

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

In the matter of an Application invoking the jurisdiction of the Hon. Supreme Court under and in terms of Articles 120 and 121 of the Constitution, in order to determine whether the Bill titled "Companies (Amendment)", or any part(s) thereof is/are inconsistent with the Constitution.

1. Transparency International Sri Lanka,
No. 366, Nawala Road,
Nawala, Rajagiriya.
2. Pulasthi Hewamanna,
No.366, Nawala Road,
Nawala, Rajagiriya.

S.C. (S.D.) No: 20 / 25

PETITIONERS

Vs.

Hon. Attorney General,
Attorney General's Department,
Hulftsdorp Street, Colombo 12.

RESPONDENT

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

On this 19th day of June 2025.

The Petition of Petitioners above-named appearing by Thushari Jayawardena, their Registered Attorney-at-Law, states as follows:

1. The Petitioners state that:

- (a) The 1st Petitioner is a body incorporated under the laws of Sri Lanka and duly re-registered under and 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. The 1st Petitioner can, *inter alia*, sue in its own incorporated name.
- (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 respectively marked 'P-1 (a) to (c)' and pleaded as part and parcel of this Petition.

- 2. The 2nd Petitioner is a Citizen of Sri Lanka and is the Chairman of the 1st Petitioner and an Attorney-at-Law by profession.

3. The Hon. Attorney-General is made a Respondent hereto under and in terms of Article 134(1) of the Constitution.
4. The Bill titled 'Companies (Amendment)' (hereinafter referred to as 'the Bill') was published in Part II of the Gazette of the Democratic Socialist Republic of Sri Lanka on April 17, 2025, and issued on the 24/04/2025 on the order of the Minister of Industries and placed on the Order Paper of Parliament on the 05th of June 2025.

A copy of the Order Paper of Parliament dated 05th of June 2025, is annexed hereto marked 'P-2' and pleaded as part and parcel of this Petition.

True copies of the said Bill (in English, Sinhala and Tamil) are annexed hereto respectively marked as 'P-3 (a) to (c)' and pleaded as part and parcel of this Petition.

5. The Long Title of the said Bill describes the same as 'a Bill to amend the Companies Act, No. 07 of 2007'.
6. At the very outset, the Petitioners state that :
 - a. the Fundamental Right to equal protection of the law, as guaranteed under Article 12(1) of the Constitution, entails the people's right to be governed under effective and proactive legislation ensuring transparent and accountable governance enabling a society free from corruption and fraud.
 - b. the Fundamental Right to information guaranteed under Article 14A of the Constitution, entails the people's right to have access to information that have a direct bearing on transparent and accountable governance, prevention of corruption and fraud.
 - c. Accordingly, any piece of proposed legislation that fails to uphold the people's right to have access to information that have a direct bearing on transparent and accountable governance, prevention of corruption and fraud, violates their Fundamental Right to information, as guaranteed under Article 14A of the

Constitution, as well as their Fundamental Right to equal protection of the law, as guaranteed under Article 12(1) of the Constitution, and in certain instances, their freedom to engage in any lawful occupation, profession, trade, business or enterprise.

SUBJECT MATTER AND BACKGROUND

7. The Petitioners state that the instant application pertains to the Constitutionality of several sections introduced under clause 7 of the aforesaid Bill, which seeks to insert a new section titled 'Beneficial Ownership' into the existing Companies Act No. 07 of 2007 (hereinafter referred to as the "Companies Act of 2007"). The sections to be introduced under this clause include, as stated in the marginal notes, the following:
 - 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 :Special provisions relating to reporting, receiving, etc. of details relating to beneficial ownership of the company.
 - i. Section 130I :Regulations.
 - j. Section 130J : Interpretation.
8. 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, which is a national priority for Sri Lanka at this juncture.

9. The Petitioners state that, for this very reason, both the 'Governance Action Plan 2025' as published by the President's Media Unit , and the Cabinet approved 'National Anti-Corruption Action Plan Sri Lanka 2025-2029', respectively *inter alia* under items no. 2, and no. 10 under sub-objective 2: Enhance the management of Conflicts of Interest, Declaration of Assets, and Gift Regulations within the Public Sector, most categorically provide for the creation of a publicly accessible, online Beneficial Ownership Register before the end of 2025.

