



# CORRUPTION RISK MAPPING RESEARCH: A STUDY ON SRI LANKA'S PRIVATE SECTOR





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ISBN: 978-624-6193-06-5

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## **Note:**

No statements made in this report are findings of bribery and/or corruption.

All statements are allegations, opinions and beliefs expressed by Respondents in relation to the subject at hand.

## **Acknowledgement:**

This report is part of the project 'Strengthening Democracy Through Enhanced Public and Private Sector Accountability.' This project is supported by a Grant from the Center for International Private Enterprise in Washington, D.C.

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# LIST OF ABBREVIATIONS

ABC	-	Anti-Bribery and Corruption
ACA	-	Anti Corruption Act No. 09 of 2023
ADB	-	Asian Development Bank
AML	-	Anti-Money Laundering
ASYCUDA	-	Automated System for Customs Data
BOI	-	Board of Investment
CBSL	-	Central Bank of Sri Lanka
CDD	-	Customer Due Diligence
CEA	-	Central Environmental Authority
CEO	-	Chief Executive Officer
CEYPETCO	-	Ceylon Petroleum Corporation
CFT	-	Countering the Financing of Terrorism
CIABOC	-	Commission to Investigate Allegations of Bribery or Corruption
CPI	-	Corruption Perceptions Index
CSE	-	Colombo Stock Exchange
CSR	-	Corporate Social Responsibility
DPA	-	Deferred Prosecution Agreement
EIRR	-	Economic Internal Rate of Return
ESG	-	Environmental, Social and Governance
FATF	-	Financial Actions Task Force
FCID	-	Financial Crimes Investigation Department
FCPA	-	Foreign Corrupt Practices Act
FGD	-	Focus Group Discussion
FIU	-	Financial Intelligence Unit
GCB	-	Global Corruption Barometer
GDA	-	Governance Diagnostic Assessment
GRI	-	Global Reporting Initiative
HR	-	Human Resources
HS	-	Harmonised System
IAU	-	Internal Affairs Unit
ICASL	-	Institute of Chartered Accountants of Sri Lanka
IIRC	-	International Integrated Reporting Council
IMF	-	International Monetary Fund
IRCSL	-	Insurance Regulatory Commission of Sri Lanka
IRD	-	Inland Revenue Department
KII	-	Key Informant Interviews
KYC	-	Know Your Customer
MFI	-	Micro-Finance Institution

MNC	-	Multi-National Corporation
MOU	-	Memorandum of Understanding
MSME	-	Micro, Small and Medium Enterprises
NED	-	Non-Executive Director
NIC	-	National Identity Card
NMRA	-	National Medicine Regulatory Authority
OTP	-	One-Time Passwords
PEP	-	Politically Exposed Persons
PHI	-	Public Health Inspectors
QA	-	Quality Assurance
RFP	-	Request for Proposals
SBE	-	Specified Business Enterprise
SDG	-	Sustainable Development Goals
SEC	-	Securities and Exchange Commission
SLAASMB	-	Sri Lanka Accounting and Auditing Standards Monitoring Board
SLC	-	Sri Lanka Customs
SLPA	-	Sri Lanka Ports Authority
SLS	-	Sri Lanka Standards
SLTDA	-	Sri Lanka Tourist Development Authority
SME	-	Small and Medium Enterprises
SPC	-	State Pharmaceutical Corporation
UNCAC	-	United Nations Convention Against Corruption
VAT	-	Value Added Tax
WoR	-	Waiver of Registration
WHO	-	World Health Organisation



## EXECUTIVE SUMMARY

Corruption in Sri Lanka for the most part has been seen as a public sector problem. Amidst large scale corruption scandals in the public sector, the role that the private sector plays in facilitating corruption has often been ignored. Research, however, indicates that the private sector often functions as the “supply side” of corruption. This Corruption Risk Mapping of the Private Sector, sought to map the corruption risks that exist in the private sector. The research makes two key contributions. First, it documents and narrates alleged experiences and examples of private sector corruption, possibly for the first time in Sri Lanka. Second, it explores and documents allegations of private-to-private corruption occurring in Sri Lanka. Finally, the research also maps the risk factors that lead to corruption within the private sector.

