court under rules formulated in terms of Article 136 of the Constitution govern the Officers of the Attorney Generals Department.*

3. Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Technical assistance

[At the end of each article, the following set of questions on technical assistance will be included.]

1. Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

2. Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required.

For example:

No assistance would be required

Legislative assistance: please describe the type of assistance

Institution-building: please describe the type of assistance

Policymaking: please describe the type of assistance

Capacity-building: please describe the type of assistance

Research/data-gathering and analysis: please describe the type of assistance

Facilitation of international cooperation with other countries: please describe the type of assistance

Others: please specify

3. Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Article 12. Private sector
Article 12, paragraphs 1 and 2

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 licenses 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.

1. Is your country in compliance with these provisions?

Yes/Yes, in part/No

Yes, In part

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with these provisions of the Convention.

(1) To Prevent Corruption Involving Private Sector

(2) Measures taken to enhance accounting and auditing standards

(3) Measures taken appropriate provide effective, proportionate and dissuasive, administrative or criminal penalties for per failure to comply with the measure.

(1) Measures taken to Prevent Corruption involving Private Sector

Whilst blue chip companies have stringent code of conduct, medium sized companies also have their own code of conduct to carry out its 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 1995. (This includes companies registered under Securities and Exchange Commission of Act No. 36 of 1987, as Unit Trusts; stock exchange and other companies stipulated in the schedule to the section 5 of the said Act)*
- 2. The Companies Act No 07 of 2007*
- 3. Securities and Exchange Commission Act No. 36 of 1987*
- 4. Monetary Law Act No.58 of 1949*
- 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

The above legislations have measures available for Record Keeping, Preparation of the Financial Statements, Auditing and Monitoring of activities of the private sector. A summary of the respective legislature are set out below.

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

A&A Act identifies parties responsible for;

- a. Setting of Accounting and Auditing Standards*
- b. Adopting and Implementation of Accounting and Auditing Standards and*
- c. Monitoring the Implementation of Accounting and Auditing Standards*

In terms of section 2 and 3 of the A&A Act, the Institute of Chartered Accountants of Sri Lanka (ICASL) (statutorily established under the 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 accounts of business enterprises. In terms of section 6 of the said Act, a statutory duty is cast on the business enterprises to audit accounts with the object of presenting a true and fair view of the financial performance and financial conditions of such enterprise. [The said accounting standards and auditing standards are gazette and can be found at https://casrilanka.com/casl/index.php?option=com_content&view=article&id=1186&Itemid=338&lang=en](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, standards stated above are only applicable to “Specified Business Enterprises”. These enterprises are identified based on criteria stipulated in the schedule of the Act and currently consisted of 1410 enterprises. [Apart from the private entities which fall within the respective statutes which govern them, or has been identified by the act based on the respective industry such as banks, finance, insurance, leasing and quoted public entities, other economically significant entities too have to comply with these standards under A & A Act. Minimum threshold applicable at present to identify such entities can be found at http://slaasmb.gov.lk/regulations/](http://slaasmb.gov.lk/regulations/)

Two Committees i.e., (i) the Accounting Standards Committee; and (ii) the Auditing Standards Committee are established under sections 8 and 9 of the A&A Act are required to make recommendations relating to 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 terms of section 11 of the Act referred to as 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 noncompliance of the provisions of the Act. The mandate of the Board is limited to the Specified Business Enterprises (SBEs) as set out in the schedule. Currently, there are 1410 business enterprises that fall within the ambit of the Board. Significant non compliances detected by SLAASMB where the entities had agreed to correct their financial statements can be found at <http://slaasmb.gov.lk/significant-cases-detected/>

Since 1 January 2012, Sri Lanka Accounting Standards are on par with the International Financial Reporting Standards (IFRSs). When the International Accounting Standards Board (IASB) issues International Financial Reporting Standards (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 Accountants of Sri Lanka for adoption as the Sri Lanka Accounting Standards. (Section 8 read with Section 2.)

A similar process is followed in setting and adopting of auditing standards as stipulated in section 9 read 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 (SLAuSs).

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.