A copy of the said 'Governance Action Plan 2025' as published by the President's Media Unit and available online as at 18/06/2025) is annexed hereto marked as 'P-4' and pleaded as part and parcel of this Petition.

A copy of the said Cabinet approved 'National Anti-Corruption Action Plan Sri Lanka 2025-2029' and available online as at 18/06/2025, is annexed hereto marked as 'P-5' and pleaded as part and parcel of this Petition.

10. The Petitioners also state that transparency in respect of the Beneficial ownership of a company is a national security imperative, in as much as, anonymous or opaque corporate structures are frequently used for:

- ☐ Cross-border illicit financial flows;
- ☐ Funding of organized crime and terrorism;
- ☐ Fronts for foreign influence operations; and
- ☐ Laundering proceeds from human trafficking, arms, or environmental crimes etc.

11. Accordingly, the Petitioners state that it is imperative that the instant Bill is compliant with the National Policy on anti- corruption as stated in the aforesaid 'Governance Action Plan 2025' , and the Cabinet approved 'National Anti-Corruption Action Plan Sri Lanka 2025-2029', and thereby makes provisions for a publicly accessible online Beneficial Ownership Registry.

12. The Petitioners state that the relevant international standards pertaining to the duty to disclose Beneficial Ownership, are generally found in the Financial Action Task Force (FATF) and United Nations Convention Against Corruption (General Assembly Resolution 58/4 31st October 2003) . These requirements regarding beneficial ownership were also recognized and recommended by the International Monetary Fund (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, are annexed hereto respectively marked 'P-6, P-7, and P-8 and pleaded as part and parcel of this Petition.

13. The Petitioners also state that this is especially important given Sri Lanka's stated ambition to position itself as a reliable and attractive destination for investment, trade, and financial services. Jurisdictions that attract sustainable, high-quality capital inflows do so on the basis of regulatory predictability, transparency, and governance maturity.
14. Against this backdrop, the Petitioners further state that the maintenance of a publicly accessible Beneficial Ownership Register is also directly linked to the Constitutionally enshrined Directive Principles of State Policy and Fundamental Duties (Article 27 of the Constitution), which entrusts the legislature and the Executive with, *inter alia*, establishing in Sri Lanka a Democratic Socialist Society, where, *inter alia*, the fundamental rights and freedoms are fully realized and economic, social and political justice is upheld, in as much as, it could not be done in a society that suffers from corrupt, fraudulent, dishonest and unethical practices.
15. As such, the Petitioners state that, in principle, the Petitioners have always been steadfast advocates and supporters of the introduction of this requirement to disclose Beneficial Ownership, and have been advocating for such introduction in the public interest of ensuring transparency and to prevent corruption, including fraud, money laundering, asset

recovery, tax evasion, and for the overall accountability in governance structures as a whole in Sri Lanka.

16. However, the Petitioners are compelled to invoke the Jurisdiction of this Court, in view of the imminent patent violation of the Fundamental Rights of the Public at large, in the event several of the sections sought to be introduced under clause 7 of the said Bill to 'amend the Companies Act, No. 7 of 2007, as more fully described in the paragraphs herein below, are inconsistent with the Constitution.
17. Therefore, the Petitioners most respectfully state that if the sections referred to herein below are enacted as they have been proposed in the said Bill, this law will not only continue to violate such Fundamental Rights of the people/public, but it will render the purpose and objective of the introduction of this duty to disclose Beneficial Ownership nugatory, and thereby deprive the Public of their right to transparent and accountable governance, as well as the right to live in a society free of corruption and fraud.

VIOLATIONS OF ARTICLE 12 (1) AND 14A OF THE CONSTITUTION

18. The Petitioners respectfully state that the proposed section 130A (4) of the said Bill, provides as follows:

" (4) (a) The company shall maintain a register and record the details specified in subsection (1) when it becomes aware of such details and the company shall keep such register of beneficial owners of the company subject to the provisions of paragraph (b) of subsection (3) of section 116 at its registered office.

(b) The provisions of section 124 relating to the place of the share register of a company shall mutatis mutandis apply to the register of beneficial owners of the company."