In documenting allegations of private sector corruption, it was revealed that there was a high probability of corruption occurring when the private sector engaged with the public sector. The allegations narrated showed a high risk of corruption occurring when applying for government approvals and licences across all industries. The research also revealed that the private sector alleged the Sri Lanka Customs, the Excise Department and the Inland Revenue Department as being particularly challenging to deal with. The research also documents allegations of corruption when bidding for government contracts. This was alleged particularly in relation to pharmaceuticals and large-scale infrastructure projects.

This research also documents allegations of private-to-private corruption. This includes examples of kickbacks, gratifications and favours, fraud, unethical manipulation of procurement processes, conflicts of interest, nepotism and favouritism. Interestingly, the research also revealed allegations of private sector entities engaging in political lobbying and significant market manipulation through the creation of monopolies. Finally, alleged corruption occurred across industries, but in different forms. The research also showed that gender dynamics affected the nature of corruption. Respondents believed women were at a higher risk of being solicited for sexual bribes in exchange for jobs, promotions or even to provide a service. Interestingly though, it was also observed that men were also subject to sexual harassment and corruption within their workplace, in some industries. Therefore, while the general opinion was that corruption in the private sector is less than corruption in the public sector, this research shows that private sector corruption is nevertheless a pervasive problem.

Whilst sharing their alleged experiences and examples of corruption in the private sector, Respondents also revealed the risk factors that created a vulnerability to corruption. A key risk that was noted, was the inadequate implementation of the law. Despite having a strong legal framework, the weak implementation of the law allows corruption to flourish. For example, although public listed companies are heavily regulated, their unlisted subsidiaries are not regulated to such a high standard. This enables the parent company to outsource their corruption to a subsidiary or sub-subsidiary. Similarly, interacting with the public sector was noted to be a significant risk. The politicisation of the public sector, the lack of political will to address corruption, and the lack of infrastructure and resources needed to introduce anti-corruption measures in the public sector were noted as increasing the risk of corruption when the private sector engaged with the public sector. The absence of a strong regulator for private sector industries also creates a higher probability of corruption occurring. Similarly, weak internal controls in a company itself can lead to a higher risk of corruption. If there is no tone from the top discouraging corruption or if the senior management turns a blind eye to it, corruption is likely to occur in such a company. Similarly, the absence of internal controls, regular financial and social audits, and undue budgetary pressures may also pose a risk of corruption. Finally, it was also noted that the absence of a conducive business environment that supported new entrants into the market, resulted in new companies resorting to corruption as a means of survival.

In addition to the risk factors mentioned above, the research also noted several mitigatory factors that companies and chambers of commerce had adopted to reduce the risk of corruption. The adoption of zero-tolerance policies to corruption was seen as a strong first step. Companies that had foreign parent companies or foreign suppliers, had adopted stringent internal anti-corruption measures to adhere to foreign standards. Similarly, some chambers of commerce have now adopted codes of

conduct that prohibit corruption and bribery. Furthermore, some chambers have begun conducting awareness sessions for their membership on the harmful effects of corruption. Several companies have also self-regulated and imposed internal standards that go beyond regulatory requirements. These include the adoption of strong audit policies, procurement processes, independent boards and strong human resource management policies.

Finally, in closing, this research makes several recommendations to both the private sector and the government. Some recommendations made to the private sector include the adoption of strong anti-bribery and corruption policies including whistleblower protection, the encouragement of collective action amongst companies in a particular industry and the adoption of strong internal controls. It is also recommended that companies strive to create a corporate culture that values performance whilst also valuing ethics and integrity. Recommendations for the public sector include a call for stronger regulatory authorities, digitisation and digitalisation of processes and strengthened procurement processes.



