

CABINET MEMORANDUM

COMMISSION TO INVESTIGATE ALLEGATIONS OF BRIBERY OR CORRUPTION

Amendments to the Asset and Declaration of Assets and Liabilities Law No. 1 of 1975

Background:

The Commission to Investigate Allegations of Bribery or Corruption was established in 1994 under the Commission to Investigate Bribery or Corruption Act, No.19 of 1994. The said Act authorizes the Commission to investigate and prosecute acts of bribery or corruption under (a) Bribery Act, No. 11 of 1954 and (b) Declaration of Assets and Liabilities Law, No. 1 of 1975.

Function:

There are certain clauses in the current Declaration of Assets and Liabilities Law, No. 1 of 1975 that impede the Commission's ability to effectively investigate and prosecute allegations of bribery or corruption. This impediment is attributed to the fact that the Declaration of Assets and Liabilities Law No. 1 of 1975:

- i) Effectively undermines powers given to the Commission under Section 12(1) of the Commission to Investigate Bribery or Corruption Act - by preventing the Commission from filing action without the sanction of the Attorney General
- ii) Omits reference to the Commission of Bribery or Corruption in certain sections
- iii) Makes reference to bodies and salary scales that are no longer in existence
- iv) Contains insufficient fines for individuals failing to comply with the requirements under the Act
- v) Imposes penalties on individuals that disclose information under the Act

Required Recommendations and Direction

Therefore, the Cabinet of Ministers is hereby directed to consider steps to have the necessary amendments enacted to the Declaration of Assets and Liabilities Law No. 1 of 1975 forthwith, as a matter of importance. The necessary amendments will ensure that the Commission is able to perform its functions in a timely and efficient manner and provide clarity by removing obsolete references and inconsistencies.

Accordingly, the following measures are recommended as required:

Recommendations:

- i) Repeal Section 9(5) of the Declaration of Assets and Liabilities Law No. 1 of 1975 that prevents the Commission from direct prosecution of offences under the Act
- ii) Replace the ‘Bribery Commissioner’ with the Commission to Investigate Bribery and Corruption in Section 5(2), Section 6, Section 7(6) and Section 9(1)(c) of the Act
- iii) Omit reference to ‘Development Councils’ and the Companies Act No. 17 of 1932 in the Act due to their non-existence
- iv) Make reference to ‘Provincial Councils’ and the Companies Act No. 7 of 2007 in the Act
- v) Increase the maximum fine (i.e. LKR 1000) under Section 9 of the Act
- vi) Repeal Section 7(4), Section 7(5) and Section 8 of the Declaration of Assets and Liabilities Law No. 1 of 1975 that imposes penalties on individuals that disclose information secured or received in terms of the Act

The Cabinet of Ministers is hereby directed to take steps to have the said amendments to the Declaration of Assets and Liabilities Law No. 1 of 1975 as set out in the annexure appended hereto, taken up for enactment by the Parliament.

At the Presidential Secretariat

Maithripala Sirisena
President

..... November 2015

Declaration of Assets and Liabilities (Amendment)

AN ACT TO AMNEND THE DECLARATION OF ASSETS AND LIABILITIES LAW, NO. 1 OF 1975

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:-

[Date, 2015]

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| Short title. | 1. This Act may be cited as the Declaration of Assets and Liabilities (Amendment) Act, No... of 2015. |
| Amendment of section 2(1)(da) and Section 2(1)(dc) of Law No. 1 of 1975. | 2. Section 2(1)(da) and Section 2(1)(dc) of the Declaration of Assets and Liabilities Law, No.1 of 1975 (hereinafter referred to as “the principal enactment”) as amended by Act. No. 74 of 1988, is hereby repealed and the following sections are substituted therefor: -

Application of this Law. The provisions of this Law shall apply to every person belonging to any one of the following classes or descriptions of persons.

(da) office-bearers of recognized political parties for the purposes of elections under the Presidential Elections Act, No. 15 of 1981, the Parliamentary Elections Act, No. 1 of 1981 or the Provincial Councils Elections Act, No. 2 of 1998, or the Trade Union’s Ordinance.

(dc) candidates nominated for election at elections to be held under the Presidential Elections Act, No. 15 of 1981, the Parliamentary Elections Act, No. 1 of 1981 or the Provincial Councils Elections Act, No. 2 of 1998, or the Trade Union’s Ordinance. |
| Amendment of section 2(1)(de) of Law No. 1 of 1975. | 3. Section 2(1)(de) of the principal enactment, as amended by Act. No. 74, of 1988 is hereby repealed and the following sections are substituted therefor:-

Application of this Law. The provisions of this Law shall apply to every person belonging to any one of the following classes or descriptions of persons.