19. It is pertinent to note that, regarding the place of the Share Register, section 124(4) of the Companies Act provides as follows:

" (4) Where the share register is not divided and the principal register is not kept at the registered office of the company, notice of the place where it is kept shall be delivered to the Registrar within ten working days after it ceases to be kept there or after the place at which it is kept is altered."

20. Accordingly, the section enables the Beneficial Ownership records to be kept at a place other than the registered office, in accordance with section 124 of the Companies Act, and given that the section specifically restricts the *mutatis mutandis* application of section 124 to the provisions relating to the place of the share register, without reference to the section 120 of the Companies Act, which makes it a duty to make the share register available to the Public, it enables the companies to keep the Beneficial Ownership records away from public, and thereby violate the public's fundamental right to information and the right to equal protection of the law, guaranteed respectively under Article 14A and 12(1) of the Constitution.

21. The Petitioners state that the proposed section 130A(6) and section 130(D) of the said Bill provide as follows:

130 A (6) : *"The Registrar shall maintain a register to record the details specified in subsection (1)"*

130D : *"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 the nature and extent of beneficial ownership of the company: Provided however, any member of the public seeking any further information set out in paragraphs (a) to (f) of subsection (1) of section 130A, may make an application for information in terms of the provisions of the Right to Information Act, No. 12 of 2016."*

22. Accordingly, the Petitioners state that:

- a. Section 130A(6) does not specifically provide that the Registrar shall make the said Register an online publicly accessibly centralized record of information,

- b. On the other hand, section 130D, purports to set-up an “upon request only” mechanism, to make available even the name and the nature and extent of the beneficial ownership, thereby completely undermining and/or rendering nugatory the purpose and objective of maintaining a Beneficial Ownership Registry;
- c. Information being limited on a request only basis, restricts the democratic and regulatory purpose of a public Beneficial Ownership Registry, and the same is contrary to the said 'Governance Action Plan 2025', and the said Cabinet approved 'National Anti-Corruption Action Plan Sri Lanka 2025-2029';
- d. Such a limitation is also contrary to international best practices, as well as the IMF Technical Assistance Report: Governance Diagnostic Assessment on Sri Lanka (September 2023), wherein it distinctly calls for a publicly accessible Beneficial Ownership Registry in Sri Lanka;
- e. Such publicly accessible Beneficial Ownership Registry requires a real-time accessible, digitised database that is integrated with other relevant registries and databases that are equipped to meet the broader objectives of transparency, anti-money laundering, asset recovery, fair taxation, market integrity, national security and fraud prevention;
- f. However, the Petitioners concede that some limited information listed under 130A(1), such as the tax details of a beneficial owner may constitute sensitive information that should not be made publicly available, yet, the mechanism of a redacted version could address this concern, following the domestic and international best practices, in upholding the public's Fundamental Rights and access to information.
- g. In particular, the limits of the extent of information available to the public under section 136D of the said Bill, cannot sufficiently identify beneficial owners, especially in instances of name duplication and common names, thereby undermining the purpose of the Beneficial Ownership Register in and of itself.
- h. International best practices demonstrate that in order to uphold the purposes of inclusion of the Beneficial Ownership Register, crucial identifiers including Full name,

Month and year of birth, country of residence, nationality, service address, extent and nature of control and other verifiable data, must be made available.

- i. Accordingly, in the absence of the inclusion of Beneficial Ownership records to be made public under section 120 of the Companies Act, or a specific statutory duty under section 130A(6) similar to that of other legislation, the public access to the records of Beneficial Ownership is restricted, and violates their Fundamental Right to equal protection of the Law and right to information guaranteed respectively under Articles 12(1) and 14A of the Constitution, whilst undermining the purpose of the Beneficial Ownership Register in and of itself.
- j. Moreover, the insufficient access under section 130D, goes against the government obligations under the FATF Recommendation 24 and the IMF's Governance Diagnostic Assessment (GDA) for Sri Lanka, which specifically recommend granting Obligated Entities, i.e. entities which have to assess the risk of money laundering to which they are exposed when they onboard and transact with their clients, such as financial institutions, designated non-finance businesses and insurers. This includes banks, lawyers, accountants, auditors, real-estate agents, etc., access to Beneficial Ownership Information, to enhance anti-money laundering efforts as it enables them to identify and report inconsistencies in Beneficial Ownership information.
- k. Thereby, an effective and consistent approach would be the proactive publication of full data with the redaction of any highly sensitive information, following a model similar to that adopted for public access to asset declarations under the Anti-Corruption Act No.09 of 2023.
- l. It is important to note that, in the context of asset recovery, fraud detection, and the prevention of asset dissipation, time is often critical/of the essence. Authorities, journalists, and other watchdogs must be able to trace, flag, and freeze assets rapidly, and therefore, the mechanism provided for in section 130D of the said Bill for access subject to an application being made under the Right to Information Act, No. 12 of 2016 is ineffective, inconsistent and meaningless.