# 1. INTRODUCTION

## 1.1. Background

In Sri Lanka, the problem of corruption has for many years been viewed as a problem solely within the scope of the public sector. Private sector corruption is not a phenomenon that has been widely documented in Sri Lanka. However, it is undeniable that corporates engage in corruption either when engaging with the public sector or with other private sector entities.<sup>1</sup> Corruption in business has many facets. It can manifest in winning a contract that ought not to have been won, price inflations, the provision of low-quality goods or services, speeding up bureaucracy, and even to avoid or change regulatory regimes. Although corruption by corporates is often recognised solely in the context of bribery, it is common to see many indirect financial contributions being made to influence processes, policies and policy makers. This research highlights that corruption in the private sector can be both coercive and collusive in nature, with the private sector often acting as the willing 'supply side' or a silent bystander to corruption.

At the request of the Sri Lankan Government, the International Monetary Fund (IMF) conducted a Governance Diagnostic Assessment (GDA) which focused on corruption vulnerabilities and governance weaknesses linked to corruption in macroeconomically critical priority areas.<sup>2</sup> The GDA revealed systematic and severe governance weaknesses and corruption vulnerabilities across state functions, with significant macroeconomic impact. The GDA also highlighted that corruption vulnerabilities were exacerbated by weak accountability institutions that have neither the authority nor competency to successfully fulfil their functions.

Considering the above, the current research was commissioned with the objective of obtaining an understanding of the nature and extent of allegations of corruption within the private sector, and the role that the private sector plays in perpetuating systemic corruption within Sri Lanka. The findings of this research are structured in two parts. The first part of the report documents alleged experiences and examples of corruption within the private sector. It discusses the nature and extent of corruption within the private sector based on anecdotal evidence. The second part of the report analyses the risk factors that lead to private sector corruption, the effects of corruption and mitigatory steps that private sector entities may adopt to address it. Finally, the report sets out recommendations for addressing corruption within the private sector.

## 1.2. Research Framework and Methodology

This situational analysis and risk mapping is expected to provide the basis for the development of interventions to address corruption in the private sector in Sri Lanka. The research framework attempted to comprehensively analyse the extent of corruption existent in the private sector and the risk factors which lead to corruption in the private sector. The assessment sought to cover a wide cross section of private sector stakeholders including micro and small-scale enterprises, limited companies, public limited companies, and private limited companies. To ensure a comprehensive analysis, a combination of both primary and secondary qualitative research methods was deployed in conducting the situational analysis and risk mapping study. Interview guidelines were developed and translated to local languages prior to conducting the Key Informant Interviews (KIIs) and Focus Group Discussions (FGDs). Drawing information through a range of tools serves the purposes of triangulation of sources and comparison of information which will aid in precise identification of issues.

The research employed a comprehensive **desk review** which entailed analysing research studies, scholarly articles, existing laws and policies, and other publicly available documents to gather information about business operations and practices, organizational models, interactions with government, use of third parties, and existing policies and procedures of companies within the private sector. The desk review also assisted in identifying the extent of private sector corruption and challenges inherent in combatting private sector corruption; and approaches and opportunities available to improve interventions to mitigate the risks of private sector corruption.

1. Gutmann, J., & Lucas, V. (2017). Private-Sector Corruption: Measurement and Cultural Origins.

2. International Monetary Fund. (2023). Sri Lanka: Technical Assistance Report-Governance Diagnostic Assessment.

<https://www.imf.org/en/Publications/CR/Issues/2023/09/29/Sri-Lanka-Technical-Assistance-Report-Governance-Diagnostic-Assessment-539804>

In addition, **Key Informant Interviews (KIIs)** were also employed as a primary research instrument to supplement and verify the information gathered through the desk review. A total of **29 KIIs** were conducted with key stakeholders with knowledge of company operations such as company executives, members of chambers of commerce, experts in forensic auditing, independent commissions, and other public authorities and institutions. KIIs were conducted with both the supply side and demand side of private sector corruption. Furthermore, in selecting stakeholders for KIIs particular attention was paid to approach stakeholders who are representative of their sector. This was undertaken with the objective of ensuring that the research captures as wide a scope of the private sector as possible.

