

**Report of the Committee  
to Develop the  
Policy and Legal Framework  
and Draft Provisions of the  
Proposed Law on Proceeds of Crime**

**Executive Summary**

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**Report**

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**Committee**

**Policy & Legal Framework and Draft Provisions**

**APRIL 10, 2024**

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# EXECUTIVE SUMMARY

## Background and Introduction

The committing of crimes (offences) results in serious and far-reaching consequences. A key objective of perpetrators is to benefit from what is derived from committing crimes. Money, property, or other benefits derived from committing crimes is referred to as 'proceeds of crime'. Perpetrators of crime use such proceeds of crime for multiple purposes, which includes luxurious living, investment, and financing of further criminal activities. In most instances, the committing of crimes cause pecuniary and other losses to direct victims of crime, the public and the state.

Those who commit crime do not have any legal right or other entitlement both morally and legally to benefit from proceeds of crime. Furthermore, they adopt multiple and complex measures to conceal proceeds of crime, change its complexion, as they transfer such property to third parties. Further, they make further arrangements to derive benefits from proceeds of crime hidden behind complex corporate and trust arrangements. Third parties linked to perpetrators of crime also derive benefit from proceeds of crime transferred to them as a collusive measure. However, there may be persons who acting *bona-fide* have purchased proceeds of crime for valuable consideration through their lawful earnings. In such instances, the nature of the property ceases to be proceeds of crime and it is the consideration received by the perpetrator or by a third party, acting in collusion with the perpetrator, which becomes the proceeds of crime.

It is the responsibility of the state to take necessary measures to deprive perpetrators of crime benefitting from proceeds of crime. Further, such proceeds should be returned to those who shall otherwise have received the entitlement to benefit from such property.

Furthermore, interdiction of proceeds of crime and having them forfeited is a means of deterrence imposed on the perpetrators of crime. Interdiction and forfeiture of proceeds of crime is also a means of disincentivizing the committing of crime.

The existing legislation does not provide a comprehensive and uniform legislative framework for the interdiction of proceeds of crime and having them effectively forfeited. Therefore, there is a need to supplement existing legislation with a new legislation for the purpose of providing an efficacious legislative framework for the effective identification, tracing, detection, investigation, restraining, seizure, preservation, protection, and

management, judicial freezing, forfeiture and the return of proceeds of crime to those who are legitimately entitled to such property.

## **Objectives**

The proposed law has been drafted for the purpose of achieving many objectives, which include: -

1. To disincentivize the commission of unlawful activities;
2. To prevent and deprive any person from benefitting from the proceeds of crime;
3. To facilitate the investigation into the committing of crime and the proceeds of crime, including crimes of bribery and corruption, drug trafficking, terrorist financing and other organized and financial crimes;
4. To regulate the conduct of investigations into proceeds of crime and also empower investigators in such manner so that investigations are conducted lawfully, independently, impartially, and comprehensively;
5. In particular, to provide for tracing, location, searching, identification, evaluation, restraining the use of, preservation, seizure, judicial freezing, protection, management and judicial forfeiture of proceeds of crime;
6. To provide for both post-conviction forfeiture of proceeds of crime and non-conviction based forfeiture of proceeds of crime;
7. To provide a cause of action recognized by civil law to enable victims of crime who have suffered pecuniary and sentimental loss to recover damages through civil litigation;
8. To establish a statutory authority for the protection, preservation, management and disposal of restrained, seized for frozen proceeds of crime;
9. To provide a mechanism for the management and the use of the realized value of the disposal of forfeited proceeds of crime;

10. To establish a Trust Fund to provide for restitution and reparation to victims of crime;
11. To provide for international cooperation and mutual assistance for location, repatriation, and recovery of proceeds of crime; and
12. To give effect to Sri Lanka's obligations under multilateral conventions and international law.

### **Structure of the proposed law**

For the purpose of achieving these objectives, a draft Bill comprising of eleven parts has been prepared. Each of these parts deals with following areas:

- Part I - General Provisions and Offences;
- Part II- Investigations into Proceeds of Crime, Restraint and Seizure;
- Part III- Judicial Freezing of Proceeds of Crime;
- Part IV- Protection, Preservation, and Management of Proceeds of Crime;
- Part V- Forfeiture Proceedings;
- Part VI - Civil Remedy for Victims of Crime;
- Part VII - Proceeds of Crime Management Authority;
- Part VIII - Disposal of Forfeited Proceeds of Crime and the Utilization of the Value Derived thereof;
- Part IX - Victims of Crime Reparation Trust Fund;
- Part X- International Cooperation; and
- Part XI - Miscellaneous Provisions.

### **Responsibility of Law Enforcement**

The enforcement of the law is to be vested in the Sri Lanka Police and the Commission to Investigate Allegations of Bribery or Corruption (CIABOC). While the CIABOC has been vested with the responsibility of taking steps in terms of the law with regard to proceeds of bribery, corruption and other offences, in respect of which, the CIABOC has the power of investigation and prosecution, the Police has been vested with the responsibility of investigating and taking steps in respect of proceeds of all offences, in respect of which,

the Police as well as other law enforcement authorities have the power of investigation. Special provision has been made so as to ensure that investigation as well as enforcement measures such as seizure of suspected proceeds of crime are carried out independently, impartially under judicial supervision so as to ensure that all measures are proportionate to the value of the proceeds of crime. Furthermore, particular attention has been given so as to ensure that enforcement measures (such as seizure) do not affect the rights and interests of innocent third parties adversely impacting on running-business activities, licit trade, commerce and financial transactions.

### **Seizure and Freezing**

The proposed law provides for initial seizing of suspected proceeds of crime for a brief period of time and judicial freezing pending forfeiture proceedings. However, where the objectives of the Act can be achieved without seizure and judicial proceedings while the suspected proceeds of crime remain with its possessor, a mechanism has been laid down to refrain from seizure and freezing subject to restraining the transfer, and disposal of the property and preservation of the property so that the property in its original value will remain available to be subjected to forfeiture.

### **Forfeiture**

The proposed law also provides for (i) conventional post-conviction forfeiture of proceeds of crime (following the successful prosecution of the offender and obtaining a conviction), (ii) imposition of a penalty to the value of the proceeds of crime following conviction for the committing of the crime (where the proceeds of crime are not available to be subjected to forfeiture proceedings), (iii) value based forfeiture of proceeds of crime (where the proceeds of crime are not tangibly available), and (iv) non-conviction based forfeiture of proceeds crime (where prosecution for the committing of the crime is not possible or has not resulted in a conviction). These multiple mechanisms enable the achieving of the objectives of the proposed law in different situations, and prevents the use of these mechanism in a way that would infringe the doctrine against double jeopardy.

## **Protection, Preservation and Management**

The proposed law contains a detailed mechanism for the protection, preservation and management of judicially frozen proceeds of crime pending a judicial decision following the forfeiture proceedings. This mechanism is aimed at ensuring that ongoing trade, commerce, and financial activities which are being carried out in a lawful manner do not suffer the interests of *bona-fide* third parties being adversely affected. Furthermore, even individual property, which have been derived by the committing of crimes should not be allowed to decay, depreciate or get destroyed due to law enforcement measures. This objective is sought to be achieved through Receivers and Special Managers appointed by court who possess competence to manage property and by the establishment and functioning of a statutory body to be named the Proceeds of Crime Management Authority. The Authority shall possess the power to protect, preserve, and manage, property submitted to the Authority by court classified as property, in respect of which, offences have been committed; and, the property, the ownership of which, has not been claimed. The Authority shall take necessary steps to protect, preserve and manage such property pending further order by court.

## **Disposal of Forfeited Proceeds of Crime**

The proposed law provides for a detailed and transparent mechanism for the disposal of judicially forfeited proceeds of crime and the value thereof to be initially transferred to the Consolidated Fund. Following its transfer, the money so received will lie in trust fund within the Consolidated Fund to be named Victims of Crime Reparation Trust Fund. The funds of the trust shall be utilized to (i) provide reparation for victims of crime, and (ii) to execute government policy for developmental and welfare purposes.

## **International Cooperation**

The proposed law also provides a detailed mechanism for bi-directional international co-operation and for return to Sri Lanka proceeds of crime that may lie in other countries.

## **Offences**

With the view to deterring persons from using, concealing, changing the nature, and transferring proceeds of crime, the proposed law contains a series of offences.

## **Miscellaneous**

The proposed law has been drafted to so as to ensure that the law is not abused for the purpose of causing harm to innocent persons. Harassment and loss that may occur due to enforcement measures such as seizure and freezing have been kept at a bare minimum through mechanisms embedded in the law. The proposed law recognizes the principles of proportionality and necessity as means of determining whether or not to enforce provisions of the law.



## SCHEME OF THE PROPOSED LAW

[From the commencement of the investigation to the transfer of proceeds of crime to victims of crime or to the state]

### Commencement of the Investigation

- Manner in which an investigation may commence (Clause 2.1)



### Conduct of the Investigation

- Who may conduct the investigations (Clause 1.18)
- Manner of investigation (Clause 2.3)
  - Fact- finding (Clause 2.3.1)
  - Investigation (Clause 2.3.2)
- Threshold to be satisfied to commence the investigation - credible information relating to a proceed of crime (Clause 2.2.3)
- Powers of Investigators (Clause 2.2)
- Notice calling for explanation relating to identified property (Clause 2.4)
- Judicial orders to facilitate investigation (Clauses 2.2.3, 2.2.4.2, and 2.2.4.3 read with 1.8)
- Search (Clause 2.2.4)
- Cooperation with foreign law enforcement, judicial and administrative authorities (Clauses 10.1 to 10.4)





### **Restraining order and Preservation order**

(Clauses 2.5.1 and 2.5.2) (Clauses 2.5.1 and 2.5.3)

- Need for reasonable grounds to believe, Possibility of disposal; transaction; destruction; diminishing of value; concealment; conversion; transfer out of Sri Lanka and Approval of the Designated Officer.  
(Clause 2.5.1)
- Validity period – 30 days extendable to 90 days  
(Clauses 2.5.2, 2.5.3, 2.5.4)




### **Seizure of Suspected Proceed of Crime**

(Clause 2.7)


- Reasonable grounds to believe that a property is (a) a proceed of crime, or (b) the property is to the corresponding value of proceeds of crime where the proceed of crime cannot be identified or is not available.  
(Clause 2.7.1)
- Outcome of seizure – possession, custody, control, dominion of property is vested in the Investigation Officer.
- Seizure is not an essential step if there is a Restraining Order and a Preservation Order and if non-seizure would not defeat the objectives of the Act.
- Where a valid explanation regarding the property has been submitted in response to a notice calling for explanation, the property cannot be seized.  
(Clause 2.7.2)
- Report to Magistrate of seizure within 72 hours.  
(Clause 2.7.10)
- Validity period up to 30 days.  
(Clause 2.7.11)
- Seizure of property under Prevention of Money Laundering Act; Poisons, Opium, and Dangerous Drugs Ordinance; Forest Ordinance; Customs Ordinance; Excise Ordinance; and, Antiquities Act shall remain possible.  
(Clause 2.11)





## Judicial Freezing of Proceeds of Crime

(Clause 3.1)

- Jurisdiction - High Court  
(Clause 3.1.1)
  - Period within which application is to be made - 7 working days from seizure  
(Clause 3.1.1)
  - Applicant - Investigation Officer  
(Clause 3.1.2)
  - Other participants - persons who claim to have a lawful entitlement to the property.  
(Clauses 3.1.7 and 3.1.12)
  - Threshold for freezing - Existence of reasonable grounds to believe that the property (a) is a proceed of crime, or (b) is a thing, the value of which, corresponds to the proceeds of crime where the proceed of crime is not available.  
(Clause 3.1.2 (iv) (b))
  - Additional requirements for freezing - for purposes of achieving the objectives of the Act, freezing is necessary and the Investigation Officer has served notice of the application to persons entitled to participate.  
(Clauses 3.1.2 (iv) (a) and (c))
  - Validity period of the judicial freezing order:
    - 6 months and extendable up to 24 months  
(Clauses 3.1.9 and 3.1.10)
    - If criminal proceedings are instituted for the corresponding unlawful activity validity period to remain for 3 months following the completion of the trial.  
(Clause 3.1.11)
  - Additional orders to be made for effective protection, preservation and management of frozen property.  
(Clause 3.1.7)
  - To accommodate lawful claims, High Court may vary the freezing order.  
(Clause 3.1.12)
  - Freezing of proceeds of money laundering shall remain possible notwithstanding this law coming into force.
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## **Protection, Preservation & Management of Proceeds of Crime**

- Objectives –
  - To protect against destruction, decay, diminishing of value or any other adverse effects.
  - To ensure that freezing does not disrupt or adversely affect
    - legitimate finance, trade and commercial activity.
    - derive economic benefit even from suspected proceeds of crime.
    - lawful employment.
    - interests of third parties.

(Clause 4.1.1)

- Investigation Officer to take initial steps necessary for protection and preservation  
(Clauses 4.1.3 and 4.1.4)
- Appointment of Receivers and Special Managers by the High Court to protect, preserve and manage property.  
(Clause 4.2)
- Entrustment of the functions of a Receiver or a Special Manager to the Proceeds of Crime Management Authority (PCMA)  
(Clause 4.2)



## **Recovery of Penalty by the state in lieu of Proceeds of Crime**

- Following conviction of any person for having committed an unlawful activity, in addition to the punishment stipulated for having committed such unlawful activity, the trial court shall be entitled to impose a penalty to the value of the proceeds of crime.
- This penalty shall be applicable only if the unlawful activity had been committed after the Act came into operation and the proceeds of crime had not been seized and frozen.
- If the penalty is paid there shall not be separate proceedings for the forfeiture of the proceeds of crime.

(Clauses 5.2.1 to 5.2.4)



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## Forfeiture of Proceeds of Crime

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| Post Conviction Forfeiture   | Non- conviction based Forfeiture (NCBF)  |
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| <p><b>(A) Situations where the proceed of crime is available</b><br/>(Clause 5.2)</p> <ul style="list-style-type: none"> <li>• <b>Condition precedent</b> - Prosecution and Conviction of a person for having committed the unlawful activity, which gave rise to an identified proceed of crime</li> <li>• <b>Object of forfeiture proceedings (Corpus in respect of which forfeiture proceedings may be instituted) -</b> <ul style="list-style-type: none"> <li>○ Proceeds of the unlawful activity</li> <li>○ Property which corresponds to the value of the proceeds of crime where proceeds of crime are not available</li> </ul> </li> <li>• <b>Time period, within which, the proceedings are to be instituted -</b><br/>3 months<br/>(Clause 5.2.5)</li> <li>• <b>Jurisdiction</b> - the court that conducted the trial in respect of the unlawful activity.<br/>(Clause 5.2.6)</li> <li>• <b>Who may institute proceedings -</b> <ul style="list-style-type: none"> <li>○ Attorney-General</li> <li>○ Director General CIABOC</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>• <b>Situations where NCBF can be resorted to -</b> <ul style="list-style-type: none"> <li>○ person who committed the unlawful activity is dead, dies during trial, is a fugitive of justice, has immunity from prosecution, prosecution of the perpetrator is not possible or the perpetrator cannot be identified.</li> <li>○ proceeds of crime has been inherited or otherwise received.</li> <li>○ unlawful activity has been prescribed.</li> <li>○ insufficient evidence to prosecute the perpetrator.</li> <li>○ unlawful activity not properly investigated.</li> <li>○ unlawful activity has been committed overseas and proceeds of crime are found in Sri Lanka.</li> <li>○ a person has been convicted of having committed an unlawful activity outside Sri Lanka and proceed of crime such crime are found in Sri Lanka.</li> <li>○ the property comprises of proceeds of several unlawful activities.</li> <li>○ no claim has been made with regard to property found.</li> </ul> </li> </ul> |

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| <ul style="list-style-type: none"> <li>• <b>Form of application</b> - Petition and affidavit (Clause 5.2.7)</li> <li>• <b>Requirement of Notice of Forfeiture to be published</b> (Clause 5.2.11 (i))</li> <li>• <b>Entitlement of parties to participate and claim the property</b> - <ul style="list-style-type: none"> <li>○ Person convicted of having committed the unlawful activity</li> <li>○ Any person having a lawful claim (Clause 5.2.12)</li> </ul> </li> <li>• <b>Nature of inquiry</b> (Clause 5.2.14)</li> <li>• <b>Forfeiture threshold and requirements</b> - Balance of probabilities that - <ul style="list-style-type: none"> <li>(a) the property is a proceed of crime,</li> <li>(b) the property corresponds to the value of the proceeds of crime (where proceeds of crime are not available), or</li> <li>(c) there is no victim of unlawful activity and that there is no claimant who has a lawful entitlement to the property (Clause 5.2.19)</li> </ul> </li> <li>• <b>Release of property threshold</b> - where a claimant establishes a lawful claim to the property on a balance of probabilities. (Clause 5.2.20)</li> </ul> | <ul style="list-style-type: none"> <li>○ person has been prosecuted for having committed an unlawful activity and has been acquitted or discharged. (Clause 5.1 (ii) (k) and (h))</li> <li>• <b>Nature of the proceedings</b> - Civil</li> <li>• <b>Subject matter of the proceedings</b> -suspected proceed of crime</li> <li>• <b>Initial requirement to invoke jurisdiction</b> - <i>prima-facie</i> material to establish that the property is a proceed of crime. (Clause 5.4.1)</li> <li>• <b>Requirement of Notice of action to be published</b> (Clause 5.4.3)</li> <li>• <b>Parties entitled to Notice, having a right to participate and present a claim</b> (Clause 5.4.4)</li> <li>• <b>Forfeiture threshold</b> - <ul style="list-style-type: none"> <li>(i) No claimant has established a lawful claim on a balance of probability</li> <li>(ii) No valid claim has been presented</li> <li>(iii) On a balance of probabilities, it has been established that the property is a proceed of crime (Clause 5.4.15)</li> </ul> </li> <li>• <b>Release of property to the victim of crime</b> (Clauses 5.4.14 and 5.4.18)</li> </ul> |
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| <ul style="list-style-type: none"> <li>• <b>Effect of forfeiture</b> - Ownership of the property or value thereof is transferred to the state.</li> </ul> <p><b>(B) Value-based forfeiture</b><br/>[Situations where the proceed of crime is not available - Clause 5.3]</p> <ul style="list-style-type: none"> <li>• <b>Condition precedent</b> - Prosecution and Conviction of a person for having committed the unlawful activity which gave rise to an identified proceed of crime</li> <li>• <b>Conditions to be satisfied to invoke the procedure</b> - Where the proceed of crime has - <ul style="list-style-type: none"> <li>○ not been traced or identified.</li> <li>○ been destroyed, decayed or become worthless.</li> <li>○ been substantially altered.</li> <li>○ been sold.</li> <li>○ got intermingled with other property.</li> <li>○ been transferred outside Sri Lanka.</li> <li>○ been subjected to money laundering.</li> <li>○ been used and exhausted.</li> <li>○ undergone change.</li> <li>○ assumed the form of a benefit, a gain, a service or an advantage.</li> <li>○ not been seized or frozen.</li> <li>○ been placed and is available outside the jurisdiction of the Democratic Socialist Republic of Sri Lanka.</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>• <b>Release of property to a claimant</b> - where on a balance of probability a lawful claim has been established and where multiple claimants claim the property the claim of one claimant exceed the others. (Clauses 5.4.13 and 5.4.17)</li> <li>• <b>Effect of forfeiture</b> - Ownership of the property or value thereof is transferred to the state.</li> </ul> |
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| <ul style="list-style-type: none"> <li>• <b>Procedure and standard for forfeiture is similar to situations where proceed of crime is available</b><br/>(Clause 5.3.3)</li> <li>• <b>Effect of forfeiture - Ownership of the property or value thereof is transferred to the state.</b></li> </ul>   |  |
| <p><b>Procedure following forfeiture</b></p> <ul style="list-style-type: none"> <li>• Following forfeiture, High Court to direct PCMA, Receiver or Special Manager to dispose of the forfeited property<br/>(Clauses 5.5.2, 5.5.3, 8.1, 8.2 and 8.3)</li> <li>• Proceeds from the disposal of proceeds of crime by the PCMA to be distributed in the following manner: <ul style="list-style-type: none"> <li>○ Victims of Crimes Reparation Trust Fund of the Consolidated Fund - 80%</li> <li>○ Retained by PCMA for protection, preservation and management of proceeds of crime - 10%</li> <li>○ Retained by PCMA for law enforcement and related matters - 10%</li> </ul> </li> </ul> <p>(Clauses 8.4, 8.5, 8.6 and 8.7)</p> |  |



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| <p style="text-align: center;"><b>Civil Cause of Action to Enable the Victims of Crime to Obtain Reparation</b></p> <p>A victim of an unlawful activity shall be entitled to file civil action in the District Court to recover damages or compensation from the perpetrator of such unlawful activity due to pecuniary, sentimental or other loss or deprivation of any benefit, service or other entitlement suffered by such victim as a result of such unlawful activity.<br/>(Clauses 6.1 to 6.7)</p> |
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**Report of the Committee  
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**Appointment of the Committee**

In June 2022, the Minister of Justice, Prison Affairs and Constitutional Reforms Hon. Dr. Wijeyadasa Rajapakse, PC, appointed a committee to prepare the policy and legal framework and procedure to be followed for the expeditious disposal of physical items presented to courts (generally referred to as ‘court productions’) in criminal cases and to make other recommendations incidental thereto. The Committee presented an interim report to the Hon. Minister on 23 November 2023. In that Report, the committee identified 7 categories of physical items that are produced in court exercising criminal jurisdictions pertaining to criminal cases. One such item was ‘proceeds of crime’, and the committee recommended to the Hon. Minister that a separate law be drafted and enacted to deal with proceeds of crime. In that regard, the committee was mindful that in 2018 a process had been initiated to develop such a law and a draft Bill had already been prepared.

On a consideration of the above-mentioned recommendation and initiatives already taken up to that point of time pertaining to the development of a separate law relating to proceeds of crime and upon a consideration of the draft Bill that had been prepared by the Legal Draftsman, in March 2023, the Hon. Minister requested the same committee to review the said draft Bill on Proceeds of Crime.

This draft Bill had been developed by the Legal Draftsman sequel to the policy and legal framework developed by a Special Presidential Taskforce on the Recovery of Proceeds of Crime located overseas (START-GOSL) and presented to the then Minister of Justice in 2018, relating to proceeds of crime, which was approved by the Cabinet of Ministers on 29 October 2019 and on 07 December 2020 respectively. (Cabinet Decisions No. අමස/19/2965/126/068 and No. අමස/20/1828/330/014-I).

The Committee observed that the draft Bill that had been prepared had some differences from the framework that had been developed by START-GOSL. The committee also noted that there is a need to develop a more detailed law.

Consequently, in March 2023, the Minister of Justice, Prison Affairs and Constitutional Reforms appointed the present Committee and conferred the mandate of developing afresh the proposed law on Proceeds of Crime. In addition to the membership of the earlier mentioned Committee, the Hon. Minister appointed representatives of the Commission to Investigate Allegations of Bribery or Corruption (CIABOC) and the Financial Intelligence Unit (FIU) of the Central Bank of Sri Lanka.

Composition of the Committee:

1. Hon. Justice Yasantha Kodagoda, PC, Judge of the Supreme Court - *Chairman of the Committee*
2. Mr. Rohantha Abeysuriya, PC, Additional Solicitors General, Attorney-General's Department  
*(Mr. Rohantha Abeysuriya was appointed as a member of the Committee on 23<sup>rd</sup> October 2023 and functioned as the 1<sup>st</sup> Representative of the Hon. Attorney-General.)*
3. Mr. Kuvera de Zoysa, PC
4. Mr. Sarath Jayamanne, PC
5. Mr. Neville Abeyratne, PC
6. Mr. Priyantha Nawana, PC  
*(Mr. Priyantha Nawana in his former capacity as Senior Additional Solicitor General represented the Hon. Attorney-General until 18<sup>th</sup> December 2023. Thereafter he was appointed by the Hon. Minister to serve as a member of the Committee in his individual capacity.)*
7. Mr. Sanjaya Gamage, Attorney-at-Law  
*(Representative of the Sri Lanka Bar Association)*
8. Mr. Sudarshana De Silva, Senior Deputy Solicitor General, Attorney General's Department  
*(2<sup>nd</sup> Representative of the Hon. Attorney-General)*
9. Mr. Amal A. Randeniya, Attorney-at-Law

10. Dr. Ayesh Ariyasinghe, Additional Director, Financial Intelligence Unit, Central Bank of Sri Lanka  
*(1<sup>st</sup> Representative of the Director- Financial Intelligence Unit)*
11. Mr. Asanga Karawita (Attorney-at-Law), Senior Deputy Inspector-General Sri Lanka Police  
*(1<sup>st</sup> Representative of the Inspector General of Police.)*
12. Mr. Kamal Silva, Attorney-at-Law  
*(Mr. Kamal Silva in his former capacity as Senior Deputy Inspector-General of Sri Lanka Police represented the Inspector-General of Police until 25<sup>th</sup> September 2023. Thereafter he was appointed by the Hon. Minister to serve as a member of the Committee in his individual capacity.)*
13. Ms. Disna Gurusinghe, Assistant Director General, Commission to Investigate Allegations of Bribery or Corruption  
*(Representative of the Director General of Commission to Investigate Allegations of Bribery or Corruption)*
14. Mr. Chathura Galhena, Attorney-at-Law
15. Ms. Lankika Dayarathna, Assistant Legal Draftsman, Legal Draftsman's Department  
*(Representative of the Legal Draftsman)*
16. Ms. Ruwanadini Kuruppu, Assistant Secretary (Legal), Ministry of Justice, Prison Affairs, and Constitutional Reforms - *Secretary of the Committee*
17. Mr. Nimantha Athukorala, Senior Assistant Director, Financial Intelligence Unit, Central Bank of Sri Lanka  
*(2<sup>nd</sup> Representative of the Director- Financial Intelligence Unit)*

[Please see as **Annexure I**, a brief description of each member.]

Ms. Jalashi Lokunarangoda, Assistant Secretary (Legal), Ministry of Justice, Prison Affairs, and Constitutional Reforms and Ms. Vineshka Mendis, Attorney-at-Law provided assistance to the Committee.

**Date of commencement of work by the Committee:** 29 March 2023

**Date of completion of work by the Committee:** 10 April 2024

**Source documents considered by the Committee:**

1. Policy and Legal Framework developed by START-GoSL in 2018 (The Policy approval of the Cabinet of Ministers in the decisions No. අම/19/2965/126/068 dated 29 October 2019 and No. අම/20/1828/330/014-I dated 07 December 2020 respectively).
2. Draft Bill developed by the Legal Draftsman in 2020-2023 (presented to the Committee on 24 March 2023)
3. FATF (2012-2023), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France.
  - Recommendations 3: Money laundering offence
  - Recommendations 4: Confiscation and provisional measures
  - Recommendations 38: Mutual legal assistance: freezing and confiscation
  - Recommendations 40: Other forms of international cooperation
4. FATF (2013-2023), Methodology for Assessing Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems, updated June 2023, FATF, Paris, France.
  - Immediate Outcome 08: Proceeds and instrumentalities of crime are confiscated.
5. Sri Lanka 2021 Article IV Consultation – Press Release; Staff Report; and Statement by the Executive Director for Sri Lanka, March 2022.
6. Sri Lanka Request for an Extended Arrangement Under the Extended Fund Facility – Press Release; Staff report; and Statement by the Executive Director for Sri Lanka, March 2023.

Reducing Corruption Vulnerabilities (structural benchmark): Comprehensive asset recovery provisions in compliance with the UNCAC standard are expected to be developed in consultation with IMF staff and incorporated into a separate draft legislation pertaining to Proceeds of Crime by March 2024.

7. Sri Lanka Technical Assistance Report – Governance Diagnostic Assessment, September 2023.  
Priority Recommendations 3: Enact Proceeds of Crime legislation that is fully aligned with UNCAC and FATF standards by April 2024.
8. Sri Lanka’s obligations on the implementation the United Nations Convention against Corruption referred in the Country Review Report of review cycle 2012-2013 (1<sup>st</sup> review cycle).
9. Sri Lanka’s obligations on the implementation of Articles 5-14 and 51-59 of the United Nations Convention against Corruption referred in the Country Review Report of review cycle 2016-2021 (2<sup>nd</sup> review cycle).
10. Paper on “The Use of Non-Conviction Based Seizure and Confiscation” prepared by the Economic Crime and Cooperation Division (ECCD) at the Directorate General, Human Rights and Rule of Law of the Council of Europe.
11. Information Sheet about the Recommendations of the Lisbon Conference, 5-7 July 2022 entitled “Support for the adoption of non-conviction based forfeiture as a tool for asset recovery” prepared by the International Centre for Asset Recovery (ICAR) of the Basel Institute on Governance funded by the Bureau of International Narcotics and Law Enforcement Affairs of the US Department of State.
12. A Good Practice Guide for Non-Conviction Based Asset Forfeiture prepared by the Stolen Asset Recovery (StAR) Initiative of the World Bank.
13. Asset Forfeiture Policy Manual 2023 of the Criminal Division of the US Department of Justice.
14. Documentation on Unexplained Wealth Orders, prepared by the Stolen Asset Recovery (StAR) Initiative of the World Bank and UNODC.
15. Assets Recovery Handbook - A Guide for Practitioners prepared by the Stolen Asset Recovery (StAR) Initiative of the World Bank and UNODC.

## **National legislation considered by the Committee:**

1. Constitution of the Democratic Socialist Republic of Sri Lanka
2. Code of Criminal Procedure Act, No. 15 of 1979
3. Prevention of Money Laundering Act, No. 5 of 2006
4. Financial Transactions Reporting Act, No. 6 of 2006
5. Evidence Ordinance (Chapter 14)
6. Penal Code (Chapter 19)
7. Poisons, Opium and Dangerous Drugs Ordinance (Chapter 218)
8. Prevention of Crimes Ordinance
9. Mutual Assistance in Criminal Matters Act, No. 25 of 2002
10. Anti-Corruption Act, No. 9 of 2023
11. Customs Ordinance
12. Sri Lanka ports Authority Act, No. 51 of 1979
13. Fisheries and Aquatic Resources Act No. 2 of 1996
14. Coast Conservation Act, No. 57 of 1981
15. Chank Fisheries Act, No. 8 of 1953
16. Pearl Fisheries Ordinances
17. Fisheries (Regulation of Foreign Fishing Boats) Act, No. 59 of 1979
18. Whaling Ordinance
19. Piracy Act, No. 9 of 2001
20. Butchers Ordinance
21. Petroleum Ordinance
22. Antiquities Ordinance
23. Treasure Trove Ordinance
24. Motor Traffic Act (Chapter 203)
25. Excise Ordinance
26. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substance Act No. 1 of 2008
27. Forest Ordinance
28. Forest (Amendment) Act, No. 84 of 1988
29. Felling of Trees (Control) Act, No. 9 of 1951
30. Animals Act No. 29 of 1958
31. Mines and Minerals Act, No. 33 of 1992
32. Offensive Weapons Act, No. 18 of 1966
33. Firearms Ordinance
34. Knives Ordinance
35. Obscene Publication Ordinance

36. Children and Young Persons Ordinance (Chapter 23)
37. Children and Young Persons (Harmful Publications) Act, No. 48 of 1956
38. Profane Publications Act, No. 41 of 1958
39. Official Secrets Act, No. 32 of 1955
40. Lotteries Ordinance
41. Gaming Ordinance
42. Dangerous Animals Ordinance
43. Explosives Act, No.21 of 1956
44. Intellectual Property Act, No. 36 of 2003
45. Consumer Affairs Authority Act, No.9 of 2003
46. Control of Pesticides Act, No. 33 of 1980
47. Public Property Act, No. 12 of 1982
48. Land Development Ordinance
49. Weight and Measures Ordinance (Chapter 188)
50. Tobacco Tax Act, No. 27 of 1953
51. National Authority on Tobacco and Alcohol Act, No. 27 of 2006
52. Stamp Duty Act, No.43 of 1982
53. Food Act, No. 26 of 1980
54. Cosmetics, Devices and Drugs Act, No. 27 of 1980
55. Bread Ordinance
56. Fauna and Flora Protection Ordinance
57. Dried Meat Ordinance
58. Food Control Act, No. 25 of 1950
59. Essential Public Services Act, No. 61 of 1979
60. National Gem and Jewelry Authority. Act. No. 50 of 1993
61. State Gem Corporation Act, No. 13 of 1971
62. Exchange Control Act, No. 14 of 1972
63. Pradeshiya Sabhas Act, No. 15 of 1987
64. Municipal Councils Ordinance

## **International legal instruments considered by the Committee**

1. United Nations Convention Against Corruption
2. United Nations Convention Against Transnational Organized Crime
3. United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988
4. United Nations Resolutions on Corruption amounting to violation of Human Rights. (Human Rights Council)

## **Foreign national legislation considered by the Committee:**

1. The Proceeds of Crime Act, 2002 (UK)
2. Proceeds of Crime Act, No. 85 of 2002 as amended (Australia)
3. USA Federal laws-
  - New York Consolidated Laws
  - US Code - Civil Forfeiture
  - US Code - Criminal Forfeiture
4. Prevention of Organized Crime Act (South Africa)
5. Act on Issuance of Remission Payments Using Stolen and Misappropriated Property, Act No. 87 of 2006 (Japan)
6. Act on Payment of Damage Recovery Benefits from Funds in Deposit Accounts Used for Crime, Act No. 133 of 2007 (Japan)
7. Act on Punishment of Organized Crimes and Control of Proceeds of Crime, Act No. 136 of 1999 (Japan)



**Foreign technical experts who were consulted by the Committee:**

|    | <b>Resource expert</b>   | <b>Mode of consultation</b>  |
|----|--|--|
| 1. | <p><b>Mr. Martin Polaine</b></p> <p>A barrister (England &amp; Wales) of over 30 years' experience possessing expertise on subjects such as anti-corruption; AML/financial regulatory; dispute resolution; public international law; and, international/transnational criminal law.</p>  | <p>Reviewed Committee's report on the Policy and Legal Framework of the proposed law on Proceeds of Crime and submitted the Committee comments and suggestions</p>               |
| 2. | <p><b>Mr. Robin Sykes</b></p> <p>IMF Legal Department- Senior Counsel</p> <p><b>Mr. Clive Scott</b></p> <p>IMF Legal Department- Regional AML/CFT Advisor</p>  | <p>Reviewed Committee's report on the Policy and Legal Framework of the proposed law on Proceeds of Crime</p>  |
| 3. | <p>Judge Daniel Mabley (retired)</p> <p>Former Minnesota District Court Judge, and Presiding Chief Judge from 1996-2000. He has also served as a United Nations International Judge in Kosovo District Court and the Kosovo Supreme Court and has conducted rule of law trainings in various countries including Russia and Moldova.</p> | <p>Presentation on Forfeiture Legislation: One State's Experience and reviewed Committee's report on the Policy and Legal Framework of the proposed law on Proceeds of Crime</p> |

|    |   |   |
|----|---|---|
| 4. | <p>Mr. Emery Adoradio</p> <p>Former Chief of Party of the USAID Efficient and Effective Justice Activity, Former state prosecutor in the U.S. jurisdictions of Manhattan, New York City, and Minneapolis, Minnesota.</p>                | <p>Presentation on Asset Seizure and Forfeiture – overview of U.S. Law, Procedures and Practical Considerations</p>                                 |
| 5. | <p>Professor Keith R. Fisher</p> <p>Fellow at the National Judicial College. Formerly served as Principal Consultant and Senior Counsel for Domestic &amp; International Court Initiatives at the National Center for State Courts.</p> | <p>Presentation on Asset Forfeiture: Money Laundering, Economic Sanctions &amp; Russian Oligarchs</p>   |
| 6. | <p>Mr. Erik Larson</p> <p>International rule of law consultant, with expertise in organized crime and economic crimes prosecutions.</p>   | <p>Presentation on Best Practices in International Financial Investigations and Asset Recovery Operations: A U.S. and International Perspective</p> |
| 7. | <p>Professor Takayuki Fukushima, Government Attorney, International Cooperation Department (ICD), RTI, Ministry of Justice, Japan</p>   | <p>Presentation on Legal systems in Japan against Proceeds of Crime.</p>  |

**Local technical experts whose views were considered by the Committee:**

|    | <b>Resource expert</b>  | <b>Topic</b>   |
|----|---|--|
| 1. | Mr. K. G. Laksiri Geethal<br>Senior Superintendent of Police<br>Director Illegal Assets Investigation<br>Division<br>Sri Lanka Police | Current schemes of Investigation of<br>Illegal Assets in Sri Lanka |

**Sri Lanka's developmental partners who provided technical or logistical support:**

|    | <b>Development Partners</b>                              | <b>Nature of the Support</b>  |
|----|--|---|
| 1. | United Nations Development Programme (UNDP) Sri Lanka    | Commissioning of Mr. Martin Polaine and logistical support for meetings of the Committee through the Support to Justice Sector Project (JURE) funded by the European Union and implemented by UNDP.                   |
| 2. | USAID Sri Lanka  | Facilitation of presentations, consultations with US experts and logistical support on meetings, through the Efficient and Effective Justice Activity funded by USAID and implemented by the Chemonics International. |
| 3. | Japan International Cooperation Agency (JICA), Sri Lanka | Facilitation of consultations with Japanese experts.  |

## Need for a special law

In the traditional sense, proceeds of crime are referred to as 'fruits of crime'<sup>1</sup>. The present law of Sri Lanka provides in certain circumstances for such fruits of crime to be forfeited or returned to the relevant victims of crime. In terms of the existing law, forfeiture of proceeds of crime can take place sequel to the conviction of a person for having committed the offence, which yielded the relevant proceeds of crime. This mechanism is referred to as 'conviction-based forfeiture of proceeds of crime' or as 'post-conviction forfeiture of proceeds of crime'. Criminal justice professionals are aware that forfeiture of proceeds of crime (as opposed to equipment, vehicles, utensils, weapons, etc. used to commit crime) following conviction of offenders is a very rare occurrence and is an extremely difficult goal to achieve. The Committee observed a lack of focus in the present law relating to proceeds of crime, which is manifest by the glaring fact that the Code of Criminal Procedure Act, No. 15 of 1979 does not even make a reference to 'proceeds of crime'.

