

Comments and Proposed amendments to the Anti Corruption Bill – L.D.061/2018

Presented to the Hon. Minister of Justice by the National Movement for Social Justice and Peoples Accountability Movement

Section	Reference/Details	Comment/Critique	Suggestions	Next Steps
4(1)	Composition of the three member Commission appointed by the President on the recommendations of the Constitutional Council	Qualification for appointment 'Expertise, reached eminence? and 20 years? Experience Fields of Competency law and one or more? of specified areas 1. Forensic auditing 2. Forensic Accounting, 3. Engineering? 4 international relations and diplomatic services? 5. Management of public affairs? or 6. Public administration'	-Appointees must be selected by their Basic and advanced Core Competencies. -Basic should be Law <u>and / or</u> other areas relevant to Criminal Investigation, Prosecution, Data Analytics, ICT, Sciences and Engineering, Risk Management, Preventive Strategists. -Skills in Intelligence, Interview, Forensics and Operations, Effective Communications. -Leadership Skills with Critical Thinking, Ability See Beyond the Stated, Correct values and Attitudes and an unblemished record of Integrity and Results oriented Achievements. (See cover letter for more details.)	
19 (1)	Qualifications of the DG- Attorney at Law with 20 years? experience in criminal prosecution	Qualifications must go hand in hand with essential core competencies and not be limited to a profession and experience in prosecution	Whilst noting that Attorney – at –law must sign the indictment prosecution for 20 years restricts the qualifications. Even judges or a defense counsel with 20 years could hold the post.	
34(1)	All possible measures to give effect to the UNCAC and other International obligations which Sri Lanka has undertaken to prevent corruption	Originally by the 19 th Amendment to the Constitution : 156A. (1) Parliament shall by law provide for the establishment of a Commission to Investigate Allegations of Bribery or Corruption. Such law shall provide for: (c)measures to implement the United Nations Convention Against Corruption and any other international Convention relating to the prevention of corruption, to which Sri Lanka is a party. This provision is available in the current Constitution as well in Article 156A (1) (C) of the Constitution.	The current provision is watered down by the addition of the words 'All possible measures to give effect to the UNCAC and other International obligations', and does not give due effect to the constitutional requirement as specified in Article 156A (1) (C). Sri Lanka being a dualistic nation. (See cover letter for more details.)	

35, 36, 37,38, 39 and 40	<p>-Enhance awareness of public</p> <p>-Monitor and co-ordinate the implementation of anti-corruption policies and practices of Govt</p> <p>-Examine, laws, practices and procedures of public authorities of corruption methods or procedures conducive for corruption</p> <p>-functions in pursuit of above</p>	<p>These objectives require strategic action plans, effective implementation and follow up action with public report accountability periodically.</p> <p>-Associated with the findings from implementation there must be investigations where risks of inherent systemic corruption or high value acts of corruption are suspected or established</p>	<p>Publish a report every 6 months and table in Parliament of the actions taken in pursuit of objectives, findings, follow up action and expected sustainable outcomes with KPI's for future assessments. Closer of files to have a stringent method.</p> <p>- Include a consequential reference under section 41 compelling accountability for follow up investigations arising from these sections</p>	
42	<p>Preliminary Inquiry/ investigation</p> <p>a-upon receipt of any information</p> <p>b- upon receipt of a complaint</p> <p>c- ex mero motu by the Commission</p> <p>d-based on any other material</p>	<p>Add the following</p> <p>- arising from any source of intelligence.</p> <p>-arising from data analytics and artificial intelligence.</p> <p>-arising from Police to Police or any Financial or Other Investigation Authorities in other jurisdiction.s</p> <p>-based on any other investigation or inquiry related information/ intelligence.</p>	<p>And all such instances must be documented and followed up with effective oversight and accountability; and where such preliminary inquiry leads to a decision not to proceed with further investigation with intent to prosecute if found material, must be recommended by the Head of the Investigation unit/ LO handing the file / DG and signed off the Commissioners.</p> <p>Propose to expand the Section 42 on Preliminary Investigations and add a proviso as follows:</p> <p>Expand coverage to include from 1. any source of intelligence 2. data analytics and artificial intelligence 3. Police to Police or any Financial or Other Investigation Authorities in other jurisdictions provided intelligence 4. any other investigation or inquiry related information/ intelligence 5. media reports; with observations/findings being documented and followed up with effective oversight and accountability;</p> <p>and where such preliminary inquiry leads to a decision not to proceed with further investigation with intent to prosecute, such decisions must be signed off by the Commissioners with the recommendations of Head of the Investigation unit / DG and the and periodically publicly reported via Parliament.</p> <p>(See cover letter for more details.)</p>	

