

Legislative Brief

CHAPTER I		
Section	Concern	Comment
Preamble and S.(1)(j)	<p>AN ACT TO GIVE EFFECT TO THE UNITED NATIONS CONVENTION AGAINST CORRUPTION AND OTHER INTERNATIONALLY RECOGNIZED NORMS, STANDARDS, AND BEST PRACTICES</p> <p>Section (1)(j) Objects and Purposes of this Act To give effect to obligations incurred under the United Nations Convention Against Corruption (UNCAC), other international agreements, and accepted international norms, standards, and best practices in order to establish a culture of integrity in Sri Lanka: Provided however, certain Parts of this Act may contain objects and purposes relevant to that Part only for the better manifestation of the provisions therein</p>	<p>The draft does not fully reflect and translate the UNCAC and its purpose. Therefore, to state in the preamble that this gives effect to the UNCAC would be a misrepresentation.</p> <p>It should state: ... give effect to certain provisions of the United Nations Convention Against Corruption...</p>
4	<p>Constitution of the Commission</p> <p>4(1) The Commission shall consist of the following three members: - (a) a Judge of the Court of Appeal or a judge of the High Court (b) an officer of the Attorney General's Department not below the rank of Deputy Solicitor General; and (c) a person qualified in the following fields: - (i) accounting; (ii) auditing; (iii) management; or (iv) public administration.</p>	<p>There should be checks and balances regarding the appointment of members to ensure independence and to avoid undue political influence.</p> <p>Amend as follows: The Commission shall consist of the following three members appointed by the President, on the recommendation of the Constitutional Council: -</p> <p>It is recommended NOT to include any officer of the Attorney General's department. Such inclusion can negatively affect the independence of the Commission and cause conflicts of interests given that the Attorney General is the chief legal adviser of the incumbent government.</p>
5	<p>Disqualifications from being a commissioner</p>	<p>Include in S.5(d) holds a position in any diplomatic mission, Presidential Commission or Task Force,</p>

<p>7</p>	<p>Resignation of a member of the Commission (1) A member of the Commission may at any time resign from his office by a letter addressed to the President in that behalf and such resignation shall take effect upon it being accepted by the President in writing.</p> <p>(2) The President shall appoint a new member in place of the member who resigned, within three months of the resignation of such member</p>	<p>Remove ‘and such resignation shall take effect upon it being accepted by the President in writing.’</p> <p>Insert in 7(2) The President shall on the recommendation of the Constitutional Council appoint a new member in place of the member who resigned, within three months of the resignation of such member</p> <p>Resignation being contingent upon the President’s discretion and authority to appoint the substitute member in S. 7(2) conflicts with the independence of the appointment and resignation process.</p> <p>No public official should be coerced to serve in a post if they are either unwilling or unable to perform.</p>
<p>10</p>	<p>Chairman of the Commission The president shall appoint as the Chairman of the Commission, the member who is a retired judge of the Supreme Court or Court of Appeal</p>	<p>The commission members do not include a retired judge of either Supreme Court or Court of Appeal as per Section 4 of the draft Act. As such, s. 10 does not comply with S.4(1)</p> <p>The president appointing the chairman also conflicts with independence and allows room for abuse of authority.</p> <p>Remove Retired judge of the Supreme Court</p> <p>Insert The President shall on the recommendation of the Constitutional Council, appoint as the Chairman of the Commission, the member who is a judge of the Court of Appeal or of the High Court</p>

