

**IN THE SUPREME COURT
OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

*In the matter of an application in terms of
Article 121 read with Article 120 of the
Constitution to determine whether the Bill titled
“Companies (Amendment)”, or any part thereof
is inconsistent with the Constitution.*

- 1. Transparency International Sri Lanka**
No.366, Nawala Road
Nawala, Rajagiriya.
- 2. Pulasthi R. K. Hewamanna**
No.366, Nawala Road
Nawala, Rajagiriya.

Petitioners

S.C. (S.D.) No: 92/24

- VS -

The Attorney General,
Attorney General's Department,
Colombo 12.

Respondent

On this 10th day of September 2024

**TO: THE CHIEF JUSTICE AND THEIR LORDSHIPS THE OTHER HONOURABLE
JUDGES OF THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

The Petition of the Petitioners above named appearing by G.D.I.Thushari Jayawardena their Registered Attorney-at-Law states as follows:

1. (a) The 1st Petitioner is a body incorporated under the laws of Sri Lanka (and duly re-registered in terms of the Companies Act No. 07 of 2007) and is made up of members, more than three-fourths of whom are citizens of Sri Lanka and is entitled to make this application in terms of Article 121 (1) of the Constitution.

(b) The primary objects of the 1st Petitioner are, inter alia, to encourage the growth of democratic concepts, practices and governance in Sri Lanka, to promote accountability and eradication of corruption in all public institutions, departments and other spheres of government and private sector, and to take steps to promote and bring about transparency and integrity in governance and work towards the eradication of corruption from all spheres of life in Sri Lanka. The Petitioners are filing this application in the public interest in accordance with Article 28 of the Constitution, aiming to uphold and defend the Constitution and the law, promote the national interest, protect public property, prevent its misuse and waste, and respect the rights and freedoms of all.

True copies of the Certificate of Incorporation, the notice of change of registered address and the Articles of Association of the 1st Petitioner are annexed hereto compendiously marked 'P1' and are pleaded as part and parcel hereof.

2. The 2nd Petitioner is a Citizen of Sri Lanka and the Chairperson of the 1st Petitioner.
3. The Petitioners make this application in terms of Article 121 (1) of the Constitution.
4. The Attorney General is made a Respondent under and in terms of the requirement of Article 134 (1) of the Constitution.
5. The Bill titled 'Companies (Amendment') (hereinafter referred to as 'the Bill') was published in the Gazette of the Democratic Socialist Republic of Sri Lanka Part II on August 2, 2024, issued on the 06.08.2024 on the order of the Minister of Industries and placed on the Order Paper of Parliament on the 3rd of September 2024.

True copies of the said Bill (in Sinhala, Tamil and English) and a copy of the Order paper dated 3rd September 2024 are annexed hereto compendiously marked 'P2a', 'P2b', 'P2c' and 'P2d' and pleaded as part and parcel hereof.

6. The long title of the said Bill describes it as a Bill to '*amend the Companies Act, No. 7 of 2007.*

Clause 7 of the Bill

7. The Petitioners state that Clause 7 of the Bill and/or many of its sub-clauses are inconsistent with Article 12 (1) of the Constitution.
8. Clause 7 of the Bill seeks to insert a new division titled 'Beneficial Ownership' into the Act. These sections to be introduced include, as stated in the marginal notes

- a) Section 130A Details of the beneficial ownership a company to be given to the Registrar
 - b) Section 130B Details to be furnished
 - c) Section 130C Appointment of a person for safe keeping and making available details
 - d) Section 130D Details for the Public
 - e) Section 130E Failing to keep and maintain a register of beneficial owners of the Company
 - f) Section 130F A claim for beneficial ownership
 - g) Section 130G Offences
 - h) Section 130H Regulations
 - i) Section 130I Interpretation
9. (a) The Petitioners state that the requirement to disclose Beneficial Ownership of a company is to create transparency and prevent corruption, including fraud, money laundering, asset recovery tax evasion and for the overall accountability in governance structures as a whole.

(b) The relevant international standards are generally found in the Financial Action Task Force and United Nations Convention Against Corruption. These requirements regarding beneficial ownership were also recognized and recommended by the IMF in its Technical Assistance Report: Governance Diagnostic Assessment on Sri Lanka (September 2023).

Copies of the Financial Action Task Force (FATF) 40 Recommendations, October 2023, The Technical Assistance Report- Sri Lanka Governance Diagnostic Report of the IMF dated September 2023 (IMF Country Report No. 23/340) and the United Nations Convention Against Corruption is annexed here marked 'P3a', 'P3b' and 'P3c' and pleaded as part and parcel hereof.

Section 130 A – sought to be included in the Companies Act No. 7 of 2007 by Clause 7 of the Bill


10. The Petitioners state that Section 130 A (10) states that *'the provisions of sections 130A to 130I shall not apply to an offshore company incorporated outside Sri Lanka and registered under this Act or, an overseas company registered under this Act where such company is required to comply with the beneficial ownership registration in the country where it has been incorporated'*.
11. The Petitioners plead that the said section violates Article 12 (1) of the Constitution in that:
- (a) It creates an arbitrary and illogical distinction between 'offshore companies incorporated outside Sri Lanka and registered under the Companies Act or an overseas company registered under the Companies Act where such company is required to comply with the beneficial ownership registration in the country where it has been incorporated' and all other Companies in Sri Lanka.

- (b) Appears to discriminate against Companies with simple shareholder structures.
 - (c) Requires less information regarding beneficial owners from companies where the beneficial owners and legal owners are different.
 - (d) The said distinction between companies has no reasonable nexus to the internationally accepted purpose of requiring the registration of beneficial owners of Companies.
12. Section 130 A (4) does not specify whether these company records on beneficial owners will be available to the Public in terms of section 120 of the Companies Act.
13. Section 130A (6) Specifies that the Registrar shall maintain a register to record the details specified in subsection (1) but does not specify whether this record is to be an online publicly accessibly centralized record of information.
14. (a) Section 130D states that the details of the beneficial owners of a company shall, upon a request for inspection by a member of the public, be made available by the Registrar whether electronically or physically, but the details of the beneficial owners of the company shall be limited to their full names and nature and extent of beneficial ownership of the company.
- (b) The said section is contrary to the Article 12 (1) read with Article 14A of the Constitution.
- (c) The said section also violates Article 12(1) as an illogical distinction is created between information regarding companies where the legal owners and the beneficial owners are the same and companies where beneficial owners are not the legal owners of the company.
15. In all these circumstances the Petitioner pleads that Your Lordships be pleased to consider the manner in which the said Bill violates the provisions of the Constitution (as will be morefully explained by counsel for the Petitioner in oral submissions) and determine that the impugned provisions are violative of/ inconsistent with the Constitution and cannot be validly passed without the special majority as set out in Article 84 (2) of the Constitution.
16. The Petitioners have not previously invoked the jurisdiction of Your Lordships' Court in respect of this matter.
17. The Petitioners respectfully reserve the right to furnish such further facts and documents in support of the matters set out herein at the Hearing.

18. An affidavit of the 2nd Petitioner is appended hereto in support of the averments contained herein.

WHEREFORE the Petitioner respectfully prays that Your Lordships' Court be pleased to:

- (a) Determine that the provisions of Clause 7 of the said Bill are inconsistent with and / or in contravention of the provisions of Article 12(1) and Article 14A of the Constitution and cannot be enacted into law except if approved by a two-thirds vote of the whole number of the members of Parliament in favour as required by Article 84(2) of the Constitution;
- (b) Grant such further and other reliefs as to Your Lordships' Court shall seem meet.


Registered Attorney at Law for the Petitioners


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