49(g) and (h)	Requirement to submit sworn statements in writing	Additionally Require statements of assets and liabilities over a specified period of years, along with the net income for the same periods of any person, his spouse and his family members with a reconciliation of same with relevant Inland Revenue Returns and any Assets and Liability declarations together with a funds flow reconciliation of the net income and incremental net assets along with beneficial ownership information/analysis.	These formats can be indicated as schedules to the Act and have been previously developed and handed over to the DG Bribery Commission. In addition to the Commission taking cognizance of Reports of Presidents Commissions, due recognition must be given to matters highlighted in Auditor General's reports and other Parliamentary Select Committee Reports such as COPE, in order to action finding of such commissions	
50	Obtaining Assistance of experts	It would be best to expand the list experts to cover other professionals engaged in supporting such investigations	Eg: Forensics, Data Analytics, Investigation, ICT, Digital Forensics, asset tracking and recovery, Transfer pricing Audits, Money Laundering, AI, Cloud Computing, block chain cyber security,	
53	Restraining Orders including freezing and seizure orders	Make provisions for the Commission to expend its funds in the preservation, asset management and such other essentials for maintenance of the value of the items in its effective custody		
54	Prohibition of dealing with Property Outside Sri Lanka	Make provisions to seek assistance with investigation of offenses committed in other jurisdictions by persons covered by the Act and specifically to network with Police, Law Enforcement Agencies and Investigating Authorities in other jurisdictions and specially to raise Mutual Legal Assistance request following the laid down procedures		
55	Special Investigation techniques	Expand list to include Financial Analysis s well as Cyber Crime related tools including - Digital/Cyber Forensics- Digital Evidence Seizure Kits -Open Source Intelligence-Digital log reviews		
57	Obtaining information from Service providers	Expand List to include legal, accounting, custodial, trust services, beneficial ownership registrars, cyber and cloud storage providers		
60 and 61 62 and 63	Assistance in Investigations/ Joint Investigation	Is there adequate and comprehensive in scope and accountability provisions and authority in the Act to permit the Commission to: -Share information and or exchange information with other local or overseas law enforcement and investigation authorities -conduct joint investigations - secure specialized services from experts and service providers locally and overseas registered in other jurisdictions under contract bound by the confidentiality commitments in this Act?		

64	Summons	Is there adequate provision in the Act for the Service of summons to persons resident or perceived to be domiciled or residing in another jurisdiction?		
65	Prosecution	Make provisions to prosecute in Sri Lanka or in an overseas jurisdiction when the offender of an offense under the Act has been committed by persons resident or perceived to be domiciled or residing in another jurisdiction with network facilitation and/or with joint investigation?		
67	Withdrawal of Indictments	Require that a half yearly report on all such indictments withdrawn shall be filed before the Minister and Parliamentary Oversight Committee with adequate justification for such action?	- Closure of files only with stringent mechanisms. (See cover letter for more details.)	
69(1)	Requesting Assistance of the Attorney General and other specialist Investigators	Expand the ambit by the addition to the Attorney General, any Senior Police Officer, Any Officer of the Central Bank, Financial Intelligence Unit, National Audit Office, Securities Exchange Commission, Telecommunications Regulatory Authority, Information and Communication Technology Agency, Public Utilities Commission and National Procurement Commission and others with specialist Investigation capability and experience	and also make provision for retaining specialist prosecutors from the private bar in complex and high profile cases	
71	Deferred Prosecution Agreements	suggest DFA's be framed in the manner applicable in UK by CPS/SFO		
79	Objects of Declaration of Assets and Liabilities	Clause (b) to be expanded as" ...and for using such system to determine and track those persons failing to provide declarations and associated follow up along with the use of such data for analysis and reconciliation of increases in net assets with net incomes and reconciling same with submissions to Revenue authorities And a further sub clause for effective confidential exchange of data with other state revenue and law enforcement agencies and where applicable networking with Police and investigating Authorities in other jurisdictions	(See cover letter for more details.)	
80	Application of this Part	Comprehensive Coverage needs validation?		