CHAPTER II

<p>18(2)</p>	<p>Qualifications and disqualifications to be appointed as the Director General (2) A Person shall be disqualified from being appointed, or continuing as the Director-General if such person -</p>	<p>Include (i) holds a position in any diplomatic mission, Presidential Commission or Task Force,</p>
<p>27(1)</p>	<p>Members of the Commission deemed to be public official & c. (1) The members of the Commission, and the Director General and officers' and employees, appointed to assist the Commission shall be deemed to be public officials within the meaning of the Penal Code (Chapter 19) and every investigation conducted under this Act shall be deemed to be judicial proceeding within the meaning of that Code.</p>	<p>The Penal Code states ‘This definitions should be replaced by the definition of "public officer" contained in Article 170 of the 1978 Constitution’</p> <p>Clause 33 of the proposed 22nd Amendment to the Constitution states: Article 170 of the Constitution is hereby amended by the repeal of the definition of the expression “public officer” and the substitution therefore of the following definition: -</p> <p><i>“public officer” means a person who holds any paid office under the Republic, other than a judicial officer, but does not include –</i></p> <p>(i) the Chairman or a member of any Commission referred to in Article 41B;</p> <p>Article 41B of the Amendment reads: (1) No person shall be appointed by the President as the Chairman or a member of any of the Commissions specified in the Schedule to this Article, except on a recommendation of the Council.</p> <p>The said Schedule referred to in 41B lists; (f) The Commission to Investigate Allegations of Bribery or Corruption.</p> <p>Thus, members of the Commission do not fall within the definition of a Public Officer under the Penal Code and therefore, Section 27 of the Composite Law draft contradicts the proposed Constitutional amendment.</p>

28(1)	<p>Protection for actions</p> <p>(1) No proceedings, civil or criminal, shall be instituted against a member of the Commission, the Director-General or any officer or employee of the Commission, or any person whose service is retained under Section 31 or any other person assisting the Commission in any way, other than for contempt for any act which is done or omitted to be done, in good faith, by him as such member of the Commission, Director-General, officer, employee, a person hired or retained under section 31 or any other person.</p>	<p>Amend as follows to avoid unfettered immunity from suit, being misused:</p> <p>(1) No proceedings, civil or criminal, shall be instituted against a member of the Commission, the Director-General or any officer or employee of the Commission, or any person whose service is retained under Section 31 or any other person assisting the Commission in any way, other than for contempt for any act which is done or omitted to be done, in good faith, by him IN HIS CAPACITY as such member of the Commission, Director-General, officer, employee, a person hired or retained under section 31 IN THE EXECUTION OF THEIR DUTIES or any other person ASSISTING THE COMMISSION.</p>
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CHAPTER III

29(2)	<p>The Commission to submit annual budget estimates for incorporation in the national budget</p> <p>29 (2) The Commission shall have its own fund.</p> <p>(a) There shall be paid into the Fund-</p> <p>(ii) all such sums of money as may be received by the Commission by way of donations, gifts, bequests, or grants from any source whatsoever, whether within or outside Sri Lanka, subject to the approval of the Minister assigned the subject of Finance.</p>	<p>Insert an approval procedure to be followed in order to ensure that such donations, gifts received from any source do not amount to conflicts of interest. Require mandatory public disclosure of all receipts and sources of funds.</p>
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CHAPTER IV

<p>30</p>	<p>Appointment, promotion, etc of the officers etc. of the Commission</p> <p>The appointment, promotion, disciplinary control, and dismissal of the officers and other employees of the Commission shall be vested in the Commission and shall be carried out in the manner as may be determined by the Commission.</p>	<p>The Section does not specify the recruitment of Investigating Officers who will be discharging police powers in investigations and arrests.</p> <p>Specify whether a special cadre will be recruited and created for the purposes of this Act or whether such Investigating Officers will be recruited from within the existing police force and/or trained civilians.</p>
<p>39(1)</p>	<p>Investigations.</p> <p>(1) Subject to the provisions of this Act, the Commission shall investigate allegations contained in any information or complaint made to it or any material received by it under section 42 where any such allegations disclose the commission of-</p> <p>(a) an offence under this Act other than any offence specified in the schedule A to this Act; or</p> <p>(c) an offence specified in the Schedule A to this Act where such offence has been committed in the same transaction together with an act which constitutes an offence in terms of this Act;</p> <p>and direct the institution of proceedings against such person in respect of such offence in the appropriate court.</p>	<p>Excludes investigations ex mero motu.</p> <p>Schedule A of Section 39 is not provided in the draft for review</p>