In the circumstances, the Committee noted the need for a comprehensive new law to enable search, tracing, identification, investigation, detection, restraint, preservation, seizure, freezing, protection, management and forfeiture (confiscation to the State) of the proceeds of crime or in the alternative, their return to the relevant victims of crime. The principal objective of such a law would be to prevent persons who commit crimes and those acting on their behalf and their beneficiaries from yielding unto themselves of fruits of crime including their beneficial use. The existence of such a law and its comprehensive, efficient, impartial and uniform enforcement would deter criminals from committing crime for the purpose of benefitting from the proceeds of such crime. Such a law would inter alia enable the return of proceeds of crime to the respective victims (including the state) and will advance objectives of criminal justice.

One major difficulty in the existing legal regime is that, certain conditions precedent have to be established in order to have the fruits of crime forfeited. They are, (i) proving that a specific offence has been committed, (ii) the identification of the offender, (iii) collection of sufficient investigational material to launch a prosecution against the offender, (iv) identification of the exact proceeds of crime, (v) successful prosecution and conviction of the offender based on admissible and relevant evidence enabling the case for the prosecution being proven beyond reasonable doubt, and (vi) successfully countering third party claims.

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<sup>1</sup> Please see Section 29 of the Code of Criminal Procedure Act, No. 15 of 1979.

Furthermore, in the following instances obtaining an order for forfeiture of proceeds of crime would be extremely difficult if not impossible:

- (a) the offender is dead or untraceable;
- (b) the principal offence has been committed in one jurisdiction and the proceeds of the crime have been retained or concealed in another jurisdiction;
- (c) in view of the manner, in which the offence has been committed, its detection, identification of the perpetrator, apprehension (arrest) of the perpetrator and collection of sufficient investigational material that would be sufficient to prove a case beyond reasonable doubt would be difficult if not impossible;
- (d) forfeiture of proceeds of crime would be extremely difficult in cases where the accused is not convicted;
- (e) a property has been found and no one claims or is in possession of it;
- (f) a property has been found, in respect of which, the possessor is unable to give a valid explanation and yet investigators cannot establish that it had been acquired through illegal means;
- (g) the original proceeds of crime have been converted into different types of property through a series of unidentifiable transactions and has changed hands on multiple occasions;
- (h) a property has been procured partly using proceeds of crime and partly through licit means;
- (i) a property has been procured using proceeds of crime gathered over a long period of time through the committing of multiple offences;
- (j) the perpetrator of the offence has by the committing an offence acquired a benefit, which has resulted in a saving and thus there is no tangible proceeds of crime; and,
- (k) the perpetrator of the offence has consumed or otherwise exhausted the proceeds of crime or the proceeds of crime has been destroyed or its value depreciated.

The Prevention of Money Laundering Act, which has been enacted to deter criminals from being able to utilize proceeds of crime for their benefit, also contains a mechanism for the forfeiture of proceeds of crime. However, that mechanism is also conditioned upon a person being first convicted of having committed the offence of money laundering. Thus, the Prevention of Money Laundering Act has also incorporated in it the 'post-conviction proceeds of crime forfeiture' method.

Particularly with regard to (i) financial crime including bribery and corruption, and (ii) trafficking of persons, narcotics and psychotropic substances, weapons, fauna and flora, antiquities, and precious stones and metals, given the organized and sophisticated manner, in which such crimes are committed, particularly using advanced technology, digital media, and modern forms of communication, as well as measures put in place by such offenders to evade detection and prevent evidence against them being collected, it is vital that a legal regime be put in place to provide for the forfeiture of proceeds of such crime, which is independent of the prosecution and conviction of the offenders. This mechanism is recognized by the laws of a significant number of countries that have launched successful legal battles against such organized crimes. This mechanism is referred to as 'non-conviction-based forfeiture of proceeds of crime'.

The theoretical foundation for non-conviction-based forfeiture of proceeds of crime, is that where successful prosecution of perpetrators of crime cannot be obtained for whatsoever reason and therefore post-conviction forfeiture of proceeds of crime is not possible, the law should provide for an alternate mechanism for a non-conviction based mechanism for forfeiture of proceeds of crime. Furthermore, in situations where a person possesses an unexplainable asset and where there are reasonable grounds to believe that such asset is a proceed of crime, it should be possible to subject such property to a non-conviction based mechanism for forfeiture subject to it being possible to establish that the property is in fact a proceed of crime.

The existing law contains one mechanism for non-conviction-based forfeiture of proceeds of crime. That mechanism is contained in section 115 of the Anti-Corruption Act, No.9 of 2023, which, relates to proceeds of bribery and corruption only.

Section 115 of the Anti-Corruption Act, meets with the UNCAC standards pertaining to non-conviction based asset forfeiture. However, it is a standalone provision which is not linked to certain initial steps which would make non-conviction based asset forfeiture an efficacious mechanism. It was noted by the Committee that the Anti-Corruption Act does not recognize proceeds of crime by that name and does not provide for mechanisms for preservation, protection and management of proceeds of crime. The Committee understood that, as at the time the Anti-Corruption Act was drafted, the Government had decided to draft a separate law that would comprehensively deal with proceeds of crime. Therefore, the draftsman of the Anti-Corruption Act, advisedly chose not to provide detailed provisions relating to proceeds of crime in the Anti-Corruption Act. On a careful consideration, the Committee decided that as the proposed law is to comprehensively deal with all aspects pertaining to proceeds of crime, once it is enacted, the provisions in

the Anti-Corruption Act pertaining to proceeds of crime should not be resorted to for the purpose of dealing with proceeds of bribery and corruption.

The Committee notes that during the Parliamentary debate which culminated in the enactment of the Anti-Corruption Act, the Hon. Minister of Justice had informed the Parliament that a separate law will be enacted expeditiously to deal with proceeds of bribery and corruption and therefore, the Anti-Corruption Act does not extensively deal with the proceeds of such crimes. The Committee also notes that during that debate, several Members of Parliament also noted the compelling need of such law.

The Committee noted that the International Monetary Fund (IMF) conducted an interdepartmental Governance Diagnostic Assessment mission in Sri Lanka during March 20-31, 2023. In line with the IMF's Enhanced Fund Engagement, the diagnostic assessment focused on corruption vulnerabilities and governance weaknesses linked to corruption stemming from critical priority areas of anti-corruption, anti-money laundering and countering financing of terrorism. The IMF mission, following discussions with the officials of the Government of Sri Lanka, recommended to enact a comprehensive Proceeds of Crime legislation that is fully aligned with UNCAC and FATF standards by March 2024, as one of the priority recommendations.

The Committee also noted that the Asia Pacific Group on Money Laundering (APG), during the Mutual Evaluation of Sri Lanka in 2015, has recommended prioritized implementation of legislation and enforcement of such legislation relating to forfeiture, including repatriation, sharing and restitution, of criminal proceeds, instrumentalities, and property of corresponding value, particularly proceeds from corruption and drug trafficking.

Further, the Committee recognizes that Sri Lanka should meet the requirements under Financial Action Task Force (FATF) Recommendation 4 (forfeiture and provisional measures), Recommendation 38 (Mutual Legal Assistance: Freezing and Confiscation), and Immediate Outcome 8 (proceeds and instrumentalities of crime are forfeited) so as to deprive criminals of the proceeds and instrumentalities of their crimes (both domestic and foreign), and to enable Sri Lanka's competent authorities to freeze or seize and confiscate, without prejudicing the rights of bona fide third parties and consider adopting measures that allow such proceeds or instrumentalities to be forfeited without requiring a criminal conviction (non-conviction based forfeiture).

The Committee also notes that the United Nations Convention against Corruption, which was ratified by Sri Lanka, require state parties to have in place measures on tracing,

freezing, seizing, forfeiting, international cooperation and return of the proceeds of corruption. The two UNCAC Review Reports (cycle 1 and 2) have been considered including the recommendations on adoption of a proceeds of crime law, adopting measures to enable freezing, seizure, confiscation of proceeds of corruption and international cooperation, introduction of non-conviction-based confiscation, preservation of property for confiscation and designation of a central assets management authority to administer frozen, seized or confiscated proceeds of corruption.

Moreover, the independent review of the government-led ' Voluntary National Review' (VNR) of the Sustainable Development Goals under the United Nations obligation to carry out within the 2030 the Agenda for Sustainable Development in Sri Lanka contains in targets 16.4 and 16.5 of Goal 16 - "Peace, Justice, and Strong Institutions", the need to significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime, and substantially reduce corruption and bribery in all their forms by 2030.

In view of the foregoing, the Committee formed the view that Sri Lanka should have new, comprehensive, and an efficacious legislation, which can operate *sui-generis* (independent from other laws) to provide for investigation, tracing, identification, detection, restraining the use, seizure, freezing, protection, preservation, management, and forfeiture of proceeds of crime so that such property would become the property of the state or be returned to the original victims of crime.

The essence of the proposed law and the scheme is contained briefly in the 'Executive Summary'.

Though the Committee commenced its work with the view to developing the Policy and Legal Framework of the proposed law, during its deliberations particularly with the view to ensuring that the time the Legal Draftsman would require the Policy to be converted into legislation, it would be desirable to directly develop the draft Bill founded upon the policy and the legal framework formulated by the Committee. In view of the extensive description contained in the draft Bill, which is attached to this report, the Committee is of the view that following Cabinet approval, the Legal Draftsman would be in a position to expeditiously convert and settle the draft Bill that may be presented to the Parliament. In this regard, it is noted that Assistant Legal Draftsperson, Ms. Lankika Dayarathna, who served as a member of the Committee is to be assigned the task of converting the Cabinet approved draft Bill into a Bill proper.



The Committee is mindful that the present initiative of the Government aimed at the enactment of a law on proceeds of crime is mainly founded upon the recommendation made by the International Monetary Fund that such a law be enacted expeditiously. The Committee is also mindful that the Financial Action Task Force (FATF) has also in its Recommendation 4 requires the Government to enact such legislation which meets with the requisite international standards. The Committee is also conscious that, as at present, the law on proceeds of crime, as contained in the Anti-Corruption Act, does not comprehensively meet with the UNCAC standards. While appreciating the need to ensure compliance with the afore-stated requirements, the Committee wishes to highlight that Sri Lanka requires an efficacious law on the proceeds of crime. Thus, the Committee wishes to highlight that the Recommendations contained herein should be viewed not only as a means of implementing the afore-stated recommendations and requirements, but as fulfilling a national need. The Committee recalls that, in 2017, the Cabinet appointed Special Presidential Task Force on the Recovery of State Assets located overseas (START-GOSL) developed a Policy and Legislative Framework of Proceeds of Crime Act of Sri Lanka, focusing specially on proceeds of crime located overseas, and the recommendations of that Task Force was approved by the Cabinet of Ministers on 29 October 2019 and 07 December 2020 respectively. The Legal Draftsman has drafted a Bill based on those recommendations, which this Committee used to commence its deliberations.

The Committee wishes to observe that it is in the national interest to interdict and forfeit proceeds of crime in the hands of the perpetrators of crime and their agents. It is a means of deterring the committing of crime. However, such interdiction and forfeiture must be carried out in accordance with the Rule of Law. Thus, the entire process of identification, seizure, freezing and forfeiture of proceeds of crime must be founded upon a law enacted in conformity with international standards relating to such legislations, and in compliance with human rights standards. The Committee having examined the relevant literature has observed that enforcement of the law relating to proceeds of crime resulting in its forfeiture is challenging and time consuming. Particularly, in instances where the proceeds of crime are located outside Sri Lanka or where the corresponding predicate crime has been committed across national boundaries, the challenges towards law enforcement can be extremely difficult and protracted. Be that as it may, what is essential is to have a well-developed law.

## Recommendations

1. The Committee recommends that the draft Bill developed by the Committee based upon the formulation of the policy and legal framework conceptualized by the Committee be presented to Parliament expeditiously to enable the Parliament to enact the Proceeds of Crime Act.
2. The Committee recommends that the draft Bill together with this Report and the Executive Summary be presented to the Cabinet of Ministers for consideration of approving the recommendations contained herein and for a direction on the Legal Draftsman to prepare the Bill for the enactment of the Proceeds of Crime Act founded upon the draft Bill developed by the Committee.
3. Following Cabinet approval, a direction on the Legal Draftsman, the Committee recommends that the Legal Draftsman be requested to expeditiously draft the Bill for the enactment of the Proceeds of Crime Act.
4. Parallel to the step contained in the Recommendations 2 and 3 above, the Committee further recommends that this Report together with its constituent components including the draft Bill be published by the Ministry of Justice (in its website following a public announcement through conventional media) together with an invitation to the public for consideration and comment. The Committee wishes to note that in view of the mandate conferred on the Committee, it was not possible for the Committee to call for the views of the public and to engage in consultations. In the circumstances, particularly in view of the novel nature of the underlying policy and recommended legislative framework contained in the draft Bill and the importance of the new law to deal with proceeds of crime, it would be important to facilitate inclusive consultations with the public prior to finalization of the Bill by the Legal Draftsperson. Once this step is implemented, the Committee expresses its willingness to reconvene for the limited purpose of considering the comments and proposals for reform presented by the public.
5. Parallel to the implementation of the Recommendations contained in 2, 3 and 4 above, ahead of the presentation of the Bill in Parliament, the Committee is

of the view that the Hon. Minister of Justice should present this Report together with its constituent components to Sectoral Oversight Committee on Just and Law-Abiding Society for the purpose of creating awareness among Members of Parliament and to obtain the considered views of Members of the Parliament. It is the view of this Committee that such pre-debate consultation in Parliament would facilitate swift passage of the Bill following the presentation of the Bill in Parliament. Should the Minister deem it necessary, some members of the Committee will most kindly be amenable to appear before the Parliamentary Committee for the purpose of the introducing the underlying policy and legislative scheme contained in the proposed law and to answer and explain any queries the Parliamentarians may have. It is further recommended that the Minister considers inviting the interested Members of the Parliament who are not members of the Sectoral Oversight Committee. Should proposals for reforms emanate from such meeting, the Committee expresses its willingness to reconvene for the limited purpose of considering the comments and proposals.

6. During meetings the Committee had with the officials of the International Monetary Fund (on their invitation) the Committee was apprised of the fact that in terms of Priority Recommendations 3 of Sri Lanka Technical Assistance Report- Governance Diagnostic Assessment, September 2023, the Government of Sri Lanka was required to present the draft law on proceeds of crime in Parliament and to have it enacted before the 31 March 2024. As this deadline could not be met, the Committee was requested to present a timeline/ roadmap relating to the enactment of the proposed law. The Committee informed IMF officials very specifically that apart from indicating a time at which the Report of the Committee would be presented to the Minister of Justice, the Committee is not in a position to assure the adherence to any timeline after the Report is presented to the Minister. However, the Committee indicated to the IMF delegation that it verily believed that the government would make every endeavor that is possible to ensure that the Act would be enacted before the expiry of this year. The Committee explained steps that would have to be taken by the relevant competent authorities after this report is presented to the Hon. Minister of Justice.
7. The Committee recommends that, the following the enactment of the proposed Proceeds of Crime Act, steps be taken by the relevant competent authorities to

- educate the officers of CIABOC and the Sri Lanka Police regarding the enforcement of the new law.
8. Following the enactment of the Proceeds of Crime Act, it is recommended that the Inspector General of Police expeditiously establish the Proceeds of Crime Investigation Division and facilitate the appointment of officers to such Division as provided in the law.
  9. The Committee recommends that following the enactment of the proposed law the Minister of Justice takes necessary steps to administratively create the Proceeds of Crime Management Authority and thereafter bring Part VII of the proposed Act into operation.

Hon. Justice Yasantha Kodagoda, PC  
Judge of the Supreme Court  
*Chairman of the Committee*

Mr. Rohantha Abeysuriya, PC  
Additional Solicitor General  
Attorney-General's Department

Mr. Kuvera de Zoysa, PC

Mr. Sarath Jayamanne, PC

Mr. Neville Abeyratne, PC

Mr. Priyantha Nawana, PC

Mr. Sanjaya Gamage  
Attorney-at-Law

Mr. Sudarshana De Silva  
Senior Deputy Solicitor General  
Attorney-General's Department

Mr. Amal A. Randeniya  
Attorney-at-Law

Dr. Ayesch Ariyasinghe  
Additional Director  
Financial Intelligence Unit  
Central Bank of Sri Lanka

Mr. Asanga Karawita  
Attorney-at-Law  
Senior Deputy Inspector-General  
Sri Lanka Police

Mr. Kamal Silva  
Attorney-at-Law

Ms. Disna Gurusinghe  
Assistant Director General  
Commission to Investigate Allegations of Bribery or Corruption

Mr. Chathura Galhena  
Attorney-at-Law

Ms. Lankika Dayarathna  
Assistant Legal Draftsman  
Legal Draftsman's Department

Mr. Nimantha Athukorala  
Senior Assistant Director  
Financial Intelligence Unit  
Central Bank of Sri Lanka

Ms. Ruwanadini Kuruppu  
Assistant Secretary (Legal)  
Ministry of Justice, Prison Affairs, and Constitutional Reforms  
*Secretary of the Committee*

**[Signatures of the Committee members are placed on the printed version of the Report.]**

## **Annexure I**

### **Hon. Justice Yasantha Kodagoda, PC Judge of the Supreme Court**

Justice Yasantha Kodagoda, President's Counsel is an Attorney-at- Law with over 35 years' experience and holds an LLM in Public International Law from University College of London. He served the Attorney-General's Department for 30 years and rose to the position of Additional Solicitor General. In 2019 was appointed President of the Court of Appeal and in 2020 appointed a Judge of the Supreme Court.

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### **Mr. Rohantha Abeysuriya, PC Additional Solicitor General, Attorney-General's Department**

Mr. Rohantha Abeysuriya, President's Counsel is an Additional Solicitor General of the Attorney General's Department and has served AGD for over 31 years. Further, he is the Head of the Court of Appeal Unit (Criminal matters) of AGD. Additionally, he is the Senior Supervising Officer of all criminal matters of the Southern Province and Northern Province, all matters investigated by the Colombo Fraud Investigation Division, immigration and emigration matters, and all matters pertaining to corruption in sports and election-related matters.

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### **Mr. Kuvera de Zoysa, PC**

Mr. Kuvera de Zoysa, conferred silk as a President's Counsel in 2012. An active legal practitioner in the fields of Commercial and Civil law with over 31 years of experience. He holds an LLM in International Trade Law from the University of Wales. Has served as a member of several committees in drafting legislation. He is a member of the International Court of Arbitration and a member of the Incorporated Council of Legal Education.

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### **Mr. Sarath Jayamanne, PC**

Mr. Sarath Jayamanne is a President's Counsel with over 35 years of experience. He Masters in Criminology and Criminal Justice from University of Oxford and is a Chevening Scholar and a Hurbert Humphry Fellow. He had served the Attorney-General's Department for 33 years and rose to the level of Senior Additional Solicitor General. He has held the posts of Director-General of the Commission to Investigate Allegations of Bribery or Corruption (CIABOC).

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**Mr. Neville Abeyratne, PC**

Mr. Neville Abeyratne is a President's Counsel with over 40 years of experience in criminal, civil, immigration, adoptions and custody of children, intellectual property law, and arbitration fields. He had been a legal consultant to many leading companies and Local Government Authorities. He is a member of the University Council of University of Kelaniya and was the Vice Chairman of the University Services Appeal Board.

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**Mr. Priyantha Nawana, PC**

Mr. Priyantha Nawana holds an LLM from Queen Mary College of University of London, UK. He served the Attorney-General's Department for 32 years both in criminal and civil law divisions and rose to the position of Senior Additional Solicitor General. Mr. Nawana has reverted to private Bar on his retirement from public service in December 2023.

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**Mr. Sanjaya Gamage, Attorney-at-Law**

Mr. Sanjaya Gamage is an Attorney-at-Law with over 34 years of experience in the legal field. He has held the post of Secretary of the Bar Association and President of the Colombo Chief Magistrate's Court Lawyer's Association and has been the Deputy Chairman of the Public Utilities Commission (2009 - 2019). He is a Council Member of the Sri Lanka Institute of Advanced Technological Education and Commission Member of the Legal Aid Commission.

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**Mr. Sudarshana De Silva  
Senior Deputy Solicitor General, Attorney-General's Department**

Mr. Sudarshana De Silva has served Attorney-General Department for over 26 years. Holds a LLM from University of Colombo, LLB from Open University, Post Graduate Diploma in International Relations from BCIS and Diploma in Forensic Medicine from University of Colombo. Has served as Puisne Judge of Republic of Fiji.

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**Mr. Amal A. Randeniya, Attorney-at-Law**

Mr. Amal A. Randeniya, is an Attorney-at-Law and a criminal practitioner. He holds an LLM in International Business Law from the University of Staffordshire. Former Secretary of the Bar Association of Sri Lanka. Former President of Colombo Law Society. Presently a Commissioner of the Legal Aid Commission of Sri Lanka, an Arbitrator of Industrial Courts, a Council member of the National Institute of Education and a Director of Airport and Aviation Service Sri Lanka Ltd.

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**Dr. Ayesh Ariyasinghe**  
**Additional Director, Financial Intelligence Unit, Central Bank of Sri Lanka**

Dr. Ayesh Ariyasinghe is the Additional Director of the Financial Intelligence Unit of the Central Bank of Sri Lanka, who enrolled as an Attorney-at-Law in 2001. He holds a Bachelor of Science (B.Sc.) degree from the University of Kelaniya, a Masters of Arts in Law and Diplomacy (MALD) in the fields of Global Banking and Finance and International Monetary Theory and Policy from the Fletcher School of Law and Diplomacy, Tufts University, MA., USA, and Doctorate of Philosophy (Ph.D.) in Monetary Economics from the Colombo University.

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**Mr. Asanga Karawita, Attorney-at-Law**  
**Senior Deputy Inspector-General Sri Lanka Police**

Mr Asanga Karawita is an Attorney-at-Law with over 20 years of experience in the legal field, presently holding the office of Senior Deputy Inspector General of Sri Lanka Police, with qualifications of LLB (Colombo), MA (Jayawardenapura), PGDip in Criminology (Jayawardenapura) and HDip in IR (BCIS).

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**Mr. Kamal Silva, Attorney-at-Law**

Mr. Kamal Silva is an Attorney-at-Law. He holds a Bachelors Degree in Arts from the University of Colombo, Master of Business Administration from the Asia e University of Malaysia, and a Post Graduate Diploma in Criminology from University Sri Jayawardenapura. He has served as the Director of the Police Narcotics Bureau and as Deputy Inspector General served as DIG of sveral areas and as Senior DIG Crimes. In 2023 he retired as Senior Deputy Inspector General of Sri Lanka Police.

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**Ms. Disna Gurusinghe**  
**Assistant Director General, Commission to Investigate**  
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Ms. Disna Gurursinghe holds a Master of Laws (LLM) in Criminal Justice Administration (Open University-Sri Lanka), Bachelor of Law (LLB) (Open University-Sri Lanka), Diploma in Forensic Medicine & Science (University of Colombo). She has served Commission to Investigate Allegations of Bribery or Corruption for over 16 years and presently serves as a Assistant Director General of that Commission.

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**Mr. Chathura Galhena, Attorney-at-Law**

Mr. Chathura Galhena is an Attorney-at-Law with 19 years of practice as a civil law practitioner. He is the Secretary of the Bar Association of Sri Lanka. He obtained an LL.M in 2007 from Northumbria University at New Castle, UK, was a lecturer at Sri Lanka Law College from 2012 to 2023, and was a member of the Civil Law Reforms Committee of the Ministry of Justice.

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**Ms. Lankika Dayarathna  
Assistant Legal Draftsman, Legal Draftsman's Department**

Ms. Lankika Dayarathna, is a legislative drafter serving the Legal Draftsman's Department of Sri Lanka since 2011. She is an Attorney-at-Law of the Supreme Court of Sri Lanka. She holds a Bachelor of Arts (B.A.) degree from the University of Colombo and a Master of Laws (LL.M) degree from the University of Colombo and has nineteen years of experience in the legal field.

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**Mr. Nimantha Athukorala  
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Mr. Nimantha Athukorala (Attorney-at-Law) holds B.Sc. Finance (Special) Degree from University of Sri Jayewardenapura, B.A in Social Sciences (Economics and Development Studies) Degree from Open University of Sri Lanka and Master of Business Administration in Finance Degree from University of Colombo. He is an associate member of the Institute of Chartered Accountants of Sri Lanka, the Institute of Certified Management Accountants of Sri Lanka and the Institute of Bankers of Sri Lanka.

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**Ms. Ruwanadini Kuruppu- Assistant Secretary (Legal)  
Ministry of Justice, Prison Affairs, and Constitutional Reforms**

Ms. Ruwanadini Kuruppu is an Attorney-at-Law holding an LLB from the University of London and an LL.M from General Sir John Kotelawala Defence University of Sri Lanka with over 12 years of experience in the legal field. She presently serves as an Assistant Secretary (Legal) of the Ministry of Justice, Prison Affairs, and Constitutional Affairs since 2016.

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# **Policy and Legal Framework and the Draft provisions of the Proposed Law on Proceeds of Crime**

## **Structure of the proposed Law**

### **Preamble**

- Part I - General Provisions and Offences**
- Part II - Investigations into Proceeds of Crime, Restraint and Seizure**
- Part III - Judicial Freezing of Proceeds of Crime**
- Part IV - Protection, Preservation, and Management of Proceeds of Crime.**
- Part V - Forfeiture Proceedings**
- Part VI - Civil Remedy for Victims of Crime**
- Part VII - Proceeds of Crime Management Authority**
- Part VIII - Disposal of Forfeited Proceeds of Crime and the Utilization of the Value Derived thereof**
- Part IX - Victims of Crime Reparation Trust Fund**
- Part X - International Cooperation**
- Part XI - Miscellaneous Provisions**

**PREAMBLE:**

**WHEREAS** the committing of unlawful activities results in serious consequences and in certain circumstances causes pecuniary and other losses and the deprivation of the enjoyment of property rights by victims of such unlawful activities, the public at large and the state;

**AND WHEREAS** those who commit unlawful activities do not possess any legal right or other entitlement to enjoy and benefit from proceeds of such unlawful activities, and those who receive or derive proprietary rights to proceeds of such unlawful activities also do not possess any legal right to such property;

**AND WHEREAS** it is the responsibility of the state to take necessary measures to deprive perpetrators benefitting from proceeds of such unlawful activities and to have such proceeds returned to those who shall otherwise have received the entitlement to benefit from such proceeds;

**AND WHEREAS** the existing legislation including the Penal Code, Code of Criminal Procedure Act, No. 15 of 1979, Offences Against Public Property Act, No. 12 of 1982, Convention on the Suppression of Terrorist Financing Act, No. 25 of 2005, Prevention of Money Laundering Act, No. 5 of 2006, Financial Transactions Reporting Act, No. 6 of 2006 and the Anti-Corruption Act No. 9 of 2023 need to be supplemented by new legislation for the purpose of providing an efficacious legislative framework for the effective identifying, tracing, detecting, investigating, restraining, seizure, preserving, protecting, and managing, judicial freezing, forfeiting and returning proceeds of crime to those who are legitimately entitled to such property;

**AND WHEREAS** for the purpose of realizing the objectives of the legal framework contained in this legislation, it is necessary to vest duties and responsibilities on certain law enforcement officers and to suitably empower them to perform such duties and responsibilities, and also to establish certain statutory bodies including the Proceeds of Crime Management Authority;

**AND WHEREAS** it is necessary to provide for a legislative mechanism to enable law enforcement authorities of Sri Lanka to cooperate with law enforcement, administrative and judicial authorities of other countries with regard to proceeds of crime located both within and outside Sri Lanka, and to cause the return to Sri Lanka or repatriate from Sri Lanka such proceeds of crime or value thereof to those who are legitimately entitled to such property;

**AND WHEREAS** it is necessary to provide restitution and repatriation victims of crime and to the community or the general public who have been affected by unlawful activities, and for such purpose provide for the creation and establishment of the Victims of Crime Reparation and Reparation Trust Fund; and,

*AND WHEREAS it is also necessary to give full effect to Sri Lanka's obligations under the United Nations Convention Against Corruption, the United Nations Convention Against Trans-National Organized Crime, and the United Nations Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substance and to enact legislation relating to proceeds of crime, compatible with contemporary international norms and best practices;*

*Parliament enacts the Proceeds of Crime Act:*

## 1. PART I - GENERAL PROVISIONS AND OFFENCES

### 1.1. Objectives of the Act

- 1.1.1. To disincentivize the commission of unlawful activities for the purpose of benefitting from the proceeds of such unlawful activities.
- 1.1.2. To prevent and deprive any person from benefitting from the proceeds of unlawful activities committed by such person or by any other person.
- 1.1.3. To facilitate the investigation into the committing of unlawful activities including bribery and corruption, drug trafficking, terrorist financing and other organized and financial crimes.
- 1.1.4. To provide for the recognition, adoption and enforcement of advanced investigation techniques and cooperation between domestic law enforcement and administrative authorities pertaining to investigation of proceeds of the crime.
- 1.1.5. To facilitate and provide for the tracing, identification, and recovery of proceeds of crime.
- 1.1.6. To provide for restraining the use and seizure of proceeds of crime.
- 1.1.7. To provide for the issuance of judicial orders for the judicial freezing of proceeds of crime.
- 1.1.8. To provide for protection, preservation and management of proceeds of crime including the disposal of proceeds of crime under certain circumstances pending the conduct and completion of forfeiture proceedings.
- 1.1.9. To deter the committing of unlawful activity which yield proceeds of crime.
- 1.1.10. To provide for legislative mechanisms for the conduct of judicial proceedings and the issuance of judicial orders for the forfeiture of proceeds of crime –
  - (i) following the conviction of a person for having committed an unlawful activity which yielded such proceeds of crime (referred to herein as '*post-conviction forfeiture proceedings*'), and

- (ii) independent of or alternative to prosecuting a person for having committed the unlawful activity which yielded such proceeds of crime, (referred to herein as '*non - conviction based forfeiture proceedings*').
- 1.1.11. To recognize and provide a cause of action in civil law to enable victims of crime to recover loss or damage through civil litigation.
- 1.1.12. To establish a statutory authority for the protection, preservation, management and disposal of restrained, seized for frozen proceeds of crime.
- 1.1.13. To provide a mechanism for the management and the use of the realized value of the disposal of forfeited proceeds of crime.
- 1.1.14. To establish a Trust Fund to provide for restitution and reparation to victims of crime.
- 1.1.15. To provide a mechanism for cooperation, mutual assistance and reciprocity with judicial, law enforcement and administrative authorities of other countries pertaining to the recovery of proceeds of crime located overseas and for repatriation of the value of proceeds of crime located in Sri Lanka.
- 1.1.16. To give effect to Sri Lanka's obligations under the United Nations Convention Against Corruption, the United Nations Convention Against Transnational Organized Crime and international standards and best practices pertaining to anti-money laundering and countering the financing of terrorist activities.

## **1.2. Territorial, *in personam* and subject matter applicability of the Act**

This Act shall apply to -

- 1.2.1. Any person who has committed any unlawful activity or any part thereof in Sri Lanka (including in its territorial waters, air space, on board an aircraft or vessel registered in Sri Lanka or chartered by any person in Sri Lanka), including any unlawful act prior to this Act coming into operation, provided at the time of committing such unlawful activity it was an offence,
- 1.2.2. Any person who is a Sri Lankan citizen or is resident in Sri Lanka who commits any unlawful activity or part thereof outside Sri Lanka.