Further, **03 Focus Group Discussions (FGDs)** were conducted with representatives of companies, and chambers of commerce representing a cross section of private sector actors such as Micro, Small and Medium Enterprises (MSMEs), Small and Medium Enterprises (SMEs), listed companies, and conglomerates. The FGDs also ensured representation across districts, and various industries of the private sector such as the construction industry, finance and micro-finance industries, banking sector, pharmaceuticals sector, and apparel sector etc. These FGDs also shed light on the challenges in implementing anti-corruption programmes at various levels of the private sector and across the country and opportunities for change and improvement.

Further, **one validation meeting** was conducted where the findings of the research were presented to stakeholders. Their opinions and feedback were obtained on the findings, and the report was amended based on the feedback received.

### 1.3. Ethical considerations

A 'do no harm' approach was used in gathering information through KIIs and FGDs. In this regard, special consideration was given to ensure the voluntary participation of respondents; provide them sufficient and adequate information for informed consent; respect participants' right to anonymity and provide information in confidence; ensuring that sensitive information cannot be traced to its source in order to protect relevant individuals from reprisals; and to store data safely from unauthorised access for a length of time only necessary for the purpose of the research.

### 1.4. Limitations

Firstly, this research is **limited in scope** as it was not feasible to assess all private sector entities in Sri Lanka. Therefore, it was not possible to gather information on all private sector actors, industries, and entities, and the research scope cannot cover the full spectrum of the private sector in depth. Therefore, information gathered cannot be extrapolated or assumed to be representative of the entire private sector. Rather, this research must be viewed as a documentation of alleged experiences of corruption experienced by the respondents. The researcher used a broad approach to corruption in the private sector. Furthermore, efforts were taken to approach bodies representative of their respective industries such as chambers of commerce, professional associations, and senior management of large companies with island wide reach. However, as the primary objective of the research is to bridge the gap in information pertaining to the state of bribery and corruption in the private sector of Sri Lanka, and to obtain a better understanding of corruption risks that corporates face, this research provides valuable anecdotal evidence of alleged corruption within the private sector. Therefore, this research should be considered as a preliminary scoping study, which provides a solid basis for the development of further in-depth research.

Secondly, the research suffers from the **non-availability of adequate literature** on the topic pertaining to Sri Lanka. While the desk review provided adequate literature to gain substantive insights into the conceptual aspects of private sector corruption, not enough information was disclosed on the private sector corruption landscape in Sri Lanka. Relatively few scholarly articles or institutional reports are available on private sector corruption, leading to greater reliance being placed on KIIs and FGDs.

Thirdly, due to the considerable reliance on KIIs and FGDs as primary qualitative research tools to supplement and complement the findings of the desk review, the research is vulnerable to **response bias** of the respondents and attendant knowledge gaps. This was particularly evident as some respondents failed to grasp the conceptualisation of private sector corruption, focussing

instead primarily on corruption that prevails within the government. However, KIIs and FGDs with a wide cross-section of organizations and persons served to mitigate response bias in allowing the researcher to tease out common themes in relation to the areas explored.

Finally, the researcher was met with a **degree of suspicion** when approaching stakeholders for KIIs and FGDs due to the sensitive nature of the research. Several organisations approached refused to grant meetings without obtaining prior board level approval, even when employees were talking in their personal capacity. Other organisations declined to engage with the researcher entirely. As such, the researcher was unable to engage with certain key stakeholders identified for the research at the outset. Furthermore, some stakeholders were concerned about sharing information that may identify themselves or their organisations for fear of attracting unwanted pressure or reprisals.