<p>41</p>	<p>Implementation of International Conventions, agreements, obligations etc.</p> <p>The Commission shall take all necessary measures to give effect to the United Nations Convention Against Corruption and any other international obligation which Sri Lanka has undertaken to prevent corruption.</p>	<p>The draft Act does not fully reflect and translate the United Nations Convention Against Corruption (UNCAC). Therefore, the Commission will not be able to take all necessary measures to give effect to the UNCAC.</p> <p>Additional measures should be taken in order to ensure international cooperation, asset recovery, and technical assistance and information exchange, to allow the Commission fully implement UNCAC in Sri Lanka.</p> <p>(E.g., passage of the Proceeds of Crime Legislation)</p>
<p>42(3)</p>	<p>Preliminary inquiry, investigations and other measures.</p> <p>S.42(3); After the holding of a preliminary inquiry, if the Commission is satisfied that there exist reasonable grounds to believe that an offence under the provisions of this Act has been committed or there has been a conspiracy, preparation, attempt, or abetment to commit an offence under the provisions of this Act, the Commission may direct the conduct of an investigation:</p> <p>Provided however, if the Commission is satisfied of the existence of reasonable grounds to believe the committing of or existence of any conspiracy, preparation, attempt, or abetment to commit an offence under the provisions of this Act, the Commission may authorise holding of an investigation without the conduct of a preliminary inquiry.</p>	<p>Be transparent about steps taken on complaints received, and reasons for non-prosecution, if any should be publicly provided?</p>

<p>47(4)</p>	<p>Commission may arrest persons without a warrant etc.</p> <p>(4) Anything in this section shall not give a right to cause the death of a person who is not accused of an offence punishable with death.</p>	<p>Remove subsection (4)</p> <p>It is unlawful to cause death to an accused or any person except by a court of law as punishment for an offence punishable with death and an exception to the offence amounts to a violation of their human and fundamental rights.</p>
<p>49(1)</p>	<p>Examination of persons when conducting an investigation.</p> <p>(1) The Commission may, in conducting an investigation under section 42-</p> <p>(d) direct by notice in writing any bank, a non-banking financial institution, or designated non-finance business to produce, within such time as may be specified in the notice, any information in whatsoever form relating to the account of any person in respect of whom any information or complaint has been received under section 42 or of any person associated with such person, or of a company of which such person is a director, or of a trust in which such person has a beneficial interest or of a firm of which such person is a partner, or to furnish as so specified, certified copies of such information therein which is in printable form;</p>	<p>S. 49 (1)(d) specifically excludes investigations of ex mero motu by insertion of words any information in whatsoever form relating to the account of any person in respect of whom any information or complaint has been received under section 42...</p> <p>Remove the words any information or complaint has been received</p> <p>and substitute with words any inquiry or investigation is being conducted under section 42</p> <p>This renders the Commission unable to utilise the powers granted by this section to direct any bank or non-banking financial institution, or designated non-finance business to produce such information... when conducting an ex mero motu investigation under S. 42.</p>
<p>49(1)(f)</p>	<p>Examination of persons when conducting an investigation.</p> <p>(1) The Commission may, in conducting an investigation under section 42-</p> <p>(f) notwithstanding the provisions of paragraph (d), require from the following officers any information or document for the purpose of conducting an investigation under the provisions of this Act: -</p>	<p>Insert</p> <p>(xv) Registrar General of The Registrar General's Department</p>