*Explanation*

*Provisions of this Act shall apply to any diplomatic or consular officer of Sri Lanka notwithstanding provisions of the Diplomatic Privileges Act, No. 9 of 1996 and any immunity that may have been conferred on such officer by any foreign state.*

- 1.2.3. Any person who commits an unlawful activity or part thereof in or outside Sri Lanka with regard to public property of Sri Lanka whether proceeds of such unlawful activity are found within or outside Sri Lanka.
- 1.2.4. Any person who commits an unlawful activity or part thereof in or outside Sri Lanka with regard or in respect of a citizen of Sri Lanka whether proceeds of such unlawful activity are found within or outside Sri Lanka.
- 1.2.5. Any person who commits an unlawful activity or part thereof in or outside Sri Lanka which has an adverse impact on the legitimate interests of Sri Lanka or its nationals or a potential of such impact whether proceeds of such unlawful activity are found within or outside Sri Lanka.
- 1.2.6. Any person who commits an unlawful activity or part thereof from within the premises of diplomatic or consular mission of Sri Lanka and the place of residence of a diplomatic or consular officer of Sri Lanka, independent of whether or not such place of residence has been procured using public funds of Sri Lanka.
- 1.2.7. Any person who commits an unlawful activity or part thereof within the premises occupied on behalf of or under the control of the Government of Sri Lanka or a statutory body thereof established by a law of Sri Lanka or within the place of residence of an employee of such statutory body situated outside Sri Lanka.
- 1.2.8. Any person who commits an offence under this Act within or outside Sri Lanka, including in its territorial waters, air space, on board an aircraft or vessel registered in Sri Lanka or chartered or otherwise used by any person in Sri Lanka.
- 1.2.9. Any proceeds of crime found in Sri Lanka or on board an aircraft or a vessel registered in Sri Lanka or aircraft or a vessel chartered by a citizen or a resident of Sri Lanka.
- 1.2.10. Any proceeds of crime found in or outside Sri Lanka, of an unlawful activity



committed in Sri Lanka.

- 1.2.11. Any proceeds of crime found in or outside Sri Lanka, of an unlawful activity committed outside Sri Lanka by a citizen or a resident of Sri Lanka.
- 1.2.12. Any proceeds of crime in brought into, transit, bound for, passing through or taken out of Sri Lanka.
- 1.2.13. The provisions of this Act shall not apply where the proceeds of an unlawful activity has been forfeited in terms of the applicable law at the time this Act having come into operation, or in the alternative of such forfeiture, a penalty or other sanction has been imposed in terms of the applicable law and complied with.

### **1.3. Temporal applicability of the Act**

- 1.3.1. Subject to the provisions of 1.2, provisions of this Act shall apply to proceeds of crime located within or outside Sri Lanka after the date of operation of this Act, notwithstanding the corresponding criminal activity which yielded such proceeds having been committed prior to this Act having come into operation.
- 1.3.2. No person shall be punished for having committed any offence under this Act, unless such offence shall have been committed after this Act shall have come into operation. Provided however, if an act which constitutes an offence under this Act shall have been continued to be perpetrated at the time of the Act having come into operation, it shall be possible to deal with such perpetrator as having committed the relevant offence under this Act.

### **1.4. Application of the provisions of this Act with regard to proceeds of crime derived out of or relating to the committing of offenses contained in Anti-Corruption Act, No. 9 of 2023**

The provisions of this Act shall prevail over the provisions of Act, No. 9 of 2023 relating to proceeds of crime that may have been derived out of or procured by committing offences contained in the said Act, and such provisions shall include the investigation, tracing, identification, detection, restraining, seizure, judicial freezing, protection, preservation, management, disposal pending forfeiture or release, forfeiture, release and disbursement of such proceeds of crime.

Therefore, the investigation, tracing, identification, detection, restraining, seizure, judicial freezing, protection, preservation, management, disposal pending forfeiture or release, forfeiture, release and disbursement of proceeds of unlawful activities which constitutes offences contained in the Anti-Corruption Act, shall be conducted in terms of the provisions of this Act.

Provided however, nothing in this Act shall in any manner prevent or preclude the investigation of offences contained in the Anti-Corruption Act being conducted in the manner provided in that Act.

## 1.5. Offences under the Act

### 1.5.1 Concealment or disguising of proceeds of crime, etc.

Any person who knowing or having reasonable grounds to believe that a property is a proceed of crime, directly or indirectly does any act by himself or with the participation of others, including carrying out of any transaction or giving advice for the purpose of **converting, transferring, concealing or disguising** -

- (i) the origin, true nature, source, location, disposition, movement, ownership, acquisition, possession, or use of asset, value of such proceeds of crime or part thereof;
  - (ii) the identities of persons who may have committed the unlawful activity which gave rise to such proceeds of crime; or
  - (iii) the identities of persons who possess beneficial interests relating to such proceeds of crime,
- commits an offence.

1.5.2 Any person who knowing or having reasonable grounds to believe that a property is a proceed of crime, **acquires, possesses, uses, has custody, exercises dominion, controls, or retains** such property commits an offence.

Provided however, no person shall be dealt with under and in terms of this Act for having committed the afore-stated offence, till the lapse of 1 year following this Act coming into operation.

1.5.3 Any person who knowingly **destroys any evidence** relating to any property which is a proceed of crime commits an offence.

- 1.5.4 Any person who breaches or obstructs the enforcement or implementation of a-
- (i) **restraining order, seizure, judicial freezing order,**
  - (ii) **any Notice or Order issued by a law enforcement officer under this Act,**
  - (iii) **any judicial order issued in respect of an investigation into a proceed of crime, or**
  - (iv) **judicial order made under this Act relating to a proceed of crime,**
- commits an offence.
- 1.5.5 Any person served with a Notice under section 2.5.1 of this Act who **(i) refuses to accept such Notice, (ii) fails to respond truthfully, or (iii) provides a false, misleading or deceptive response,** commits an offence.
- 1.5.6 Any person who **intentionally aids or advices another** to whom a Notice under section 2.5.1 has been served to provide a false or misleading or deceptive response to such Notice, commits an offence.
- 1.5.7 Any person who presents a false or misleading description, claim or representation to the High Court for the purpose of preventing the judicial freezing of any property, discharge of any property, or for the purpose of having a judicial freezing order varied or vacated, shall commit an offence.
- 1.5.8 Any person who presents a **false or misleading claim, representation or description, or an affidavit containing a false or misleading description or a false document** to the High Court for the purpose of preventing the forfeiture of proceeds of crime or the release of any property, commits an offence.
- 1.5.9 Any person who abets, attempts, or conspires to commit an offence under this Act commits an offence.
- 1.5.10 Any person convicted of having committed an offence under sections 1.5.1 to 1.5.9, shall be punished with imprisonment for a period not exceeding fifteen (15) years and with fine not exceeding ten (10) million rupees. The provisions of sections 303 and 306 of the Code of Criminal Procedure Act, No. 15 of 1979 shall not be applicable with regard to such sentence of imprisonment.
- 1.5.11 The High Court shall have jurisdiction to try and punish a person on indictment by the Attorney General for having committed offences paragraphs 1.5.1 to 1.5.9.

Provided however, if the offence had been committed in respect of proceeds of crime which had been derived out of the committing of an offence contained in the Anti-Corruption Act, the Director General of the CIABOC acting on a direction issued by the Commission shall have the authority to prefer indictment and prosecute the accused.

- 1.5.12 Any person who acquires any knowledge or information after this Act coming into operation pertaining to a proceed of crime, which he believes to be true and which information he has reasons to believe is not in the public domain, following the expiry of one year from this Act coming into operation, **fails to disclose such information** to the Inspector General of Police, Police Designated Officer or to the Officer in charge of a Police Station or the Director General of CIABOC, commits an offence.

*Clarification*

*Where such information relates to proceeds of crime pertaining to an offence contained in the Anti-Corruption Act such information shall be provided to the Director General of CIABOC. Information pertaining to all such other proceeds of crime shall be submitted to the Inspector General of Police, Police Designated Officer or to the Officer in charge of a Police Station.*

Provided, an Attorney-at-Law who in the course of the performance of his professional services receives information pertaining to the existence of or any other information relating to proceeds of crime, shall not be required to provide such information to the Inspector General of Police, the Director General of CIABOC, or to any other person referred to above, if such Attorney-at-Law is obliged in terms of professional ethics to protect the confidentiality of the information he has received.

Provided further, any person who in the course of his employment or providing professional services receives or becomes aware of any information pertaining to a proceed of crime, and provides such information to the compliance officer (if any) appointed in terms of section 14 of the Financial Transaction Reporting Act or in his absence to the principle Executive Officer of his employer, shall not be required to comply with this requirement.

- 1.5.13 Any person who **dissuades, prevents, obstructs or advices any other person from disclosing information** pertaining to proceeds of crime to a Designated

Officer or an Investigation Officer, commits an offence.

Provided however, an Attorney-at-Law providing professional service in accordance with applicable professional ethics shall not be accused of having committed this offence.

1.5.14 Any person, who intentionally **interferes, instructs, advices, obstructs, prevents, dissuades or takes any other measure** to prevent, dissuade, or obstruct any person who is empowered under this Act to perform any function, commits an offence.

Provided however, it shall not be an offence for a person duly authorized or empowered under this Act in good faith to issue instructions or give advice in the manner provided by this Act.

1.5.15 Any person who in his official capacity or otherwise takes any decision or engages in any conduct which is not provided by law or by administrative regulations or rules, which amounts to-

- (i) an adverse change in a condition, entitlement or a privilege of employment,
- (ii) reprisal,
- (iii) coercion,
- (iv) intimidation,
- (v) retaliation,
- (vi) harassment, or
- (vii) deprivation of any entitlement,

with the object of causing any detrimental effect or pain of mind to any other person in relation to any action taken in good faith and in a lawful manner by such person who had been authorized under this Act to perform any function, shall commits an offence.

1.5.16 Any person who is not authorized or empowered by this Act or by any other law to issue instructions or give advice to a Designated Officer or to an Investigation Officer to perform any function or exercise any power under this Act, **issues any direction, gives advice, influences the performance of any function or exercise of any power, solicits or obtains any information or material**, with the view to defeating the objects of this Act, commits an offence.

1.5.17 Any person -

- (a) from whom information, documents or other material has been called for by a Designated Officer or an Investigation Officer,
- (b) who has been required by a duly authorized person under this Act to perform any function or provide any information or material, and
- (c) who has been directed by an order of any Court to provide any information, document or any other material, or render any service or conduct any activity,

unless it is necessary for the purpose of giving effect to the objects and purposes of this Act, provides information in respect of such matter to any other person who is not authorized under this Act to receive such information commits an offence.

*Explanation:*

*Where an Investigation Officer has issued a Notice to a Bank either directly or through an Order issued by a Magistrate requiring such Bank to provide details of a particular bank account and to submit certain documents relating to such account, an employee of such Bank reveals such requirement imposed on the Bank to the account holder or to any third party, commits an offence under this section.*

1.5.19 Any person being a Designated Officer, Investigation Officer or any other person who is superior, parallel, or subordinate to a Designated Officer or Investigation Officer including any person who may possess managerial, supervisory or administrative authority in respect of a Designated Officer or Investigation Officer who **discloses, causes the release of or directs the disclosure or release** of the following information -

- (i) that any person is being investigated into under this Act,
- (ii) that any property is being investigated on suspicion that it is a proceed of crime,
- (iii) that a person named or otherwise described is conducting an investigation under this Act or is advising in the conduct of investigation under this Act or is otherwise assisting in the conduct of an investigation,
- (iv) that an application is being made under this Act to a court of law,
- (v) that an order of restraint, seizure, judicial freezing, forfeiture is to be made in respect of any property,

commits an offence.

Provided however, it shall not be an offence, if such information is provided by reason of -

- (a) his being required or authorized by this Act or any other law,
- (b) his acting for the purpose of giving effect to provisions of this Act, or
- (c) his having done so in response to an order made by a court of law.

1.5.20 Any person who has knowledge or information which he believes to be true pertaining to -

- (a) proceeds of crime, including the location, and nature of such proceeds of crime,
- (b) concealment or disguise of proceeds of crime,
- (c) any transactions relating to proceeds of crime, or
- (d) committing of any offence contained in this Act,

**fail to disclose such information to (i) the Inspector General of Police, (ii) to any other police officer appointed by the Inspector General of Police to receive such information or (iii) the Director General of CIABOC** after the lapse of a period of 1 year from the date of coming into operation of this Act, commits an offence.

Provided however, an Attorney-at-Law who in the course of the performance of his professional duties receives information pertaining to the existence or any other information relating to proceeds of crime, he shall not be required to provide such information to the Inspector General of Police or the Director General of CIABOC, provided he is required in terms of professional ethics to maintain confidentiality relating to such information.

1.5.21 Any person who **fails to comply with a duty conferred on him by this Act** commits an offence. Provided however, if such person can establish that he has in good faith attempted to fulfil the relevant duty and the failure to perform such duty was for reasons beyond his control, he shall not be liable for prosecution or conviction.

1.5.22 Where an offence under this Act is committed by an incorporated body of persons all Directors of such body at the time of committing such offence shall, in addition to the incorporated body of persons be individually liable for the committing of such offence, notwithstanding each such Director not being responsible for committing the Act which constitute the relevant offence.

Provided however, that no such Director shall be prosecuted or deemed to be guilty for having committed an offence if he satisfies the Investigation Officer who conducted the investigation or on a balance of probability prove before the trial court that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of the offence.

*Clarification*

*For the purpose of instituting criminal proceedings against Directors of an incorporated body of persons, it shall not be necessary to first prosecute and obtain a conviction against the corresponding incorporated body of persons.*

- 1.5.23 Where an offence under this Act is committed by an unincorporated body of persons all office bearers of such body at the time of committing such offence shall, in addition to the unincorporated body of persons be individually liable for the committing of such offence, notwithstanding each such office bearer not being responsible for committing the Act which constitute the relevant offence.

Provided however, that no such office bearer shall be prosecuted or deemed to be guilty for having committed an offence if he satisfies the Investigation Officer who conducted the investigation or on a balance of probability prove before the trial court that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of the offence.

*Clarification*

*For the purpose of instituting criminal proceedings against office bearer of an unincorporated body of persons, it shall not be necessary to first prosecute and obtain a conviction against the corresponding unincorporated body of persons.*

- 1.5.24 Where an offence under this Act is committed by in the name and style of a partnership, its partners at the time of committing such offence shall be individually liable for the committing of such offence, notwithstanding each such partner not being responsible for committing the Act which constitute the relevant offence.

Provided however, that no such partner shall be prosecuted or deemed to be guilty for having committed an offence if he satisfies the Investigation Officer who conducted the investigation or on a balance of probability prove before the



trial court that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of the offence.

1.5.25 Any person convicted of having committed an offence under sections 1.5.13 - 1.5.21 shall be punished with imprisonment for a period not exceeding five (5) years and with fine not exceeding one (01) million rupees. The provisions of section 306 of the Code of Criminal Procedure Act, No. 15 of 1979 shall not be applicable with regard to such sentence of imprisonment.

1.5.26 Notwithstanding of anything contrary to Code of Criminal Procedure Act, No. 15 of 1979 the Magistrate's court shall have jurisdiction to try a person against whom criminal proceedings have been instituted in such court for having committed offences contained in sections 1.5.13 - 1.5.21 with the sanction of the Attorney General and punish such person in terms of this Act.

If an offence contained in paragraphs 1.5.13 to 1.5.21 has been committed in respect of property derived out of the committing of an offence under the Anti-Corruption Act, the Director General of the CIABOC acting on a direction of the Commission shall be entitled to investigate the committing of such offence, institute criminal proceedings and prosecute the accused.

1.5.27 In this section "abet", "aid", and "conspiracy" shall have the same meaning as in sections 100, 101, and 113 respectively of the Penal Code.

1.5.28 All offences under this Act shall be cognizable offences for the purposes of application of the Code of Criminal Procedure Act, No. 15 of 1979.

1.5.29 The provisions of the Code of Criminal Procedure Act, No. 15 of 1979 shall apply to the investigation of offences contained in this Part of the Act.

## **1.6 Duty to disclose information**

1.6.1 Any person including a person who is in the course of his employment, profession, trade, business, occupation, or in the discharge of contractual duties comes across or has knowledge or information pertaining to-

- (i) proceeds of crime, including the location, nature, value, the identity of the person having possession, custody, dominion of such proceeds of

- crime, concealment or disguising of proceeds of crime or any transactions relating to proceeds of crime, or
- (ii) committing of any offence contained in this Act,

shall disclose such information to the Inspector General of Police or the Director General of CIABOC, and obtain and retain proof thereof.

Provided however, an Attorney-at-Law who in the course of his professional duties receives information referred to into (i) to (iii) above shall not be obliged to discharge this statutory duty if he is bound in terms of professional ethics to maintain confidentiality of the information he has received, unless the person who provides such information has consented to a release of such information as provided in this Act.

#### 1.6.2 Protection of informants and whistleblowers

- 1.6.2.1 A person who has discharged his statutory duty under and in terms of section 1.6.1, shall be entitled to claim from the Investigation Officer to whom the information provided that his identity shall not be disclosed.
- 1.6.2.2 A person who has discharged his statutory duty in terms of section 1.6.1 shall if he perceives or receives any threat or harm to his person, family or property, or damage to his reputation, shall be entitled to receive protection under and in terms of the Assistance to and Protection of Victims of Crime and Witnesses Act, No.10 of 2023.
- 1.6.2.3 No person who has discharged his duty in terms of section 1.6.1 shall be by virtue of such discharge of statutory duty be subject to disciplinary action or an adverse change in the terms and conditions of his employment.
- 1.6.2.4 Despite any prohibition of or restriction on the disclosure of information under any other law, contract, oath, or practice, a person who has provided information under section 1.6.1 shall not be subject to detrimental action on account of having provided such information.
- 1.6.2.5 No person shall be subject to any civil or criminal liability as a result of providing such information.
- 1.6.2.6 An Investigation Officer or any other person who may be called to testify in any judicial proceedings shall not be compelled to reveal the identity of any

person who has discharged his statutory duty in terms of this provision.

- 1.6.2.7 Any provision in a contract of service or other agreement between an employer and an employee is void in so far as it—
- (a) purports to exclude any provision of this Act, including an agreement to refrain from instituting or continuing any proceedings under this Act or any proceedings for breach of contract; or
  - (b) purports to preclude the employee or has the effect of discouraging the employee from providing information.

## **1.7 Clarification**

1.7.1 For the avoidance of doubt, it is hereby declared that a conviction for the commission of any specific unlawful activity by any person, shall not be required as proof that proceeds of crime have been derived or realized from such unlawful activity.

1.7.2 For the purpose of proving a charge of 'Concealment or disguising of proceeds of crime, etc.' proving or presenting evidence regarding any one or more of the following shall not be necessary:

- (i) that the person being prosecuted committed the corresponding unlawful activity.
- (ii) that the person being prosecuted benefited from either the relevant proceeds of crime or the corresponding unlawful activity.
- (iii) the date and or place of the corresponding committing the unlawful activity.
- (iv) that the corresponding unlawful activity was committed within Sri Lanka.

## **1.8 Jurisdiction and powers of the Magistrate's Court**

The Magistrate's court shall in addition to the jurisdiction and the powers vested in it by the Judicature Act, No. 2 of 1978 and the Code of Criminal Procedure Act, No. 15 of 1979 shall have the power to -

- (i) make orders as provided in this Act to enable Investigation Officers to conduct investigations, gather information, documents and material for investigation purposes and the search of premises, other locations and

- devices;
- (ii) make orders as provided in this Act authorizing the conduct of advanced investigation techniques;
- (iii) take note of restraining orders issued by Investigation Officers and seizure of property;
- (iv) take note of judicial freezing of suspected proceeds of crime by the High Court,
- (v) make any other necessary order for the purpose of achieving the objects and purposes of this Act, and
- (vi) subject to the provisions of this Act, adopt a fair *sui generis* procedure for the conduct of proceedings, for the purpose of achieving the objects and purposes of this Act.

## 1.9 Jurisdiction and powers of the High Court

The High Court shall in addition to the jurisdiction and powers vested in it by the Judicature Act, No. 2 of 1978 and the Code of Criminal Procedure Act, No. 15 of 1979, have the power to –

- (i) issue, extend, vary, and vacate judicial freezing orders and in that regard entertain and carryout necessary proceedings;
- (ii) make orders for the protection, preservation and management of proceeds of crime;
- (iii) as provided in this Act, conduct proceedings and make orders for the forfeiture of proceeds of crime, including making of a (a) proceed of crime forfeiture order, (b) substituted property forfeiture order, and (c) substituted money forfeiture order;
- (iv) orders for the disposal and release of proceeds of crime,
- (v) any other order which would be necessary to achieve the objects and purposes of this Act, and
- (vi) subject to the provisions of this Act, adopt a fair *sui generis* procedure for the conduct of proceedings, for the purpose of achieving the objects and purposes of this Act.

## **1.10 Powers of the Commission to Investigate Allegations of Bribery or Corruption under this Act**

1.10.1 The Commission shall have the power to authorize either generally or on a case-by-case basis, the performance of duties and the exercise of powers conferred on the Director General of the CIOBOC, who shall be the Designated Officer for the purposes of this Act.

1.10.2 The Commission shall have the power to –

- (i) authorize the making of applications to the High Court to obtain orders for judicial freezing of proceeds of crime;
- (ii) direct the institution of criminal proceedings for having committed offences under this Act;
- (iii) authorize the making of applications for forfeiture of proceeds of crime;
- (iv) take necessary steps to make any applications in terms of the Act and any applications ancillary thereto;
- (v) instruct an Attorney-at-Law of the Commission, request the Attorney-General to appoint an Attorney-at-Law of the Attorney-General's Department or retain the services of any Attorney-at-Law to appear on behalf of the Director General and represent the Commission with regard to matters stated in paragraph (i)- (iv) of this section; and
- (vi) obtain and act upon legal advice of the Attorney-General with regard to the performance of its functions under this Act and with regard to the functions of the Designated Officer and Investigation Officers of the Commission.

1.10.3 For the purposes of this Act, the Commission shall have power to designate any officer of the Commission as an Investigation Officer, who shall thereafter perform functions and exercise powers under this Act vested in Investigation Officers.

The designation of an officer of the Commission as an Investigation Officer for the purposes of this Act shall not preclude such officer from performing any functions and powers entrusted in him by the Anti-Corruption Act, No. 9 of 2023 or administratively vested in him by the Commission.

1.10.4 The Commission shall have the power to refer any matter to the Attorney-

General, and in such situations, the Attorney- General shall exercise powers conferred on him by this Act and by the Code of Criminal Procedure Act subject to general or case specific directions issued by the Commission.

1.10.5 If in the course of conducting an investigation into proceeds of crime or taking any step under this Act pertaining to such proceeds of crime, the committing of an offence which is not contained in the Anti- Corruption Act, No. 9 of 2023 is disclosed, the Commission shall have the power to refer the alleged committing of such offence to the Inspector General of Police to take action in terms of the law.

Provided however, if the committing of an offence under this Act is disclosed the Commission shall have the power to take necessary actions in that regard in terms of this Act.

1.10.6 The quorum of the Commission to exercise its powers and discharge its functions under this Act shall be two (02) members of whom one shall be a Commissioner who is an Attorney-at-Law.

1.10.7 In this framework wherever there is reference to the functions and powers of the Attorney-General such reference shall be read as a reference to the Director General of the CIABOC where such powers and functions relate to proceeds of crime emanating from unlawful activities which come within the investigative and prosecutorial competence of the CIABOC. The Director General of the CIABOC shall discharge such functions and exercise powers subject to general or case specific direction of the Commission.

1.10.8 In this framework where there is a reference to the functions and powers of a Designated Officer such reference shall be read as a reference to the Director General of the CIABOC, where such powers and functions relate to proceeds of crime emanating from unlawful activities which come within the investigative and prosecutorial competence of the CIABOC.

1.10.9 In this framework where there is a reference to the functions and powers of a Investigation Officer such reference shall be read as a reference to an authorized officer of the CIABOC, where such powers and functions relate to proceeds of crime emanating from unlawful activities which come within the investigative and prosecutorial competence of the CIABOC.

## 1.11 Powers of the Attorney- General under this Act

1.11.1 The Attorney- General shall have the power to advise,

- (i) the CIABOC and its officers when advice is sought;
- (ii) either *ex-mero mottu* or when sought, advice the Police Designated Officer and Police Investigation Officers regarding the conduct of investigations and the exercise of duties and powers conferred on such officers by this Act; and
- (iii) the PCMA regarding its duties and functions under this Act.

1.11.2 The Attorney- General shall have the power to-

- (i) present indictments to the High Court and conduct prosecutions regarding the committing of offences contained in this Act;
- (ii) sanction the institution of criminal proceedings, undertake, conduct and carry-on criminal proceedings in the Magistrate's court pertaining to the committing of offences contained in this Act;
- (iii) on behalf of the Police Designated Officer or Police Investigation Officer make any application to the Magistrates Court;
- (iv) make applications referred to in this Act to the High Court in respect of proceeds of crime and matters incidental thereto including applications for judicial freezing of proceeds of crime and forfeiture of proceeds of crime; and
- (v) call for and examine any record, file or document of Police or the PCMA.

1.11.3 The Attorney-General shall have the power to make recommendations to the High Court pertaining to -

- (i) the protection, management and preservation of proceeds of crime in respect of which an application for judicial freezing to the High Court has been made or an order of judicial freezing has been made by the High Court; or
- (ii) restraining or preservation order has been made by an Investigation Officer; or
- (iii) property suspected to be a proceed of crime has been seized by an Investigation Officer.

1.11.4 The Attorney-General shall by himself or by an officer of the Attorney-General's Department or by an Attorney-at-Law authorized by him be entitled to intervene, appear, and make representations on behalf of the state in any court of law in any proceedings instituted under this Act.

1.11.5 The powers and functions of the Attorney-General conferred on him by this Act shall be performed by the Attorney-General himself or by an officer generally or specially authorized in that regard by the Attorney-General.

## **1.12 Proceeds of Crime Investigation Division (PCID) of Sri Lanka Police**

1.12.1 There shall be a Division of the Sri Lanka Police which shall come into force by virtue of the enactment of this Act. It shall be called the Proceeds of Crime Investigation Division (PCID) of the Sri Lanka Police.

1.12.2 The Police Designated Officer referred to in this Act shall be the Director General of the PCID.

1.12.3 The Police Deputy Designated Officer referred to in this Act shall be the Deputy Director General of the PCID.

1.12.4 The Police Investigation Officers referred to in this Act shall be officers attached to the PCID. They shall perform their functions in terms of this Act under the directions of the Director General of the PCID. They may be assigned to another Division, Bureau or Unit or to a Police Station for the purposes of effectively carrying out their duties and functions under this Act.

1.12.5 Subject to administrative directions issued by the Inspector General of Police and the Director General of the PCID, any police officer attached to PCID shall be empowered to conduct investigation into any unlawful activity related to proceeds of crime being investigated into by such officer, provided he is authorized to do so in terms of the Police Ordinance, Code of Criminal Procedure Act, and any other applicable law.

1.12.6 Any police officer not below the rank of an Inspector of Police shall subject to case specific approval given by the Director General of the PCID, be entitled to exercise the powers and functions conferred on a Police Investigation Officer by this Act and conduct investigations, and take action as provided in this Act with regard to any proceed of crime.

1.12.7 The National Police Commission shall be empowered to appoint on a recommendation of the Inspector General of Police a suitable number of police officers to the PICD to assist the Police Designated Officer and the Police Investigation Officers.



- 1.12.8 For the purpose of facilitating and providing necessary expertise to enable the carrying out of the objectives of this Act and the due performance of the duties and functions of the Police Designated Officer and Police Investigation Officers, the National Police Commission shall on a recommendation of the Inspector General of Police be empowered to appoint either on a full or part-time basis or on an assignment basis experts possessing necessary knowledge, qualifications, experience and expertise to the PCID.
- 1.12.9 Upon a consideration of the qualifications, experience and expertise of the relevant expert and the assignments to be entrusted to such experts, the National Police Commission shall on an individual basis determine the remuneration payable to such experts.
- 1.12.10 Where in the view of the Director General of the PCID, an investigation into suspected proceeds of crime is complex, unusual, long-drawn, or multi-jurisdictional, and the funds assigned to the PCID is insufficient to duly carryout the investigation, the Director General of the PCID may make a request together with reasons therefor to the PCMA to assign necessary financial resources required for the efficient conduct of such investigation.

### **1.13 Central Authority for Mutual Legal Assistance**

- 1.13.1 For the purposes of achieving the objectives of this Act including investigations into suspected proceeds of crime from other national, State<sup>2</sup>, regional and provincial jurisdictions, the Police Designated Officer and the Designated Officer of the CIABOC shall be deemed to be Central Authorities for the purposes of Mutual Assistance in Criminal Matters Act, No.25 of 2002.
- 1.13.2 Any request for mutual legal assistance received by the Central Authority appointed in terms of Act, No.25 of 2002 which relates to proceeds of crime shall be forwarded to the Police Designated Officer or the CIABOC Designated Officer with due regard to the assignment of their functions in terms of this Act.

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<sup>2</sup> State means a unit of governance within a country designated in such manner.

## **1.14 Designated Officers**

### **Police Designated Officer**

- 1.14.1 For the purposes of this Act, there shall be a Police Designated Officer and a Police Deputy Designated Officer, who shall be the Director General and the Deputy Director General, respectively, of the PCID.
- 1.14.2 The Police Deputy Designated Officer shall be entitled to perform all such duties, functions and powers vested by this Act on the Police Designated Officer, subject to such duties, functions and powers having been delegated to him by the Police Designated Officer either generally or on a investigation specific basis. Subject to provisions contained herein in situations where the Police Designated Officer is unable to perform his duties, functions and powers under this Act due to illness, incapacity and any other reason, the Police Deputy Designated Officer shall be entitled to perform the Police Designated Officer's duties, functions and powers for a period not exceeding seven (07) days, notwithstanding the absence of general or specific delegation.
- 1.14.3 The Police Designated Officer shall be a Police officer holding a rank of not below the rank of Deputy Inspector General of Police (DIG) and may be a Senior Deputy Inspector General of Police. The Police Deputy Designated Officer shall be a Police officer holding a rank of not below the rank of Senior Superintendent of Police (SSP).
- 1.14.4 The Police Designated Officer and the Police Deputy Designated Officer shall be appointed by the National Police Commission based on three (03) nominations each made in that regard by the Inspector General of Police.

Wherein the National Police Commission is unable to appoint a Police Designated Officer within 72 hours following a vacancy in such position arising, for reasons to be recorded, the National Police Commission shall appoint the Police Deputy Designated Officer to act for the Police Designated Officer for a period not exceeding three (03) months. The period of the Acting Police Designated Officer shall not be extended.

This same procedure may be adopted in situations where due to reasons of illness, incapacity or any other circumstances the Police Designated Officer is unable to perform his duties and functions for a period exceeding seven (07) days.

1.14.5 Such Police Designated Officer and the Police Deputy Designated Officer shall be appointed for a period of three (03) years each, and may be re-appointed for another term of three (03) years, only. Provided however, the first Police Deputy Designated Officer shall be entitled to hold office for a period not exceeding four (04) years.

1.14.6 Such Police Designated Officer shall be subject to the superintendence of the Inspector General of Police and the National Police Commission with regard to the performance of his duties, functions and exercise of powers under this Act.

Provided however, for the purposes of this Act, the Inspector General of Police and the National Police Commission shall not be empowered to issue investigation-specific directions to the Police Designated Officer.

1.14.7 The Police Designated Officer may be removed by the National Police Commission in consultation with the Inspector General of Police on grounds of-

- (a) acting contrary to the provisions of this Act or any other law,
- (b) committing of an offence in respect of the asset or any part thereof which has been entrusted to him in terms of this Act,
- (c) acting contrary to an order of the Court made under this Act,
- (d) acting in a manner which amounts to abuse of power,
- (e) acting in bad faith or otherwise conducting himself in a disreputable, corrupt, or any other manner which gives rise to questionable integrity or misconduct, or
- (f) acting in a manner defeating the purposes of this Act or failing to realize the objectives in an efficient manner.

#### **Designated Officer of the CIABOC**

1.14.8 For the purposes of this Act, there shall be Designated Officer and a Deputy Designated Officer of the Commission to Investigate Allegations of Bribery or Corruption, who shall perform the duties, functions and exercise powers conferred on him by this Act with the approval of the Commission.

1.14.9 The Director General of CIABOC shall be the Designated Officer of the CIABOC.

1.14.10 The Commission shall from among senior authorized officers of the

Commission authorized to conduct investigations under the Anti-Corruption Act, No. 9 of 2023, appoint an officer to function as the Deputy Designated Officer of the CIABOC for the purposes of this Act.

- 1.14.11 The Designated Officer and the Deputy Designated Officer of the CIABOC shall be responsible to the Commission as regards the performance of his duties, functions and the exercise of powers conferred on him by this Act to the Commission.
- 1.14.12 The Deputy Designated Officer of the CIABOC shall be entitled to perform all such duties, functions and powers vested by this Act on the Designated Officer of the CIABOC, subject to such duties, functions and powers having been delegated to him by the Designated Officer of the CIABOC either generally or on an investigation specific basis with the approval of the Commission.

**1.15 Functions to be discharged by Designated Officers jointly:**

The two Designated Officers shall –

- 1.15.1 regularly discuss and agree on the manner in which mutual cooperation may be extended between their respective institutions towards effectively achieving the objectives and purposes of this Act,
- 1.15.2 at a minimum of once in 2 months, jointly chair a meeting of Investigation Officers required by them to attend such meeting, to discuss and agree on effective enforcement of provisions of this Act, and the manner in which the objectives and purposes of this Act may be achieved,
- 1.15.3 at a minimum of one in 6 months, jointly chair a meeting of the principle executive officers of public and statutory institutions which in terms of this Act are required to submit information pertaining to suspected proceeds of crime, to ensure that information stipulated in this Act is received,
- 1.15.4 develop and enforce (a) ‘pre-restraint’ and ‘pre-seizure’ planning protocols to be applied by Investigation Officers prior to restraining and seizing suspected proceeds of crime, and (b) protection, preservation and management protocols following seizure of suspected proceeds of crime, pending an order for protection, preservation and management being made by the High Court,
- 1.15.5 at a minimum of once in 6 months, conduct a meeting with the Proceeds of Crime

Management Authority regarding the effective enforcement of the provisions of this Act, and

- 1.15.6 prepare and submit to Parliament an Annual Report setting out the manner in which the two institutions have given effect to provisions of the Act and achieved the objectives and purposes of the Act.