## 1.5. Understanding Corruption in the Private Sector

Historically, corruption as a concept has been recognised primarily in relation to the public sector. However, the world over, there has been a shift in the perception of corruption to acknowledge that corruption can also be found in all forms of private sector activities. Therefore, it is now acknowledged that companies are just as likely to pay bribes to other firms as they are to bribe public officials.<sup>3</sup> Whilst the concept of private sector corruption has come to the forefront, defining corruption in the private sector has proved to be no easy task.

The most widely accepted definition of corruption is “*the abuse of entrusted power for private gain*”<sup>4</sup>. As such, corruption occurs any time public officials or employees misuse the authority placed in them as public servants and/or employees for either monetary or non-monetary gain that accrues to them, their friends, their relatives or their personal or political interests.<sup>5</sup> There have been several other definitions of private sector corruption with no one settled definition emerging.<sup>6</sup> However, one key feature of private sector corruption is that it recognises and accepts the concept of private-to-private corruption.<sup>7</sup> In such instances transaction transpires wholly within the private sector to the exclusion of the public sector.

Private sector corruption can be both coercive and collusive. Coercive forms of corruption for example occur when bribes are required to gain access to services, and collusive corruption occurs when corrupt activities unjustly benefit interested parties.<sup>8</sup> Collusive corruption may even include state capture, where economic elites effectively dictate policies to suit their private interests, or state predation.<sup>9</sup>

Therefore, where public sector corruption primarily abuses government resources private sector corruption primarily abuses private or commercial resources. Where public officials are entrusted with power to serve the public interest, private sector corruption acknowledges that employees in the private sector are entrusted with power to serve legitimate company interests. In both contexts, corruption occurs when individuals or organizations promote interests that differ from the interests they were entrusted to serve.<sup>10</sup> Common examples of private sector corruption within business organizations include, among others, commercial bribery, kickbacks, corporate fraud, collusion, and insider trading.<sup>11</sup>

3.. Gutmann, J., & Lucas, V. (2017). Private-Sector Corruption: Measurement and Cultural Origins.

4.. Transparency International. (n.d.). What is corruption? Retrieved April 25, 2024, from <https://www.transparency.org/en/what-is-corruption>

5.. Spector, B., Johnston, M., & Winbourne, S. (2009). *Anticorruption Assessment Handbook*. US Agency for International Development.

6.. For more definitions on private sector corruption please refer: Klitgaard, R. (1988). *Controlling Corruption*. University of California Press. <http://www.jstor.org/stable/10.1525/j.ctt1pnj3b>; Neild, R. R. (2002). *Public corruption: The dark side of social evolution*. Anthem Press; Senior, I. (2004). *Corruption, The Government and The Private sector: Why It Matters and What Can Be Done*. Economic Affairs, 24(2), 22-29; The United Nations Declaration against Corruption and Bribery in International Commercial Transactions Article 3; The Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders;

7.. For definitions of private-to-private corruption see Argandoña, A. (2003). Private-to-private corruption. *Journal of Business Ethics*, 47, 253-267; Garner, B. A. editor in chief. (2014). *Black's Law Dictionary*. St. Paul MN: Thomson Reuters.

8.. Heywood, P. M. (2017). Rethinking corruption: Hocus-pocus, locus and focus. *The Slavonic and East European Review*, 95(1). <https://doi.org/10.5699/slaveasteurorev2.95.1.0021>

9.. Spector, B., Johnston, M., & Winbourne, S. (2009). *Anticorruption Assessment Handbook*. US Agency for International Development.

10.. United Nations Office on Drugs and Crime. (n.d.) *University Module Series on Anti-Corruption, Module 5 - Private Sector Corruption*.