<p>53(1)</p>	<p>Restraining orders</p> <p>S. 53(1) The Commission may-</p> <p>(a) prohibit by written order (referred to as the "freezing order"), any person in respect of whom an information or a complaint has been received under section 42, the spouse, other family member of such person or any other person holding any property in trust for such rust-mentioned person, or a company of which he is a director or a firm in which he is a partner, from transferring the ownership of, or any interest in, any movable or immovable property specified in such order, until such time such order is revoked by the Commission and to cause a copy of such written order to be served on any such authority as the Commission may think fit, including in the case of-</p>	<p>S.53(1)(a) excludes freezing order on ex mero motu investigation by specifying; ‘person in respect of whom an information or a complaint has been received under section 42,’</p> <p>Remove the words any person in respect of whom an information or complaint has been received</p> <p>and substitute with words any person in respect of whom an inquiry or investigation is being conducted under section 42</p>
<p>55-59</p>	<p>Commission’s authority to intercept</p>	<p>These powers should be subject to due process safeguards and data protection laws to prevent abuse of power</p>
<p>62</p>	<p>Sharing of information</p>	<p>Insert (xv) Registrar General of The Registrar General's Department.</p>
<p>67(3)</p>	<p>Withdrawal of indictments</p> <p>S. 67 (3) The Director General may, when withdrawing an indictment under subsection (1), impose on the accused one or more of the following conditions to be fulfilled within a stipulated period -</p> <p>(i) to publicly express remorse and apology before the High Court, using a text issued by the Commission;</p> <p>(ii) to provide reparation to victims of the offence, as specified by the Commission;</p> <p>(iii) to publicly undertake that he refrains from committing an offence under this Act; or</p> <p>(iv) to permanently refrain from holding public office, both elected and appointed</p>	<p>Amend to make express remorse and apology AND another condition as the Director General may deem fit as allowing the option of the condition being only ‘to publicly express remorse and apology before the High Court, using a text issued by the Commission;’ does not help in prevention and deterrent of commission of an offence. It could also be seen as a loophole by those who commit offences.</p> <p>Amend as follows;</p> <p>S. 67 (3) The Director General SHALL, when withdrawing an indictment under subsection (1), impose on the accused one or more of the</p>

		<p>following conditions to be fulfilled within a stipulated period -</p> <p>(i) to publicly express remorse and apology before the High Court, using a text issued by the Commission; AND One or more of the following conditions (ii), (iii), (iv)</p> <p>It is recommended to have a proper mechanism to oversee this power to ensure withdrawals only on reasonable grounds.</p> <p>Change to 'using a text produced by the Defendant".</p>
71(3)	<p>Section 71. Deferred Prosecution Agreements (DPA)</p> <p>S.71(3) Where the Commission decides in terms of subsection (1) to suspend or defer the institution of criminal proceedings against any person alleged to have committed an offence under this Act, it shall prefer an application to the High Court, to obtain sanction of such Court for the imposition of one or more Of the following conditions to be fulfilled within a stipulated period, on such person as consideration for the suspension and deferment of the institution of criminal proceedings against such person -</p> <p>(I) to publicly express remorse and apology before the High court, using a text issued by the Commission; · (ii) to provide reparation to victims of the offence, as specified by the Commission; (iii) to publicly undertake that such person refrains from committing an offence under this Act; or (iv) to permanently refrain from holding public office, either elected or appointed</p>	<p>Amend as follows;</p> <p>S. 71(3) Where the Commission decides in terms of subsection (1) to suspend or defer the institution of criminal proceedings against any person alleged to have committed an offence under this Act, it shall prefer an application to the High Court, to obtain sanction of such Court for the imposition of one or more One or more of the following conditions to be fulfilled within a stipulated period, on such person as consideration for the suspension and deferment of the institution of criminal proceedings against such person -</p> <p>(i) to publicly express remorse and apology before the High Court, using a text issued by the Commission; AND One or more of the following conditions (ii) to provide reparation to victims of the offence, as specified by the Commission; (iii) to publicly undertake that such person refrains from committing an offence under this Act; or (iv) to permanently refrain from holding public office, either elected or appointed; or (v) to pay a sum as compensation to victims of the crime as decided by the Court. (vi) to pay a fine to the State, as decided by the Court.</p>