(de) Chairman, Directors and staff officers of companies registered under the Companies Act, No. 07 of 2007, in which the majority of shares are held by the State or by a public corporation. |
| Amendment of section 4(ia) Law No. 1 of 1975. | 4. Section 4(ia) of the principal enactment, as amended by Act. No. 74 of 1988, is hereby repealed and the following sections are substituted therefor:- |

To whom declaration of assets and liabilities are to be made.

The declaration of assets and liabilities shall be made in the following manner:

(ia) To the Commissioner of Elections

(i) by officer bearers of recognized political parties for the purposes of elections under the Presidential Elections Act No. 15 of 1981 the Parliamentary Elections Act, No. 1 of 1981 or the Provincial Councils Elections Act, No. 2 of 1998, or the Trade Union's Ordinance.

(ii) candidates nominated for election at elections to be held under the Presidential Elections Act, No. 15 of 1981, the Parliamentary Elections Act, No. 1 of 1981 or the Provincial Councils Elections Act, No. 2 of 1998, or the Trade Union's Ordinance.

Amendment of section 4(id) of Law No. 1 of 1975.

5. Section 4(id) of the principal enactment, as amended by Act. No. 74 of 1988, is hereby repealed and the following sections are substituted therefor:-

To whom declaration of assets and liabilities are to be made.

The declaration of assets and liabilities shall be made in the following manner:

(id) to the Registrar of Companies, Chairman, Directors and staff officers of companies registered under the Companies Act, No. 07 of 2007, in which the majority of shares are held by the State or by a public corporation.

Amendment of section 5(2) of Law No. 1 of 1975.

6. Section 5(2) of the principal enactment, as amended by Act. No. 74 of 1988, is hereby repealed and the following sections are substituted therefor:-

Power to refer to declaration of assets and liabilities.

The Attorney General, the Commission to Investigate Bribery or Corruption, the Commissioner General of Inland Revenue and the Head of the Department of Exchange Control shall have the right to call for and refer to any declaration of assets and liabilities.

Amendment of section 6 of Law No. 1 of 1975.

7. Section 6 of the principal enactment, as amended by Act. No. 74 of 1988, is hereby repealed and the following sections are substituted therefor:-

Power of the Bribery Commissioner to call for additional information

The Commission to Investigate Bribery or Corruption may, at any time, call for such additional information as it may require from any person who has made a declaration of assets and liabilities under this Law, and utilize such information or the declaration made under this Law for the performance of its function under the Act.

Amendment of section 7(6) of the Law No. 1 of 1975.

8. Section 7(6) of the principal enactment, as amended by Act. No. 74 of 1988, is hereby repealed and the following sections are substituted therefor:-

Procedure regarding written communications by any person and prohibition of public statements

In this section, “appropriate authority” shall mean the Attorney-General, the Commission to Investigate Bribery or Corruption, the Commissioner-General of Inland Revenue, the Head of the Department of Exchange Control and the Principal Collector of Customs.

Amendment of section 9(1) of Law No. 1 of 1975.

9. Section 9(1) of the principal enactment, as amended by Act. No. 74 of 1988, is hereby repealed and the following sections are substituted therefor:-

Offences.

A person:-

- (a) who fails without reasonable cause to make any declaration of assets and liabilities which he is required under section 3; or
- (b) who makes any false statement in any such declaration; or
- (bb) who wilfully omits any asset or liability from any such declaration ; or
- (c) who fails without reasonable cause to give such additional information as the Commission to Investigate Allegations of Bribery or Corruption may require under this Law; or
- (d) who otherwise contravenes any provision of this Law

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

Repeal of section 7(4) of Law No. 1 of 1975.

10. Section 7(4) and Section 7(5) of the principal enactment, as amended by Act. No. 74 of 1988 is hereby repealed.

Repeal of section 8 of Law No. 1 of 1975.

11. Section 8 of the principal enactment, as amended by Act. No. 74 of 1988 is hereby repealed.

Repeal of section 9(5) of Law No. 1 of 1975.

12. Section 9(5) of the principal enactment, as amended by Act. No. 74 of 1988 is hereby repealed.

Amendment of section 12 of the principal enactment.

13. Section 12 of the principal enactment as amended by Act. No. 74 of 1988, is hereby amended by the repeal of the definition of the expression “Local Authority” and the substitution of the following new definition:

“Local Authority” means any Municipal Council, Urban Council, Provincial Council, Pradeshiya Sabha, and includes any authority created and established by or under any law to

exercise, perform and discharge powers, duties and functions exercised, performed and discharged, by any such Council;

Sinhala text to prevail in case of inconsistency.

14. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.