### **1.16 Investigation Officers**

- 1.16.1 A Police Investigating Officer shall be a police officer holding the rank not less than a Sub Inspector of Police (SI), who shall perform his duties, functions and powers conferred on him by this Act under the general supervision of the Police Designated Officer.
- 1.16.2 An officer of the CIABOC appointed by such Commission in consultation with the Director General of that Commission shall be an Investigation Officer for the purposes of this Act, who shall perform his duties, functions and powers conferred on him by this Act with the approval of the Designated Officer.
- 1.16.3 For the purposes of achieving the objectives of this Act including the due performance of the functions of the Designated Officer of the CIABOC and the Investigation Officers of such Commission, the Commission shall in consultation with the Designated Officer appoint such other officers of the Commission to advise and assist the Designated Officers and Investigation Officers.

### **1.17 Duties, functions and powers of a Designated Officer**

- 1.17.1 Supervise the conduct of investigations into suspected proceeds of crime, provide necessary direction to the Investigation Officer conducting such investigations and assign necessary resources for such investigations.
- 1.17.2 Supervise the conduct of investigations into the committing of offences under this Act.
- 1.17.3 To receive information pertaining to proceeds of crime submitted by institutions referred to in this Act.

- 1.17.4 Authorize the issuing of Seizing orders.
- 1.17.5 Authorize the filing of action in the High Court to obtain judicial freezing orders.
- 1.17.6 Provide training to Investigation Officers regarding the objectives of this Act, duties, functions and powers of Investigation Officers, and methodologies to be adopted in the conduct of investigations including advanced investigation techniques.
- 1.17.7 To obtain advice from the Attorney-General pertaining to the performance of duties and functions, the exercise of powers and any other matter under this Act.
- 1.17.8 To obtain the assistance of the Attorney-General with regard to court proceedings under this Act including but not limited to making applications for judicial freezing and forfeiture of proceeds of crime.
- 1.17.9 To obtain the assistance of the Attorney-General for the presentation of requests for mutual assistance pertaining to investigations into proceeds of crime from competent authorities of other jurisdictions and to represent the Designated Officer before foreign judicial, administrative, and law enforcement authorities.
- 1.17.10 To obtain or procure the professional services of local or foreign competent person or an institution or organization pertaining to money flow investigations, financial analysis, forensic accounting, forensic auditing, accessing of commercial data bases, tracing, identification, search, and examination of property suspected to be or containing proceeds of crime.
- 1.17.11 Receive and process requests from foreign competent authorities pertaining to suspected proceeds of crime situated in Sri Lanka.
- 1.17.12 Disseminate requests to foreign competent authorities pertaining to proceeds of criminal activities committed in Sri Lanka, believed to be located overseas.
- 1.17.13 The declaration of the afore-stated duties, functions and powers shall not derogate from the duties, powers and functions of a Police Designated Officer as conferred on him by the Police Ordinance and the Code of Criminal Procedure Act, No. 15 of 1979.

- 1.17.14 The declaration of the afore-stated duties, functions and powers of the Director General of CIABOC in his capacity as a Designated Officer under this Act, shall not derogate from his duties, powers and functions under the CIABOC Act.
- 1.17.15 When a matter is referred to the Police Designated Officer by the CIABOC, it shall be the duty of such Police Designated Officer to cause the conduct of investigations into such alleged offence and take necessary further action in terms of this Act.

### **1.18 Legal authority and duty to conduct investigations**

- 1.18.1 An Investigation Officer shall have the duty and power to conduct investigations into the following: -
- (i) suspected proceeds of crime;
  - (ii) if in the course of an investigation into suspected proceeds of crime, information relating to the unlawful activity that yielded the said proceeds of crime transpires, conduct investigation into such unlawful activity;
  - (iii) committing of offences contained in this Act.

Nothing in paragraph (ii) above shall prevent a law enforcement officer who is duly authorized by law to conduct an investigation into the committing of an unlawful activity.

Furthermore, investigation into unlawful activities which constitute offences under the Anti-Corruption Act shall be conducted only by authorized officers of CIABOC, unless such unlawful activity comes within the investigative purview of the Police as well.

If in the course of an investigation conducted by a Police Investigation Officer into suspected proceeds of crime, information relating to the committing of an offence under the Anti-Corruption Act transpires, it shall be the duty of such Police Investigation Officer to transmit such information promptly to the Director General CIABOC through the Police Designated Officer.

If in the course of an investigation conducted by an Investigation Officer of the CIABOC into suspected proceeds of crime, information relating to the committing of an offence which comes within the investigation purview of Police transpires, it shall be the duty of such Investigation Officer of the

CIABOC to transmit such information promptly to the Police Designated Officer through the Inspector General of Police.

- 1.18.2 For such purpose of conducting investigations into the committing of unlawful activities, it shall be lawful for the Investigation Officer to use powers of investigations contained in this Act, in addition to the generality of powers of investigations vested in such Investigation Officer contained in the Code of Criminal Procedure Act, No. 15 of 1979 and the Police Ordinance or the Anti-Corruption Act, No. 9 of 2023, as the case may be.

**1.19 Statutory duty of certain parties to provide information pertaining to proceeds of crime**

Notwithstanding any provision of the law which may require a person or institution to maintain confidentiality of certain information, the following persons, shall upon information pertaining to any one or more of the following coming to his knowledge, provide such information in writing to the Inspector General of Police or to the Designated Officer under whose purview the investigation of the relevant proceeds of crime or offence comes has been vested by this Act:

- (a) The possible existence of proceeds of crime.
- (b) The identity of persons who may be possessing, having custody, exercising dominion or control of possible proceeds of crime.
- (c) The possible committing of an unlawful activity and the person who had been complicit in such offence.
- (d) The committing of an offence under this Act.

Designation of officers and institutions required by this Act to provide information:

- (i) Director, Financial Intelligence Unit
- (ii) Auditor General
- (iii) Commissioner-General of Inland Revenue
- (iv) Director-General of CIABOC in so far as such information may relate to an offence or proceeds of crime falling within the purview of the Police Designated Officer
- (v) Police Designated Officer in so far as such information may relate to an offence or proceeds of crime falling within the purview of the Director General of the CIABOC
- (vi) Commissioner-General of Excise
- (vii) Director-General Customs



- (viii) Commanders of the Sri Lanka Army, Navy and Air Force
- (ix) Secretaries of Ministries
- (x) The Head of any government Department
- (xi) Director- General Security Exchange Commission
- (xii) The Chief Executive Officer of any statutory authority or body corporate
- (xiii) Commissioner General of Motor Vehicles
- (xiv) Registrar General (of Lands)
- (xv) The Mayor or Chairman of a Municipal Council, Urban Council or Pradeshiya Sabha
- (xvi) Any other person holding public office who may be designated under this section by the Minister, in consultation with the Police Designated Officer and the Designated Officer of the CIABOC.

It shall be the duty of all persons referred to above to within 1 year of this Act coming into operation put in place internal administrative mechanisms to ensure that if the institution of which he is the principle executive officer receives any information referred to in this section, that such information be forthwith brought to his attention.

Upon receipt of information as provided herein by the Inspector General of Police or a Designated Officer, a written acknowledgement shall be issued and the information shall be forthwith presented to the relevant Designated Officer for action in terms of this Act.

## **1.20 Evidential provisions**

### **1.20.1 Presumption**

#### **1.20.1.1 For the purposes of -**

- (a) making an order restraining the use of suspected proceeds of crime,
- (b) making an order for preservation of suspected proceeds of crime,
- (c) seizure of suspected proceeds of crime,
- (d) judicial freezing of suspected proceeds of crime, and
- (e) forfeiture of proceeds of crime

under this Act, it shall be lawful to presume until the contrary is proven, that any movable or immovable property acquired, received, possessed, has dominion over or controlled by a person -

- (i) are the proceeds of any unlawful activity,
- (ii) is property procured using proceeds of crime, or
- (iii) has been derived or realized directly or indirectly from committing an unlawful activity,

if such property or part thereof –

- a) is money, cannot be or could not have been –
  - (i) part of the known lawful income, receipts or entrustments of such person; or
  - (ii) money to which his known lawful income, receipts or entrustments has or had been converted; or
  
- b) is not money, which cannot be or could not have been –
  - (i) property lawfully acquired with any part of his known lawful income, receipts or entrustments;
  - (ii) property which is or was part of his known lawful income, receipts or entrustments; or
  - (iii) property to which any part of his known income, receipts or entrustments has or had been converted.

1.20.1.2 The burden shall lie on the person claiming that a particular property is not a proceed of crime, **to prove on a balance of probability** that such property was derived out of his lawful income, receipts or property.

1.20.1.3 Where under circumstances the presumption may be applied and no person proves on a balance of probability that the property in issue is not a proceed of crime, this presumption may be used by the High Court to conclude that there exists prima-facie evidence that the property in issue is a proceed of crime.

#### 1.20.2 Admissibility of response to a Notice calling for an explanation

Subject to the prohibition contained in section 25 of the Evidence Ordinance, notwithstanding anything to the contrary in the Code of Criminal Procedure Act, No. 15 of 1979, a statement made or response given in the form of an affidavit or a written or oral statement to an Investigation Officer in response to a Notice served on such person in accordance **Schedule I** of this Act, shall be admissible against the maker of such affidavit or statement or against any third party –

- (a) when deciding whether or not to restrain or seize suspected proceeds of crime,
- (b) in judicial proceedings instituted under this Act for judicial freezing and forfeiture of proceeds of crime, and
- (c) in respect of applications for the release of restrained, seized or frozen proceeds of crime or a part thereof.

Provided however, any party whose interests that may be affected by the use or proving of the contents of such affidavit or statement, shall be entitled to present evidence to establish the contrary.

Provided further that, should a person who provides an affidavit or makes a statement either written or oral in response to a Notice served on such person in accordance with Schedule I of this Act, and such person is prosecuted for having committed an unlawful activity, the contents of such affidavit or statement shall not be admissible against such person as substantive evidence.

However, if such person in his defence chooses to give or tender evidence on his behalf, the contents of such affidavit or statement shall be admissible to (a) prove that he made a different statement at a different time, and therefor for the purpose of assessment of credibility of such person, and (b) to rebut evidence placed on behalf of the accused.

- 1.20.3 A statement made by any person to a police officer who has exercised a function under this Act to interview and record a statement of such person, shall not be used against the maker of such statement in any criminal proceedings against such person, unless subject to section 25 of the Evidence Ordinance the content of such statement is used for the purpose of proving if that he made a different statement at a different point of time.
- 1.20.4 Any statement made by any person to a person who is not a police officer who is duly authorized to perform any function under this Act, shall be admissible against the maker of such statement, subject to the provisions of sections 17 to 24 of the Evidence Ordinance.
- 1.20.5 In prosecutions and in actions under this Act, the provisions of the Electronic Transactions Act, No. 19 of 2006 shall apply to and in relation to the admissibility of evidence of electronic records or other electronic documents.

1.20.6 Notwithstanding anything to the contrary in the Evidence Ordinance, a certificate from a foreign competent authority certified by the Attorney General as amounting to a certificate from a foreign competent authority regarding a property located in the country of such competent authority certifying that such property is a proceed of crime together with supporting documentary evidence in support of such claim, shall be *prima-facie* evidence of the relevant property being a proceed of crime, without the certifying authority being called to testify.

## 2 PART II - INVESTIGATIONS INTO PROCEEDS OF CRIME, RESTRAINT AND SEIZURE

### 2.1 The manner in which an investigation into suspected proceeds of crime may commence

Subject to any administrative directions that may be given by a Designated Officer, an Investigation Officer may commence an investigation under this Act into suspected proceeds of crime, in one of the following ways:

- i. Where in the course of an investigation conducted by himself or by any other person authorized by law to conduct such investigation, into the committing of an unlawful activity, **suspicion arises** that any property is a proceed of crime of such unlawful activity;
- ii. Upon the receipt of a report from and intelligence agency relating to a suspected proceed of crime;
- iii. Upon the receipt of information provided by a person who has discharged his statutory duty in terms of this Act to provide information pertaining to a proceed of crime;
- iv. Upon the receipt of a complaint or a petition from any person relating to a proceed of crime;
- v. Upon receipt of an order of a court of law to conduct an investigation into suspected proceed of crime;
- vi. On the advice of the Attorney- General that an investigation in terms of this Act be conducted;
- vii. Where an Investigation Officer or a Designated Officer based on information or material available, forms a view that **suspicion exist** for him to be of the opinion that an identified property is a proceed of crime;
- viii. Based on a report submitted to the Police Designated Officer by the Director General of CIABOC relating to suspected proceeds of crime believed to have been derived by the committing of an unlawful activity which in terms of the Anti-Corruption Act, No. 9 of 2023, does not come within the investigating purview of the CIABOC.
- ix. Based on a report submitted to the Director General of CIABOC by the Police Designated Officer relating to suspected proceeds of crime believed to have been derived by the committing of an unlawful activity which comes within the investigating purview of the CIABOC in terms of the Anti-Corruption Act, No.9 of 2023.

- x. On a report submitted to the Police Designated Officer or the Designated Officer of CIABOC by any **other law enforcement agency** pertaining to suspected proceeds of crime derived out of the committing of any unlawful activity which comes within the investigation purview of the Police or the CIABOC or such law enforcement agency, as the case may be;
- xi. On a report or information submitted to either the Police Designated Officer or the Designated Officer of CIABOC by (a) a legislative, executive, judicial, regulatory, supervisory or administrative authority of a foreign country, (b) law enforcement or intelligence agency of a foreign country, (c) by an international, regional, or multilateral organization or agency, or (d) by a mechanism or organization established under an international or regional arrangement to which Sri Lanka is party to;
- xii. Following the receipt of a request from a foreign law enforcement agency including a request under the Mutual Assistance in Criminal Matters Act, No. 25 of 2002;
- xiii. Based on a report received from the International Criminal Police Organization (INTERPOL);
- xiv. Following the receipt of a suspicious transaction report or other report or communication from the Financial Intelligence Unit of Sri Lanka established under the Financial Transactions Reporting Act, No. 6 of 2006;
- xv. On a report including an interim report from a Commission of Inquiry appointed under the Commissions of Inquiry Act (Chapter 393) or from a Commission appointed under the Special Presidential Commissions of Inquiry Law, No. 7 of 1978;
- xvi. On information provided in terms of this Act by a person who has been vested with the duty to provide information;
- xvii. On the receipt of a report or a communication by Parliament or a committee thereof which discloses reasonable grounds to believe that a particular property is a proceed of crime;
- xviii. Upon a report from the Public Service commission;
- xix. On a report from the National Police commission;
- xx. Based on a report of or communication from the Auditor General;
- xxi. On a report from a lawfully established disciplinary body;
- xxii. On a report of Controller of Exchange;
- xxiii. On a report of Director (Bank supervision) under the Banking Act, No. 30 of 1988;
- xxiv. Report of Director (Non-Banking Financial supervision of the central Bank of

- Sri Lanka) under the Finance Business Act, No. 42 of 2011;
- xxv. On a Report of Registrar General of Land /Title Registrar;
  - xxvi. Upon a Report submitted by the Registrar of Motor Vehicles;
  - xxvii. Upon a Report submitted by the Commissioner General of Excise;
  - xxviii. Report of National Gem and Jewelry authority;
  - xxix. Report of Divisional Secretary;
  - xxx. Report of Grama Niladhari;
  - xxxi. On a report or information submitted by any other person conferred with a duty under this Act to provide information pertaining to proceeds of crime;
  - xxxii. Report by a Local Authority, the Urban Development Authority or the Construction Industry Development Authority and the Condominium Management Authority; and
  - xxxiii. Upon any observation of a Designated Officer or an Investigation Officer regarding the existence of proceeds of crime, or such observation by any peace officer which is conveyed by such peace officer to a Designated Officer or an Investigation Officer.

## 2.2 Powers of Investigation of an Investigation Officer

2.2.1 Following the commencement of an investigation under this Act, an **Investigation Officer** shall have the following **powers of investigation**: -

- (i) Require any person believed to be acquainted with information pertaining to suspected proceeds of crime or any fact relating to suspected proceeds of crime including the committing of an unlawful activity, to answer questions put to him by such Investigation Officer, and to provide a written statement on matters specified by such Investigation Officer.
- (ii) Video record the conduct of an interview with any person and the making of his statement.
- (iii) Issue Notice in terms of Schedule I of this Act, and call for any information to facilitate the conduct of an investigation into a suspected proceed of crime.
- (iv) Take steps that may be necessary for the identification, tracing, recovery and examination of suspected proceeds of crime.
- (v) Obtain a valuation of suspected proceeds of crime.
- (vi) Obtain a certified copy of a declaration of assets and liabilities submitted in terms of the Anti- Corruption Act, No.9 of 2023.

- (vii) Examine and take into custody documents, material and information contained in any files, records, a digital storage device or in any other location, believed to contain material, data and information pertaining to proceeds of crime being investigated into.
- (viii) Subject to the approval of the Designated Officer, conduct or cause the conduct of surveillance (through intelligence gathering agencies of the Sri Lanka Police) and gather information pertaining to -
  - (a) suspected proceeds of crime,
  - (b) committing of an unlawful activity,
  - (c) transactions pertaining to suspected proceeds of crime, and
  - (d) the possession, dominion, custody, control and use of suspected proceeds of crime.

Provided however should such surveillance involves -

- (i) interception of private communication (with or without recording),
- (ii) digital surveillance within private premises of a person under surveillance, or
- (iii) any other surveillance which would relate to the personal life of any person which is not in public,

such surveillance shall be conducted only with the prior approval obtained from the Magistrate having the territorial jurisdiction in respect of the place of surveillance. Such application shall be made by a confidential application in that regard, which shall be considered by the Magistrate in *ex-parte in-camera* proceedings. The Magistrate shall take every reasonable step to hold such application and the order made in that regard in confidence.

The Magistrate shall prior to granting approval for surveillance consider the legality, necessity and justification based on the principle of proportionality for such investigative measure to be carried out.

Provided further, if based on grounds of urgency or for grounds beyond the controlled of the Investigation Officer obtaining the prior approval from the Magistrate would defeat the purposes and the object of this Act, for such reasons to be recorded contemporaneously by the



Investigation Officer the surveillance may be carried out without obtaining prior authorization. Provided however, reasons for having taken such action shall be recorded and forthwith upon an opportunity arising, the relevant Magistrate shall be notified of such action taken by a confidential communication.

- (ix) Provide necessary protection and preservation to restrained, seized and or frozen proceeds of crime.
- (x) Conduct of financial analysis including analysis that may involve the use of specialized digital and other programmes.

2.2.2 Following the commencement of an investigation under this Act, an **Investigation Officer** shall with the sanction of the Designated Officer have the power to:-

- (i) as provided in the subsequent provisions of this Act, **restrain** any person from using or transacting with a property and requiring a person to **preserve** such property which he has **reasonable grounds to suspects to be a proceed of crime**, in a manner specified by him in a written Restraining Order. He shall also be empowered to issue a **restraining and preservation order** on any person having possession, dominion, custody or control over proceeds of crime, which shall contain a direction of what action in respect of such property has been restrained.
- (ii) As provided in the subsequent provisions of this Act, **seize** any property which the Investigation Officer has **reasonable grounds to suspect to be a proceed of crime**.

Provided however, prior to seizing any suspected proceed of crime, the Investigation Officer shall consider (a) the approximate monetary value of the suspected proceed of crime, (b) whether that value exceeds the value stipulated by the Proceeds of Crime Management Authority as being the minimum value of property that may be seized, and (c) whether it would be economically viable to protect, preserve and manage the seized property, pending and order for protection, preservation and management being obtained from the High Court.

Provided further that, notwithstanding the value of the property to be seized being minimal or less than the amount specified by the Proceeds of Crime Management Authority, if the Investigation Officer in

consultation with the Designated Officer forms the opinion that public interest demands the seizure of the suspected proceed of crime, he shall for reasons to be recorded in that regard, seize such property in terms of this Act.

- (iii) Take possession of a seized proceed of crime.
- (iv) Apply for, obtain, serve and enforce a **Judicial freezing Order** relating to a restrained or seized proceed of crime.
- (v) Conduct an investigation into a proceed of crime either jointly or with the assistance of a local or foreign law enforcement agency.
- (vi) Request the Attorney - General to consider the institution of proceedings for judicial freezing or forfeiture of suspected proceeds of crime.

2.2.3 Following the commencement of an investigation under this Act, an **Investigation Officer** shall, subject to compliance with administrative directions, have the entitlement to make a **confidential application** to the Magistrate's Court having territorial jurisdiction to the relevant location where the suspected proceeds of crime is believed to be located or where such location is outside Sri Lanka or unknown to the Investigation Officer to the Magistrates Court of Colombo, and following an *ex-parte in-camera* hearing, be entitled to obtain a **Magisterial authorization or order to facilitate the conduct of the following investigations**.

Following the receipt of an application from an Investigation Officer under this section, the Magistrate shall *in-camera* and in *ex-parte* proceedings forthwith consider the application, and upon being satisfied that the granting of the authorization would be necessary to realize the objectives of the Act, **grant such authorization or issue an order** subject where necessary to any conditions which the Magistrate shall deem necessary.

2.2.4 Entry, Search and Examine:

- (a) The search and examine any premises, location, facility, network, digital data storage device, any other property or thing, or person for the tracing, location, identification or ascertaining the nature and the existence of suspected proceeds of crime and its connection with the committing of any unlawful activity.

Provided however, if based on grounds of urgency or for grounds beyond

the controlled of the Investigation Officer obtaining the prior approval from the Magistrate would defeat the purposes and the object of this Act, for such reasons to be recorded contemporaneously by the Investigation Officer the search shall be carried out without having obtained prior authorization.

Provided further, such Investigation Officer shall report the conduct of such search to the relevant Magistrate, within 24 hours of the conduct of such search.

- (b) It shall be the duty of any person having control, possession or dominion of any premises, location or any other thing, to permit an Investigation Officer exercising the power of search in terms of this section and to facilitate such search.
- (c) If entry or access into any premises or location is not possible or has been obstructed it shall be lawful for an Investigation Officer exercising the power of search to take necessary measures which may include the use of necessary force to gain entry or access into such premises or location for the purpose of searching such premises or location.

2.2.4.1 To **obtain the following information:** -

- (a) Details pertaining to banking relationships including bank accounts, deposits, loans, other facilities and other similar banking instruments, and information relating to the use of online banking facilities.
- (b) Details pertaining to financial instruments/products and services from any other financial institution or designated non-financial businesses and professions or virtual assets service provider.
- (c) Details relating to access and the use and carrying out transactions pertaining to or using crypto currency, bitcoins, block chain transactions and other similar transactions using digital media.
- (d) Details pertaining to financial instruments/products and services from any financial institution unregistered and non-regulated.
- (e) Details pertaining to virtual trading. (E.g., Forex, Futures and Commodity trading)
- (f) Copies of and information contained in Declarations made to the Commissioner General of Inland Revenue.

- (g) Copies of and information contained in and relating to declarations made to the Director General of Customs.
- (h) Declarations and information provided to the Registrar of Titles.
- (i) Copies of Deeds and other conveyances filed in Land Registries.
- (j) Information available at the Head of the Department of Foreign Exchange.
- (k) Telephone and mobile phone call records, transmission details, call termination details, use of digital data services, traffic data, access to internet portals and gateways, etc.
- (l) Details pertaining to equity ownership, share and other equity transactions, etc.
- (m) Extraction of data and information from any digital device including digital data storage devices.

Provided however, it shall be lawful for an Investigation Officer to take custody of such device and retain it until the obtaining the Magisterial order.

- (n) A direction on any person who is believed to possess the username and password or any other information to gain access to a digital device, digitized application, website, server, or any other cyber or networked environment.
- (o) Take steps necessary to unencrypt any digital device or digital storage or to break or bypass its access codes.
- (p) Any principal or chief executive officer of any institution or any other person of such institution to, notwithstanding a provision of law or contractual or other obligation that may require such institution or other person to maintain confidentiality relating to data and information that he may has possession or to which he has access to (i) provide such information, (ii) certified copy of documents, files and registers, (iii) any digital device, to the Investigation Officer.
- (q) Any other information sought for directly by an Investigation Officer and not made available to him by the person possessing such information or material.
- (r) An order on any person not referred to above to provide any data or information either in digital or hard copy form or a certified copy of

any existing digital or hard copy document or any other information not referred to above which may be necessary for the conduct of investigations.

- (s) Any public or private repository of data and information relating to any property, and information relating to persons claiming ownership, possession, having custody, dominion or control over such property.

2.2.4.2 Judicial authorization to conduct the following **special investigative techniques**:

- (a) controlled delivery.
- (b) digital surveillance which includes the interception and recording of digital, voice, video communication.
- (c) undercover operations including those involving the use of decoys,
- (d) laying of traps,
- (e) forensic extraction of data, information and images, from computers, mobile phones, digital data storage devices, and other digital equipment,

Such application shall be made by a confidential application in that regard, which shall be considered by the Magistrate in *ex-parte in-camera* proceedings. The Magistrate shall take every reasonable step to hold such application and the order made in that regard in confidence.

Upon the receipt of an application as afore-stated from an Investigation Officer the Magistrate shall without delay consider the said application and upon being satisfied grant permission for the conduct of necessary advanced investigations. Where necessary the Magistrate may in the interest of justice impose conditions to be complied with.

The Magistrate shall prior to granting approval for the conduct of an advanced investigative techniques consider the necessity and justification for its conduct based on the principle of proportionality for such investigative technique to be carried out.

Following the obtaining of approval as referred to above, the Investigation Officer shall once in 14 days report progress of such investigation using the advanced investigative technique for which approval has been obtained to

the relevant Magistrate.

- 2.2.4.3 A **judicial order** on any state or private person to conduct **any activity that may be necessary for the conduct of investigations** into suspected proceeds of crime, including the conduct of,
- (i) a forensic audit,
  - (ii) digital forensic extraction of data and information,
  - (iii) valuation of the property,
  - (iv) copying and storage of data and information in digital storage devices, and
  - (v) forensic analysis of any transaction relating to property.

Provided however, where such activity is directed to be conducted by a private party, the Magistrate shall in consultation with the relevant service provider determine fees to be payable and require the relevant law enforcement agency to pay such fees.

- 2.2.4.4 The reference in this Act to a Magistrate shall mean the Magistrate in whose jurisdiction the property believed to be a proceed of crime is located, and where –
- (i) the location of the property cannot be traced,
  - (ii) the property is in parts located within the jurisdiction of more than one Magistrate,
  - (iii) the property has a virtual presence or is in cyber space,
  - (iv) the property is intangible, or
  - (v) the property is located overseas,

shall mean the Magistrate of Colombo.

- 2.2.4.5 The declaration of the afore-stated duties, functions and powers shall not derogate from the duties, powers and functions of a Police Investigation Officer conferred on him by the Police Ordinance and the Code of Criminal Procedure Act, No. 15 of 1979.

- 2.2.4.6 The declaration of the afore-stated duties, functions and powers of an Investigation Officer of the CIABOC in his capacity as an Investigation Officer under this Act, shall not derogate from his duties, powers and functions under the Anti-Corruption Act No. 9 of 2023.

## 2.3 The manner of conducting an investigation under this Act

2.3.1 Upon **receipt of an information, complaint, petition, report, etc.**, referred in section 2.1, the Investigation Officer shall where necessary, take steps to conduct a **fact finding**<sup>3</sup>. The objective of conducting a fact finding shall the determination of the veracity of the information contained in the information, complaint, petition, report, etc.

Provided however, if upon an examination of the information, complaint, petition, report, etc., the Investigation Officer has **reasons to believe the truth of the information contained therein**, he may without conducting a fact finding, for such reasons to be recorded, commence the conduct of an investigation as provided in this Act. However, the commencement of such investigation shall be subject to section 2.3.2 hereinunder.

2.3.2 Upon the completion of the fact finding referred to in the above section, the Investigation Officer shall consult the Designated Officer for the purpose of determining -

- a. whether it would be necessary to conduct an investigation into the suspected proceeds of crime; and
- b. whether the monetary value of the suspected proceed of crime will be sufficiently high so as to justify and necessitate the conduct of an investigation into the suspected proceed of crime under this Act;

The determination arrived at shall be recorded.

2.3.3 Where upon verification, the information or part thereof contained in the information, complaint, petition, report, etc., is found to be **credible and that it relates to a proceed of crime**, and therefore the commencement of an investigation under this Act is necessary, subject to the approval of the corresponding Designated Officer and general or special directions issued by such Designated Officer, commence and conduct an investigation under this Act.

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<sup>3</sup> For the purposes of this Act, a 'fact finding' shall mean a preliminary examination of available information and material, and engaging in a process of verification of the information contained in the Information, Complaint, Petition, Report, etc., without conducting any activity that would have the effect of infringing any rights of any person for the purpose of determining whether the information contained therein is credible and relates to a proceed of crime.

Provided however, where, given the attendant circumstances, obtaining the prior approval of the Designated Officer would not be practicable or would defeat the objectives of this Act, an Investigation Officer may for reasons to be recorded, on his own motion commence the investigation and thereafter as soon as possible obtain approval of the Designated Officer.

Provided further, upon a report being presented to the Designated Officer by an Investigation Officer under this section, he may approve or refuse to approve the commencement of an investigation. Should the Designated Officer refuse to approve the commencement of an investigation, he shall record reasons therefor, and should he be the Police Designated Officer submit to the Inspector General of Police a report in respect of such decision not to approve the conduct of an investigation. Should the Designated Officer be the Director General of CIABOC, he shall submit such report to the Commission.

2.3.4 Where necessary, the Investigation Officer shall take steps to trace and identify the property which is believed to be a proceed of crime.

2.3.5 An Investigation Officer shall, for the purpose of achieving of the objectives of this Act, conduct **further investigations**, and shall in particular-

- (i) take necessary steps to **identify, search, trace, recover and examine** the suspected proceed of crime,
- (ii) determine whether the identified property or part thereof is a proceed of or has been derived out of the committing of an unlawful activity,
- (iii) collect evidence relating to the committing of such unlawful activity, including the identity the person who committed such unlawful activity,
- (iv) collect evidence relating to the both the past and present possession, custody, control, use and dominion of the property,
- (v) identify the person who may have beneficial interest in such property,
- (vi) determine the unlawful activity which yielded the identified proceed of crime,
- (vii) determine the nature and the approximate value of such property,
- (viii) ascertain any information as may be necessary to cause the restraint, seizure and judicial freezing of such property,
- (ix) gather such other and further information as may be necessary to achieve the objectives of this Act, and



- (x) take such further action as may be necessary to achieve the objectives of this Act.

For the purposes of achieving the objectives set-out above, an Investigation Officer shall be entitled to exercise the powers of investigation vested on him under this Act.

Provided however, if at any point of time **reasonable grounds exist that a property being investigated into is a proceed of crime**, steps as contained hereunder with regard to the restraint, preservation and or seizure of such property may be carried out by an Investigation Officer notwithstanding further investigations as provided in the above section not having being completed.

2.3.6 The objective of conducting an investigation and further investigation as provided in this Act, shall *inter-alia* be to -

- (i) determine whether the property being investigated into is a proceed of crime,
- (ii) whether any offence as contained in this Act pertaining to such property has been committed, and if so to identify the person who committed such offence and to gather evidence for the prosecution of such offender, and
- (iii) for the purpose of identifying the unlawful activity which yielded such property and gathering evidence relating to such unlawful activity that would enable successful prosecution of judicial proceedings for the forfeiture of such proceeds of crime.

2.3.7 Following the conduct of investigations and necessary further investigations as provided herein before, should the Designated Officer on a report by the Investigation Officer and upon consideration of the notes of such investigations conclude that **reasonable grounds do not exist** that the property investigated into is not a proceed of crime, he shall for reasons to be recorded therefor, direct the termination of the conduct of investigations. Should the identity of the person who submitted the relevant information, complaint, petition, or report be known, convey to such person the decision to terminate investigations and reasons therefor.

2.3.8 If the information, complaint, petition, report, etc., reveals **reasonable grounds to for the Investigation Officer to believe** the identity and the location of a proceed of crime, it would not be necessary for the Investigation Officer to conduct investigations under this section to validate the facts, trace and identify the property, or conduct investigations, as stated herein before, and shall be entitled to take necessary action to -

- (i) serve a Notice calling for explanation,
- (ii) restrain the use of the property, issue a direction for the preservation of the property, or
- (iii) seize such asset, as provided herein under.

2.3.9 Where a Designated Officer has obtained or procured the professional services of local or foreign competent person or an institution or organization pertaining to money flow investigations, financial analysis, forensic accounting, forensic auditing, accessing of commercial data bases, tracing, identification, search, and examination of property suspected to be or containing proceeds of crime, it shall be lawful for an Investigation Officer to act upon the material and information collected through such process for the purposes of (a) carrying out further investigations, (b) forming an opinion regarding property under investigation, and (c) taking any action, in terms of this Act.

## 2.4 Notice calling for explanation -

2.4.1 If upon the information received pertaining to a suspected proceed of crime, and where necessary, following a fact finding and or an investigation, should there be **reasonable grounds to believe** that an identified property is a proceed of crime, an Investigation Officer may following a contemporaneous recording of reasons and with the approval of the corresponding Designated Officer, serve on,

- (i) the person having possession, custody, control, or dominion of such property,
- (ii) the person who is registered or is known to claim, the ownership of such property,
- (iii) any person having beneficial interests in such property,
- (iv) the agent, nominee, representative, manager, principal officer, or attorney of the above-mentioned persons (i)- (iii), or
- (v) all the above categories of persons,

a **Notice** in the manner prescribed in **Schedule I** of this Act. The said Notice shall require the person to whom the Notice is served to provide accurate information regarding the –

- (a) manner in which he acquired, came into possession, is owning, controlling, having dominium or using such property,
- (b) the lawfulness of his acquisition, possession, owning, controlling, having dominium or using such property, including the sources of the consideration provided for such acquisition, possession, control, dominium, or use,
- (c) identity of the person from whom he received the property and the circumstances pertaining to such receipt, and
- (d) any other information pertaining to such property as may be specified in such Notice.

Such Notice shall be served<sup>4</sup> for the purpose of obtaining explanation and information pertaining to the property described in such Notice, and specifically for the purpose of ascertaining *inter alia*,

- (a) the identified property is a proceed of crime,
- (b) the property has been derived out of the committing of one or more specific unlawful activities, and if so that identity of such unlawful activity that yielded such proceed of crime and evidence relating to such unlawful activities,
- (c) whether any person has committed an offence under this Act in respect of such property,
- (d) identity of the person who had committed the corresponding unlawful activity, and
- (e) evidence relating to such unlawful activity and the proceed of crime.