CHAPTER V		
General	<ul style="list-style-type: none"> • The chapter does not specify the protection of victims of corruption. E.g., victims of gratification by means of sexual favors. • This chapter does not acknowledge the harm/ damage caused to property of the witnesses/ informers/ victims. • This chapter does not specify the measures to be taken in case of an imminent threat to the informer and the victims of corruption. 	Amend as being; subject to the Assistance to and Protection of Victims of Crime and Witnesses Act No. 4 of 2015, and ensure that the victims of corruption will be directly referred to the National Authority for the Protection of Victims of Crime and Witnesses by CIABOC.
73(1)	<p>Protection of informers of the Commission</p> <p>Does not include the instances of the Commission receiving information on any offence prior to it happening and only protects informers of an offense that has happened already.</p>	Include protection of informers who inform of an offence prior to it happening, of the likelihood of such an offence happening.
74	<p>Protection of Whistleblowers</p> <p>Does not specify protective measures of whistleblowers subjected to civil or criminal liability, adverse conditions of employment, reprisal, coercion, threat, intimidation, retaliation, or harassment as result of a disclosure</p>	Strengthen whistleblower protection accordingly.
76(2)	<p>Protection of witnesses and persons assisting the Commission</p> <p>The Inspector General of Police, or such public authority or public official is under duty to comply with a direction of the Commission for the protection of witnesses and persons assisting the Commission, “as far as reasonably possible”.</p>	<p>Remove “as far as reasonably possible”</p> <p>Directives issued by the Commission on the protection of witnesses and persons assisting the Commission must be mandatorily followed by the respective public authority or public official. Having an escape clause of “as far as reasonably possible” could render the witness and informer protection provisions redundant if the implementation is conditional upon the definition of “reasonably possible” of the IGP or public authority/official,</p>

154-interpretation	No harmonization on the definition of “witness” the Anti-Corruption Act and the Assistance to and Protection of Victims of Crime and Witnesses Act.	Replace the definition with the definition of a ‘witness’ given in Assistance and Protection of Victims of Crime and Witnesses Act, which provides a broader definition.
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PART II- DECLARATION OF ASSETS AND LIABILITIES

78(1)	<p>Application of this Law.</p> <p>The provisions of this Part shall apply to every person belonging to any one of the following classes or descriptions: -</p>	<p>Include following categories</p> <p>(w) Staff of state banks in managerial and/or supervisory roles</p> <p>(x) High risk categories including lower-level staff officers (the exact categories as identified through risk analyses from time to time to be designated by way of regulations by the Minister)</p>
79(2)	<p>Duty of persons to whom this part applies to make declarations of assets and liabilities</p> <p>79(2) For the purposes of this section, the "assets and liabilities" means assets, liabilities, income, expenditure, and interests which gives rise to or may give rise to conflicts of interest, in and outside Sri Lanka, the details of which shall be prescribed by regulations.</p>	<p>The following categories of assets and liabilities are proposed to be included;</p> <ol style="list-style-type: none"> 1. Corporate rights 2. NFTs (Non-Fungible Token), cryptocurrencies and all cryptographic and digital assets 3. Shareholding, directorships 4. Beneficial ownerships of companies 5. Financial obligations 6. Concurrent work 7. Memberships in organizations and their governing bodies.
81(1)	<p>Submission process of declarations of assets and liabilities</p> <p>(1) The submission and verification of declarations of assets and liabilities shall be made through the centralized electronic system administered by the Central Authority</p>	<p>Does not specify when the e-system would be created.</p> <p>Include a provision requiring the establishment and implementation of the centralized electronic system by the Central Authority within 18 months of enactment of this Act</p>