- m. Moreover, the authority as well as the administrative discretion vested solely with the Registrar of Companies as to the provision of even the most primitive information (which are not at all sufficient in serving the purpose of the Beneficial Ownership Register i.e. sufficient and distinct identification of the beneficial owners to detect money laundering, terrorist financing, fraud, tax evasion etc.), in the absence of a robust and express mechanism of holding the said Company Registrar accountable for such decisions, through imposition of timelines, sanctions and/ or an appeal mechanism, leaves unsupervised power with the said Registrar of Companies, facilitating potential arbitrary use of power, corruption and collusive practices, instead of the prevention of the same;
- n. The subjecting of only the release of details pertaining to beneficial ownership, to the provisions of the Right to Information Act, No. 12 of 2016, is unfair, irrational, misconceived, and unreasonable, and negates the purpose and/or objective of such disclosures.
- o. It is significant that access of the public to information and details contained in certain prescribed forms currently filed with the Registrar of Companies under the Companies Act of 2007, are not restricted or subjected to the provisions of the Right to Information Act, No. 12 of 2016. The Petitioners respectfully reserve the right to produce any prescribed forms/specimen forms at the hearing of this Application.
- p. This is especially so, because some of the prescribed forms to be filed with the Registrar of Companies under the Companies Act of 2007, which can be accessed by any member of the public (upon payment), already contain much of the information listed under the proposed section 130A(1) (a) to (f) of the said Bill.
- q. Ready/unrestricted access to a beneficial ownership registry will foster, promote, and encourage, inter alia, ethical business, business dealings, and practices.

- r. No sanctions are imposed by the said Bill on the Registrar of Companies for non-compliance with the beneficial ownership disclosure requirements.
23. In the aforesaid circumstances, the Petitioners state that the Beneficial Ownership Registry in Sri Lanka is likely to be an ineffectual and meaningless mechanism in the absence of suitable measures to redesign the disclosure mechanism to fit its intended purpose, which violates Article 14A and Article 12(1) and/or Article 14(1)(g) of the Constitution, in its current form.
24. In all of the foregoing circumstances, the Petitioners state that Your Ladyship's Court be pleased to consider the manner in which the said Bill violates the provisions of the Constitution (as will be more fully adverted to by Counsel appearing for the Petitioners during hearing) and determine that the impugned provisions are violative of/ inconsistent with the Constitution and cannot be validly passed without the special majority referred to in Article 84(2) of the Constitution.
25. In the totality of the aforesaid circumstances, the Petitioners respectfully state that the entirety of the said Bill and/or any part(s) thereof and/or any one or more of the clauses/sections/provisions thereof (as more fully adverted to herein), should not become law, unless passed by two-thirds of the whole number of Members of Parliament
26. The Petitioners state in full disclosure that, on 03rd September 2024, a Bill titled "A Bill to amend the Companies Act No. 7 of 2007", was presented to the Parliament, containing clause 19; purporting to introduce special provisions relating to information on beneficial ownership of a company held on the appointed date, and the same was challenged by these Petitioners under and in terms of Articles 120 and 121 of the Constitution, in case bearing No. SC(SD) 92/2024, wherein these Petitioners re-iterated *inter alia*, the critical importance of publicly accessible Beneficial Ownership Register.

A true copy of the Petition filed in the said case bearing no. SC(SD) 92/2024, is annexed hereto marked as 'P-9(a)' and pleaded as part and parcel of this Petition.

A copy of the Bill published in the Gazette of the Democratic Socialist Republic of Sri Lanka, Part II on August 02, 2024, issued on the 06/08/2024, and placed on the order paper of Parliament on the 3rd of September 2024, is annexed hereto marked as 'P-9(b)', and pleaded as part and parcel of this Petition.