2. The Companies Act No 07 of 2007

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

3. The Securities and Exchange Commission of Sri Lanka Act no. 36 of 1987

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

The Colombo Stock Exchange (CSE) listing rules (April 2011) 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>

Listing Rules and the Code of Best Practice on Corporate Governance requires listed entities to establish independent Audit Committees (Corporate Governance Section D.3), Related Party Transactions Review Committee (Listing Rules Section 9.2), Remuneration Committee (Corporate Governance Section B.1). Regulatory requirement of maintaining an independent audit function in compliance with Codes 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.

Qualified Auditor

As per the A & A Act, the audits of specifies business enterprises could be carried out only by members of the Institute of Chartered Accountants of Sri Lanka. However, 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 the Democratic Socialist Republic of Sri Lanka interpreted the 'Qualified Auditor' 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 do so 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 and will be effective from 2017. Once the NOCLAR is adopted in Sri Lanka, Code of Ethics of ICASL will be fully in line with the International Code of Ethics.

4. Monetary Law Act No.58 of 1949

The Financial Intelligence Unit of the Central Bank of Sri Lanka 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 professional institutes/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 the supervision

and on site reviews on a regular on-going basis of supervised entities coming within their scope.

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 is currently in the process of been amended.

There are several requirements for a company to disclose conflicts of interests. 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 has specific provisions for identification and disclosure of related parties.

In order to promote use of good commercial practices among businesses and to develop contractual relations of businesses, ICASL and several segments 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.

Accordingly, Sri Lanka has a well-established legal system relating to Accounting and Auditing standards. Since 2012, Sri Lanka follows international Accounting standards to maintain integrity in business enterprises. Additionally, Public Listed Enterprises are required to follow their own codes of best practices on cooperate governance.

Please cite, summarize and attach the applicable measure(s) and penalty(ies)

Please cite the text(s)

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

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

The Companies Act No 07 of 2007

Applicable measures and penalties for non-compliance of Companies Act is 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.

The Securities and Exchange Commission of Sri Lanka Act no. 36 of 1987

Applicable measures and penalties for non-compliance of the Securities and Exchange Commission Act is stated in the Sections 33A and 51. Offenders shall be liable on conviction after summary trial by a Magistrate to 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.

Monetary Law Act No.58 of 1949

Applicable measures and penalties for non-compliance of the Monetary Law Act is stated in the Section 122.

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.

See The Sri Lanka Accounting and Auditing Standards Act, No. 15 of 1995
http://www.commonlii.org/lk/legis/num_act/slaaasa15o1995425/index.html

See The Companies Act no 7 of 2007 s 191 to s 200

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

See Securities Exchange Commission of Sri Lanka
<http://www.sec.gov.lk/wp-content/uploads/SEC-Act-Revised-Edition-2009.pdf>

See The Colombo stock exchange (CSE) listing rules

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

See the Monetary Law Act

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

See Rules and Directions of the Financial Investigations Unit

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

3. Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Instances where the non-compliances with accounting standards by specified business enterprises had been identified as significant issues and had been able to make the relevant entities to correct their financial statements can be found at <http://slaasmb.gov.lk/significant-cases-detected/>

One very significant case where the SLAASMB had concluded that the issue requires filing action for misleading the shareholders, the entity under discussion appealed against the decision of SLAASB in the Court of Appeal. The Judgment of the Court of Appeal was in favor of the entity and SLAASMB had to file an appeal against such judgement in the Supreme Courts. Even though the final judgement was in favor of SLAASMB the entire legal process took 9 years to conclude. Presently, SLAASMB is in the process of filing action against the directors and auditors of such entity.

Article 12, paragraph 3

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; and*
- (f) The intentional destruction of bookkeeping documents earlier than foreseen by the law.*

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes in part

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

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 of which attracts 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.

A & A Act requires an entity to prepare its financial statements under accounting standards and take all measures to ensure that the financial statements are audited as per 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 had 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 requires to report the key audit matters detected during the normal course of audit on the face of the audit report. The said Auditing Standards will be effective from 31st 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.

3. Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Article 12, paragraph 4

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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

There are allowable deductions under section 25 and not allowable deductions under section 26 of the Inland Revenue Act no 10 of 2006. 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 take steps under A & A Act for non-compliance (even though making such payment is not a non-compliance with accounting standards, non-disclosure of such payment in the financial statements will be a noncompliance) .

Section 30 (b) of the A & A Act enables the Inland Revenue Department to be informed of such non-compliances.

3. Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Technical assistance

[At the end of each article, the following set of questions on technical assistance will be included.]

1. Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

2. Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required.

For example:

No assistance would be required

Legislative assistance: please describe the type of assistance

Institution-building: please describe the type of assistance

Policymaking: please describe the type of assistance

Capacity-building: please describe the type of assistance

Research/data-gathering and analysis: please describe the type of assistance

Facilitation of international cooperation with other countries: please describe the type of assistance

Others: please specify

There is a need for technical assistance for the relevant institutions as a form of financial and non-financial to strengthening the implementation of Governance and Monitoring related activities in Sri Lanka and for the capacity building of such institutions.

3. Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

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 had been considered in such amendments have to be studied and considered with legal expertise.

***Article 13. Participation of society-
Article 13, paragraph 1***

1. Each State Party shall take appropriate measures, within its means and in accordance with the 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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes, in part

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

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. From 2015 onwards, CIABOC took several robust measures to involve the civil

society organizations in its activities. The first of such steps was to organize a walk in collaboration with the CSOs, the general public, politicians, and International community on 9th December 2015, i.e, on the International Anti Corruption Day. Since then, CIABOC has invited and received the assistance of many international Non-Governmental Organizations (INGOs), national Non-Governmental Organizations (NGOs) and local Community Based Organizations (CBOs) for a number of civil society centered activities and consultations. Some of these organizations are the Asian Development Bank (ADB), United Nations Development Program (UNDP), Transparency International Sri Lanka, Sarvodaya, Centre for Policy Alternatives (CPA), Law and Society Trust (LST), Anti-Corruption Front, and Rights Now Collective for Democracy, and a number of Trade Unions. The same civil society collective was also invited and they actively participated in the formation of the new strategic plan for CIABOC, titled, “Seven Steps to Zero Tolerance” (December 2015)

http://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

The World Anti-Corruption Day celebrations (December 2015)

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

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 CSO to work with the CIABOC on prevention related work. CIABOC’s consultation with the CSOs on the ways of amending the Asset Declaration Act enabled positive and collaborative environment with the CSO collective. The active participation of TISL and LST to amend the Asset Declaration Act assisted CIABOC to come out with a timely and relevant end product which was in turn submitted to the Cabinet for consideration.

b) The CIABOC presently 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 press conferences by CIABOC improved its public face, and the commitment to answer question 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 the civil society collective with their wider ground penetration and power of advocacy at various levels.

CIABOC presently maintains a very informative Hotline 1954 and email ciaboc@eureka.lk providing access to lodge complaints electronically.

c) CIABOC conducts regular public awareness campaigns at different levels in different geographies. Currently, CIABOC has submitted a cabinet paper to create a Prevention Unit. CIABOC has already taken measures and initiated discussions with the National Institute of

Education (NIE) to incorporate education related to fighting bribery and corruption into the school curriculum.

CIABOC and the Ministry of Education have commenced several long term and short-term projects to educate the next generation. Short term projects include month of October being declared as the anti-corruption month in all schools, creative competitions in 7 segments, introducing regulations to curb corruption in the school administration. Long-term projects include introducing anti-corruption measures to schools syllabuses, establishing Integrity clubs in all schools etc.

d) Right to Information Act No. 12 of 2016 is the latest legislation that was assented to by the Speaker on 4th August 2016 and some parts will come into operation on 4th February 2017. Article 14A of the Constitution guarantees the right to information to foster as 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 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. ”

S. 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 1988) 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.”

<http://www.lawnet.lk/process.php?st=1981Y3V63C&hword=%27%27&path=5>

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."

3. Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

1. The World Anti-Corruption Day (December 2015) celebrations

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

OGP National Action Plan

Article 13, paragraph 2

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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

CIABOC which was established in 1994 is well known to the public as the statutory body established to curb corruption. Over the years there have been several awareness programs that have been carried out by the CIABOC with the assistance of UNDP, ADB and UNODC.

CIABOC has taken several measures to permit the public to access CIABOC. The hotline 1954 is well known to the public and the first information on most of the raids-sting operations are informed by the public through this hot line. The public also has access to CIABOC through telephone, website, email, walk in complaints and general post. CIABOC observes the most complaints are received through post. CIABOC also conducts programmes on awareness regularly to public servants. Close interaction with the media also assisted public awareness of CIABOC.

3. Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

In the year 2015, CIABOC has received complaints in the following mediums as stated below.
Hotline- 1954

Email- ciaboc@eureka.lk

Post – No.36, Malalasekara Mawatha, Colombo 07, Sri Lanka

Fax - +94112595045, +94112595054, +941122058627

Telephone- +94112596365, +94112596363, +94112586857

Technical assistance

[At the end of each article, the following set of questions on technical assistance will be included.]

1. Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

2. Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required.

For example:

No assistance would be required

Legislative assistance: please describe the type of assistance

Institution-building: please describe the type of assistance

Policymaking: please describe the type of assistance

Capacity-building: please describe the type of assistance

Research/data-gathering and analysis: please describe the type of assistance

Facilitation of international cooperation with other countries: please describe the type of assistance

Others: please specify

3. Is any technical assistance already being provided to you? If so, please provide a general description of the nature

CHAPTER V

B. Money-laundering (arts. 14, 55 and 57)

Article 14. Measures to prevent money-laundering

Article 14, paragraph 1 (a)

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;

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The Financial Intelligence Unit [FIU] has been established under the Financial Transaction Reporting Act No. 6 of 2006. Powers & functions of the FIU are set out in Part III of the said Act

3. Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Article 14, paragraph 1 (b)

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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The legal regime of anti-money laundering include Prevention of Money Laundering Act No 5 of 2006 as amended by Act No. 40 of 2011, Financial Transactions Reporting Act No 6 of 2006 [FTRA] and Convention on the Suppression of Terrorist Financing Act, No 25 of 2005. Offence of Money Laundering is defined under section 3 of Act No. 5 of 2006 and includes inter alia engaging in any transaction with property realized from 'unlawful activity'. The definition of 'Unlawful activity' includes any offence under the Bribery Act.

All institutions carrying out finance businesses or designated non-finance businesses as defined under the FTRA should comply with the provisions of this Act. Verification and establishment of identity of customers, maintenance of records, conducting on-going due 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.

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.

3. Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Article 14, paragraph 2

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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

All entry and exit points to the island are under surveillance and the control of customs and immigration authorities. The Controller of Exchange through regulations made under Exchange Control Act, imposes limitations on cash movements across the border. At present, cash allowance without declaration is, US\$ 15,000.

Tax clearance from Inland Revenue Dep. is required for remittance of money overseas.

www.ecd.gov.lk – Exchange Control Department of Central Bank of Sri Lanka

Sections 25 and 26 of the FTRA also relates to cash movements across the border.

3. Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Article 14, paragraph 3

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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes

2. Please describe (cite and summarize) the measures/steps your coframe) to ensure full compliance with this provision of the Convention.

Regulations are in place requiring the financial institutions to obtain information on the originator. Relevant forms available at the FIU website.

The Financial Transactions Reporting Act no 6 of 2006

www.fiusrilanka.gov.lk

Financial Institutions (CDD- Customer Due Diligence) rules No. 01 of 2016-

www.fiusrilanka.gov.lk

3. Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Article 14, paragraph 4

4. In establishing a domestic regulatory 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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Sri Lanka is a member of The Asia Pacific Group (APG) and FIU of the Central Bank is a member of Egmont Group.

3. Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Article 14, paragraph 5

5. States Parties shall endeavour to develop and promote global, regional, sub regional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Sri Lanka is a member of the APG on Anti-Money Laundering. The FIU has entered in to MOUs with 31 foreign counterparts.

3. Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Technical assistance

[At the end of each article, the following set of questions on technical assistance will be included.]

1. Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

2. Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required.

For example:

No assistance would be required

Legislative assistance: please describe the type of assistance

Institution-building: please describe the type of assistance

Policymaking: please describe the type of assistance

Capacity-building: please describe the type of assistance

Research/data-gathering and analysis: please describe the type of assistance
Facilitation of international cooperation with other countries: please describe the type of assistance
Others: please specify

3. Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

C. Asset recovery (arts. 51, 53-57 and 59)

Article 51. General provision

Article 51

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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention, including identifying both any legal authorities/procedures for accepting requests for asset recovery and assessing that these requests are reasonably substantiated and supplemented as well as any time frame established under domestic laws and procedures for their execution, taking into account requests received from countries with similar or different legal systems and any challenges faced in this context.