82(2)	<p>Verification Process</p> <p>The Central Authority shall conduct verification for accuracy and completeness to detect signs of illicit enrichment, and to detect conflicts of interests in the following circumstances:</p>	<p>Include</p> <p>(d) Verification upon red-flags of illicit enrichment or discrepancies in assets being detected by the automated system</p> <p>(e) Verification upon journalistic investigations</p>
82(2)(a)	<p>Central Authority shall also conduct verification of the declarations of asset and liabilities in the following circumstances</p>	<p>Specify in the provision or provide for Minister to specify within a certain time period.</p>
85(2)	<p>Public Access</p> <p>85(2) The Central Authority shall, within a period of three months of the commencement of the functions of the Central Authority, appoint an officer as the Information Officer of the Central Authority in terms of section 23 of the Right to Information Act, No. 12 of 2016 and the Head of the Central Authority shall be the Designated Officer for the purposes of the said Act No provision for public access to redacted versions of electronic declarations submitted to the system.</p>	<p>Recommend making the “centralized electronic system” open and publicly accessible, subject to redaction as per Section 85 (1). Public access should not only be limited to asset declarations of electoral candidates as per s. 86(1), but should be extended to all categories of declarants covered by s. 78(1).</p> <p>Amend as follows:</p> <p>“The redacted version of the declaration of assets and liabilities shall be made available to the public within weeks from submission date”.</p> <p>Accessibility of information on the Declarations of Assets and Liabilities contributes to increased scrutiny by the public which complements the role of the Central Authority to monitor illicit enrichment and conflicts of interest which is an object of this Part of the Act under S.77(e)</p> <p>Accessibility of information on the Declarations of Assets and Liabilities (DAL) contributes to increased scrutiny by the public on the declarants which compliments the role of the Central Authority to monitor illicit enrichment and conflicts of interest. Given that there has so far been much resistance to disclosing declarations of assets and liabilities.</p>

<p>86</p>	<p>86(1) All the candidates of elections referred to in paragraph (p) of section 76 shall, submit a copy of the form and a summary of the declaration of assets, and liabilities, to the Commissioner of Elections together with such candidate's nomination papers.</p> <p>(2) The summary of the declaration of assets and liabilities shall be available for the public.</p>	<p>The provision is vague and does not specify whether it is the Central Authority or the Election Commission who is responsible for making the summary available in the system to the public. It also does not cover what details a "summary" should contain.</p> <p>If the redacted versions of all asset declarations are made publicly available, there is no need to produce a separate summary of the asset declarations of electoral candidates as proposed above.</p> <p>However, if this specific provision is to be operative, the Act should specify whether the Central Authority or the Election Commission is responsible for producing and making such summary of a declaration publicly available in the system and the time limit for such availability which should be well ahead of the election date.</p>
<p>123(1)</p>	<p>Any person-</p> <p>(c)who willfully omits any asset or liability from any such declaration; or</p>	<p>The burden of proof is on the law enforcement authority, to prove a willful omission of an asset.</p> <p>The burden of proof to establish that they did not willfully omit an asset, should be on the declarant, where there has been a willful omission of an asset in an asset declaration.</p> <p>Amend as follows “For the purposes of any prosecution under paragraph (c) of subsection (1), it shall be deemed, until the contrary is proved by the person, that such undeclared asset or liability was willfully omitted from such declaration.”</p> <p>Fine is not specified.</p>

123(4)	<p>Any person who fails to submit his declaration of assets and liabilities along with his application forms for nomination for an election, shall be liable to sanctions in accordance with the provisions of the relevant written laws.</p>	<p>Where an electoral candidate fails to submit his asset declaration along with his nomination, the penalty is not clear.</p> <p>It states that he “shall be liable to sanctions in accordance with the provisions of the relevant written laws”.</p> <p>Recommend to specify which sections of which “written laws” are referred to, in this subsection.</p>
123(6)	<p>For any person who fails to submit the first appointment 'declaration, ad-hoc declarations or the end of tenure or retirement declaration until twenty-eight days after the due date, commits an offence and shall on conviction after summary trial before a Magistrate, be liable to a fine equivalent to-</p> <p>(i) one hundred thousand rupees where any person fails to submit his first appointment declaration</p> <p>(ii) one hundred thousand rupees, where any person fails to submit his ad-hoc declaration; or</p>	<p>Suggest to increase the fine amount to “not exceeding five hundred thousand rupees”, in order to serve as a stronger deterrent and preventive measure.</p>
123(7)	<p>Any person who makes any false statement in any declaration or who willfully omits any asset or liability from any declaration commits an offence and shall on conviction after summery trial before a Magistrate, be liable to a fine equivalent to last drawn gross salary or twelve months of that person or to a term of imprisonment not exceeding one year or to both such fine and imprisonment.</p>	<p>Increase the imprisonment period to not exceeding seven years, or for both fine and imprisonment.</p>