2.4.2 Upon receipt of a Notice substantially in the form prescribed in **Schedule I**, it shall be the duty of the person who receives such Notice to not later than three (03) working days from the receipt of such Notice provide a true and descriptive response thereto (referred to herein as an 'explanatory statement') in writing in the form of a sworn/affirmed statement.

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<sup>4</sup> "serve" mean manually (including situations where the acceptance was rejected by the recipient), electronically, presumption arising out of having been transmitted through registered post

Provided however, the person to whom the Notice is served, may for sufficient reasons to be given to the Investigation Officer, seek in writing, and where such reasons are found to be *bona fide*, obtain a further extendable period which shall not exceed a period fourteen (14) days for the submission of explanatory statement referred to above:

Provided further, the Investigation Officer may in such circumstances issue a Restraining Order (in addition to other circumstances in which a Restraining Order may be issued under this Act) for the purpose of ensuring that the objectives of this Act are not defeated, which shall be valid only for a period of 72 hours from the time at which the explanatory statement is received by him.

- 2.4.3 Following the receipt of the explanatory statement (sworn/affirmed statement) referred to above, the Investigation Officer shall consider and determine whether **reasonable grounds to exists** that the property being investigated into is a proceed of crime. For such purpose where necessary, he may conduct further investigations which shall include interviewing and recording a statement of the person who submitted the explanatory statement and statements of such other and further persons.
- 2.4.4 Where a notice in terms of this Part is to be served on a sole proprietorship, the notice shall be served on the proprietor. It shall be the duty of such proprietor to respond to such notice in the manner provided herein before.
- 2.4.5 Where notice in terms of this Part of this Act to be served on a partnership the notice shall be served on any partner thereof and it shall be the duty of such partner to respond to such notice in the manner provided herein before. Following compliance with such notice such partner shall obtain a memorandum signed by all partners of the partnership ratifying the contents of the explanation provided and submit it to the investigation officer within three (03) weeks. It shall be the duty of all partners of a partnership to either ratify the afore-stated memorandum or provide to the relevant Investigation Officer his own explanation.
- 2.4.6 Where notice in terms of this Part of this Act is to be served on an unincorporated body of persons, the notice shall be served on a principal office bearer or in the absence of such officer on any other office bearer thereof and it shall be the duty of such office bearer to respond to such notice in the manner provided herein

before. Following compliance with such notice such office bearer shall obtain a memorandum signed by all office bearers of the unincorporated body of persons ratifying the contents of the explanation provided and submit it to the investigation officer within three (03) weeks. It shall be the duty of all office bearers to either ratify the afore-stated memorandum or provide to the relevant Investigation Officer his own explanation.

2.4.7 Where notice in terms of this Part of this Act is to be served on an incorporated body of persons, the notice shall be served on the Managing Director or in his absence any Director thereof and it shall be the duty of such Director to respond to such notice in the manner provided herein before. Following compliance with such notice such Director shall obtain a memorandum signed by Board of Directors of the incorporated body of persons ratifying the contents of the explanation provided and submit it to the investigation officer within three (03) weeks. It shall be the duty of all Directors to either ratify the afore-stated memorandum or provide to the relevant Investigation Officer his own explanation.

## **2.5 The manner and circumstances in which a Restraining Order and or a Preservation Order pertaining to the suspected proceeds of crime may be issued-**

2.5.1 If at any point of time, an Investigation Officer forms **reasonable grounds for him to believe and such opinion is endorsed by the Designated Officer** that -

- (a) objectives of this Act can be achieved without seizing such property which is reasonably believed to be a **proceed of crime or a property to the corresponding value of such proceeds of crime**, and
- (b) any person is preparing, attempting or taking steps to-
  - (i) dispose of,
  - (ii) engage in any transaction relating to,
  - (iii) destroy or diminish the value,
  - (iv) conceal or convert, or
  - (v) transfer out of Sri Lanka, such property, or
- (c) it would for reasons to be recorded be necessary to direct the person who is in possession, has custody, control or dominium of the property not to engage in any particular transaction relating to such property and / or to take necessary steps to preserve the property, the Investigation Officer shall serve an order(s) on -

- (i) the person who is having possession, control, custody or dominion over the property, or
- (ii) any person who is believed to take anyone or more of the aforementioned steps,

requiring such person to **refrain from engaging in any activity specified by him (Restraining Order) and / or to take necessary steps to preserve the property (Preservation Order).**

However, such order shall not include a prohibition on the regular *bona-fide* use of such property in a manner that would not result in a significant depreciation of its value or otherwise handling such property in a manner that would defeat the objectives of this Act.

Such orders which shall be called a **Restraining Order** and **Preservation Order** and shall be in the form specified in **Schedule II** of this Act.

Such Restraining Order and Preservation Order unless vacated earlier, shall remain in force for a period specified therein which shall not exceed thirty (30) days.

2.5.2 The **Restraining Order** referred to above shall require the person to whom such order is imposed not engage in any activity prohibited by such Restraining Order, or other activity that would defeat the objectives of this Act being carried out without the approval of the relevant Investigation Officer, unless the same is vacated or a period of thirty (30) days have lapsed since the serving of such Restraining Order.

2.5.3 The **Preservation Order** referred to above shall require the person to whom such order is imposed to take necessary measures so as to preserve the value and present condition of the relevant property in the manner in which it exists and not engage in any activity which may result in the property decaying, getting destroyed or otherwise its value would get depreciated, or engage in any other activity that would defeat the objectives of this Act being carried out without the approval of the relevant Investigation Officer, unless the same is vacated or a period of thirty (30) days have lapsed since the serving of such Preservation Order.

- 2.5.4 An Investigation Officer shall for reasons to be recorded, be entitled to extend the operational period of a Restraining Order or a Preservation Order for a period of another thirty (30) days at a time on two more occasions, so as not to exceed a total period of such an order to ninety (90) days.
- 2.5.5 If the Investigation Officer for reasons to be recorded is satisfied that it shall not be necessary to seize the property in respect of which the Restraining Order and or a Preservation Order has been issued, he shall directly make an application to the High Court in terms of section 3.1 hereinafter for the judicial freezing of the said property.
- 2.5.6 Where necessary, a **Restraining Order** and / or a **Preservation Order** may be issued by an Investigation Officer on any person or institution that is capable of restraining any transaction in respect of and / or preserving the value of the property suspected to be a proceed of crime, and in which event, it shall be the duty of such person or institution to act in terms of the relevant order.

*Clarification:*

*An Investigation Officer acting in terms of this section may issue a Preservation Order on a Bank which has a bank account being maintained by a third party, which the Investigation Officer reasonably believes to contain a specified amount of proceeds of crime. When such order is received, it shall be the duty of such bank to preserve in the account the sum of money stipulated in the said order, which is believed to be proceeds of crime, and subject thereto permit the account holder to operate the account.*

## **2.6 General provisions relating to investigations-**

- 2.6.1 An investigation into a suspected proceed of crime may continue notwithstanding the seizure or judicial freezing of such suspected proceed of crime.
- 2.6.2 Subject to the provisions of this Act, an investigation into the committing of an offence under this Act shall be conducted in the manner provided in the Code of Criminal Procedure Act, No. 15 of 1979.
- 2.6.3 An Investigation Officer conducting an investigation in terms of this Act shall be entitled to take into consideration and act upon material and information

contained in notes of investigations pertaining to an investigation conducted with regard to the committing of any unlawful activity.

- 2.6.4 A Police Investigation Officer shall be entitled to take into consideration and act upon material and information contained in notes of investigation pertaining to an investigation conducted in whole or part by the CIABOC into an offence contained in Act, No. 9 of 2023.

Provided however, he shall make an application for such notes of investigation through the police Designated Officer who shall convey such request to the Designated Officer of CIABOC. Upon receipt of a request from the police Designated Officer notwithstanding anything to the contrary in Anti-corruption Act Designated Officer of CIABOC shall make available the required material to the police Designated Officer.

The Police Designated Officer and the police Investigated Officer shall be obliged to maintain confidentiality relating to information contained in material so received unless for purpose of giving effect to the provisions of this Act.

- 2.6.5 The CIABOC and its officers who are empowered to act in terms of this Act shall if made available or received through lawful means notes of investigations relating to investigations conducted in terms of this Act by a police Investigated Officer take into consideration and act upon information and material contained in the said notes of investigations with or without any further investigations being conducted by an Investigated Officer of the CIABOC. Furthermore, it shall be lawful for the CIABOC and the Designated Officer of CIABOC to act in terms of this Act and make applications for forfeiture of proceeds of crime based on a consideration of the said material and where necessary on any further material that may be collected in the course of any further investigations conducted by the CIABOC.

- 2.6.6 Notwithstanding anything to the contrary in this Act, where in the course of an investigation into any offence being conducted in terms of any other law, a police officer conducting such investigation or any other police officer acting on the instructions of such officer conducting the investigation, finds in the course of such investigation the proceeds of such offence, he shall have the power to seize such proceeds of crime, and take action in terms of this Act or deal with such



property in terms of any such other law under which such investigation was being conducted.

*Example-*

*A police officer who receives information regarding an instance of theft commences the conduct an investigation in to such theft in terms of the Code of Criminal Procedure Act, No. 15 of 1979. In the course of the investigation during the conduct of a search he locates property which he has reasonable grounds to believe is proceeds of committing theft. Notwithstanding anything to the contrary in this Act, he shall be entitled to take action in terms of Code of Criminal Procedure Act, No. 15 of 1979 to take such property in to his possession and take further action in terms of the law.*

- 2.6.7 It shall be lawful for the Attorney-General, the CIABOC, a Designated Officer and for an Investigation Officer to take into consideration and act upon any information and material contained in proceedings of inquiry and investigations conducted by a Commission appointed under Special Presidential Commission of Inquiry Law No. 7 of 1978 or a Commission of Inquiry appointed Commission of Inquiry Act (Chapter 393) so far as such information or material relating to proceeds of criminal activity.
- 2.6.8 Subject to necessary authorization that may have to be obtained from the competent authorities of a foreign country and subject to administrative approval, an Investigation Officer shall be entitled to carry out the entire or part of an investigation under this Act in a foreign country.

For such purpose, an Investigation Officer may obtain the assistance of a law enforcement officer of such foreign country.

Where a law enforcement officer of a foreign country provides assistance to an Investigation Officer and therefor conduct any investigation pertaining to a suspected proceed of crime, it shall be deemed that such investigation or part thereof was conducted by an Investigation Officer, and evidence may be presented in judicial proceedings founded upon material collected by such foreign law enforcement officer.

*Clarification:*

*For the purpose of obtaining the assistance of a foreign law enforcement officer in the conduct of an investigation in a foreign country, an Investigation Officer need not have*

*been present in such foreign country when the relevant part of the investigation was being conducted.*

## **2.7 Seizure of suspected proceeds of crime -**

2.7.1 An Investigation Officer may **seize a property** which he has **reasonable grounds to believe is (a) a proceed of crime, or (b) a property to the corresponding value of such proceeds of crime where the proceed of crime cannot be identified or is not available**, including any property which has been subjected to a Restraining Order and or a Preservation Order.

2.7.2 Should a Notice calling for explanation has been served on any person under paragraph 2.4.1 above in respect of any property, such property shall not be seized, **unless** -

- (i) such person has not provided within the time frame stipulated a truthful explanation,
- (ii) the explanation provided is found to be false, inaccurate, insufficient or misleading, or
- (iii) it transpires that the property in issue had been received by gift, procured or derived in a fraudulent manner,

2.7.3 Upon seizure of a suspected proceed of crime or a property of the corresponding value of the proceeds of crime, the Investigation Officer shall **take possession, control, custody or dominion** of such property, by serving on the person who is in possession, control, custody or dominion of such property a **Notice of Seizure** in the form specified in **Schedule III** of this Act and thereby take effective possession, control, custody or dominion of such property.

Provided however, if the person who is in possession, control or dominion of such property presents credible material to the Investigation Officer to satisfy him that the property in issue had been inherited by him a minimum of thirty years (30) prior to such date on which the Notice calling for explanation has been served, no further action shall be taken by the Investigation Officer under this Act.

Provided further, notwithstanding anything to the contrary in the above proviso, if there exists *prima facie* material that the property in issue had been originally

procured by the committing of an unlawful activity that had an adverse impact on public finance or public property<sup>5</sup>, notwithstanding the lapse of thirty years from the point of inheritance of such property, it shall be lawful for an Investigation Officer to seize such property.

- 2.7.4 If based on the material available there exists **reasonable grounds for the Investigation Officer to believe that a property is a proceed of crime or is a property to the corresponding value of proceed of crime** and that unless immediate steps are taken to seize such property the objectives of this Act would be defeated, he shall be entitled to after obtaining the approval of the Designated Officer, **to take steps to temporarily seize the property at the time a Notice calling for explanation under section 2.4.1 is served.**
- 2.7.5 Provided however, if a suspected **proceed of crime or a property to the corresponding value of proceed of crime** is temporarily seized at the time a Notice calling for explanation is served, such seizure shall remain valid only till the explanation to the Notice calling for explanation is received by the Investigation Officer, and until he has had reasonable time to consider the explanation provided and either accept or reject such explanation, and take a decision thereon. If the Investigation Officer upon a consideration of the explanation decides to accept the explanation, he shall vacate the order of temporary seizure and return possession of the property to the party from whom its possession was obtained. If the Investigation Officer decides to reject the explanation received, he shall be entitled to make a further order in terms of this Act to seize the property and thereby retain possession of the property.
- 2.7.6 Unless as provided in section 2.7.2 above, a property shall not be seized unless an opportunity had been provided to the person who claims ownership, possession, or has custody, control or dominion of such property to explain that such property is not a proceed of crime, and the explanation provided in the explanatory statement had been rejected by the Investigation Officer for reasons to be recorded therefor.

Provided however, if in the circumstances,

- (i) providing an opportunity as aforesaid was not practicable, or

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<sup>5</sup> As defined in the offences against the Public Property Act.

(ii) any delay in affording such opportunity or time that may be taken for the verification of the information contained in the explanatory statement would defeat the objectives of this Act, and there **exists reasonable grounds** for the Investigation Officer to believe that the property **is a proceed of crime or is a property of the corresponding value of such proceed of crime**, he shall forthwith with the approval of the Designated Officer **seize** such property.

2.7.7 Following an order for the restraint or the seizure thereof, the property suspected to be a proceed of crime or is property of the corresponding value of such proceed of crime, the Investigation Officer shall be entitled to examine such property and documents, records, or information relating to such property, for the purpose of determining whether either the entirety or any part of such property or any other property within or connected with the restrained or seized property should be excluded from seizure or a judicial freezing order as the case may be.

2.7.8 When serving the **Notice of Seizure**, the relevant Investigation Officer shall forthwith take possession of the relevant property.

Provided however, though an Investigation Officer shall seize any of the following items of property, unless there are reasons to conclude that the possessor or any other party on his behest is acting in a manner to prevent the realization of or defeat the objectives of this Act, he shall not take possession and control of such property.

- (i) Actual sole residence of the person in possession in such property.
- (ii) Essential wearing apparels and jewelry.
- (iii) Essential furniture, fixtures and fittings, and cooking utensils at such residence.
- (iv) A vehicle used for the daily transportation of the person concerned and for the transportation of the utensils and equipment which he regularly uses for his occupation and the proceeds of his occupation.
- (v) Any other items that are essential for his living and occupation.

Provided however, this provision shall not apply to seizures under the provisions of the Prevention of Money Laundering Act and the Poisons, Opium and Dangerous Drugs Ordinance.

Where any investigation officer seizes any of the above-referred to items of property and permits its possession to remain with the person who possessed it, he shall require such person to enter into a bond requiring such person to submit the property to the High Court in the event of the High Court making an order for judicial freezing of such property.

*Clarification:*

*An Investigation Officer may subject to the provisions of this Act make a Restraining Order or a Preservation Order in respect of any of the above-mentioned items of property.*

- 2.7.9 Pending an order from the High Court for the protection, preservation and management of the seized property, it shall be the duty of the relevant Investigation Officer to provide necessary protection and take necessary measures for the protection and preservation of the seized property. For such purpose, an Investigation Officer shall be entitled to obtain the services of any state agency.
- 2.7.10 Within 72 hours of the seizure of a suspected proceed of crime or a property of the corresponding value of such proceed of crime, the relevant Investigation Officer shall, report such seizure to the Magistrate's Court within whose jurisdiction the seizure took place. The purpose of such notification shall be to apprise the Magistrate of the action taken in terms of this Act and to enable the Investigation Officer to obtain orders to facilitate the conduct of further investigations.
- 2.7.11 The afore-stated seizure of the suspected proceeds of crime or a property of the corresponding value of such proceed of crime, shall be in force for a period of up to thirty (30) days, and unless previously vacated by the Investigation Officer, shall lapse unless within such period, a judge of the High Court shall issue an order for judicial freezing under and in terms of this Act or refuses to issue a judicial freezing order.
- 2.7.12 Should upon the examination referred to in section 2.6.4 above and the representations that may have been made to him, an Investigation Officer forms the view that the Restraining Order issued or the Seizure carried out should be varied or vacated, he shall with the approval of the Designated Officer make such variation or vacation, and where necessary serve such revised restraining order or notice of seizure to the party who previously possessed, controlled, had

custody, or held dominion over such property and, where necessary release the relevant property. He shall forthwith file a report in the relevant Magistrate's Court informing the action taken in that regard.

- 2.8 Where, given the attendant circumstances, obtaining the prior approval of the Designated Officer to take steps under section 2.6.3 would not be practicable or would defeat the objectives of this Act, an Investigation Officer may for reasons to be recorded there under, on his own motion serve such Restraining Order or carry out the Seizure of such proceed of crime as the case may be, and thereafter as soon as possible obtain the approval of the Designated Officer.
- 2.9 Following the completion of an investigation into suspected proceeds of crime, the Investigation Officer shall submit the notes of such investigation along with the copies of documents and records collected and a list containing a description of the material gathered in the course of such investigation to the Designated Officer. He shall also submit a report containing his findings. Following a consideration of the documents, records, and material submitted and the report of the Investigation Officer, the Designated Officer shall if he is of the opinion that the property is a proceed of crime, which therefor necessitate action being taken in the High Court for the judicial freezing and subsequent forfeiture of such property, submit a request to the Attorney-General to consider taking action in terms of this Act to institute and prosecute legal action in the High Court for the judicial freezing and forfeiture of property.

If following the consideration of the available material the Designated Officer forms the view that the property in issue is not a proceed of crime, he shall if such property has not been frozen, make an application through the relevant Investigation Officer to the relevant Magistrate's Court notifying the Magistrate of the decision taken not to take any further action with regard to the property in issue.

Provided however, prior to taking an action as stipulated above, the Designated Officer shall be entitled to seek and obtain the advice of the Attorney-General.

Nothing in this section shall preclude the Attorney-General from instituting legal action in terms of this Act for the forfeiture of the relevant property founded upon one out of the two courses of action available for the forfeiture of proceeds of crime.

Provided however, if the Designated Officer is the Director General of the CIABOC, he shall act on the instructions of the Commission.

**2.10** If following a consideration of material collected in the course of the investigation the Designated Officer on his own motion or having obtained the advice of the Attorney- General forms the opinion that a property in respect of which a restraint order has been issued or a seizure made should be released as no sufficient grounds exist that such property is proceeds of crime or the property is of the corresponding value of such proceed of crime, he shall for reasons to be recorded and conveyed to the Investigation Officer, direct the Investigation Officer to forthwith take necessary action to vacate such order. The Investigation Officer shall following compliance with the said directive, report such fact to the relevant Magistrate's Court and notify the reasons received from the Designated Officer or the Attorney-General as the case may be, notify the party to whom the restraint order or the notice of seizure was served, and where relevant return custody of the property.

However, if an Investigation Officer, upon the conduct of further investigations, forms the opinion that the released property is proceeds of crime, he may within one (01) year of the previous release of the property, with the prior approval of the Designated Officer make an application to the High Court having served prior notice to the party who may be affected by a fresh restraining and/ seizure, seek from the High Court an order for the restraining and/ seizing of the previously released property. An order for the issuance of restraining and/ seizure of the property in terms of this provision, shall be made by the High Court following inquiry, or *ex-parte* if it is satisfied that the Notice to the affected party has been duly served. No order for restrain or seizure of property shall be made by the High Court unless that it is satisfied *prima facie* that the property in question is proceeds of crime.

**2.11 Nothing in this Act shall prevent seizure of property in terms of any law which authorizes seizure of property, including the following -**

- (i) Prevention of Money Laundering Act
- (ii) Poisons, Opium and Dangerous Drugs Ordinance
- (iii) Forest Ordinance
- (iv) Customs Ordinance

- (v) Excise Ordinance
- (vi) Antiquities Act

Provided however, if a property is seized in terms of such law, such property shall also be dealt with (following seizure) in terms of that law.



### 3 PART III - JUDICIAL FREEZING OF PROCEEDS OF CRIME

#### 3.1 Issue of a Judicial freezing Order by the High Court

3.1.1 If an Investigation Officer is of the view that, it would be necessary to have the seized property to be frozen,

he shall within 7 working days from the seizing of such property, with the approval of the Designated Officer,

having given Notice in terms of **Schedule IV** of this Act to any party (i) from whom the property was seized, (ii) on whom the restraining order was served, (iii) whose identity has been revealed to him as would be a person affected by the seizing or restraining of the property, and (iv) whom he believes would have been directly affected by the restraining order and or the seizing order (if previously issued),

make an application either by himself or with the assistance of any other police officer or the Attorney-General or an Attorney-at-Law appointed by the Attorney-General,

to the High Court within the judicial zone in which the seized property or part thereof is situated or if the location of the property cannot be located to the High Court of the judicial zone of Colombo,

seeking **an order for judicial freezing** of such property which is believed by him to be a proceed of crime or its corresponding value of such proceed of crime.

Provided however, if the seizure or restraining of the property was by an Investigation Officer of CIABOC, the afore-stated application to the High Court shall be made by an officer of such Commission, an officer appointed by the Attorney-General on a request by the Commission, or by an Attorney-at-law appointed by the Commission.

3.1.2 Upon the making of such Application by an Investigation Officer, the Judge of the High Court shall consider -

- (i) the material presented to court by the Investigation Officer,
- (ii) such other relevant material he may in the interest of justice permit any party who has interest or claim in the property seized or restrained, and

- (iii) any such further material he may in the interest of justice call for and examine, and
- (iv) representations made on behalf of parties before court,

make an order for the **judicial freezing of the property**, if he is satisfied that -

- (a) the Investigation Officer has served Notice of his intention to make an application to the High Court for the judicial freezing of the property to the parties hereinbefore listed,
- (b) **there exist reasonable grounds to believe that (a) the property is a proceed of crime, or (b) is property the value of which corresponds to the proceeds of crime**, where the proceed of crime is not available and
- (c) for the purpose of achieving the objectives of the Act it is necessary to freeze the said property.

Such **judicial freezing order** shall be issued by the High Court in the form contained in **Schedule V** of this Act.

Provided further, if at the time the Application for a judicial freezing order is made, the property in issue was not subject to a seizure, the High Court shall on the motion of the Attorney-General, pending an order being made in respect of the Application for judicial freezing of the property, make suitable orders for the temporary protection, preservation and management of the property.

Having due regard to the nature of the property seized and the likelihood of persons unaware of the making of the judicial freezing order engaging or attempting to engage in any transaction relating to the frozen property, the High Court shall direct the Investigation Officer to publish the judicial freezing order or any part thereof in the manner specified in the order of court. He may also direct any public official to take steps as may be specified in a further order with regard to the frozen property.

- 3.1.3 If an Investigation Officer is of the view that a period of time in excess of 7 working days is necessary to carry out further investigations for the purpose of making an application for an order from High Court to freeze the seized property, he shall with the approval of the Designated Officer, within 7 working days from the seizure of the property make an application containing the reasons for such application to the High Court seeking an extension of time which shall not extend beyond another 7 working days from the expiry of the afore-stated 7 working days to make an application to freeze the seized property.

If such an application is made by an Investigation Officer within the afore-stated period, the restraining of the property and the seizure will remain in force till the High Court makes an order thereon.

- 3.1.4 When making an order for the judicial freezing of property, the Court shall also where necessary make orders in terms of Part IV of this Act (Protection, Preservation, and Management of Proceeds of Crime) in respect of the frozen property.
- 3.1.5 If following the restraining or seizure of a property, the High Court on an application by an Investigation Officer, does not make an order judicial freezing the seized or restrained property, the seizure of the property and the restraining order made in respect of the seized property **shall stand vacated**. Where necessary the High Court shall make order to **return the property** to the person from whom it was seized or to any other person to whom it appears to court that such property should be returned.
- 3.1.6 If following an application to the High Court for the judicial freezing of a property and the High Court decides to release such property and the property has been so released, an Investigation Officer upon conduct of further investigations forms the opinion based on **reasonable grounds** that the released property is proceeds of crime, he may within one (01) year of such order for the release of the property, with the approval of the Designated Officer make one further application to the High Court having served Notice to the party to whom the property was previously released by the High Court and to any other party who may be affected by a judicial freezing order, seeking the judicial freezing of the previously released property. An order for the judicial freezing of such property in terms of this provision shall be made only if the High Court is satisfied that the Notice to the affected party has been duly served and there exists reasonable grounds to believe that the such property in question is proceeds of crime.
- 3.1.7 Upon an application by an Investigation Officer to the High Court made for the judicial freezing of a property that is believed to be a proceed of crime, and the High Court is satisfied that there exist reasonable grounds to believe that the property is proceeds of crime and therefore it should be frozen, the court may on an application by a party from whose possession, control or dominion the property had been seized or restrained, after necessary inquiry **in the interest of the public and for the effective protection, preservation and management of**

**such property**, in addition to making an order for judicial freezing of such property, make a further order at the same time or any time thereafter for the temporary release of such property or part thereof to the party who made the afore-stated application, subject to the said party submitting to court reasonable security in the form and nature as specified by court and subject to conditions that may be imposed by court including conditions restraining specified transactions. Such order for temporary release of property shall be made only if the High Court is satisfied that the temporary release of the property shall not defeat the objectives of this Act, and the court is satisfied that the property shall remain available without the diminishing of its value due to willful conduct of any party, to be subject to forfeiture proceeding as stated herein.

- 3.1.8 An order of the High Court judicial freezing a suspected proceed of crime shall be forthwith served on the parties who had previously possessed, controlled or held dominion over such property and is likely to be directly affected by such judicial freezing order. It shall also be published in the manner specified by the High Court.
- 3.1.9 A judicial freezing order shall initially be valid for a period **not exceeding six (06) months**.
- 3.1.10 A judicial freezing order may be **extended** by the High Court for a period not exceeding twenty-four (24) months (6 months at a time) on an application by the Attorney- General or the Director General of the CIABOC as the case may be, for reasons to be recorded by the High Court.
- 3.1.11 If following the judicial freezing of a property by the High Court, and if proceedings are instituted in the High Court or the Magistrate's Court as the case may be for the committing of the unlawful activity which is alleged to have yielded the frozen property, the judicial freezing order made by the High Court shall remain in force for a period of time not exceeding three (03) months following the completion of the said trial.

If the accused is convicted and an appeal is filed in respect of such conviction, the judicial freezing order shall remain in force till the completion of the appeal, judgment being delivered and a period of three (03) months lapsing therefrom.

If, however, the accused is acquitted by such High Court or the Magistrate's Court and an appeal against such acquittal is filed, the judicial freezing order shall remain in force till the completion of the appeal and three (03) months lapsing following the judgment being delivered.

3.1.12 Following the making of a judicial freezing order, any person directly affected by the making of such judicial freezing order, may make an application to the High Court, seeking a variation of the judicial freezing order and the Court may grant such variation provided that the Court is satisfied that the variation sought does not relate to proceeds of crime.

Provided however, the Court shall not permit carrying out of transactions that may even be legitimate, if such transaction relates to proceeds of crime.

3.1.13 Upon the issue of a Judicial freezing Order, the High Court shall make necessary orders for the protection, preservation, and management of the frozen proceeds of crime applicable for the operational period of the judicial freezing order and such extended period during which forfeiture proceedings shall conducted. Such order for the judicial freezing, protection, preservation and management of the property shall be made as provided in Part IV of this Act.

3.1.14 Following a High Court judicial freezing suspected proceeds of crime, the court may, pending the conduct of forfeiture proceedings or the making of a forfeiture order, on application by a party entitled to such property, after obtaining a valuation of the property, temporarily release such property or part thereof to the claimant, subject to specified conditions and the submission of a bond, and such conditions shall include the submission of a security in the manner and value prescribed by the court. The value of the security shall commensurate with the value of the property claimed. Such security shall be deposited as directed by the High Court with the court itself or with the PCMA.

3.1.15 The property temporarily released on a bond as provided in the preceding section, shall be used by the party to whom such property was released, only for the purposes prescribed by court, and shall be returned to Court or to the PCMA whenever recalled by the High Court.

3.1.16 Such party shall be required in terms of this Act to furnish such temporarily

released property to the High Court to be subject to forfeiture proceedings as provided in this Act or for upon the order of forfeiture for disposal in the manner specified by the forfeiture proceedings. Upon submission of the property back to Court, the claimant shall be entitled to claim the security submitted. Provided however, if at the time the property is returned to the High Court, its value has been depreciated, the Court shall be entitled to forfeit the relevant value of the security and return to the claimant only the remaining value, if any.

3.1.17 When a property is temporarily released to a claimant, he shall be responsible for its effective protection, preservation and management and shall not intentionally engage in any activity which results to the destruction or the depreciation of the value of such property.

3.1.18 Nothing in this Act shall prevent the judicial freezing of property in terms of any law which authorizes the judicial freezing of property. Provided however, if a property is frozen in terms of such other law, such property shall (following its judicial freezing) be dealt with in terms of that same law.

#### **4 PART IV - PROTECTION, PRESERVATION, AND MANAGEMENT OF PROCEEDS OF CRIME**

##### **4.1 Provisions relating to the protection, preservation, and management of seized or frozen proceeds of crime:**

- 4.1.1 With the view to ensuring that a seized or frozen proceed of crime is not destroyed or decayed and its value is not be diminished or adversely affected, and for the purpose of ensuring that the seizure or judicial freezing of a proceed of crime does not disrupt or adversely affect -
- (a) legitimate finance, trade, and commercial activity,
  - (b) the deriving of economic benefit through lawful financial, trading and commercial activity,
  - (c) the lawful employment of persons, and
  - (d) the interests of third parties,

meaningful and effective action as provided in this Act shall be taken by the Investigation Officer to protect, preserve and manage the seized or frozen property that is believed to be a proceed of crime.

Where necessary orders of the Magistrates Court and the High Court shall be obtained for the effective protection, preservation, and management of the restrained, seized and frozen property.

- 4.1.2 The seized or frozen property suspected to be a proceed of crime shall be also be protected and preserved for the purpose of preserving evidence that would be necessary for the prosecution of any person for having committed an unlawful activity that is believed to have yielded the relevant proceed of crime or for having committed any other offence.
- 4.1.3 It shall be the duty of an Investigation Officer who seizes a property suspected to be a proceed of crime, to, pending the obtaining of necessary orders from the High Court, to provide necessary protection to such property and take necessary measures to preserve such property.
- 4.1.4 When an Investigation Officer forms the view that a restrained or seized property suspected to be a proceed of crime requires to be protected or preserved, he shall either by himself or subject to relevant administrative directions, with the assistance of any other police officer or other public servant,

provide necessary protection and necessary steps for the preservation of such property.

- 4.1.5 Where the Investigation Officer is of the view that it would be necessary to obtain the assistance or services of any public or statutory institution to provide protection and/or to take steps for the protection or preservation of the seized property, he shall, pending the High Court making an order in terms of this Part of the Act, make an application to the relevant Magistrate's Court and obtain an order from a Magistrate directing a specified public servant or any public authority to take steps as may be necessary for the protection and preservation of the seized property.
- 4.1.6 When a property suspected to be a proceed of crime is frozen by the High Court or pending an order on the judicial freezing of the property being made, such Court shall either on its own motion or on application by an Investigation Officer, make necessary orders in terms of this Act for the protection, preservation, and management of such frozen property or property that is sought to be frozen.
- 4.1.7 It shall be the duty of any public servant or public or statutory body to which an order is made by the High Court to take necessary steps for the effective protection, preservation and management of a seized or frozen property.
- 4.1.8 Pending a judicial order pertaining to the forfeiture of the seized or frozen property or its release or return to the party lawfully entitled to possess such property being made by the High Court, such property shall be held in trust the party entrusted with the protection, preservation and management of the property, on behalf of the State or the relevant victim of crime or the party lawfully entitled to such property, as the case may be.
- 4.1.9 Any seized or frozen property suspected to be a proceed of crime which at the time of the seizure or judicial freezing was being used to carryout any lawful financial, trading or commercial activity, shall be used by the person to whom the management of such property has been entrusted by the High Court, in the same or nearly as the same lawful manner, with every meaningful step being taken to prevent (a) the destruction or decay of the property, (b) the diminishing of its economic value, (c) the disruption of legitimate finance, trade or commerce, (d) the disruption of lawful employment, and (e) any adverse impact being cause to the interests of third parties.



Necessary action in such regard shall be taken pending the forfeiture of the property to the State, release or return to such property to the party having a legitimate entitlement to such property or pending a further order from the High Court. Where further action need be taken to achieve the objectives contained in this section, the person entrusted with the task of managing the property, shall make appropriate applications to the High Court and obtain necessary further authorization.

4.1.10 Any profit or other proceeds derived or generated from the management of proceeds of crime shall with the prior approval of the High Court, be utilized by the Party to whom the management of the property has been vested by the High Court for (i) the development of the same financial, business or trade activity, (ii) any other lawful financial, trade or commercial activity, or (iii) invested in the most appropriate manner.

4.1.11 It shall be lawful for the person authorized by the High Court to protect, preserve and manage the suspected proceed of crime, to with the permission of the High Court deduct the sum of money lawfully expended by him for the protection, preservation, and management of the said property or to have such sum of money reimbursed from the Proceeds of Crime Management Authority.

4.1.12 The protection, preservation, and management of a property frozen by the High Court shall be entrusted by such High Court to the Proceeds of Crime Management Authority (PCMA) or to any other suitable public authority. The functions of protection, preservation and management of a frozen proceed of crime may be assigned to more than one such authority. Provided however, if the High Court forms the view that in view of the nature of the frozen property and the purpose for which it had been used at the time of its restrained or seizure, such property cannot be effectively protected, preserved, or managed by the Proceeds of Crime Management Authority or any other public authority, he shall appoint a Receiver or a Special Manager to perform such functions as may be specified by such Court.

