

# **POLICY AND LEGISLATIVE FRAMEWORK OF THE PROPOSED PROCEEDS OF CRIME ACT OF SRI LANKA - KEY PROVISIONS**



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# BACKGROUND

Approximately 20 – 40 billion US dollars are annually lost to developing countries as a result of bribery and corruption. Usually, this money is hidden in off shore financial centers, depriving these origin countries the opportunity to utilize such funds, for the benefit of the people. Countries are internationally bound to put mechanisms in place to combat corruption and to work collectively to fight illicit financial flows of this nature.

As signatory to the UN Convention against Corruption (UNCAC), Sri Lanka is responsible to cooperate in the international arena to combat the transfer of proceeds of crime and recover such proceeds. Sri Lanka reiterated this commitment in 2015 at the London Anti-Corruption Summit and the Global Forum on Asset Recovery (GFAR) in 2017 pledging to prioritize the recovery of stolen assets.

In 2018, the Special Presidential Taskforce on Recovery of State Assets (START), the body appointed to coordinate Sri Lanka's efforts on asset recovery, i.e. to investigate, identify, trace, seize and transfer to Sri Lanka assets stolen from Sri Lanka, convened a drafting committee to prepare a policy and legislative policy on proceeds of crime, involving different stakeholders. This framework was a product of that exercise and was completed by the end of 2018. It has been presented to the President for further action in order for this policy to be translated into legislation.

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# THE CONTENTS OF THE POLICY

## THE PURPOSES OF THE PROPOSED LAW

- a. Deprive criminals of the proceeds of crime
- b. Compensate victims of crime
- c. Dismantle organized crime (e.g. terrorism, financial and economic crime)
- d. Create an economically viable proceeds of crime recovery system
- e. Preserve the value of seized or confiscated assets for the benefit of the State, society and victims of crime, and
- f. Ensure accountability and transparency of and public confidence in the proceeds of crime recovery system.

## THE PROPOSED LAW WILL BE APPLICABLE,

- Where an offence is committed in Sri Lanka, or
- Where a citizen, dual citizen or a person domiciled in Sri Lanka commits an offence within or outside Sri Lanka and the proceeds of such crime is found in or outside Sri Lanka, or
- Where the proceeds of a crime are in Sri Lanka or has transited Sri Lanka



## THE PROPOSED LAW WILL GOVERN THE FOLLOWING MATTERS

- Investigations relating to proceeds of crime
- Identifying and tracing proceeds of crime
- Seizing, freezing, confiscating and forfeiting such proceeds of crime and initiating legal action relating to such proceeds
- Disposing and managing recovered assets
- Providing reparations to victims of crime and recognizing the rights of bona fide third parties
- Periodic public reporting and reporting to Parliament



## SOME KEY PROVISIONS OF THE PROPOSED LAW

- A statutory body called 'Proceeds of Crime Recovery & Management Authority of Sri Lanka' will be created for the enforcement of provisions of this law.
  - The Authority will have the same powers as a law enforcement agency on identification, detection, seizure, conducting investigations and instituting legal proceedings relating to proceeds of crime (including non-conviction based confiscation proceedings).
- Property or beneficial interest in any property shown on a balance of probability to have been acquired unlawful can be subjected to non- conviction based confiscation. This type of confiscation is not conditioned on the conviction of a person of a crime.
- Following the conviction of a person for committing an offence, it is mandatory to commence confiscation proceedings with regard to the proceeds of crime unless the proceedings are waived by the court.
- The persons who possess assets that appears to be unexplainable will be obliged to make a sworn declaration on the source of the funds.

- The proposed law will provide for the management of seized property, including the below:
  - Disposal of perishable goods
  - Managing assets during judicial proceedings
  - Discharging property not confiscated
  - Settling claims relating to seizure of property
- Confiscated proceeds to be transferred to a Trust Fund (“Trust Fund for Confiscated Proceeds of Crime”) maintained by a Board of Trustees
  - The Board of Trustees will be persons of repute with expertise in the fields of administration of justice, law enforcement, public finance, financial management, business management, related civil society activism and auditing. The appointment will be made by the Constitutional Council.
  - The funds in the Trust can only be utilized for the following purposes:
    - to strengthen law enforcement and administration of justice,
    - to promote and protect rights and entitlements of victims of crime and witnesses,
    - for development and maintenance of crime prevention measures,
    - to provide incentives for law enforcement officers enforcing this law,
    - to strengthen a fund called “Informants Reward Fund”, and
    - to achieve the targets of the Sustainable Development Goals
- Management of the Trust Fund must be transparent, amenable to public inspection and subjected to the public auditing process
- Seized property in respect of which confiscation proceedings are not commenced within a reasonable time needs to be returned to the persons who are entitled to it.
- Receiving reparations from confiscated proceeds of crime will not be a bar to claim compensation and damages in a civil matter arising from the same crime.
- A duty to report has been placed on certain persons who would come in to possess knowledge on the proceeds of crime.
- The following principles need to be recognized as guiding principles in enforcing and interpreting the proposed law: achieving objectives of criminal justice, necessity, proportionality and public interest



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