Sec. 17 of Mutual Assistance in Criminal Matters Act No. 25 of 2002 in respect of specified countries and on the basis of reciprocity on other non -specified countries.

3. Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Technical assistance

[At the end of each article, the following set of questions on technical assistance will be included.]

1. Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

2. Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required.

For example:

No assistance would be required

Legislative assistance: please describe the type of assistance

Institution-building: please describe the type of assistance

Policymaking: please describe the type of assistance

Capacity-building: please describe the type of assistance

Research/data-gathering and analysis: please describe the type of assistance

Facilitation of international cooperation with other countries: please describe the type of assistance

Others: please specify

3. Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Article 52. Prevention and detection of transfers of proceeds of crime

Article 52, paragraph 1

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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The provisions of the Financial Transactions Reporting Act No. 06 of 2006 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 of all suspicious financial transactions. 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 FIU has issued guidelines covering all financial institutions including licensed Banks and Registered Finance Companies, Security and Exchange Commission and the Insurance Industry.

As it is 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-
www.fiusrilanka.gov.lk*

Guidelines have been introduced to identify the beneficial owners of accounts maintained in financial institutions.

Even though the FTR Act does not lay down the meaning of a High Value Accounts, the regulations require institutions to report cash or electronic fund transfers if the value is over One Million Sri Lanka Rupees and any suspicious transaction.

Section 5 of the FTR Act 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.

3. Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Article 52, paragraph 2 (a)

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;

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

In Sri Lanka FIU has the responsibility of issuing advisories to institutions regarding the types of natural or legal person who maintain financial relationships with institutions.

Under the FTR Act "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 have been given 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. Authorization of the senior management is required when opening of accounts for "Politically exposed Persons". Also all cash deposits of over Rs.200, 000 by third parties should have the identity of the depositor on record.

In terms of FTR Act 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 FTR Act institutions are expected to conduct ongoing due diligence on the business relationship with the customer and conduct ongoing scrutiny of any transaction.

3. Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Article 52, paragraph 2 (b)

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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Financial Transactions Reporting Act no 6 of 2006

Guidelines issued by the FIU on financial institutions.

3. Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Article 52, paragraph 3

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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Rules are issued with regard to accounts that require enhanced scrutiny. Financial institutions rule No. 01 of 2016 provides for opening of accounts belonging to PEP category, required authorization of the senior management, minimum information required relating to identity of customer as well as beneficial owner. FIU can give directions to any financial institution to maintain records pertaining to any account more than the stipulated period of time if the situation requires.

In terms of the provisions of section 4(1) (a) of the FTR Act 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.

3. Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Article 52, paragraph 4

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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

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 since 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 from alternative remittance systems such as Undial, Hawala.

According to the rules and guidelines issued by the FIU 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. 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"

3. Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Article 52, paragraph 5

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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

In terms of the provisions of the Declaration of Assets and Liabilities Law No. 1 of 1975 Public Officers, Judges, Members of 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 the public officers for non-compliance. Declaration of Assets and Liabilities Law No 1 of 1975
(Please see the Sections 2,3 & 9 of the Declaration of Assets and Liabilities Law No.1 of 1975)*

3. Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Article 52, paragraph 6

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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

In terms of Declaration of Assets and Liabilities Law No. 1 of 1975 all public officials are required to make periodic declarations of their Assets and Liabilities in and outside Sri Lanka.

The provisions of the Exchange Control Act No 24 of 1953 is in compliance. Section 23A of the Bribery Act has similar provisions.

3. Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Technical assistance

[At the end of each article, the following set of questions on technical assistance will be included.]

1. Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

2. Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required.

For example:

No assistance would be required

Legislative assistance: please describe the type of assistance

Institution-building: please describe the type of assistance

Policymaking: please describe the type of assistance

Capacity-building: please describe the type of assistance

Research/data-gathering and analysis: please describe the type of assistance

Facilitation of international cooperation with other countries: please describe the type of assistance

Others: please specify

3. Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Article 53. Measures for direct recovery of property

Article 53, subparagraph (a)

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;

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

No

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

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.

3. Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Article 53, subparagraph (b)

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;

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

No

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

There is no specific law in Sri Lanka permitting courts to order those who have committed offences established in accordance with the convention to pay compensation or damages to another state party that has been harmed by such offences.

3. Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Article 53, subparagraph (c)

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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Sections 17 and 19 of the Mutual Legal Assistance Act and sec. 30 of Prevention of Money Laundering Act as amended can be invoked.

3. Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Technical assistance

[At the end of each article, the following set of questions on technical assistance will be included.]

1. Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

2. Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required.

For example:

No assistance would be required

Legislative assistance: please describe the type of assistance

Institution-building: please describe the type of assistance

Policymaking: please describe the type of assistance

Capacity-building: please describe the type of assistance

Research/data-gathering and analysis: please describe the type of assistance

Facilitation of international cooperation with other countries: please describe the type of assistance

Others: please specify

3. Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Article 54. Mechanisms for recovery of property through international cooperation in confiscation

Article 54, paragraph 1 (a)

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;

1. Is your country in compliance with this provision?

Yes

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate timeframe) to ensure full compliance with this provision of the Convention.

Under Part VI of the Mutual Assistance in Criminal Matters Act, 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 no 25 of 2002, 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

(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.*

3. Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Article 54, paragraph 1 (b)

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;

1. Is your country in compliance with this provision?

Yes

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Section 13(1) of the Prevention of Money Laundering Act No. 5 of 2006, allows Courts to make an Order confiscating any movable or immovable property of a person derived or realized, directly or indirectly from any unlawful activity.

The Prevention of Money Laundering Act, No. 5 of 2006 Section 13

- (1) Where a person is convicted of the offence of money laundering, the Court convicting such person shall, subject to the provision of subsections (2) make Order that any movable or immovable property of such person derived or realized, directly or indirectly from any unlawful activity, be forfeited to the State free from all encumbrances.*
- (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.*

Furthermore, Section 19 of the Mutual Assistance in Criminal Matters Act, No. 25 of 2002, has specifically enacted provisions permitting its Competent Authorities to give effect to an order of confiscation issued by a foreign court.

*Mutual Legal Assistance in criminal Matters Act
Section 19*

(1) Where-

- (a) a court in a specified country has, in a proceeding relating to a criminal matter, made an order-*
 - (i) forfeiting any property or having the effect of forfeiting or confiscating any property ;*
 - (ii) imposing a fine or other pecuniary penalty on any person or requiring that person to pay compensation to any other person ;*
 - (iii) 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*

3. Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Article 54, paragraph 1 (c)

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.

1. Is your country in compliance with this provision?

Yes

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

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, 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.*

Mutual Assistance in Criminal Matters Act, No. 25 of 2002

Section 19

(1) Where-

a. *a court in a specified country has, in a proceeding relating to a criminal matter, made an order-*

- (i) *forfeiting any property or having the effect of forfeiting or confiscating any property ;*
- (ii) *imposing a fine or other pecuniary penalty on any person or requiring that person to pay compensation to any other person ;*

(iii) *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*

3. Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Article 54, paragraph 2 (a)

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;

1. Is your country in compliance with this provision?

Yes

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Under the provisions of the section 15 of the Mutual Assistance in Criminal Matters Act there is provision to execute freeze or seize property upon freezing or seizure order issued by a competent authority of a requesting State, after following the required steps explained in the said section.

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 subscription (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.*

3. Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Article 54, paragraph 2 (b)

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;

1. Is your country in compliance with this provision?

Yes

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Under the provisions of Section 15 of the Mutual Legal Assistance in Criminal Matters Act, No. 25 of 2002, 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 freeze 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.

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-*
 - (d) *in the clothing that is worn by a person ; or*
 - (e) *otherwise in a person's immediate control ;*
the police officer may-
 - (iii) *lay before such Magistrate such information on oath setting out the grounds for such belief ; and*
 - (iv) *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-*
 - (f) *to search the person for such thing ; and*
 - (g) *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-*
 - (h) *lay before such Magistrate such information on oath setting out the grounds for such belief; and*
 - (i) *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-*
 - (j) *to enter upon the land, or upon or into the premises;*
 - (k) *to search the land or premises for such thing; and*
 - (l) *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-*

- (m) *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*
 - (n) *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-*
- (o) *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;*
 - (p) *Whether the search is authorized at any time of the day or night or during specified hours of the day or night;*
 - (q) *a description of the kind of things authorized to be seized; and*
 - (r) *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-*
- (s) *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*
 - (t) *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 subscription (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.

3. Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Article 54, paragraph 2 (c)

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.

1. Is your country in compliance with this provision?

Yes

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

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-

- (d) *in the clothing that is worn by a person : or*
- (e) *otherwise in a person's immediate control ;
the police officer may-*
- (v) *lay before such Magistrate such information on oath setting out the grounds for such belief
; and*
- (vi) *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-*
- (f) *to search the person for such thing ; and*
- (g) *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-*
- (h) *lay before such Magistrate such information on oath setting out the grounds for such belief;
and*
- (i) *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-*
- (j) *to enter upon the land, or upon or into the premises;*
- (k) *to search the land or premises for such thing; and*
- (l) *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-*
- (m) *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*
- (n) *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-*
- (o) *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;*
 - (p) *Whether the search is authorized at any time of the day or night or during specified hours of the day or night;*
 - (q) *a description of the kind of things authorized to be seized; and*
 - (r) *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-*
- (s) *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*
 - (t) *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.*

3. Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Technical assistance

[At the end of each article, the following set of questions on technical assistance will be included.]

1. Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

2. Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required.

For example:

No assistance would be required

Legislative assistance: please describe the type of assistance

Institution-building: please describe the type of assistance

Policymaking: please describe the type of assistance

Capacity-building: please describe the type of assistance

Research/data-gathering and analysis: please describe the type of assistance

Facilitation of international cooperation with other countries: please describe the type of assistance

Others: please specify

3. Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Article 55. International cooperation for purposes of confiscation

Article 55, paragraph 1

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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

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. He can request the Attorney General for its registration in the Provincial High Court which has a discretion on enforcement.

3. Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Article 55, paragraph 2

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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Section 15 of Act No 25 of 2002 provides for 'assistance in relation to seizure', whilst Part II of the Act provides for 'tracing proceeds of crime and enforcement of orders'.

3. Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Article 55, paragraph 3

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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes in part

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Sec. 18 of the Act No 25 of 2002 and if the request is in compliance with form G/H/I of the schedule. (copy of sec 18)

3. Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Article 55, paragraph 4

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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

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, subject 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 07 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."

3. Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Article 55, paragraph 5

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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

No

2. Please provide a reference to the date these documents were transmitted, as well as a description of any documents not yet transmitted.

Not applicable

Article 55, paragraph 6

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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

No

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

3. Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Article 55, paragraph 7

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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

No

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

There is no domestic legal provisions to give effect to the above. A discretion is vested with the Government of Sri Lanka under sections 6 and 17 of the Mutual Legal Assistance Act.

3. Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Article 55, paragraph 8

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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

No

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

However, based on 'reciprocity', Sri Lankan authorities make a conscientious effort not to turn down the requests made by foreign countries without a valid reason.

3. Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Article 55, paragraph 9

9. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes, in part

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Section 28A of the Bribery Act No 11 of 1954 and section 19 of the Mutual Assistance in Criminal Matters Act No 25 of 2002

3. Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Technical assistance

[At the end of each article, the following set of questions on technical assistance will be included.]

1. Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

2. Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required.

For example:

No assistance would be required

Legislative assistance: please describe the type of assistance

Institution-building: please describe the type of assistance

Policymaking: please describe the type of assistance

Capacity-building: please describe the type of assistance

Research/data-gathering and analysis: please describe the type of assistance

Facilitation of international cooperation with other countries: please describe the type of assistance

Others: please specify

3. Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Article 56. Special cooperation

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

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes,

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Sri Lanka has adopted a policy of providing "informal" mutual legal assistance on the basis of reciprocity. Specially in connection with the offences that fall within the definition of the Convention on the Suppression of Terrorist Financing Act, and in 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 a duty 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 Money Laundering Act the government of Sri Lanka has an obligation to assist another State party without prior request.

FIU Sri Lanka provides information to Egmont Group.

3. Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Technical assistance

[At the end of each article, the following set of questions on technical assistance will be included.]

1. Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

2. Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required.