11.. Sartor, M. A., & Beamish, P. W. (2020). Private Sector Corruption, Public Sector Corruption and the Organizational Structure of Foreign Subsidiaries. *Journal of Business Ethics*, 167, 725-744. <https://doi.org/10.1007/s10551-019-04148-1>

### 1.5.1. Defining Private Sector Corruption for the Present Research

The Anti-Corruption Act No. 09 of 2023 defines bribery as “the offer, solicitation or acceptance of any gratification in contravention of any provision of the Act”.<sup>12</sup> However, it offers no definition of private sector corruption. Accordingly, no local definition of private sector corruption could be found. As such, the present research defined corruption as “*Behaviour which deviates from the **normal** duties of a person and/or accepted norms of a job role in order to enrich themselves or the organisation, leading to an uncertain business environment.*” This may include the unethical manipulation of power and resources, collusion with public officials or other parties, and abuse of entrusted power. It could also be motivated by private-gain, financial, status or other gains (both personal and organisational).

A broad definition was adopted, as the research was undertaken with the objective of determining the nature and extent of corruption in the private sector. A broad definition was essential to identify certain practices within a private sector entity as legal, but corrupt, or indeed to identify as corrupt, the very fact that they are legal.<sup>13</sup> Therefore, the definition does not focus directly on corruption alone but also focusses on specific practices within an entity that compromise that entity’s capacity to perform its function in an impartial and accountable manner. These practices might be direct examples of corruption, for example, bribery or trading in influence. They might also however, include other practices such as unfair or unequal treatment, failure to follow specific requirements of law, or other legal norms/procedures etc.<sup>14</sup> As such, the adoption of a broad definition, enabled the researcher to also identify vulnerabilities within organisations that create opportunities for corruption. This could include not only corrupt incentives, but day to day business practices such as budgetary pressures as well.

## 1.6. Findings

The findings of the research are presented in two parts. The first part of the research describes and narrates alleged experiences of corruption faced by members of the private sector. It also explores the private sector’s perceptions on corruption both in terms of private-to-private corruption and private-to-public corruption. The second part of the findings analyses the risk factors within the private sector that create vulnerabilities to corruption. In addition to exploring the corruption risk factors it also looks at mitigatory measures that the private sector has taken to address these risks.

### PART I – Experiences and Examples of Corruption in the Private Sector

**This section has been arranged into two sub-sections as follows:**

- Alleged Experiences and Examples of corruption within the private sector.
- Perceptions on private sector corruption.

### PART II – Corruption Risks in the Private Sector

**This section has been arranged into three subsections as follows:**

- Risk factors that lead to corruption within the private sector.
- Mitigatory measures that companies have taken to address corruption within the private sector.
- Effects of private sector corruption in Sri Lanka.

12. Section 162(2)

13. Hoppe, T. (2014). Regional Study: “Risk assessment: Typologies of underlying causes of corruption”. Council of Europe.

14. Ibid.







# PART I

## 2. ALLEGED EXPERIENCES AND EXAMPLES OF CORRUPTION IN THE PRIVATE SECTOR

Research has indicated that corruption is a pervasive problem in Sri Lanka. Sri Lanka was ranked 115<sup>th</sup> out of 180 countries, according to the 2023 Corruption Perceptions Index (CPI) reported by Transparency International.<sup>15</sup> Sri Lanka received its lowest ever score of 34 in the year 2023. Similarly, according to GAN Integrity, there is a moderately high risk of corruption for businesses in Sri Lanka.<sup>16</sup> This is particularly so, where private sector activities intersect with the public sector. GAN Integrity recognises customs administration and public procurement as having a very high risk of corruption. In line with the above research, Respondents in general believed the prevalence of corruption in the private sector was fairly high. It was alleged that most businesses would have offered bribes in their day-to-day operations at some point in time.

### 2.1. Private-to-Public Corruption

Most respondents recognised that there was a higher likelihood for corruption to occur when the private sector intersected with the public sector. The general perception was that gratifications of varying kinds had to be offered to obtain public services in a timely manner. Refusing to engage in such activities when dealing with the public sector could lead to significant delays in project implementation causing financial losses to the company. In this light, several respondents alleged Sri Lanka Customs (SLC), the Inland Revenue Department (IRD), and the Excise Department of Sri Lanka as some of the most corrupt public sector institutions that private companies must engage with.