**PART III- CHAPTER 1
OFFENCES**

<p>88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98 (1), 98 (2), 101, 102, 103 (3), 105, 112, 118 (2), 118 (3)</p>	<p>Fines proposed in these Sections are limited to not exceeding a hundred thousand rupees</p>	<p>Increase the fine to “not exceeding five hundred thousand rupees”, if these provisions are to serve as deterrents and preventive measures since the Court has the discretion to fine a lesser sum considering circumstances. A sum of a hundred thousand is not a significant amount to deter commission of an offence nor will it be even a considerable amount in a few years. Since the laws are long term and are not often amended, it is recommended to have higher fines</p>
<p>111</p>	<p>The fine proposed in this Section is limited to not exceeding two hundred thousand rupees.</p>	<p>Increase the fine amount to “not exceeding five hundred thousand rupees”</p>
<p>113, 114, 115, 117, 118 (1), 120</p>	<p>The fine proposed in this Section is limited to not exceeding fifty thousand rupees.</p>	<p>Increase the fine amount to “not exceeding five hundred thousand rupees”</p>
<p>95</p>	<p>Bribery of public officials by persons having dealings with the Government The Proviso to this Section states: Provided, however, that such offer of a gratification to a public official as is referred to in paragraph (b) of this section shall not be an offence under this section if the <i>offeror</i> proves that the gratification was bona fide offered for a purpose not connected with and not relating to such dealings as are referred to in that paragraph and that when he offered the gratification he had no hope or expectation of having any such dealings or he did not intend that the gratification should be an inducement or a reward for that public official's doing or forbearing to do any act connected with or relating to any such dealings.</p>	<p>Remove section 95, reference specific laws that allow gifts or specify a certain threshold value.</p>