For example:

No assistance would be required

Legislative assistance: please describe the type of assistance

Institution-building: please describe the type of assistance

Policymaking: please describe the type of assistance

Capacity-building: please describe the type of assistance

Research/data-gathering and analysis: please describe the type of assistance

Facilitation of international cooperation with other countries: please describe the type of assistance

Others: please specify

3. Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Article 57. Return and disposal of assets

Article 57, paragraph 1

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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes, in part

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

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 community, 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, Central Authority can specify suitable steps giving effect to a request made by a State party which includes repatriation of funds.

Moreover, the said section 19(7) also makes provision for "any property forfeited or confiscated or any fine or 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".

3. Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Article 57, paragraph 3 (a)

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;

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

In terms of section 19(7) of Act No 25 of 2002, if such a request is made, the "competent-authority" has the discretion to comply with the request of the State-Party & return the confiscated property. But prior to such decision, compliance of provision 19 of the Mutual Assistance in Criminal Matters Act is mandatory.

3. Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Article 57, paragraph 3 (b)

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;

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

No

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Whilst highlighting the relevance of the provisions of section 17 of Mutual Legal Assistance Act No 25 of 2000, the necessity for a government policy decision in amending the existing legal frame work is emphasized.

3. Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Article 57, paragraph 3 (c)

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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

No

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

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.

3. Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Article 57, paragraph 2

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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

Yes

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention

In terms of section 19(7) Act No 25 of 2002, any property forfeited or confiscated or any fine or pecuniary penalty or compensation recovered, by reason of the enforcement of an order registered in the High court of the province may be dealt with in such manner as the Central Authority may specify for the purpose of giving effect to the request made by the State party.

Hence, on the basis of the request made by the State party, Competent Authority can order repatriation of confiscated property.

3. Please provide examples of the implementation of those measures, including related court or other cases, statistics, etc.

Article 57, paragraph 4

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.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

No

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

3. Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Article 57, paragraph 5

5. Where appropriate, States Parties may also give special consideration to concluding agreements or mutually acceptable arrangements, on a case-by-case basis, for the final disposal of confiscated property.

1. Is your country in compliance with this provision?

Yes/Yes, in part/No

No

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Sri Lanka has adopted a policy of providing "informal" mutual assistance on the basis of reciprocity. If assistance sought is not obnoxious to any provision of law, granting of mutual assistance may be possible under the policy practiced in Sri Lanka.

3. Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Technical assistance

[At the end of each article, the following set of questions on technical assistance will be included.]

1. Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

2. Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required.

For example:

No assistance would be required

Legislative assistance: please describe the type of assistance

Institution-building: please describe the type of assistance

Policymaking: please describe the type of assistance

Capacity-building: please describe the type of assistance

Research/data-gathering and analysis: please describe the type of assistance

Facilitation of international cooperation with other countries: please describe the type of assistance

Others: please specify

3. Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Article 58. Financial intelligence unit

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, analyzing and disseminating to the competent authorities reports of suspicious financial transactions.

1. Is your country in compliance with this provision?

Yes

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

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 mMoney laundering and the financing of terrorism respectively.

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

www.fiusrilanka.gov.lk

[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)

3. Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Technical assistance

[At the end of each article, the following set of questions on technical assistance will be included.]

1. Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

2. Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required.

For example:

No assistance would be required

Legislative assistance: please describe the type of assistance

Institution-building: please describe the type of assistance

Policymaking: please describe the type of assistance

Capacity-building: please describe the type of assistance

Research/data-gathering and analysis: please describe the type of assistance

Facilitation of international cooperation with other countries: please describe the type of assistance

Others: please specify

3. Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Article 59. Bilateral and multilateral agreements and arrangements

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.

1. Is your country in compliance with this provision?

Yes

2. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

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. So far 31 such agreements have been signed.

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. However 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 agreements have been signed with India, Pakistan, Thailand, Ukraine, Russia, China, UAE, Hong Kong and Belarus

3. Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Technical assistance

[At the end of each article, the following set of questions on technical assistance will be included.]

1. Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

2. Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required.

For example:

No assistance would be required

Legislative assistance: please describe the type of assistance

Institution-building: please describe the type of assistance

Policymaking: please describe the type of assistance

Capacity-building: please describe the type of assistance

Research/data-gathering and analysis: please describe the type of assistance

Facilitation of international cooperation with other countries: please describe the type of assistance

Others: please specify

3. Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.