81(2) And 92	Definition of Assets and liabilities	A fuller and more comprehensive definition of assets, liabilities, income, expenditure and interests , entitlements globally is preferable keeping the option as currently to specify them by regulation	include "Contingent assets, assets created via entitlements, trusts, beneficial arrangements/ interests and assets in orbit and in cloud as well as perks, benefits and entitlements in income are some examples: further Assets and entitlements to include all moveable and immovable property accumulated in Sri Lanka or overseas jurisdictions or placed in credit in beneficial interest arrangements created by transfer pricing and money laundering	
87	Electronic Systems administered by the Central Authority	It is essential that Electronic Systems to embed required Data Protection, Risks & Control Systems and ensure all alterations made by the persons are adequately authenticated and all such alterations are also made a part of accessible systems log records with date and times duly noted		
99 and 101 proviso	Bribery in respect of Government Business and Bribery of Public Officials having dealing with government	99-Provided however, that it shall not be an offense for a public official to solicit or accept any gratification which he is authorized by any law or terms of his employment?	101-Such offer of a gratification to a public official shall not be an offense if the offeror proves that the gratification was bona fide for a purpose not connected with such dealing? This provisions is ambiguous and can be misused as a defence. The period in Section 101 (b) to increase to 10 years as 1 year period too short. See cover letter for more details.	
107	Failure to Declare Conflicts of Interests		Make it compulsory by that all Public Authorities require public officials covered by the Act to annually submit to the Head of such Authority a duly completed declaration of interest and also to Introduce a requirement for all persons covered by this Act to be required compulsorily to report to a Central Authority all instances of Non Compliance with Laws and Regulations (NOCLAR) in the institutions or persons covered by this Act	

130	Director General on the direction of the Commission	<p>Will this provision continue to provide a loophole whereby all cases without the consent of all three Commissioners become illegal? What happens if the Commission members are absent or are unable to perform duties?</p> <p>What happens if one member dissents or refuses to endorse valid acts of prosecution and in other contingent situations where it becomes for whatever reason fail to get all Commissioners to consent</p>		
155	Mutual Legal Assistance	<p>Will the provisions relating to development, service and follow up of Mutual Legal Assistance Requests, as now provided in the Act, enable leveraging effective and professionally supportive network link options with judicial/law enforcement and other state parties; and will it allow the use of external specialist service providers, to develop requests meeting professional high standard for effective network support?</p>		
162	Interpretations		<p>Make Contingent Assets and entitlements contingent on a specified event to be treated as owned by the person with such interests</p> <p>Similarly All trusts, Orphan Trusts and other depositories wherever held in any jurisdiction including in Orbit and in Cloud be considered as a part of the assets of the person with ultimate beneficial interest</p> <p>All crypto-currency and cyber money or entitlements are also be treated as assets of the beneficiary</p>	
			<p>Gratifications to include perks, benefits, promotions, travel and passage and hotel and home stays and medical and surgical benefits, entertainment sporting options of all types</p>	
		<p>Private Sector is Limited to Specified Business Enterprises. This concept of limiting the scope of application of the Act is an acceptable and workable challenge and may in due course be further enlarged in scope of application</p>	<p>This being a new Concept suggest that the full description be listed under interpretations</p>	
		<p>Public Companies exclude Companies formed under Companies Act will leave out a larger number and may conflict with bringing then in as Specified Business Enterprises</p>	<p>Need to Resolve this ambiguity especially in relation to the reference to Scheduled Institutions</p>	
		<p>Public Official Definition be revisited with a critical review to ensure Comprehensive Coverage</p>		