## **4.2 Appointment of the Proceeds of Crime Management Authority or a Receiver and or Special Manager for the protection, preservation, and management of proceeds of crime**

4.2.1 For the purpose of effective protection, preservation and management of a

frozen proceed of crime, the High Court shall appoint the Proceeds of Crime Management Authority (PCMA), or a Receiver or a Special Manager if;

- (a) the Investigation Officer applies to Court for the appointment of a person for the protection, preservation and management of a seized or frozen property as provided hereinafter, and
- (b) the Court considers the circumstances pertaining to the seized or frozen proceed of crime to necessitate the appointment of the PCMA or a Receiver or a Special Manager as it would be necessary for the effective protection, preservation and management of the frozen property.

Provided however, in instances where the Investigation Officer does not make an application for the appointment of the PCMA or a Receiver or a Special Manager, and nevertheless the Court upon the consideration of the nature, value and attendant circumstances pertaining to the property that has been seized or frozen is of the view that the appointment of the PCMA or a Receiver or a Special Manager is necessary, the Court shall at its discretion confer the responsibility of protecting, preserving and managing the property to the PCMA or make an appointment of a Receiver or a Special Manager in terms of this Part of the Act.

Whereas ordinarily an order authorizing the PCMA or the appointment of a Receiver or a Special Manager shall be made after an order judicial freezing the suspected proceed of crime, due to circumstances to be recorded, and the High Court may make order authorizing the PCMA or appoint a Receiver or a Special Manager to protect, preserve and manage the property, pending an order being made regarding the judicial freezing of the suspected proceed of crime, provided such property has been restrained or seized, and proceedings have been instituted in the High Court for the judicial freezing of the suspected proceed of crime.

4.2.2 Upon taking into consideration of the value, nature and other relevant attendant circumstances pertaining to the restrained, seized or frozen property, including whether the cost of protection, preservation and management of the property would exceed the value of the property, the Court may as an alternative to the appointment of a Receiver or a Special Manager, direct the Investigation Officer to take necessary measures to protect, preserve and manage such asset as far as it may be reasonably possible.

4.2.3 Where an order for the protection, preservation and management of a property

suspected to be a proceed of crime is made in respect of a seized or frozen property, the Proceeds of Crime Management Agency (PCMA), any other public authority or Receiver or a Special Manager appointed by the High Court shall be entitled to, subject conditions imposed and directions of the High Court, to the possession, custody, use and control of such property during the operational period of the said order.

- 4.2.4 Where the PCMA, a Receiver and or a Special Manager has been appointed by the High Court in respect of a seized or frozen property, during the pendency of such appointment, it shall be deemed that such all rights of such property have been vested in the PCMA or in the Receiver and or the Special Manager as the case may be.
- 4.2.5 Where the PCMA, a Receiver or a Special Manager has been appointed by the High Court in respect of a seized or frozen property, the PCMA, or the Receiver or the Special Manager, as the case may be, shall be entitled to bring or defend any action or any other legal proceedings in his official name in relation to such property.
- 4.2.6 For the purposes of this Act, the Proceeds of Crime Management Agency (PCMA), established in terms of Part VII of this Act, shall be empowered to function as a Receiver and or as a Special Manager in term of this Part of the Act.
- 4.2.7 Where the Proceeds of Crime Management Agency, has been established or there exists any other specialized agency of the State capable of effectively protecting, preserving and or managing a seized or frozen property, the High Court shall not appoint any other person to function as a Receiver or as a Special Manager, unless following inquiry from such PCMA and upon a consideration of the nature of the seized or frozen property, the Court is of the view that the property cannot be properly protected, preserved or managed by the PCMA or such other State agency.
- 4.2.8 Where the Proceeds of Crime Management Agency has not been established and or is not efficaciously functioning, and there does not exist any specialized agency of the State that is capable of effectively protecting, preserving and or managing the seized or frozen property, the High Court may for reasons to be recorded directly consider the appointment of a Receiver or a Special Manager.
- 4.2.9 A **Receiver** shall be a person competent in protecting, preserving and managing

a seized or frozen proceed of crime. A **Special Manager** shall be a person who possesses expertise as may be necessary to manage a particular category of seized or frozen proceed of crime, with the view to achieving the objectives of protecting, preserving and managing suspected proceeds of crime.

A High Court may if a necessity arises and for reasons to be recorded, appoint both a Receiver and a Special Manager in respect of a single suspected proceed of crime.

A Receiver shall be entitled to employ one or more Special Managers.

For the purpose of appointing a Receiver or a Special Manager under this Part of the Act, the Secretary to the Ministry of Justice shall maintain a Register of registered Receivers and Special Managers based on a classification of the category and nature of the property such Receivers and Special Managers are competent in protecting, preserving, and managing and the expertise of such Special Managers.

- 4.2.10 The Minister may in terms of Regulations made under this Act, from time to time specify qualifications, experience and other relevant requirements including disqualifications that a person who intends to register as a Receiver or as a Special Manager under this Part of the Act should possess or have, as the case may be. Such, qualifications, disqualifications and expertise may be general in nature or specific to each category of property.
- 4.2.11 Any person possessing the qualifications, experience and any other requirements stipulated by the Minister, may at any time seek registration with the Secretary to the Ministry of Justice to be appointed as a Receiver or a Special Manager. In the application seeking registration, the applicant shall state his qualifications, experience and evidence of satisfaction of requirements stipulated by the Minister, and specializations if any in the protection, preservations and management of different categories of property and fees payable for functioning as a Receiver or as a Special Manager. He shall also affirm to by affidavit to the absence of any disqualification.
- 4.2.12 Upon receipt of an application from a person seeking to be appointed as a Receiver or Special Manager, the Secretary to the Ministry of Justice shall upon satisfaction that the applicant possesses the qualifications, experience and other requirements specified by the Minister, and the absence of any

disqualification, register such person for a period of time not exceeding 5 years.

- 4.2.13 Any person registered as a Receiver or a Special Manager shall be removed from the Register by the Secretary of the Ministry of Justice upon:
- (a) Conviction for having committed an offence punishable with a term of imprisonment or any other conduct involving moral turpitude;
  - (b) The receipt of a report from the Judge of the High Court stating that he has not duly performed his functions as a Receiver or as a Special Manager;
  - (c) Proof that the person is suffering from a disqualification specified by the Minister; and
  - (d) The relevant person making a request to be relieved of functioning as a Receiver or a Special Manager.

Upon the removal of the name of the person from the Register of the Receivers and Special Managers, the Secretary to the Ministry of Justice shall publish such removal in the Gazette.

- 4.2.14 The Secretary to the Ministry of Justice shall from time to time and not less than once a year publish in the Gazette the names of persons registered as the Receivers and Special Managers.

- 4.2.15 A High Court which in terms of this Part of the Act is required to appoint a Receiver or a Special Manager in respect of a seized or frozen property suspected to be a proceed of crime, shall select such person from the afore-stated list of Registered Receivers and Special Managers published in the Gazette. When making such appointment, the High Court shall take into consideration the following: -

- (i) Nature and status of the property;
- (ii) Expertise that may be necessary for the protection, preservation, and management of the property;
- (iii) Whether the identified person is willing to accept the appointment of the Receiver or Special Manager;
- (iv) Fees payable for the protection, preservations, and management to the identified Receiver or the Special Manager;
- (v) Views of the Investigation Officer;
- (vi) Views of any party represented at that stage of the judicial proceedings; and
- (vii) Any other factor necessary for the purpose of giving effect to the

objectives of this Act.

#### 4.2.16 Notice of Appointment of the Receiver

When the High Court appoints the PCMA, any other public authority or a Receiver or a Special Manager, a Notice of such appointment shall be published in the Gazette.

The Court may at its discretion make an order for the service of such Notice on any party including the person from whom the property was seized and any regulatory or law enforcement agency.

#### 4.2.17 Preliminary Report by the Receiver

When a property has been seized or frozen is deemed to have been vested with a Receiver or a Special Manager by an order of the High Court, the Receiver or Special Manager shall as soon as practicable and not later than within 07 working days submit a preliminary report to Court on the following :-

- (a) Confirming whether that the property seized or frozen, and vested with the Receiver or Special Manager, is the described property in the seizure or the judicial freezing order as the case may be.
- (b) The nature, status, current location, value, and other pertinent details relating to the property seized or frozen.
- (c) The manner in which the Receiver or Special Manager intends to protect, preserve, and manage the seized or frozen property, including the manner in which the property may be utilized so as to achieve the objectives of protection, preservation and management as contained in this Act and towards contributing towards the enhancement of the national economy, trade and commerce, and for the enhancement of its value.
- (d) If a Receiver has been appointed, whether in his opinion the appointment of Special Manager is required for the effective protection, preservation, and management of the said property.
- (e) If applicable, any expenditure to be incurred for the protection, preservation, and management of the property, and any income, return, etc. the property may generate.

#### 4.2.18 Duties, Functions, and Powers of the PCMA, any public authority or a Receiver

Where the PCMA or any other public authority or a Receiver has been appointed by the High Court in relation to any seized or frozen property entrusted with the task of protecting, preserving and managing a seized or frozen proceed of crime, such person may subject to the approval of the High Court, take or cause to be taken any step that is reasonably necessary to protect, preserve and manage the property and the value thereof, and such measures may include the following:

- (a) where necessary register the asset;
- (b) to take necessary steps to ensure that the possession, use, and transactions relating to such property shall be in compliance with the law;
- (c) if necessary, ensure that the property is insured;
- (d) if the property has been used prior to its seizure or judicial freezing for a particular lawful financial activity or trade or commerce, continue to use and manage such property for such purpose, and in that regard take necessary steps as may be necessary to carry on such trade or business activity, incur necessary capital and recurrent expenditure, enter into contracts, employ agents, contract suitable persons with requisite expertise and skills that may be necessary for the carrying out of the relevant activity, and take any other necessary steps in that regard;
- (e) if the property is -
  - (i) not claimed by any party,
  - (ii) perishable,
  - (iii) unsafe or hazardous,
  - (iv) is subject to rapid waste, decay, rapidly depreciating or other forms of loss,
  - (v) difficult to administer,
  - (vi) in view of the nature of the property requisite expertise for its effective management or maintenance or enhancement of value is either unavailable or difficult to procure,
  - (vii) the cost of protection, preservation, maintenance, storage and management as the case may be would far exceed the present value of the property,

take necessary steps for its disposal or immediate realization of its value;

- (f) if due to the nature of the seized or frozen property its protection, preservation and management is impracticable, take steps to dispose of such property;
- (g) if the value of the property is volatile or transformative, take necessary steps for the preservation of its value or its disposal as the case may be, by subjecting such property to any method of preservation or using such property for any lawful transaction;
- (h) if the property can be subject to financial, trade or commercial transactions which are likely to enhance its value or generate profit, cause the conduct of necessary lawful transactions for such purpose; and
- (i) if the cost of the protection, storage, preservation or maintenance of the property is likely to exceed its value, dispose of it in such manner as the court may direct.

Provided however, the PCMA, other public Authority, or a Receiver or Special Manager shall perform the afore-stated functions without the prior approval of the High Court in circumstances where the delay involved in obtaining approval is likely to result in (a) a significant diminution in the value of the property, (b) defeat the objectives of protection, preservation and management of suspected proceeds of crime, (c) adversely affect legitimate finance, trade and commerce, (d) adversely affect the value of the property, or (e) pose a danger to public health and safety.

In situations afore-stated the Authority, other public authority or the Receiver or the Special Manager as the case may be, shall upon take the necessary action, forthwith notify the High Court setting out the following: -

- (i) reasons for the disposal or sale of the property,
  - (ii) measures taken to protect, preserve and manage the said asset and lack of its efficacy.
  - (iii) details relating to the realization of the value of the property.
- (j) if the seized or frozen property consists, wholly or partly, of an ongoing lawful business, which may be either a sole-proprietorship, a partnership, an incorporated company, trust or any other business entity-



- (i) perform such functions which the Proprietor, Partners, Board of Directors, Trustees or Principal Executive Officers of such business would in the normal course of business would perform;
  - (ii) make any payments by means cheques or otherwise for the purpose of managing the business, and matters connected thereto; and
  - (iii) doing any other thing that is necessary or convenient for carrying on the business on a sound commercial basis.
- (k) if the property comprises of or includes shares or other securities of a company, exercise rights attached to such shares or securities which the person from whom such property was seized would have otherwise been entitled to perform,
  - (l) if the property consists of a Bank account or any other account maintained at a financial institution, perform such functions relating to such account and any other related or linked account in respect of which the person from whom such property was seized would have otherwise been entitled to perform,
  - (m) making necessary statutory payments;
  - (n) if the property is a fixed deposit or any other form of investment where interest is accrued and/or drawn, manage the said property for the purpose of achieving the best return on such investment, and in that regard issue necessary directions to any party holding such investment.
  - (o) if the property consists, wholly or partly, of an ongoing activity, which appears not to be related to a lawful business activity, manage such property for any lawful purposes for which such property has been used prior to the seizure or for any other purpose.

#### 4.2.19 Appointment, Duties, Functions and Powers of a Special Manager

If the High Court has appointed a Special Manager or following the appointment of a Receiver, the Receiver forms the view that for the effective protection, preservation and management of the seized or frozen property a Special Manager should be appointed who possess expertise in the said activities and the High Court appoints a Special Manager, such Special Manager may as authorized by the High Court perform such functions of a Receiver, and other functions which the High Court may authorize him to perform. Should the High Court appoint a Special Manager he shall by virtue

of such appointment be conferred with the function, duties and powers of a Receiver as stipulated in this Act.

4.2.20 A Receiver and a Special Manager appointed in terms of this Act and any other persons appointed by such Receiver or the Special Manager to give effect to the duties and functions entrusted to him or to assist him, shall during the pendency of such appointment be deemed to be a 'Public Official' for the purposes of Anti-Corruption Act, No. 9 of 2023 and a 'Public Servant' for the purposes of the Penal Code.

4.2.21 A Receiver and a Special Manager appointed in terms of this Act and any other persons appointed by such Receiver or the Special Manager to give effect to the duties and functions entrusted to him or to assist him shall for the purposes of the Assistance to and the Protection of the Victims of Crimes and Witnesses Act, No. 10 of 2023 be deemed to be a witness.

#### **4.3 Resignation and removal of a Receiver and a Special Manager**

4.3.1 A Receiver or a Special Manger appointed under this Act may resign for cause to be shown.

Provided however, the High Court may for reasons to be recorded refuse to accept the resignation of the Receiver or the Special Manager as the case may be, and may direct such Receiver or Special Manager to perform such tasks as may be necessary for the due protection, preservation and management of the property and to finalize the accounts relating to such functions as may have been performed by such Receiver or a Special Manager.

Provided further, the High Court may also withhold the acceptance of the afore-stated resignation up until the appointment of a succeeding Receiver or a Special Manager.

4.3.2 A Receiver or a Special Manager may be removed by the High Court on one or more of the following grounds-

- (i) The name of the Receiver or the Special Manger having been removed from the Registers of Receivers and Special Mangers.
- (ii) Following an inquiry, the High Court having arrived at the finding that the Receiver or the Special Manger has -
  - (a) acted contrary to the provisions of this Act or any other law or in

- a manner contrary to directions issued by the High Court,
- (b) intentionally acted in a manner detrimental to the value of the property.
- (c) committed an offence in respect of the property,
- (d) acted in *bad faith*,
- (e) acted in collusion with the person from whom the property had been seized,
- (f) acted without due diligence, or
- (g) acted in a manner defeating the purposes of this Act.

#### **4.4 Expenditure pertaining to the protection, preservation, and management of property in respect of which a Receiver or a Special Manager has been appointed**

- 4.4.1 Where the protection, preservation, and management of a seized or frozen property has been vested with the Proceeds of Crime Management Authority or any other public authority, such institution shall bear the expenditure relevant expenditure.
- 4.4.2 Where the protection, preservation and management of seized or frozen asset has been vested with a Receiver and or a Special Manager as provided for in this Act, the funds required for protection, preservation and management of the property shall be advanced or reimbursed with the approval of the High Court that appointed such Receiver or Special Manager, from the Fund for the Protection, Preservation and Management of Proceeds of Crime (PPMF) of the PCMA.

#### **4.5 Final Report of the Receiver and the Special Manager**

- 4.5.1 Upon the fulfillment of the duties and functions of the Receiver or Special Manager as the case may be pertaining to the protection, preservation, and management of a seized or frozen property, he shall submit to the High Court a Report prepared and certified in conformity with specifications issued by the High Court, which shall include a statement of financial performance pertaining to the property as well as his duties and functions. The Receiver or the Special Manager as the case may be shall also include in such Report any further information which the High Court may require him to submit pertaining to the property and any such information which he himself deems fit.
- 4.5.2 Upon the submission of the Final Report, the High Court shall consider the same

and subject to clarification and further information which the High Court may call for accept the Report.

#### **4.6 Release of the Receiver and Special Manager**

- 4.6.1 A Receiver or a Special Manager appointed in terms of this Act shall be released by the High Court from his duties and functions in the following circumstances:-
- (i) Upon the completion of the duties and functions entrusted to him with regard to the protection, preservation, and management of the property and the submission and acceptance of the Final Report.
  - (ii) Upon the acceptance of the resignation and subject to the fulfillment of his duties.
  - (iii) Upon the removal of the Receiver or Special Manager in the manner provided in this Act.

Provided however, if a Receiver or a Special Manager were to be released from his duties and functions consequent to removal, such Receiver or Special Manager shall give effect to directions if any imposed by Court which relates to his appointment as a Receiver or a Special Manager.

- 4.6.2 If upon the conclusion of the inquiry, the Court orders the property that has been seized or frozen be vested with the owner or the possessor thereof or any other party which has claimed such property, the Court shall release the Receiver or Special Manager from complying with his functions as a Receiver or Special Manager, taking into consideration the report and any objections which may be urged by the owner or the possessor thereof against the release of the Receiver or Special Manager.
- 4.6.3 Where the release of the Receiver or Special Manager is withheld, the High Court may on the application of the owner or person claiming such property make such order as it thinks just, charging the Receiver or Special Manager with the consequences of any act done, or default made by him in the protection, preservation and management of the seized or frozen property.
- 4.6.4 An order of the High Court releasing the Receiver or Special Manager shall discharge him from all liabilities in respect of any act done or default made by him in the protection, preservation and management of the property or otherwise in relation to his conduct as the Receiver or Special Manager.

## 5 PART V - FORFEITURE OF FROZEN PROCEEDS OF CRIME AND RELATED PROCEEDINGS

5.1 The procedure and the mechanism contained in this Part of the Act will relate to the following two situations: -

(i) **Post - conviction forfeiture (criminal forfeiture)**

**Introduction** - Where the committing of an unlawful activity has been investigated into and the suspected perpetrator prosecuted for having committed the relevant unlawful activity and he has been convicted of having committed such unlawful activity, proceedings may thereafter be instituted for (a) the forfeiture of proceeds of such unlawful activity which has been frozen, or (b) for the corresponding value of the proceeds of crime to be recovered and forfeited. Such proceedings shall be referred to as **post-conviction forfeiture proceedings**.

Such proceedings shall be instituted -

- (a) against the person who has been convicted for having committed the unlawful activity which yielded the relevant proceed of crime or who had in his possession control or dominion the property of the corresponding value of such proceeds of crime, or
- (b) against any other person from whom the relevant proceed of crime was recovered.

Proceedings for forfeiture under this scheme shall commence following conviction of the offender of the corresponding unlawful activity, and need not await the determination of the appeal if any, against the conviction.

However, should an appeal be filed, and following post - conviction forfeiture proceedings, the property is forfeited, the order of forfeiture shall not be implemented till the determination of the appeal, and shall be carried out only if the conviction is affirmed in appeal.

If -

- (i) the trial does not result in the conviction of the accused, or
- (ii) the appeal against the conviction is successful and the conviction is set-aside,  
the Attorney-General may initiate **non - conviction based forfeiture**

**proceedings** in respect of the property believed to be proceeds of crime or in respect of the property of the corresponding value of such proceed of crime.

**(ii) Non - conviction based forfeiture (civil forfeiture)**

**Introduction -**

- (a) Where a property suspected to be a proceed of crime has been investigated into and material collected to establish *prima-facie*, that such property is a proceed of crime (property derived out of the committing of an unlawful activity), and such property has been either restrained and / or seized and thereafter frozen in terms of this Act, civil proceedings may be thereafter instituted in the High Court in terms of this Act, against such property, for the forfeiture of such property suspected to be a proceed of crime as provided in this Act. Such civil judicial proceedings shall be referred to as **non - conviction based forfeiture proceedings**.
- (b) For the forfeiture of a proceed of crime in terms of this scheme, it shall not be necessary to prosecute and obtain a conviction against the person who had committed the unlawful activity which yielded the relevant proceed of crime.
- (c) Forfeiture proceedings under this scheme shall not be an alternative to the prosecution of a person for having committed the corresponding unlawful activity. Where investigations yield sufficient evidence, the person who committed the corresponding criminal activity shall be prosecuted in terms of the applicable law.
- (d) Where a person has been prosecuted and convicted of having committed an unlawful activity, and the proceeds of such unlawful activity are available, the scheme for the post - conviction forfeiture of proceeds of crime shall be ordinarily enforced for the forfeiture of the proceeds of such unlawful activity.

However, parallel to or in the absence of the Attorney-General instituting criminal proceedings and prosecuting the offender responsible for having committed the unlawful activity, it shall be lawful for proceedings to be instituted and carried out in terms of this

Act in respect of the proceeds of such unlawful activity, provided the requirements contained in this Act relating to non-conviction based forfeiture of proceeds of crime have been satisfied.

*Clarification*

*Therefore, it may be possible to have proceedings for non-conviction based asset forfeiture taking place parallelly to or in the alternative to a criminal prosecution.*

- (e) The High Court of the Republic of Sri Lanka holden in the judicial zone of Colombo shall have jurisdiction to entertain and adjudicate upon an application for non - conviction based forfeiture of proceed of crime notwithstanding the location of such property being outside the territorial jurisdiction of such court.

Provided however, where the Chief Justice on an application by the Attorney-General directs that an application for non-conviction based proceed of crime shall be entertained and adjudicated by a High Court of any other judicial zone, such High Court shall have jurisdiction.

When determining an application by the Attorney-General for a direction the Chief Justice shall consider whether due to delays in the conduct and completion of hearing for non-conviction based forfeiture proceedings would defeat the objectives of this Act, it would be desirable jurisdiction to be vested in a High Court not holden in the judicial zone of Colombo.

- (f) While ordinarily, for the institution of non - conviction based forfeiture proceedings, a judicial freezing order shall be a prerequisite, if the Attorney - General can establish that for reasons beyond the control of the relevant Designated Officer or Investigation Officer, it was not possible to obtain a judicial freezing order, he shall be entitled to institute proceedings for non - conviction based forfeiture even in the absence of a judicial freezing order.
- (g) For the successful forfeiture of proceed of crime, the High Court should **on a balance of probability** be satisfied that, the property in respect of which the action has been instituted is a proceed of crime (property derived out of the committing of an unlawful activity). For forfeiture of

property under the **non - conviction based forfeiture** scheme, it shall not be necessary to first secure a conviction against any person for having committed an unlawful activity.

- (h) Non - conviction based forfeiture proceedings may be instituted even where criminal proceedings had been instituted against the person accused of having committed the corresponding unlawful activity and he had been acquitted or discharged at the trial or appellate stage.
- (i) If the proceeds of an unlawful activity which comes within the jurisdiction of this Act is found outside Sri Lanka, non-conviction based forfeiture proceedings in respect of such property may be instituted in the High Court, without any initial steps of restrain, seizure or judicial freezing having taken place in terms of this Act.

Furthermore, where a person who has committed an unlawful activity either within or outside Sri Lanka, is convicted by a court of competent jurisdiction of another country and the proceeds of such unlawful activity is found in Sri Lanka, non - conviction based forfeiture proceedings in respect of such property may be instituted and carried out, without the initial steps of the restraint, seizure or judicial freezing of such property taking place in terms of this Act.

- (j) In view of the need to ensure that action in terms of this Act does not cause a serious impact on the national economy or public interest, it shall be lawful for the Attorney-General to institute non-conviction based proceeds of crime forfeiture proceedings in the High Court notwithstanding the property in respect of which proceedings are being instituted have not been subjected to any prior restraining, preservation, seizure or judicial freezing.

Provided however, following the filing of the Application in terms of this Part of the Act for the commencement of proceedings for non-conviction based forfeiture of suspected proceeds of crime, the Attorney-General should satisfy the High Court that *prima-facie* **the property in respect of which action has been instituted is a proceed of crime.**



(k) **Situations where non-conviction based forfeiture proceedings can be instituted.**

Non - conviction based forfeiture proceedings can be instituted in the following circumstances and is not limited to these circumstances:

- (i) Where the person who committed the corresponding unlawful activity is dead, dies during trial, is a fugitive from justice, has immunity from criminal prosecution or his prosecution is not otherwise possible, or such perpetrator cannot be identified or is unknown.
- (ii) The property derived out of the committing of an unlawful activity (proceed of crime) has been inherited, otherwise received or procured or is being held by a third party.
- (iii) A prosecution cannot be conducted against the perpetrator of the unlawful activity, since the committing of offence has been prescribed.
- (iv) There is no or insufficient evidence to institute criminal proceedings against the person who committed the unlawful activity and to prosecute him successfully.
- (v) Where no investigation has been conducted or the conduct of an investigation has not been possible into the committing of the unlawful activity which yielded the relevant proceed of crime.
- (vi) Where a person subject to the jurisdiction of this Act has committed an unlawful activity in another country and the offender has not been prosecuted or been convicted in that country, and the proceeds of the unlawful activity are found in Sri Lanka or elsewhere.
- (vii) Where a person subject to the jurisdiction of Sri Lanka has committed an unlawful activity within or outside Sri Lanka and the proceeds of such unlawful activity is found outside Sri Lanka.
- (viii) Where the proceeds of an unlawful activity which comes within the jurisdiction of this Act is found outside Sri Lanka.
- (ix) Where a person who has committed an unlawful activity either within or outside Sri Lanka, is convicted by a court of competent jurisdiction of another country and the proceed of such unlawful activity is found within Sri Lanka.
- (x) Where the restrained, seized, or frozen property is (a) only partly the proceeds of an unlawful activity, or (b) comprises of

components derived out of the committing of several unlawful activities, or (c) is a combination of “(a)” and “(b)”.

- (xi) Where a property suspected to be a proceed of crime has been investigated into and **(i) no person has claimed ownership of such property, (ii) a person has presented a claim in respect of such property and later withdrawn it, or (iii) no person has made any claim in respect of such property.** In this category, proceedings for non - conviction based forfeiture may be instituted without a prior restraint, seizure or judicial freezing of such property.
- (xii) Unless specifically provided by the provisions of this Act, no property shall be immune from proceedings in terms of this Act for non - conviction based forfeiture of proceeds of crime.

## 5.2 Post - conviction Forfeiture Procedure

5.2.1 Following the conviction of any person for having committed any unlawful activity, the court which convicted such person shall in addition to the punishment prescribed for such unlawful activity in the relevant law, be entitled to impose a penalty to the value of the proceeds of crime derived at the time committing of the unlawful activity and any value derived by the utilization of such proceeds of crime.

Provided however an order for payment for a penalty as provided above shall not be made if the unlawful activity had been committed prior to the date of the enactment of this Act.

Provided further an order for the payment of penalty as provided above shall not be made if the proceeds of such unlawful activity or a property to the corresponding value of such proceeds of crime had been seized or frozen in terms of this Act or is otherwise available to be subject to forfeiture proceedings in terms of this Act.

5.2.2 The penalty imposed in terms section 5.2.1. shall be recovered in the form of recovery proceedings pertaining to recovery of fines contained in the Code of Criminal Procedure Act.

5.2.3 If the proceeds of crime derived out of the committing of the unlawful activity referred to in section 5.2.1 had been the personal property of any person, and the penalty prescribed in the section is paid by the convicted person, the court shall make order for the release of the sum paid to such person who is entitled to the proceeds of crime.

5.2.4 If the penalty as provided in section 5.2.1 is paid in full by the convicted person, the Attorney-General shall not be entitled to institute proceedings for post-conviction forfeiture of the relevant proceeds of crime.

If the penalty as provided in section 5.2.1 is not paid in full by the convicted person, the Attorney-General shall be entitled to institute proceedings for post-conviction of the relevant proceeds of crime in respect of the remaining sum of money.

5.2.5 Following the conviction of a person by a trial court for having committed an unlawful activity, and there being identified property which is believed to be proceeds of crime derived out of the committing of such unlawful activity or property which is to the corresponding value of such proceed of crime, the Attorney-General may within three (03) months from the date on which the accused was convicted and sentenced, notwithstanding the convicted accused having filed an appeal against such conviction, institute proceedings in the relevant trial court moving such court to conduct an inquiry under this Act -

- (i) for the forfeiture of-
  - (a) such proceeds of crime, or
  - (b) the property which is of the corresponding value of such proceeds of crime, or
  - (c) the security submitted to court in lieu of release of the proceeds of crime following its judicial freezing, or
  - (d) monetary proceeds of the disposal of the proceeds of crime pending forfeiture proceedings,and
- (ii) for a direction that such proceeds of crime, property to the corresponding value to such proceeds of crime, security or the proceeds of disposal of the proceeds of crime be released to the relevant victim of unlawful activity, if any.

Provided however, if the trial Court following the conviction of the accused,

when imposing the sentence, has imposed a penalty under the applicable law on the convicted accused to an amount not less than the value of the relevant proceeds of crime, the Attorney-General shall not be entitled to institute proceedings under this Act for post-conviction forfeiture of the proceeds of crime.

5.2.6 The trial Court that has convicted a person for having committed an unlawful activity shall have jurisdiction to entertain an application referred to in section 5.2.5, and following inquiry as provided herein,

- (i) make order for the forfeiture of-
  - (a) such proceeds of crime, or
  - (b) the property of the corresponding value of the proceeds of crime, or
  - (c) the security submitted to court in lieu of the release of the proceeds of crime following its judicial freezing, or
  - (d) proceeds of the disposal of the proceeds of crime pending the forfeiture,

**or**

- (ii) for a direction that such proceeds of crime or property of such corresponding value of such proceeds of crime, security or the proceeds of disposal be released to the relevant victim of unlawful activity.

5.2.7 The institution of proceedings in terms of the above section shall be carried out by filing a Petition and Affidavit together with duly authenticated necessary supporting evidence. Notwithstanding anything to the contrary in any other law, the Affidavit shall be affirmed to/sworn by a person who is acquainted with the averments contained in the Petition.

5.2.8 The Attorney- General shall be entitled to institute proceedings in term of this Part of the Act, notwithstanding the trial against the accused having commenced and been conducted in the absence of the accused following an order made under sections 192 or 241 of the Code of Criminal Procedure Act, No. 15 of 1979.

A convicted accused who had been absconding during the trial, shall not be entitled to present a claim for the release of the property which is the subject matter of the inquiry or participate in proceedings under this Part of the Act, unless he has purged his default in appearance before the trial court, and has

established that his absence at the trial was due to (i) his being unaware of the trial proceedings, or (ii) for reasons beyond his control.

5.2.9 The Attorney-General shall be entitled to institute proceedings under this Part, notwithstanding the death of the convicted accused.

Provided however, the Attorney-General shall cite the heir, administrator or executor as the case may be if any of the deceased convicted accused as a Respondent.

5.2.10 The person convicted of having committed the unlawful activity shall be cited as a Respondent to this action. Furthermore, any other person from whose possession or dominion such property was seized and any other party who has presented a claim in respect of such property during proceedings for the judicial freezing of the property, shall be cited as Respondents and it shall include the victim of crime.

5.2.11 Following the filing of action, the Court shall direct the Attorney- General to -

- (i) publish a Notice in the form and manner prescribed by Court,
- (ii) to serve a copy of the Application together with the Notice to any victim of crime who has been deprived of the proceed of crime due to the committing of the unlawful activity,
- (iii) to serve the Application on the convicted accused and such other persons who may have presented claims in respect of the property together with a Notice calling upon such persons to show cause, if any, as to why the property in issue should not be forfeited and notifying such person the date before which such cause should be presented to court,
- (iv) serve a copy of the Notice to the PCMA, and the Receiver or the Special Manager (if any) appointed by court to protect, preserve, and manage the relevant property.

5.2.12 Any party who is a respondent to the action or any other party having legal entitlement to claim the property including the victim of crime if any, that is sought to be forfeited (Claimant) shall be entitled within the time period specified in the afore-stated Notice to file a statement of objections together with an affidavit and duly authenticated supporting evidence for the purpose of satisfying court that (a) the property should not be forfeited, and (b) such

property should be released to the relevant claimant.

5.2.13 Should one or more of the Respondents or a claimant file a statement of objections, the Petitioner shall be entitled to file counter objections together with any other supporting evidence.

5.2.14 An inquiry in terms of this Part of the Act shall be conducted by the examination of affidavit and documentary evidence.

Provided however, for reasons to be recorded, the Court may in exceptional circumstances permit the presentation of oral and documentary evidence, in which event the rules pertaining to examination of witnesses and presentation of documentary evidence as contained in the Evidence Ordinance shall apply.

5.2.15 Following the filing of the afore-stated material, the court shall take up the matter for inquiry. The Court shall initially consider whether the Attorney-General has made out a *prima facie* case to satisfy court that the property in respect of which the application has been filed is a proceed of crime in respect of which a person has been convicted. For the purpose of arriving at such finding, the Court may take into consideration-

- (a) the evidence placed before court during the trial,
- (b) notwithstanding anything to the contrary in sections 25 and 26 of the Evidence Ordinance and section 110 of the Code of Criminal Procedure Act, notes of investigations including the statements recorded during the course of the investigation into the committing of the unlawful activity including statements made by the convicted person,
- (c) the judgment pronounced by the trial court that convicted the accused for having committed the unlawful activity, and
- (d) any other evidence which the Court shall deem necessary considering the interest of justice.

5.2.16 If after inquiry, should the court be satisfied that the Attorney-General has made out a *prima facie* case, the Court shall call upon the Respondents to show cause as to why the Attorney-General's application should not be allowed and hence as to why the property should not be forfeited.

5.2.17 Should the court not be satisfied that the Attorney-General has made out a

- prima facie case*, the Court shall dismiss the application without calling on the respondents to show cause, and make order vacating the judicial freezing order, if any, previously made in respect of the relevant property in terms of this Act. The Court shall also make a suitable order for the release the property to the party entitled to such property.
- 5.2.18 Should the Respondents show cause, the Court shall conduct further inquiry into the matter.
- 5.2.19 If following inquiry, the Court is satisfied on a **balance of probabilities** that the property in respect of which the application for forfeiture has been filed is-
- (a) the proceeds of crime, or
  - (b) property of the corresponding value of the proceeds of crime, or
  - (c) that no victim of unlawful activity or claimant exists who has the legal entitlement to take possession of such property,
- make order **for the forfeiture of** (i) the property, or (ii) the security deposited, or (iii) the proceeds of the disposal of the property pending trial, or forfeiture proceedings in respect of which such application has been made.
- 5.2.20 If following inquiry, the Court is satisfied on a **balance of probabilities** that the Respondent to the application or the claimant has a lawful claim for the property in respect of which the proceedings has been instituted, the Court shall make order for the release of the property or the value thereof to such party.
- 5.2.21 An order made in terms of this Act for-
- (a) dismissal of the application,
  - (b) forfeiture of the property, or
  - (c) release of the property to the Respondent or claimant
- shall be deemed to be a final order and any party aggrieved by such order shall be entitled to appeal against such order to the Court of Appeal within a period of fourteen (14) days from the date of such order, following the procedure contained in the Code of Criminal Procedure Act.
- 5.2.22 The Court which pronounces the order for forfeiture or release of the property, shall record reasons for such order.