27. Nevertheless, the said Bill that was presented to the Parliament on 03rd September 2024, is different from the Bill that forms the subject matter of the present Application, in as much, *inter alia*, as :

- a. Section 130D of the Bill that was presented to the Parliament on 03rd September 2024 did not contain a proviso;
- b. Section 130A(10) of the Bill that was presented to the Parliament on 03rd September 2024, exempted offshore companies incorporated outside Sri Lanka and registered under the Companies Act and overseas company registered under the Companies Act, where the company is required to comply with the beneficial ownership registration in the country where it has been incorporated, from the duty to disclose beneficial ownership, whereas the Bill that forms the subject matter of the present Application, imposes the same duty of disclosure on these two types of companies as well;
- c. A new section 130H is included in the Bill that forms the subject matter of the present Application;

28. Moreover, in any event when submissions were made in the aforesaid application bearing No. SC(SD) 92/2024, the matter was left without a determination due to Parliament being dissolved as a result of the impending Presidential (held on 21/09/2024), and in those circumstances the matters urged by the Petitioners before Your Lordships' pertaining to the grievous impact on the Fundamental Rights of the Public, as set out in the foregoing paragraphs, remain as matters that are yet to be determined by this Court;

29. Accordingly, the Petitioners have not previously invoked the jurisdiction of Your Ladyship's Court in respect of this same matter.
30. The Petitioners respectfully reserve the right to furnish such further facts and documents in support of the matters set out herein at the hearing of this Application, due to the applicable time constraints.
31. Notice of this Petition (together with a copy of this Petition and all the annexures hereto) have been served on the Hon. Attorney-General and the Hon. Speaker of Parliament, as required by law. The relevant Registered Postal Article Receipts in proof thereof and/or endorsements in relation thereto are appended to the Motion filed together with this Application.
32. The Affidavit of the 2nd Petitioner above-named is appended hereto in support of the several averments contained herein above.

WHEREFORE the Petitioners respectfully pray that Your Ladyship's Court be pleased to:

- (a) Entertain this Application and duly hear the Petitioners;
- (b) In the exercise of the special Constitutional jurisdiction of Your Ladyship's Court under Articles 120 and 121 of the Constitution, determine that the entirety of the said Bill titled "Companies Amendment", which was placed on the Order Paper of Parliament on 05/06/2025, and/or any one or more of the sections/provisions of the said Bill under reference (produced marked as 'P-2(a) to (c) herein) including, but not limited to clause 7, and/or any parts/portions thereof, and/or any one or more of the remaining clauses thereof, is/are violative of and/or inconsistent with the provisions of the Constitution, including but not limited to Articles 12(1) and/or 14A and/or 14(1)(g) of the Constitution, as read

together with the Directive Principles of State Policy, including Articles 27(2)(g), 27(6), and 27(10) of the Constitution;

(c) In the totality of the circumstances, determine that sections 130A(4) and/or 130A(6) and/or 130D of clause 7 of the said Bill titled "Companies Amendment" in its entirety and/or any one or more of the clauses/sections therein, is/are required to be passed by the special majority of two thirds of the whole number of members of Parliament (including those not present) as required by Article 84(2), before the said Bill can become law;

(d) Grant the Petitioners such other and further reliefs, as to Your Lordships' Court shall seem meet.

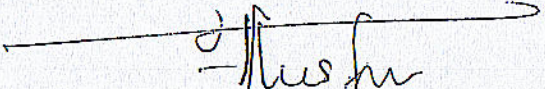
Settled by:

Nithma Fernando,

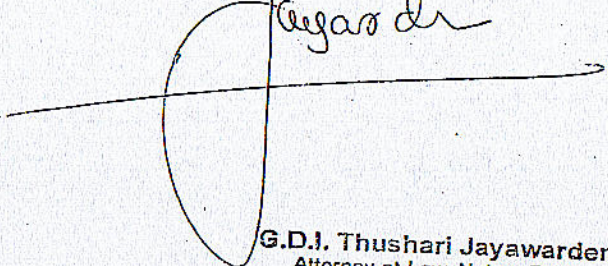
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