<p>100</p>	<p>Bribery in the Private sector</p> <p>100(1) Any person who, in the course of economic, financial or commercial activities, offers, directly or indirectly, a gratification to any person who directs or works, in any capacity, for a private sector entity, for the person himself or for another person, in order that he commits any act or refrains from committing any act in breach of his duties, commits an offence of bribery under this Act and on conviction be liable to a fine not exceeding hundred thousand rupees or to a term of rigorous imprisonment not exceeding seven years or to both such fine and imprisonment.</p> <p>100(2) A person who directs or works, in any capacity, for a private sector entity, in the course of economic, financial or commercial activities, solicits or accepts, directly or indirectly an advantage, for the person himself or for another person, in order that such person does any act or refrain from doing any act in breach of such person's duties, commits an offence of bribery under this Act and on conviction be liable to a fine not exceeding hundred thousand rupees or to a term of rigorous imprisonment not exceeding seven years or to both such fine and imprisonment.</p>	<p>Private Sector Bribery: the listed companies cover a very limited and narrow number of companies</p> <p>There is no distinction between coercive bribes, where persons are forced to commit bribery, usually through means of extortion, and collusive bribes where the bribe giver works in agreement with the bribe taker to receive a benefit. Bribe givers are usually considered the guilty party – so under this provision, if they were coerced, they would still be guilty.</p> <p>Recommend: Add provisions for an offence of ‘Failure to Prevent’ bribery</p> <p>The private sector entity should have a defense by proving that it had in place adequate procedures designed to prevent persons associated with the entity from undertaking/engaging in bribery and corruption. The purpose being to encourage commercial organisations to put in place due diligence procedures that adequately inform the application of proportionate measures designed to prevent persons associated with them from bribing on their behalf.</p> <p>Recommend: to a fine not exceeding five hundred thousand rupees or to a term of rigorous imprisonment not exceeding seven years or to both</p> <p>The fee for bribery committed by the private sector must be increased significantly in comparison to bribery committed by a person or individual. Fee structures should be determined proportionate to the size, scope and resources of the private company, whether incorporated, unincorporated or a corporation. A fine of Rs. 100, 000, while a significant amount for an individual, is an insignificant small price to pay for a large corporation and does not serve the purpose of the law.</p>
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101(3)	<p>Failure to declare conflict of interest</p> <p>In case of declared Conflict of Interest, the next steps to follow are not clearly mentioned in this provision.</p>	<p>Include specific steps to be followed in an instance of conflict of interest, in line with The Handbook on “Rules on Conflict of Interest” of the CIABOC National Action Plan.</p>
109	<p>Offences by body of persons</p> <p>Where an offence under this Act is committed by a body of persons, then- if such body of persons is a body incorporate or unincorporate or a corporation, every director or officer or agent thereof; and if such body of persons is a firm, every partner, shall be liable to a fine as specified for the respective offences:</p> <p>Provided, however, a director or an officer or agent of such body incorporate, unincorporate or of such corporation or partner of such firm shall not be deemed to be guilty of such offence if he proves that such offence was committed without his knowledge or that he used all such diligence to prevent the commission of such offence.</p> <p>.</p>	<p>The fee for bribery committed by a body of persons can be increased significantly in comparison to a person or individual. Fee structures should be determined proportionate to the size, scope and resources of the body of persons, whether incorporated, unincorporated or a corporation. A fine of 100, 000 while a significant amount to an individual, may only be a small price to pay for a large corporation. These fines are not high enough and are not practical for corporate entities Sentencing should also take into account the need for compensation of any victims of the crime.</p>
142	<p>(1) When determining the term of imprisonment to be imposed on a person convicted of having committed an offence under this Act, the following factors shall be taken into account as aggravating factors which warrant the imposing of an enhanced term of imprisonment, subject to the provisions of this Act: -</p> <p>(2) When determining the term of imprisonment to be imposed on a person convicted of having committed an offence under this Act, the following factors shall be taken into account as mitigating factors which warrant a reduced term of imprisonment subject to the provisions of this Act:-</p> <p>(b) coercion or duress under which the offence had been committed;</p>	<p>Include in subsection (1) (e) coercion or duress under which the offence had been committed;</p> <p>In general, for Section 142, there should be a provision to the effect that where it has been proven on a balance of probabilities that someone has been forced or coerced to pay a bribe, including sexual bribes, there need not be a penalty imposed on the victim of such coercion.</p>

N/A	The Right to Information Act should prevail subject to section 5(1) thereof.	Include a savings clause to ensure the prevalence of the Right to Information Act. With respect to any sensitive information, any refusals to provide information can happen under section 5(1) of the Right to Information Act.
154	<p>Interpretation</p> <p>Assets and Liabilities</p>	<p>Include the definition</p> <p>"assets and liabilities" mean assets and liabilities in and outside Sri Lanka, and includes movable and immovable property owned by the declarant in whole or in part or held by the declarant in bank accounts or in any form, any property in which the declarant has a beneficial interest and any property acquired by the declarant during the period to which the declaration relates, in the name of his spouse or child.</p>
154	<p>Interpretation</p> <p>Gratification</p>	<p>'Gift' should specify what constitutes a gift. The value and nature of the gift should be mentioned and a threshold for gifts should be identified.</p> <p>The Handbook on "Gift Rules" of CIABOC National Action Plan proposes to draft and validate gift rules (rules pertaining to the acceptance of gifts by declarants) as a supplement to the principal law.</p>