- 5.2.23 Proceedings in term of this part of the Act for a determination on the forfeiture of proceeds of crime may be conducted notwithstanding the relevant property having been disposed of pending trial and the value thereof recovered.
- 5.2.24 Proceedings in terms of this part of the Act may be conducted for the recovery of the value of financial benefits derived by the committing of the unlawful activity.
- 5.2.25 It shall be lawful for the Attorney-General to make an application to the trial Court in terms of this Part of this Act for forfeiture of proceeds of crime or the property of the corresponding value of such proceeds of crime, notwithstanding -
- (a) the unlawful activity having been committed prior to the coming into operation of this Act, or
  - (b) the property in issue not having been restrained, seized, or frozen in terms of this Act.
- 5.2.26 Where a person has been convicted for having committed an unlawful activity which constitute an offence under and in terms of the Anti-Corruption Act, the entitlement conferred on the Attorney-General in this Part of the Act shall be exercised by the Director General of CIABOC on the direction of the Commission or by the Attorney-General on a request by the CIABOC or by any Attorney-at-Law retained by the CIABOC on the directions of such Commission.
- 5.2.27 If during proceedings under this Part of the Act, on evidence placed before Court and further evidence if any called for and examined by court, the court becomes satisfied that the property in respect of which forfeiture proceedings has been instituted comprises partly of proceeds of crime and partly of property which does not constitute proceeds of crime, the court shall obtain a valuation of such property and determine the percentage value of such property which constitutes proceeds of crime and make order for forfeiture only in respect of such value which amounts to proceeds of crime.
- 5.2.28 Should one or more parties present a claim in respect of such property and as provided in this Act on a balance of probability establish such claim, the court shall direct that the percentage value of such property corresponding to such established claim which does not relate to proceeds of crime become the



entitlement of such claimant.

- 5.2.29 The court shall direct the disposal of such property in the manner provided by this Act and upon realization of the value thereof direct the Registrar of the court to make payment in the sum determined by the court to the claimant and direct the forfeiture of the remaining sum of money which corresponds to the percentage value of the proceeds of crime to be forfeited to the State.

### **5.3 Value based forfeiture**

5.3.1 Following the prosecution and conviction of a person for having committed an unlawful activity, if it appears to court that the proceeds of such unlawful activity-

- (a) has not been traced or specifically identified notwithstanding diligent attempts to identify and trace such property,
- (b) has been destroyed, decayed or become worthless,
- (c) has been substantially altered,
- (d) has been sold,
- (e) has got intermingled with other property and is therefore not possible or difficult to be separated,
- (f) has been transferred outside Sri Lanka,
- (g) has been otherwise subjected to money laundering,
- (h) has been used by a convict or such other person and is therefore no longer available,
- (i) has undergone change due to what so ever reason and hence its value has diminished to an insignificant amount or has lost its original utility or commercial value,
- (j) has assumed the form of a benefit, a gain, a service or an advantage which is measurable monetarily, or
- (k) has not been seized or frozen due to such action having the potential of causing (i) a significant impact on the national economy, or (ii) adverse impact on the interests of bona-fide third party, or
- (l) is available in a place outside the jurisdiction of the Democratic Socialist Republic of Sri Lanka,

the Attorney-General may make an application to court -

- (i) the convicted accused to pay a sum of money as determined to be the value

of the proceed of crime to be paid for an order directing (order for 'substituted money forfeiture'), or

(ii) for an order for the forfeiture of a property of the convicted accused which is of comparable monetary value (order for 'substituted property forfeiture').

5.3.2. When determining the value of the property to be subjected to an order of 'substituted property forfeiture' and the monetary value of the 'substituted money forfeiture', the Court may take into account the appreciation or the fluctuation of the value of the original proceed of crime due to the passage of time and the potential of such proceed of crime being used for investment or business purposes.

For such purpose, the Attorney-General shall be required to identify property of the convicted accused which may be subjected to such forfeiture.

5.3.3. The procedure to be followed with such forfeiture proceedings shall *mutatis mutandis* be the procedure with regard to post - conviction forfeiture procedure.

5.3.4. If it is not possible to identify a property of the convicted accused which is of comparable value to the proceed of crime, the Court may on application by the Attorney-General direct the convicted accused to make a sworn declaration of his assets. Following the submission and consideration of such declaration, the Attorney-General may make an application in terms of the above-mentioned procedure for forfeiture of any property of the convicted accused of comparable value based on the information contained in the said declaration. If such an application is made, it shall be disposed of in the manner provided for in this Part of the Act, *mutatis mutandis*.

If the afore-stated declaration does not contain information pertaining to any property of comparable value, the Court may on application by the Attorney-General make an order on the convicted accused to pay a sum of money equivalent to the value of proceeds of crime.

5.3.5. The afore-stated sum of money ordered by the Court shall be recovered in the same manner as a fine imposed by Court.

5.3.6. In proceedings under this Part of the Act for forfeiture of value - based proceeds of crime, if any party is to object to the value or other property derived out of the committing of an unlawful activity being forfeited, the Court may insist on such

claimant to initially submit to court security in the manner the court may require security to be deposited upon an application being made for the temporary release of frozen property, *mutatis mutandis*.

- 5.3.7. If the trial Court following the conviction of the accused, when imposing the sentence, had imposed on the convicted accused a penalty under the applicable law to an amount not less than the value of the relevant proceeds of crime, the Attorney-General shall not be entitled to institute proceedings under this Act for value-based forfeiture of the proceeds of crime.

#### **5.4 Non - conviction based Forfeiture of proceeds of crime**

- 5.4.1 Following the completion of an investigation into property suspected to be a proceed of crime and ordinarily a judicial freezing order has been made by the High Court in respect of such property, the Attorney-General or the Director General of CIABOC (as the case may be), may institute proceedings in the High Court under this Part of the Act against such property, by filing an Application, praying such High Court to make an **order for the forfeiture (forfeiture to the State) of such property or its return to its lawful owner or to the party having entitlement to its possession.**

The contents of such Application shall be supported by an affidavit by the relevant Investigation Officer and to the Application shall be attached any such document or other evidence as may be necessary to **establish *prima facie* that the property in respect of which the Application is made is a proceed of crime.**

- 5.4.2 The Attorney-General shall not be entitled to institute proceedings under this Part seeking an order of non-conviction based forfeiture of a proceed of crime, unless a Notice had been served in terms of section 2.4.1 of this Act and (a) the person to whom such Notice had been served had defaulted in submitting an explanation in the manner provided by this Act, or (b) the explanation provided by the person to whom the Notice has been served for reasons recorded being rejected by the Investigation Officer, which rejection had been approved by the corresponding Designated Officer.

Provided however, if the explanation provided by recipient of the Notice is partially accepted by the Investigation Officer, the Attorney-General shall be entitled to institute proceedings under this Part with regard to the value of the

portion of the property in respect of which a valid explanation has not been provided.

- 5.4.3 Upon a filing of an Application in terms of this Part, the High Court shall direct the relevant Designated Officer to publish a Notice in the manner prescribed by such Court.
- 5.4.4 The afore-stated Notice (pertaining to the filing of the Application) shall be issued to the following parties and to any other party the High Court deems necessary:
- (i) The person from whose custody the relevant property was seized by an Investigation Officer.
  - (ii) The victim of crime from whom the property is believed to have been taken.
  - (iii) Any person who may have been directly affected by the judicial freezing of the property.
  - (iv) Any party who may have a claim in respect of the property.
- 5.4.5 The High Court shall in afore-stated Notice, announce the date before which any party seeking the return, possession or entitlement to use or control the frozen property shall present its claims to Court. The period granted by the Court for the presentation of claims shall be not less than six (06) weeks from the publication or delivery of such notice, whichever occurs later.
- 5.4.6 Any party (including a party to whom the afore-stated notice has not been served) seeking a declaration of any right or interest or entitlement to possess or use a frozen property, shall be entitled to present its claim in that regard to the High Court.
- 5.4.7 A claim presented to the High Court under this Part of the Act shall be in the form of a statement of claim together with an affidavit and necessary evidentiary documents attached thereto.
- 5.4.8 The Competent Authority of any sovereign State shall be entitled to present a claim with regard to a frozen property on the premise that such property has been derived out of the committing of an unlawful activity in relation to the public funds or other assets of such country.

Provided further that, the High Court shall not entertain any such claim by a Competent Authority of any sovereign State, unless the Claimant attaches to

such claim a Certificate issued by the Secretary to the Ministry of Foreign Affairs, certifying that an agreement exists bi-laterally, through multi-lateral treaty or through any other form of arrangement for international cooperation pertaining to the return of proceeds of crime and that such agreement remains in force.

- 5.4.9 It shall be lawful for the Attorney-General to make an application under this Part on behalf of the Competent Authority of any sovereign State.
- 5.4.10 Upon the filing of claims, the Court shall afford an opportunity to all parties to study each other's claims and should they wish file statements of objections (accompanied with an affidavit and supporting documents, if any) and or counter claims (in the manner provided with regard to claims).
- 5.4.11 Following the filing of claims, counter claims and statements of objections, the High Court shall fix the matter for inquiry, and upon the conduct of such inquiry, determine whether the property in respect of which the Application has been filed should be forfeited or in the alternative the property should be released to a party entitled in law to its possession or use.

In an Inquiry conducted under this Part of the Act, oral evidence shall be led, only if under exceptional circumstances the Court grants permission in that regard on the basis that such oral evidence is necessary for the determination of the matter.

- 5.4.12 In proceedings under this Part of the Act, the High Court may apply the presumption contained in section 1.20.1 for the purpose of determining (a) whether the property in respect of which proceedings have been instituted is a proceed of crime, and (b) determining the legitimacy of a claim by any person for the release of the property in respect of which proceedings have been instituted.
- 5.4.13 A party seeking to gain control or possession of the property in respect of which action has been instituted, should establish a lawful claim on a **balance of probability** and to a threshold which **exceeds the threshold that may have been established by any other claimant**.
- 5.4.14 If following inquiry, the High Court forms the view that the property in respect of which proceedings have been instituted is a property of any particular victim of crime, the Court shall make order directing that the **property be returned to such victim of crime**.

- 5.4.15 If the High Court following inquiry determines that -
- (i) **no claimant party has on a balance of probability** established a lawful claim for the release of the property, or
  - (ii) **no valid claim has been presented** to Court by (a) a victim of the corresponding unlawful activity, or (b) the Competent Authority of a foreign State in terms of this Act, and that
  - (iii) **on a balance of probability** the property in respect of which the Application has been filed **is a proceed of crime,**

the High Court shall make order **forfeiting the property.**

- 5.4.16 If following inquiry, the High Court determines that only a portion in respect of which proceedings have been instituted under this Part of the Act for non-conviction based forfeiture of proceeds of crime, the Court shall following the determination of the value of the relevant proceeds of crime make Order that -

(a) the property be forfeited to the State and the State making a payment to the party entitled to the remaining portion of the value

- 5.4.17 If the High Court directs that a claimant has on a balance of probability presented a lawful claim for such property, the High Court shall make order directing that the property in respect of which proceedings were instituted be released to such claimant.

- 5.4.18 If the High Court determines that the property in respect of which proceedings have been instituted belongs to a claimant who is a victim of the corresponding crime, it shall make order releasing the property to such victim of crime.

- 5.4.19 If the High Court determines that the property in respect of which the proceedings have been instituted is the public property of a requesting foreign State which has through its Competent Authority presented a claim, it shall make order subject to the provisions contained in this Act, releasing the property or part thereof or its value to the requesting foreign State.

- 5.4.20 If the Court makes an order for forfeiture of the property, it shall be forfeited to the State and the Secretary to the Treasury shall take possession thereof and deal with such property in terms of this Act.

- 5.4.21 If the Court is of the view that a claimant has on a balance of probability

established that he is the lawful owner of such property, the Court shall vacate the judicial freezing order and release such property to such claimant.

5.4.22 The forfeiture of any property in terms of the non-conviction based forfeiture of proceeds of crime procedure contained in this Act, shall not be deemed as a punishment or as any penalty imposed on any person, and by virtue of such forfeiture, no person shall be subjected to any disqualification or other sanction.

5.4.23 If during proceedings under this Part of the Act, on evidence placed before Court and further evidence if any called for and examined by court, the court becomes satisfied that the property in respect of which forfeiture proceedings has been instituted comprises partly of proceeds of crime and partly of property which does not constitute proceeds of crime, the court shall obtain a valuation of such property and determine the percentage value of such property which constitutes proceeds of crime.

5.4.24 Should one or more parties present a claim in respect of such property and as provided in this Act on a balance of probability establish such claim, the court shall direct that the percentage value of such property corresponding to such established claim which does not relate to proceeds of crime become the entitlement of such claimant.

5.4.25 The court shall direct the disposal of such property in the manner provided by this Act and upon realization of the value thereof direct the Registrar of the court to make payment in the sum determined by the court to the claimant and direct the forfeiture of the remaining sum of money which corresponds to the percentage value of the proceeds of crime to be forfeited to the State.

## **5.5 Provisions common to post-conviction forfeiture of proceeds of crime and non-conviction based forfeiture of proceeds of crime - procedure following the Order of forfeiture**

5.5.1 If upon the conclusion of the inquiry into proceeds of crime the court makes an order for forfeiture of the property, the court shall direct the PCMA, Receiver or the Special Manager as the case may be to release the property to the party stipulated by court.

Provided however, if the Court is of the view that notwithstanding the forfeiture of the property to the State, such property should be protected, preserved and managed for a further period of time as the Court shall deem fit, for reasons to be recorded, the court shall direct the PCMA, Receiver or the Special Manger as the case may be to continue to provide protection, preservation and management of the property upon such terms and conditions the Court shall deem fit.

- 5.5.2 Following forfeiture of the property to the State, the High Court shall direct the PCMA, the Receiver or the Special Manager as the case may be to dispose of the property through public auction or any other means of disposal recommended by the PCMA and approved by court, subject to the terms of this Act and any other conditions the Court may impose.

Provided however, if the property has been already disposed of pending forfeiture proceedings, it shall not be necessary for court to make a post-forfeiture disposal order.

If the PCMA, Receiver or the Special Manager reports to court that in view of the present condition or attendant circumstances relating to the property, the disposal of such property may not be possible or may not give rise to the realization of true value of such property, and the Court is satisfied of such reason, the court may make necessary orders to relevant Competent Authorities of the Government with regard to the property, so as to enable the disposal of the property through public auction and realization of true value thereof.

Provided further, if the Court is of the view that given the attendant circumstances, the disposal of the property will not be in any event possible, the Court shall make an appropriate order transferring the property to a Competent Authority of the Government of Sri Lanka.

- 5.5.3 The PCMA, Receiver or Special Manager as the case may be shall on the direction of the court dispose of the property and upon realization of the value thereof credit the said sum of money to the account titled "PCMA Proceeds of Disposal of Proceed of Crime" of the PCMA.
- 5.5.4 Following the receipt of the money realized from the disposal of the forfeited property, the PCMA shall disburse the said funds in the manner provided for in this Act.



5.5.5 If at the time the Court is required to make an order for the disbursement of monies arising out of the disposal of forfeited proceeds of crime, the PCMA has not been established or is incapable of performing its functions in terms of this Act, the Court shall direct that the proceeds of disposal be remitted to a separate account maintained by Court, and shall thereafter disburse such funds in the manner this Act has stipulated that the PCMA disburse such funds.

## 6 PART VI - CIVIL REMEDY FOR VICTIMS OF CRIME.

6.1 Where any person has committed an unlawful activity and such activity has resulted directly or indirectly in pecuniary, sentimental or other loss or deprivation of any benefit, service or other entitlement, the party adversely affected by such unlawful activity, any other person been so affected including the state shall be entitled to recover the pecuniary, sentimental, or other loss or damage suffered by such party.

A plaintiff claiming damages and compensation founded upon the cause of action referred to in the above section shall institute civil action in the relevant district court and shall be required to establish his case by proving the ingredients of the offence which constitute the relevant unlawful activity on a balance of probabilities.

For the purpose of successfully prosecuting a civil action founded upon the cause of action referred to above, it shall not be necessary for the plaintiff to establish that defendant has been convicted of having committed unlawful activity and or that the proceeds of the unlawful activity have been traced, identified or recovered.

The entitlement to institute civil proceedings founded upon the cause of action referred to above shall be independent of any criminal investigation, criminal prosecution or the outcome thereof.

### *Explanatory Illustration*

- a) *X who is the accountant of a company commits criminal breach of trust and with the proceeds of such unlawful activity purchases a motor vehicle. The Company complains to the Police. The Police may or may not commence taking action against X in terms of this Act and other provisions of the law. Independent of the action taken or otherwise by the Police and or the institution of criminal proceedings against X, the company shall be entitled to institute civil action against X invoking the afore-stated cause of action for the purpose of recovering pecuniary loss suffered by it as a result of the committing of the afore-stated unlawful activity.*
- b) *X commits the offence of corruption with regard to funds allocated for a particular public purpose. This results in reduction of funds available for the afore-stated public purpose by a specific amount or percentage. Consequentially the reduction in the benefit to the community for whose benefit the public purpose was to be given effect to is calculated either in monetary terms or in a quantified reduction of the scheduled public purpose. Thus, those who have suffered pecuniary or sentimental loss, deprivation of the envisaged*

*service, facility, or benefit as a result of the unlawful activity carried out by X, shall be entitled to sue X either jointly or severally for the purpose of obtaining damages or compensation to commensurate the loss or damage suffered.*

- c) *X commits an act of corruption which does not result in personal financial gain to him. Notwithstanding X not having personally gained from the committing of such unlawful activity, any party adversely affected by such unlawful activity shall be entitled to sue X, to recover pecuniary or sentimental loss directly or indirectly suffered by them as a result of the afore-stated unlawful activity.*

**6.2** An action under this Part for loss or damages, shall be instituted in accordance with the provisions of the Civil Procedure Code and such action shall be procedurally governed by the provisions of that Code.

**6.3** Where more than one person has suffered loss or damages due to an unlawful activity committed by another person as referred to in section 6.1 –

- (i) either one or more of such persons, or
- (ii) an incorporated or unincorporated body representing such persons

who have suffered loss or damages due to such unlawful activity may with the consent of such of the persons being represented as those having suffered loss or damages, institute proceedings in terms of this Part for the purpose of recovering damages or compensation in respect of loss suffered by such parties as a result of the committing of the unlawful activity.

**6.4** Unless the evidence of a person who is knowledgeable and specially skilled with regard to pecuniary and sentimental loss suffered by the plaintiff as a result of the committing of the unlawful activity is presented to court by the plaintiff, the court may at its discretion call one or more such persons who is knowledgeable and specially skilled for the purpose of assisting court regarding the determination of loss or damages suffered by the plaintiff and or parties being represented by such plaintiff.

- 6.5 Notwithstanding anything to the contrary in the Prescription Ordinance, an action in terms of this Part shall be instituted within three (03) years from the date on which the plaintiff became aware of the committing of an unlawful activity which resulted in loss or damage suffered by such plaintiff.
- 6.6 The provisions of this Part shall be in addition to and not in derogation of any right or remedy provided by any other Part of this Act, and any other written or unwritten law.
- 6.7 In an action filed under this Part, the Court shall in computing the award of compensation or damages, take into consideration any other interim or final payments already received or any other relief obtained by the plaintiff or other affected parties on whose behalf the action has been filed by the plaintiff.

## 7 PART VII - PROCEEDS OF CRIME MANAGEMENT AUTHORITY

### 7.1 Establishment of the Proceeds of Crime Management Authority (Authority)

7.1.1 There shall be established a body which shall be called and known as the Proceeds of Crime Management Authority (hereinafter referred as the "Authority") for the purpose of this Act.

7.1.2 The Authority shall by the name assigned to it by this Act, be a body corporate and shall have perpetual succession and a common seal and may sue and may be sued in such name.

7.1.3 The Authority shall have duties, functions and powers specified by this Act **or by any other written law** for the accomplishment of the objects of this Act and for the discharge of duties, performance of functions and the exercise of powers conferred on it under this Act.

7.1.4 The Authority may also be vested with legal authority by any other written law or by an order of a competent court of law for the purposes of the protection, preservation and management of proceeds of crime or any other thing relating to pending of future criminal proceeding which may come under the purview of any other written law and or as specified by a judicial order.

Provided however, court shall recognize that the primary responsibility of the Authority shall be to protect, preserve and manage proceeds of crime under this Act.

7.1.5 The Authority shall possess the power to protect, preserve, and manage, property submitted to the Authority by court classified as property in respect of which offences have been committed and property the ownership of which has not been claimed. The Authority shall take necessary steps to protect, preserve and manage such property pending further order by court.

7.1.6 The Authority shall exercise and perform its duties, functions and powers without being subject to any direction or other interference proceeding from any other person except a court entitled under law to direct or supervise the Authority in the exercise or performance of such duties, functions and powers.

7.1.7 Any interference or obstruction in the exercise and performance of the duties,

functions and powers vested in the Authority by this Act without lawful authority to do so shall constitute an offense in terms of this Act.

## **7.2 Duties, Functions and Powers of the Authority**

- 7.2.1 The Authority shall have the functions and powers vested in Receivers and Special Managers by this Act with regard to the protection, preservation and management of proceeds of crime.
- 7.2.2 The Authority shall also discharge the functions and exercise the powers vested in a Receiver or in a Special Manager by any other written law, if in terms of such law or in terms of a judicial order made in terms of such law, the Authority is vested with the function of a Receiver or Special Manager under such other law for the protection, preservation and management of proceeds of crime.
- 7.2.3 The Authority shall have the duty to give effect to any order issued on the Authority by a court of law.
- 7.2.4 When appointed as a Receiver or as a Special Manager by the High Court, the Authority shall have the functions, powers, and duties of a Receiver or a Special Manager as contained in this Act.
- 7.2.5 When appointed as a Receiver or as a Special Manager by any court of law in terms of any other written law, the Authority shall have the functions, powers, and duties of such Receiver or Special Manager as contained in such other written law.
- 7.2.6 The Authority shall maintain records and statistics of the discharge of its functions.
- 7.2.7 The Authority shall within the first six (06) months of the following year present to Parliament through the Minister an annual report relating to its performance during the preceding year.
- 7.2.8 The Authority in consultation with the two Designated Officers shall from time to time stipulate the minimum monetary value of a proceed of crime that should be subject to a seizure or judicial freezing.
- 7.2.9 The Authority shall from time to time develop and issue to Designated Officers

Standard Operating Protocols to facilitate the protection, preservation and management of seized proceeds of crime by Investigation Officers.

7.2.10 The Authority shall have the powers to-

- (a) hold any property movable or immovable that may become vested in the Authority by virtue of any purchase, grant, gift or otherwise and sell, mortgage, lease, grant, assign, exchange or otherwise dispose of the same;
- (b) to borrow or raise funds with or without securities and to receive grants, gifts or donations in cash or kind:

Provided that, the Board shall obtain the prior written approval of the Department of External Resources of the Ministry of the Minister assigned the subject of Finance, in respect of all foreign grants, gifts or donations made to the Authority;

- (c) enter into and execute, whether directly or through any officer or agent authorized in that behalf by the Board, all such contracts or agreements as may be necessary, for the discharge of the functions of the Authority;
- (d) open, operate and maintain and close any account in any bank as the Board may approve;
- (e) appoint, dismiss or terminate and exercise disciplinary control over officers and employees of the Authority;
- (f) to make rules for the administration of the affairs of the Authority; and
- (g) determine the terms and conditions of service and the remuneration payable to the officers, employees, agents, contractors, consultants and experts so appointed with the concurrence of the Minister assigned the subject of Finance.

### **7.3 Management and administration of the Authority**

7.3.1 The management and administration of the affairs of the Authority shall be vested in a Board of Directors (hereinafter referred to as the "Board").

7.3.2 The Board shall, for the purpose of the management and administration of the affairs of the Authority, perform, discharge and exercise the duties, functions and powers conferred or assigned to or imposed on the Authority by this Act.

### 7.3.3 The Board shall consist of -

- (a) the following *ex-officio* members:-
  - (i) an officer of the Ministry of the Minister assigned the subject of Justice not below the rank of a Senior Assistant Secretary nominated by the Secretary to that Ministry;
  - (ii) an officer of the Ministry of the Minister assigned the subject of Finance not below the rank of a Senior Assistant Secretary nominated by the Secretary to that Ministry;
  - (iii) an officer of the Ministry of the Minister assigned the subject of Public Administration not below the rank of a Senior Assistant Secretary nominated by the Secretary to that Ministry;
  - (iv) a representative of the Inspector General of Police holding the rank of Deputy Inspector General of Police recommended by the National Police Commission; and
  
- (b) five other members (hereinafter referred to as the “appointed members”) appointed by the Minister of Justice in the following manner-
  - (i) A Chartered Accountant in consultation with the Institute of the Chartered Accountants of Sri Lanka;
  - (ii) An Engineer in consultation with the Institute of the Engineers of Sri Lanka;
  - (iii) An Attorney-at-Law in consultation with the Bar Association of Sri Lanka;
  - (iv) A Chartered Valuer in consultation with the Institute of Valuers of Sri Lanka; and
  - (v) A person qualified and experienced in management in consultation with the Ceylon Chamber of Commerce.

The Organizations referred to herein shall when their opinion is sought by the Minister shall nominate in its opinion the most appropriate member.

## 7.4 Chairman of the Board

- 7.4.1 The Minister of Justice shall appoint from amongst the appointed members the person who in his opinion is the most suitable person to perform the functions of the Chairman of the Board and thereafter record the reasons for such appointment.



- 7.4.2 The Chairman shall be the Head of the Authority and shall preside over meetings of the Board.
- 7.4.3 The Chairman may resign from his office by letter addressed to the Minister and such resignation shall be effective from the date on which it is accepted by the Minister.
- 7.4.4 The Minister may for reasons assigned remove the Chairman from the office of Chairman and report such removal with reasons therefor to Parliament by making an address to Parliament.
- 7.4.5 Where the Chairman is temporarily unable to perform the duties of his office due to ill health, other infirmity, prolonged absence from Sri Lanka or any other cause, the Minister may appoint any other appointed member to act as Chairman in addition to his normal duties as an appointed member.

## **7.5 Disqualifications from being a member of the Board**

- 7.5.1 Every appointed member of the Board shall -
- (a) be not more than seventy (70) years of age as at the date of appointment to the Board;
  - (b) be of sound mind; and
  - (c) be a competent person with integrity and good repute;
- 7.5.2 A person shall be disqualified from being appointed or continuing as a member of the Board, if such person -
- (a) is or becomes a member of Parliament or of any Provincial Council or any local Authority;
  - (b) is not or ceases to be a citizen of Sri Lanka;
  - (c) is a person who having been declared insolvent or bankrupt under any law in Sri Lanka;
  - (d) is serving or has served a sentence of imprisonment imposed by any court in Sri Lanka or in any other country;
  - (e) holds or enjoys any right or benefit under any contract made by or on behalf of the Authority;
  - (f) is a person registered as a Receiver or a Special Manager under this Act;  
or
  - (g) has any financial or other interest as is likely to affect prejudicially, the

discharge by him of his functions as a member of the Board.

## **7.6 Term of office of the members of the Board**

7.6.1 Every member of the Board shall, unless such member earlier vacates office by death, resignation or removal, hold office for a period of three years and shall be eligible for reappointment for two terms consecutive or otherwise:

Provided however, the members of the First Board appointed under the provisions of this Act shall hold office from the date of appointment in the following manner:-

- (a) the Chairman shall hold office for a period of three years;
- (b) two other members other than the Chairman shall hold office for a period of two years; and
- (c) the remaining two members shall hold office for a period of one year.

The two members of the first Board who shall vacate office during the first and second year from the appointment to the first Board shall be determined by drawing lots at the first meeting of the Board.

7.6.2 Where a vacancy arises in the office of a member of the Board due to the expiration of his period of office, such member shall continue in such office until a new member is appointed in his place.

7.6.3 The Minister of Justice shall, within one (01) month of the occurring of a vacancy in the office of a member of the Board due to the expiration of his period of office shall appoint a new member in his place.

## **7.7 Removal and resignation of members of the Board**

7.7.1 Every appointed member may at any time resign from his office by a letter to that effect, addressed to the Minister, and such resignation shall be effective from the date on which it is accepted by the Minister in writing.

7.7.2 Where any appointed member by reason of illness, infirmity or absence from Sri Lanka is temporarily unable to discharge the functions of his office, the Minister may, having regard to the provisions of this Act relating to the composition of members of the Board of Directors, appoint some other person to act in his place.

7.7.3 The Minister may after affording an opportunity to the relevant member to explain and thereupon being satisfied that removal of such member is warranted, and for reasons to be given in writing to such member and to the Board, remove an appointed member from office.

7.7.4 Where an appointed member dies, resigns or is removed from office, the Minister may, having regard to the provisions of this Act relating to the composition of members of the Board of Directors, appoint another person in his place and the person so appointed shall hold office for the unexpired period of the term of office of the member whom he succeeds.

## **7.8 Members of the Board to disclose any interest**

7.8.1 A member of the Authority shall at the time of consideration being given to being appointed as a member of the Board, submit to the Minister, any interest he may have which may give rise to either a conflicting or competing interest with the objectives and functions of the Authority.

7.8.2 A member of the Board who is directly or indirectly interested in any matter which may give rise to a conflicting or competing interest with regard to a matter under consideration or due to be taken up before the Board shall disclose the nature of such interest to the Board and shall not take part in any deliberation or decision making of the Board with regard to such matter.

## **7.9 Quorum and meetings of the Board**

7.9.1 The meetings of the Board shall be held a minimum of once a month.

7.9.2 The quorum for a meeting of the Board shall be five (05) members consisting of minimum of two *ex officio* members.

7.9.3 The Chairman shall preside at every meeting of the Board. In the absence of the Chairman from any meeting of the Board a member elected by the members present shall preside at such meeting.

7.9.4 All questions for decision at any meeting of the Board shall be decided by the vote of the majority of members present at such meeting. In the case of an equality of votes the Chairman or such other member who shall chair such

meeting, in addition to his vote have a casting vote.

- 7.9.5 Subject to the preceding provisions of this section, the Board may regulate the procedure in relation to the meetings of the Board and the transaction of business at such meetings.
- 7.9.6 The Board shall from time to time appoint an Attorney-at-Law or a Chartered Secretary to either fulltime or part time basis function as the Board Secretary and determine the remuneration payable for such person.
- 7.9.7 It shall be the duty of the Board Secretary to as directed by the Chairman or based on a resolution of the Board to convene meetings of the Board.
- 7.9.8 It shall be the responsibility of the Board Secretary to maintain minutes of meetings of the Board and facilitate the necessary arrangements for the conduct of Board meetings.

#### **7.10 Acts or proceedings of the Board deemed not to be invalid by reason of any vacancy**

The Board may act notwithstanding any vacancy among its members and any act or proceeding of the Board shall not be or deemed to be invalid by reason only of the existence of any vacancy among its members or any defect in the appointment of a member thereof.

#### **7.11 Remuneration of the members of the Board**

The members of the Board shall be paid remuneration in such manner and at such rates as may be determined by the Minister, with the concurrence of the Minister assigned the subject of Finance.

#### **7.12 Seal of the Authority**

- 7.12.1 The seal of the Authority shall be in the custody of the Board Secretary.
- 7.12.2 The seal of the Authority may be altered in such manner as may be determined by the Board.

7.12.3 The seal of the Authority shall not be affixed to any instrument or document except with the sanction of the Board and in the presence of the Chairman and one other member of the Board who shall sign the instrument or document in token of their presence:

Provided however, where the Chairman is unable to be present at the time when seal of the Authority is affixed to any instrument or document, any other member of the Board authorized in writing by the Chairman on that behalf shall be competent to sign such instrument or document in accordance with the preceding provision of this subsection.

Provided further that if the Chairman has not appointed a member of the Board to sign on his behalf in his absence, the Board shall appoint another member of the Board empowering such member to perform such function.

7.12.4 The Authority shall maintain a register of the instruments and documents to which the seal of the Authority has been affixed.

### **7.13 Chief Executive Officer of the Authority**

7.13.1 The Board shall having regard to the scheme of recruitment developed having due regard to the duties and functions of the Authority and approved and adopted by the Board, following a transparent scheme for the selection of a suitable person appoint the Chief Executive Officer of the Authority. It shall be lawful for the Authority to with the approval of the relevant head of the institution appoint a suitable public officer as the CEO on secondment.

7.13.2 The Chief Executive Officer so appointed shall be in charge of all executive and administrative functions of the Authority and the Chief Financial Officer of the Authority.

7.13.3 The Board shall exercise the disciplinary authority over such Chief Executive Officer.

7.13.4 The Chief Executive Officer shall on the invitation of the Board be entitled to participate at the meetings of the Board.

7.13.5 The Chief Executive Officer shall, unless he vacates office earlier by death, resignation, or removal be entitled to serve in such position for a period not

exceeding ten (10) years.

7.13.6 The Chief Executive Officer shall, subject to the general directions and supervision of the Board-

- (a) be charged with the administration of the affairs and the executive functions of the Authority including the administration and control of the staff;
- (b) be responsible for the execution of all decisions of the Board; and
- (c) carry out all such functions as may be assigned to the Chief Executive Officer by the Board.

7.13.7 The Chief Executive Officer may be removed from office if he -

- (a) becomes permanently incapable of performing the duties of the office of the Chief Executive Officer;
- (b) had in the opinion of the Board, committed any act which is incompatible with the duties, functions and powers of such officer, has acted in a manner either defeats the purposes of this Act or in a manner prejudicial to the interests of the Authority, or been inefficient; or
- (c) has failed to comply with any directions issued by the Board.

7.13.8 The office of the Chief Executive Officer shall become vacant upon the death, removal from office under subsection (7) or resignation by letter in that behalf addressed to the Board by the holder of that office or upon completion of the period of ten (10) years' service.

7.13.9 If any vacancy occurs in the office of the Chief Executive Officer, the Board may appoint an officer of the Authority holding managerial responsibility, to perform the duties of the Chief Executive Officer until an appointment is made.

7.13.10 During the fourth quarter of every year the Chief Executive Officer shall with due regard to the object and functions of the Authority submit to the Board for approval a corporate plan for the following year.

7.13.11 The Chief Executive Officer shall be paid such remuneration as may be determined by the Board.

#### **7.14 Staff of the Authority**

7.14.1 Subject to the provisions of this Act, Chief Executive Officer shall have the

authority to appoint such officers and other employees as it may be necessary for the efficient exercise and discharge of its powers and functions.

- 7.14.2 The recruitment of officers who are to be vested with managerial responsibility shall be carried out by the Chief Executive Officer based upon scheme of recruitment approved by the Board and every such appointment shall be ratified by the Board.
- 7.14.3 The Chief Executive Officer shall subject to the provisions of this Act, exercise disciplinary control over the officers and employees of the Authority. Provided however, no disciplinary measure relating to an officer vested with managerial responsibility shall be carried out by the Chief Executive Officer unless the Board has given approval.
- 7.14.4 The Chief Executive Officer shall have the authority to determine the terms and conditions of employment of the officers and employees of the Authority. Provided however, such terms and conditions pertaining to an officer vested with managerial responsibility to be ratified by the Board.
- 7.14.5 All employees of the Authority shall, within one month of employment, declare in writing to the Authority of their personal direct or indirect interest in the affairs and transactions of the Authority as well as those of their close relations or concerns in which such member has a substantial interest.

### **7.15 Appointment of public officers to the Authority**

- 7.15.1 The Authority on the recommendation of the Chief Executive Officer may obtain on secondment, temporarily or contractual basis the services of any public servant or an officer or employee of a statutory body, with the consent of such officer or employee and his appointing authority. The remuneration payable to such officer or employee shall be determined by the Board.
- 7.15.2 Where any public officer is temporarily appointed to the staff of the Authority-
- (a) if, at the time of his temporary appointment to the staff of the Authority, his substantive post in the public service was a post declared to be pensionable under the Minutes of Pensions-
    - (i) he shall, while in the employment of the Authority be deemed to have been absent from duty in the public service on leave granted

without salary on grounds of public policy and accordingly section 10 (1) of those Minutes shall apply to him; and

(ii) in respect of him, the Authority shall pay out of the funds of the Authority to the Treasury to be credited to the Consolidated Fund for every complete month during which he is in the employment of the Authority, such sum not exceeding twenty-five *per centum* of the salary payable to him in his substantive post in the public service as may be determined by the Minister in charge of the subject of Finance; and

(b) if, at the time of his temporary appointment to the staff of the Authority, he was a contributor to the Public Service Provident Fund established under the Public Service Provident Fund Ordinance, his service to the Authority shall, for the purpose of that Ordinance, be deemed to be service to the Government, and accordingly he shall while he is in the employment of the Authority, continue to pay to the Public Service Provident Fund such contributions as he may be liable under that Ordinance to pay, and in respect of him the Authority shall pay at the close of each financial year out of the funds of the Authority to the Deputy Secretary to the Treasury to be credited to the appropriate account in the Public Service Provident Fund a sum equivalent to such contribution as the Government is liable to pay to the Public Service Provident Fund in respect of him.

7.15.3 Where any public officer is permanently appointed to the staff of the Authority-

(a) he shall be deemed to have left the public service;

(b) if, at the time of his permanent appointment to the staff of the Authority, his substantive post in the public service was a post declared to be pensionable under the Minutes on Pensions-

(i) he shall be eligible for such an award under those Minutes as might have been made to him if he had been retired from the public service on the date of his permanent appointment to the staff of the Authority;

(ii) the amount of any such award made under those Minutes shall not be paid to him unless his employment in the staff of the Authority is terminated by retirement on account of age or ill health or by the abolition of the post held by him in such staff or



on any other ground approved by the Minister in charge of the subject of Public Administration; and

(iii) in the event of his death while in employment of the Authority, such an award as might have been made in respect of him under those Minutes if he had died immediately before his permanent appointment to the staff of the Authority may be made in respect of him; and

(c) if, at the time of his permanent appointment to the staff of the Authority he was a contributor to the Public Service Provident Fund established by the Public Service Provident Fund Ordinance, he shall for the purpose of that Ordinance, be deemed to have left the service of the Government upon the determination of his contract with the consent of the Government otherwise than by dismissal.

7.15.4 Where the Authority employs any person who has entered into a contract with the government by which he has agreed to serve the government for a specified period, any period of service to the Authority by that person shall be regarded as service to the government for the purpose of discharging the obligations under such contract.

## **7.16 Authority to obtain services of other personnel**

The Authority may on the recommendation of the Chief Executive Officer obtain the services of any other persons on fixed-term contracts or contract for specific services to be provided if the Authority is satisfied that the services of such person is necessary for the due discharge of the functions of the Authority as provided by this Act or is directed to be performing in terms of an order of a court.

## **7.17 Funds of the Authority**

7.17.1 The Authority shall have the following funds:

- (i) **Management and Administration fund of the Proceeds of Crime Management Authority.** (M&AF)
- (ii) **Fund for the Protection, Preservation and Management of Proceeds of Crime.** (PPMF)

7.17.2 There shall be credited to the **M&AF**:-

- (a) all sums of money as may be voted from time to time by Parliament, for the use of the Authority;
- (b) all sums of money as may be remitted to the Fund by courts of law; and
- (c) all such sums of money as may be received by the Authority by way of loans, grants, gifts, bequests or donations from any source whatsoever whether within or outside Sri Lanka.

7.17.3 There shall be credited to the **PPMF**:-

- (a) all sums of money as may be remitted to the Fund by courts of law;
- (b) all sums of money as may be voted from time to time by Parliament, for the use of the Authority; and
- (c) all sums of money that may be received by the Authority for the protection, preservation and management of proceeds of crime.

7.17.4 There shall be paid out of the **M&AF**-

- (a) all such sums of money as are required to meet any expenditure for the discharge of the functions of the Authority including expenditure pertaining to its day-to-day functioning;
- (b) all such sum of money as required for the payment of salaries, allowances, compensation, fees and other payments of the Board and Chief Executive Officer, officers and employees and other persons whose services have been obtained on contractual basis; and
- (c) any other payments authorized by the Board.

7.17.5 There shall be paid out of the **PPMF**-

- (a) all such sums of money as are required to discharge functions entrusted to it by this Act and by orders of a court of law pertaining to the protection, preservation, and management of proceeds of crime and matters associated therewith, including payments to be made to persons who have provided specific services relating to such protection, preservation and management;
- (b) on the recommendation of the Chief Executive Officer with the approval of the Board to the M&AF a sum of money which shall not exceed twenty five per centum (25%) of the annual expenditure required for the functioning of the Authority; and
- (c) any other payments authorized by the Board including sums of money necessary to –

- (i) provide training to Designated Officers and Investigation Officers;
- (ii) provide training to legal officers and other Attorneys-at-law who provide professional services to achieve the objects and functions of this Act;
- (iii) procurement of equipment and programs that may be necessary for the tracing, search, identification and examination of proceeds of crime;
- (iv) the payment of professional fees payable to experts who may be contracted by the Designated Officers for the purpose of conducting cash flow tracing, financial analysis, and tracing proceeds of crime; and
- (v) for programs necessary to create awareness regarding the provisions this Act.

7.17.6 The Chief Executive Officer with the ratification of the Board shall make plans and related guide lines pertaining to investment, management and payment of moneys out of the M&AF and PPMF.

## **7.18 Financial year and Audit of Accounts of the Authority**

7.18.1 The financial year of the Authority shall be the calendar year.

7.18.2 The Chief Executive Officer shall cause proper books of accounts to be kept of the income and expenditure, assets and liabilities and all other transactions of the Authority.

7.18.3 The provisions of Article 154 of the Constitution and the National Audit Act relating to the audit of the accounts of public corporations shall apply to the audit of the accounts of the Authority.

7.18.4 The Chief Executive Officer shall through the Board within three months of the end of each financial year, submit to the Minister an annual report of the activities carried out by the Authority during that financial year, and cause a copy each of the following documents relating to that year to be attached to the report: –

- (a) the audited accounts of the Authority for the year, along with the Auditor General's report;

- (b) a report of proposed activities for the year immediately following the year to which such report and accounts relates.

7.18.5 The Minister shall place such report and documents before Parliament within two months of the receipt thereof.

## **7.19 Protection against actions and law suits**

It shall be a defence in any criminal or civil proceeding for anything done or omitted to be done by –

- (a) a member of the Board;
- (b) the Chief Executive Officer, officer or any employee of the Authority;

if he proves that he exercised due diligence and reasonable care and acted in good faith in the course of or in connection with the discharge or purported discharge of his obligation under this Act or any regulation, rule, order or directive issued or made thereunder.

## **7.20 Expenses incurred to be paid out of the M&AF.**

Any expense incurred by a member of the Board or any other officer or employee or agent of the Authority or such other former member, officer, employee or agent in any suit or prosecution brought against the Authority or such person before any Court, in respect of any act which has been committed by the Authority or such person in his official capacity under this Act or on the direction of the Authority, shall, if the Court holds that such act had been done in good faith, be paid out of the M&AF.

## **7.21 Members of the Authority, etc. deemed to be public servants**

7.21.1 The members of the Authority, the Chief Executive Officer and officers and employees of the Authority and any other person whose services are obtained on contractual basis shall be deemed to be public servants within the meaning of the Penal Code (Chapter 19)

7.21.2 The Authority shall be deemed to be a scheduled institution for the purposes of the Anti-Corruption Act, No. 9 of 2023.

## **8 PART VIII- DISPOSAL OF FORFEITED PROCEEDS OF CRIME AND THE UTILIZATION OF THE VALUE DERIVED THEREOF.**

- 8.1** Following an order for the frozen proceeds of crime to be forfeited to the State, the High Court shall direct the PCMA to obtain a valuation of the property and have it disposed of through public auction or any other means of disposal to be recommended by the PCMA and approved by court through which the value of the property could be derived. Such disposal shall be supervised by court.
- 8.2** Following the disposal of the properties in the manner prescribed by court the PCMA shall credit such amount to an account titled "PCMA Proceeds of Disposal of Proceed of Crime" and make an application to court for an order prescribing the manner in which such sum of money is to be disbursed.
- 8.3** Following an application made in terms of 8.2 by the PCMA the court shall take into consideration the following among other factors which the court deems necessary, and make an order for the disbursement of the value derived by the disposal of the forfeited property.
- (a) Whether the unlawful activity that had been committed which yielded the relevant proceeds of crime can be identified and if so, the category of persons who may have suffered due to the committing of the unlawful activity.
  - (b) Whether subject to the two conditions stipulated below, the value derived by the disposal of the forfeited property should in its entirety be transferred to the Consolidated Fund.
  - (c) Whether the forfeited property in part contains a lawfully procured property, which is inseparable from the proceed of crime.
  - (d) Whether the value derived by the disposal of the forfeited property should be remitted to a requesting state that had by either itself or its people or institutions suffered a loss due to the committing of the relevant unlawful activity.
  - (e) Any other matter which the High Court deems relevant.
- 8.4** Where the Court determines that the unlawful activity that had been committed which yielded the relevant proceeds of crime can be identified and if so, the category of persons who may have suffered loss due to the committing of the unlawful activity is identified, the Court shall direct the PCMA:
- i. to transfer 80% of the value derived by the disposal of the property to the Victims of Crime Reparation Trust Fund. (VCRTF)

- ii. to retain 10% of the value derived by the disposal of the property and transfer such some of money to the Protection, Preservation and Management of Proceeds of Crime Fund. (PPMF)
- iii. to retain 10% of the value derived by the disposal of the property and transfer such sum of money from time to time to the Attorney General, Sri Lanka Police and the CIABOC for the following purposes:
  - a) training and capacity building of legal officers and law enforcement personnel;
  - b) procuring of equipment necessary for investigation, tracing and identification of proceeds of crime;
  - c) resources necessary for seizure, temporary custody, and enforcement of restraining orders pertaining to proceeds of crime;
  - d) for activities necessary for the prevention of persons deriving benefit out of the committing of the unlawful activity;
  - e) making necessary payments with regard to obtaining or procuring professional services of local or foreign competent persons or institutions and organizations pertaining to the conduct of money flow investigations, financial analysis, forensic accounting, forensic auditing, accessing of commercial data bases, tracing, identification, search, and examination of property suspected to be or containing proceeds of crime; and
  - f) any other purpose in furtherance of the objectives of this Act.

**8.5** Where the Court concludes that the category of persons who may have suffered loss due to the committing of the unlawful activity cannot be identified or that there is no evidence that any person has directly suffered any loss due to the committing of the unlawful activity, the court shall direct the PCMA to transfer 80% of the value derived by the disposal of the forfeited property to the Consolidated Fund to be utilized in terms of the law as directed by the Parliament. The remaining 20% shall be utilized in the manner stipulated in paragraphs 8.4 (ii) and 8.4 (iii) above.

**8.6** Where the Court concludes that the forfeited property contains in part a licit property, which is inseparable from the proceeds derived from committing unlawful activity, the Court shall compute the value of the licit component of the forfeited proceeds of crime, and direct the PCMA to transfer such amount to the party identified by court to have a lawful claim for such property.

8.7 Where the Court concludes that the value derived by the disposal of the forfeited property should be remitted to a requesting state that had either by itself or through its people or institutions suffered loss due to the committing of the relevant unlawful activity, the Court shall direct the PCMA to in consultation with the Secretary to the Ministry of Foreign Affairs, transfer the relevant sum of money to the Competent Authority of such requesting state subject to compliance with in paragraphs 8.4 (ii) and 8.4 (iii) above.

## 9 PART IX – VICTIMS OF CRIME REPARATION TRUST FUND

9.1 There shall be a Trust created by the operation of this law called the “Victims of Crime Reparation Trust Fund”. (VCRTF)

9.2 The VCRTF shall be a part of the Consolidated Fund.

9.3 Objectives of the VCRTF

- i. Upon a consideration of the following:
  - a) the order made by the High Court regarding the category of victims of crime to be repaired, and
  - b) the manner in which the committing of the unlawful activity (which gave rise to the relevant proceeds of crime that have been forfeited) had affected the afore-stated category of victims of crime,

formulate suitable reparatory, developmental, or welfare activity to be implemented for the benefit of such victims of crime.

*Explanation:*

*This is for the purpose of mitigating the original negative impact which occurred as a result of the afore-stated unlawful activity.*

- ii. If any sum of money is remitted to the VCRTF without a specification by court as to the affected category of victims of crime, having regard to policies of the State, identify suitable developmental activities the implementation of which is in public interest which may be carried out using such funds remitted to the VCRTF.

9.4 Funds of the VCRTF

The Fund of the VCRTF shall comprise of the following :-

- (i) Sums of money remitted by the PCMA, on a direction of the High Court made in terms of section 8.4 (i);
- (ii) Sums of money which the Parliament may vote to be remitted to the VCRTF; and
- (iii) Sums of money that may be remitted to the Government of Sri Lanka by foreign administrative, law enforcement and judicial authorities as being monies accruing from the disposal of proceeds of crime to which Sri Lanka



has an entitlement.

**9.5** The Board of Trustees of the VCRTF shall comprise of the following: -

9.5.1 Chairman- *ex officio* - Secretary to the Treasury

9.5.2 Six (06) Members

- i. Secretary, Ministry of Justice or an Additional Secretary (Legal) nominated by the Secretary, Ministry of Justice
- ii. Secretary, Ministry of Social Services or an Additional Secretary nominated by the Secretary, Ministry of Social Services
- iii. Deputy Governor in charge of Financial System Stability of the Central Bank
- iv. Chairman of the Ceylon Chamber of Commerce or his nominee
- v. Two members of reputed non-political social services organizations appointed by the Minister of Finance in consultation with the Minister of Justice and the Minister of Social Services.

**9.6** Duties of the Trustees

- i. Identification and appointment of suitable persons to implement the formulated activity, having regard to the following:
  - a) institutions of the State and non-state institutions that may be capable of efficaciously implementing such activity,
  - b) obtaining the services of such implementing agency on terms most favourable, and
  - c) ensuring that the assigned funds are not subjected to any further unlawful activity and the assigned activities are implemented in a transparent manner.
- ii. For the purpose of obtaining the services of a competent implementing agency on terms most favourable, the VCRTF shall call for expression of interests and tenders.
- iii. Entering into memoranda of understanding with State agencies pertaining to implementation of the formulated activities and entering into contracts with non-state agencies pertaining to the same.
- iv. Allocation of funds for the implementation of activities, monitoring work progress and supervision.

- v. Carry out any other activity that may be necessary for the purposes of giving effect to the objectives of the VCRTF.
- vi. To obtain the services of officials of the General Treasury to assist the VCRTF to give effect to the objectives of the VCRTF and the duties of the Trustees.
- vii. To establish and maintain an account within the Consolidated Fund and maintain annual financial statement.
- viii. To cause auditing of the accounts including the annual audits of the VCRTF by the Auditor General.
- ix. Submit to Parliament an annual report.

#### 9.7 Beneficiaries of the VCRTF

- a) Persons who have suffered loss due to the committing of the unlawful activities as specified in orders made by the High Court.
- b) Persons identified as the affected category of victims of crime by the Board of Trustees.

## **10 PART X - INTERNATIONAL COOPERATION**

### **10.1 Requests by Sri Lanka to competent authorities of other countries.**

Subject to administrative requirements, it shall be lawful for a Designated Officer to for the purposes of achieving the objects and purposes of this Act, seek and obtain assistance from administrative, law enforcement and judicial competent authorities of other countries the following:

- 10.1.1 Assistance for tracing, identification, search, detection and examination of property suspected to be proceeds of crime and for other investigational purposes.
- 10.1.2 Assistance for gathering evidence including documents, witness statements, reports, and other material including samples and specimens.
- 10.1.3 Assistance to locate and identify witnesses, documents, records, and suspected proceeds of crime.
- 10.1.4 Assistance to facilitate the interview and recording of statements of witnesses either in person or through a contemporaneous audio-visual link.  
  
Notwithstanding anything to the contrary in the Assistance to and the Protection of Victims of Crimes and Witnesses Act, No. 10 of 2023, the remote location of such interview may take place at the office of the relevant administrative, law enforcement or judicial competent authority.
- 10.1.5 Requests for seizure, judicial freezing and forfeiture and return to Sri Lanka proceeds of crime or value thereof.
- 10.1.6 Transmission, service and enforcement of judicial orders made by Sri Lankan courts in foreign countries.
- 10.1.7 Cooperation for post-conviction and non-conviction based forfeiture proceedings and related matters.
- 10.1.8 Service of summons, other processes of court and assistance to procure the attendance of witnesses at judicial proceedings held in Sri Lanka.

10.1.9 Assistance with regard to the conduct of investigations jointly with foreign administrative and law enforcement authorities and related counterparts.

10.1.10 Any other matter in respect of which assistance is required for the purposes of achieving the objectives of this Act including ensuing and further related assistance on an initial request.

## **10.2 Requests by foreign administrative, law enforcement and judicial competent authorities of other countries to Sri Lankan counterparts.**

A foreign administrative, law enforcement and judicial competent authority shall be entitled to request and obtain assistance from a Designated Officer in respect of any matter pertaining to which a Designated Officer is entitled in terms of this Act to obtain assistance from an administrative, law enforcement and judicial competent authority of any other country.

## **10.3 Mutual Cooperation**

10.3.1 The provisions of this Part of the Act shall be enforced in pursuance of,

- (a) International, regional, multi-lateral and bilateral agreements to which Sri Lanka is a party together with the corresponding state,
- (b) international conventions ratified by Sri Lanka and the corresponding state, and
- (c) ad-hoc or case by case basis understanding reached by the Sri Lanka and the corresponding state.

10.3.2 For the purposes of this Part, the Secretary to the Ministry of Foreign Affairs shall be the Competent Authority of Sri Lanka to certify the existence of the matters set out in 10.3.1 (a)- (c).

10.3.3 The Secretary to the Ministry of Foreign Affairs shall on a request by the Secretary to the Ministry of Justice, or a Designated Officer, be competent to negotiate with the Competent Authority of any other country and enter into regional, multi-lateral and bilateral agreement or an ad-hoc or case by case basis understandings for the purpose of obtaining mutual cooperation under this

Part of the Act.

- 10.3.4 For the purposes of this Part of the Act a Designated Officer shall be entitled to initiate a request pertaining to matters stated in 10.1.1 to 10.1.10 of this Part of the Act, which shall be transmitted to the competent authority of the recipient state through the Secretary to the Ministry of Foreign Affairs.
- 10.3.5 For the purposes of this Act a request to a foreign administrative, law enforcement or judicial authority to preserve, restraint, seize, freeze or forfeit proceeds of crime shall not be made to a foreign competent authority unless such request is sanctioned by the High Court.
- 10.3.6 A request by a foreign administrative, law enforcement or judicial competent authority for investigative assistance relating to tracing, identification, and detection of proceeds of crime or for any other matter as provided in this Act, shall be addressed to the Designated Officer of the CIABOC if the unlawful activity which is believed to have resulted in the generation of proceeds of crime has originated from the committing of acts which constitute an offence under the Anti-Corruption Act. Any other request shall be addressed to the Designated Officer of Police. All such requests shall be forwarded to the relevant Designated Officer through the Secretary to the Ministry of Foreign Affairs.
- 10.3.7 The scheme contained in this Part of the Act, shall provide a legislative mechanism parallel to the Mutual Assistance in Criminal Matters Act, No. 25 of 2002 for mutual assistance pertaining to proceeds of crime.

#### **10.4 Extradition**

For the purposes of the Extradition Law No. 8 of 1977, the offences contained in this Act shall be deemed to be extraditable offences.

## 11 PART XI - MISCELLANEOUS PROVISIONS

### 11.1 Definitions

11.1.1 "account" means any facility or arrangement by which a financial institution does any of the following: –

- (a) accepts deposits of currency;
- (b) allows withdrawals of currency; or
- (c) pays cheques or payment orders drawn on the Institution or collects cheques or payment orders on behalf of a person other than the financial Institution,

and includes any facility or arrangement for a safety deposit box or any other form of safe deposit;

11.1.2 "benefit" means an advantage, gain, service, profit, or payment of any kind, and the benefits that a person derives or obtains or that accrue to him including those that another person derives, obtains or that otherwise accrue to such other person, if such other person is (a) under the control of, (b) is directed or requested by, or (c) has a matrimonial or family relationship or a significant importance to the first person;

11.1.3 "cash" means any coin or paper money that is designated as legal tender in the country of issue and includes (a) bearer bonds, (b) travelers' cheques, (c) postal notes, and (d) money orders;

11.1.4 "Code of Criminal Procedure Act" means the Code of Criminal Procedure Act, No.15 of 1979;

11.1.5 "computer system" means a computer or group of interconnected computers, including through the internet or any other form of connectivity;

11.1.6 "Controlled delivery" shall mean the investigative technique of allowing a property suspected to be a proceed of crime to (i) pass out of, through, or into Sri Lanka, or (ii) within one place to another in the territory of Sri Lanka, under the direct or indirect surveillance of an Investigation Officer, for the purpose of achieving the objectives of this Act, including but not limited to –

- (a) enabling the further investigation of the offence suspected to have yielded the said proceeds of crime and the committing of offences under this Act,

- (b) the identification of all persons involved in the commission of the afore-stated offences,
- (c) collection of evidence relating to the said property including evidence relating to the source of money that enable the procurement of the said property and financial transactions relating to or arising out of such property and determining whether the said property is a proceed of crime, or
- (d) to tracing and identifying persons who are having dominion over such property and having beneficial interest in respect of such property;

11.1.7 “Court” means the High Court of the Republic;

11.1.8 “currency” means the currency of Sri Lanka or that of a foreign country that is designated as legal tender and which is customarily used and accepted as a medium of exchange in the country of issue;

11.1.9 “dealing with property” means-

- (a) a transfer or disposition of property;
- (b) making or receiving a gift of the property;
- (c) removing the property from Sri Lanka;
- (d) where the property is a debt owed to that person, making a payment to any person in reduction or full settlement of the amount of the debt;
- (e) using the property to obtain or extend credit, or using credit that is secured by the property; or
- (f) where the property is an interest in a partnership, doing anything to diminish the value of the partnership;

11.1.10 “digital currency”-

- (a) includes any digital representation of monetary value that-
  - (i) is used as a medium of exchange, as valuable consideration to enable any transaction, or as a unit of account or store of value; and
  - (ii) may not be recognized as legal tender; and
- (b) does not include-
  - (i) a transaction in which a merchant grants, as part of an affinity or rewards program, value that cannot be taken from or exchanged

with the merchant for legal tender, bank credit or digital currency; or

- (ii) a digital representation of value issued by or on behalf of a publisher and used solely within an online game, game platform, or family of games sold by the same publisher or offered on the same game platform;

11.1.11 “document” means any record of information, and includes –

- (a) anything on which there is writing;
- (b) anything on which there are marks, figures, symbols, or perforations having meaning for persons qualified to interpret them;
- (c) anything from which sounds, images or writings can be produced, with or without the aid of anything else;
- (d) a map, plan, drawing, photograph or similar thing; and
- (e) any of the above kept or maintained in electronic form, and includes a digital document.

11.1.12 “electronic” shall have the same meaning assigned to it by the Electronic Transactions Act, No.19 of 2006;

11.1.13 “Financial Intelligence Unit” means the Financial Intelligence Unit of Sri Lanka established under the Financial Transactions Reporting Act, No. 6 of 2006;

11.1.14 “foreign competent authority” shall mean ...

11.1.15 “forfeiture” means the conclusive right, title, and any interest or beneficial interest to a proceed of crime being vested in the state through a judicial order in the manner provided by this Act.

*Clarification*

*Forfeiture need not be contingent upon a person being convicted of having committed the relevant unlawful activity.*

11.1.16 “judicial freezing order” means a judicial order made by a court vested with jurisdiction to make such order, which causes a property which *prima - facie* appears to be a proceed of crime, of which the possession, custody, control and dominion to be vested in a person appointed by such court, for the protection, preservation and management of such property which may include its



- temporary use and utilize, pending the conduct and completion of judicial proceedings to determine whether such property should be forfeited to the state.
- 11.1.17 “gift” means property given by one person to another person, and includes any transfer of property directly or indirectly-
- (a) after the commission of an unlawful activity by the first person;
  - (b) to the extent of the difference between the market value of the property at the time of its transfer and
    - (i) the consideration provided by the transferee, or
    - (ii) the consideration paid by the transferor whichever is greater;
- 11.1.18 “information” includes any fact or message depicted by way of any letters, sentence or part thereof, symbol, image, pictorial, art, video, sound, code, or any other mode of communication, and contained in any physical or electronic media and would include anything communicated verbally which the recipient documents upon receipt of the communication;
- 11.1.19 “instrumentality” means any property which has been used by any person exclusively or partly to commit any unlawful activity, and the use of such property had in the circumstances pertaining to the committing of the unlawful activity been necessary, and such property may include any (i) vehicle or other means of transport for carriage of persons or goods, (ii) computer, (iii) software application or programme, (iv) physical or digital storage facility, (v) machine, (vi) equipment and (vii) utensil, notwithstanding (a) its value exceeding the value of the proceed of the unlawful activity, and (b) the owner of such instrumentality not having participated in or intentionally aided the committing of the unlawful activity.”
- 11.1.20 “interest” in relation to property, means:
- (a) a legal or equitable estate or interest in the property; or
  - (b) a right, power or privilege in connection with the property;
- 11.1.21 “other Law enforcement authority” includes the, Department of Customs, Excise Department, Forest Conservation Department, Department of Wildlife, Sri Lanka Coastguard, and any other statutorily created body empowered with the investigation of the commission of any offence;

- 11.1.22 “Minister” means the Minister appointed under Article 44 or Article 45 of the Constitution, to whom the subject of Justice is assigned;
- 11.1.23 “person” means any natural or legal person, including a body of persons whether it has legal personality or not and includes a branch of such person or body of persons incorporated or established outside Sri Lanka;
- 11.1.24 “prescribed” means prescribed by regulations made under this Act;
- 11.1.25 “proceeds of crime” includes any property, benefit, service, or savings that is wholly or partly obtained, derived or realized directly or indirectly as a result of or in connection with the commission of an unlawful activity by any person, and includes economic or financial gains, savings and funds or property converted or transformed, in whole or in part, into other funds or property, and would also include instrumentalities and the value of such proceeds of crime, irrespective of –
- (a) who carried out the unlawful activity;
  - (b) who benefited from the unlawful activity;
  - (c) whether the unlawful activity was carried out before or after the coming into operation of this Act;
  - (d) whether the unlawful activity was carried out in Sri Lanka or elsewhere;
- Provided however, a proceed of crime which has been purchased, otherwise procured or transacted in any manner in good faith for valuable consideration and without knowledge or reasonable grounds to believe that such property is a proceed of crime, shall cease to be a proceed of crime, and in such instances, the valuable consideration shall for the purposes of this Act be recognized and treated as a proceed of crime.

*Clarification:*

*A property, benefit, service, or savings that is wholly or partly obtained, derived or realized directly or indirectly as a result of or in connection with the commission of an unlawful activity shall be a proceed of crime, notwithstanding (a) the proceed of crime not having been received by the person who committed the unlawful activity, and (b) the proceed having been given to, received or otherwise procured by a third party.*

- 11.1.26 “property” means anything which is corporeal or incorporeal, movable or immovable, tangible or intangible situated in Sri Lanka or elsewhere, which

has financial or economic value, including-

- (a) currency, digital currency, virtual asset, account, investment,
- (b) any intellectual property,
- (c) legal documents or instruments in any form whatsoever including electronic or digital documents, evidencing title to, or interest in, such assets, and also includes and will not be limited to bank credits, travelers' cheques, deposits, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit, and any interest, dividends or other income on or value accruing from or generated by such funds or other assets, and any other assets which potentially may be used to obtain funds, good or services,
- (d) any legal or equitable interest in any such property, and
- (e) any other tangible or intangible thing, procured using financial consideration and having a financial or commercial value;

11.1.27 "prosecution" means a complainant under the provisions of the section 136(1) (a) of the Code of Criminal Procedure Act, No.15 of 1979, Indictment preferred under the Code of Criminal Procedure Act and the Anti-Corruption Act, and would include the conduct of a prosecution in a court vested with trial jurisdiction pursuant to the filing of a complaint or indictment;

11.1.28 "public property" shall have the same meaning assigned to it by the Offences Against Public Property Act, No. 12 of 1982;

11.1.29 "record" means any material on which data is recorded or marked and which is capable of being read or understood by a person, computer system or other device;

11.1.30 "resident" means any citizen of Sri Lanka or any citizen of a foreign country, if such person has been in Sri Lanka continuously or otherwise for a period of hundred and eighty-three (183) days or more in aggregate during the preceding twelve months or a citizen of a foreign country who is resident or employed in Sri Lanka under the authorization of a visa issued by the Department of Immigration and Emigration authorizing employment or the conduct of business.

- 11.1.31 “service provider” means-
- (a) a public or private entity which provides the ability for its subscribers to communicate by means of a computer system or electronic system or by any other means; and
  - (b) any other entity that processes or stores computer data or information on behalf of that entity or its customers;
- 11.1.32 “Sri Lanka” includes the territorial waters and air space of Sri Lanka;
- 11.1.33 “subscriber information” means any information contained in the form of computer data or any other form that is held by a service provider, relating to subscribers of its services;
- 11.1.34 “traffic data” means data –
- (a) that relates to the attributes of a communication by means of a computer system;
  - (b) which is generated by a computer system that is part of a service provider;
  - (c) which shows communications origin;
  - (d) data processed for the purpose of the conveyance of a communication using an electronic communication network, or for the billing in respect of such communication and includes data relating to the routing, identity of the router, duration or time of a communication.
- 11.1.35 “trap” means an organized investigative technique which enables the (a) detection of the committing of an offence, (b) identification and arrest of a person who commits an offence soon after the committing of such offence, and (c) collection of evidence relating to the committing of an offence, (d) collection of proceeds of such offence and instrumentalities thereof.
- 11.1.36 “undercover operation” shall mean a process within an investigation which involves an Investigation Officer or an officer subordinate to an Investigation Officer who is subject to direction of an Investigation Officer engaging in conduct which at times may amount to actions constituting an offence, for the purposes of achieving the objectives of this Act including but not limited to (a) tracing, locating, identifying and searching suspected proceeds of crime, (b) identifying persons who commit offences, and (c) investigation and gathering evidence regarding such persons and the committing of offences.

11.1.37 An 'unlawful activity' shall mean any conduct which constitutes an offence under the laws of Sri Lanka, and would include (a) any activity which is wholly or partly committed in or outside Sri Lanka which would constitute an offence under the laws of Sri Lanka if it was wholly committed in Sri Lanka, and would also include (b) any activity which had been committed prior to this Act coming into operation, provided, such activity constituted an offence under the law of Sri Lanka at the time it was committed.

11.2 No Designated Officer or an Investigation Officer or any other police officer or an officer of the CIABOC who has acted on the instructions of the Designated Officer or Investigation Officer, who has acted in *good faith* and diligently shall be liable for damages of compensation in any civil suit.

11.3 The Minister shall on the recommendation of the Designated Officers (who shall make such recommendations jointly) and the Proceeds of Crime Management Authority, and on the advice of the Attorney-General be empowered to make **Regulations** (i) to give effect to the provisions of this Act and matters incidental thereto, and (ii) which shall take the form of **Standard Operating Protocols** pertaining to -

- (a) the manner in which investigations into suspected proceeds of crime may be conducted,
- (b) procedure to be following in issuing Restraining Orders and the format of a Restraining Order,
- (c) the manner in which a Seizure should be carried out and the format of the Notice of Seizure,
- (d) the conduct of pre-restraining and pre-seizure planning,
- (e) the protection, preservation and management of proceeds of crime,
- (f) the manner in which provisions of the Mutual Assistance in Criminal Matters Act may be invoked and the manner in which assistance to investigations from foreign administrative,
- (g) the manner in which a request from a foreign competent authority for assistance in the conduct of investigations into suspected proceeds of crime should be carried out,
- (h) the manner in which a request for forfeiture of a proceed of crime located in Sri Lanka pertaining to an unlawful activity committed a foreign country should be processed and given effect to,

- (i) the manner in which a request for the assistance for investigations to be conducted in a foreign country should be made,
- (j) disposal of perishable and hazardous proceeds of crime,
- (k) the procedure by which the court shall obtain valuation of property and determine the value of such property, and
- (l) the procedure by which the auctioning of proceeds of crime should be carried out.

Upon a Standard Operating Protocol being promulgated as a Regulation, such protocol shall have the force of law.

Regulations made by the Minister shall be placed before Parliament as soon as possible, and such Regulations shall come into operation upon adoption by Parliament.

**11.4** Where there is any inconsistency between a provision of this Act and the provision of any other law, the provision of this Act shall prevail over the provision of such other law.