#### 2.1.1. Sri Lanka Customs and Sri Lanka Ports Authority

Companies functioning in the import and export sector are at a substantial risk of engaging in corruption as they deal closely with Sri Lanka Customs (SLC) and Sri Lanka Ports Authority (SLPA), where it was alleged that most exporters and importers would have offered a bribe or engaged in some form of corruption when dealing with the above-mentioned public sector institutions. Bribes of this nature may be as large as LKR 125 million solicited by senior officers.<sup>17</sup> Some Respondents alleged that it was difficult to ascertain the true extent and impact of corruption within the SLC as complaints of corruption are rarely raised. However, they alleged it to be common; occurring on a daily basis.<sup>18</sup>

The impact of alleged corruption in SLC is unclear. It could distort revenue collection to the extent that it cannot be accurately calculated. It can also undermine the implementation of prohibitions and restrictions in place to prevent substandard and illegal goods from entering the country, smuggling, and imports that may harm national fauna, flora, and heritage.

#### **Forms of Corruption Within the SLC and SLPA**

Most Respondents alleged the demand of money in exchange for the provision of a service as the most common form of corruption within the SLC. Advantages gained could include jumping the queue, the waiving or reducing of duty liability or the circumvention of legal requirements. Waivers or reductions in duty liability are achieved through the manipulation of the Harmonised System (HS)<sup>19</sup> codes. It was alleged that it was common for a customs officer to demand a bribe to alter the HS code.<sup>20</sup>

15. The CPI ranks 180 countries and territories around the globe by their perceived levels of public sector corruption, scoring on a scale of 0 (highly corrupt) to 100 (very clean). Transparency International. (2023). Corruption Perceptions Index. <https://www.transparency.org/en/cpi/2023>

16. GAN Integrity. (2019). Country Profile: Sri Lanka. <https://www.ganintegrity.com/country-profiles/sri-lanka/>

17. Echelon. (2016). Sri Lanka Customs: Judge & Jury. <https://www.echelon.lk/sri-lanka-customs-judge-jury/>

18. Respondents Q, F, C, E, G, L, V and X

19. The Harmonized Commodity Description and Coding System generally referred to as "Harmonized System" or simply "HS" is a multipurpose international product nomenclature developed by the World Customs Organization (WCO). - <https://www.wcoomd.org/en/topics/nomenclature/overview/what-is-the-harmonized-system.aspx>

20. Respondents F and G

**“Another tactic used is through the manipulation of the HS codes. For example, if the duty payable on an import is LKR 1 million, a customs officer will offer to change the HS code so that the duty payable will reduce to LKR 250,000 in exchange for a bribe of LKR 500,000. This in effect, saves the company LKR 250,000 and is therefore a strong motivator for them to engage in corruption.”<sup>21</sup>**

On the other hand, other Respondents alleged that companies engage in corrupt behaviour, particularly through mis-invoicing.<sup>22</sup>

**“Companies either undervalue, understate or misdescribe their imports to avoid paying duty. In more extreme cases, companies also import goods without declaring it at all or they declare a reduced quantity of goods to evade the payment of duty.”<sup>23</sup>**

Companies resort to mis invoicing as HS codes are allocated based on the description of the goods. Therefore, companies deliberately misdescribe the goods to attract an HS code with a lower duty rate, or to avoid an HS code that is subject to restrictions such as additional licenses and permits. In this regard, it was alleged by one Respondent that approximately 50% of the consignments that were referred for valuation, had been undervalued by importers.<sup>24</sup>

Exporters and Importers also alleged that the SLC did not maintain clear lines of communication with the private sector.

**“Last year (2023), the government introduced new policies for exporters. When new policies are introduced, these are not clearly communicated to the private sector, resulting in exporters and importers approaching authorities without the documentation required by the new policies. In such instances, exporters and importers are likely to offer a bribe for authorities to turn a blind eye to the missing documentation and provide clearance regardless of the shortcoming.”<sup>25</sup>**

Some respondents also alleged that the port and airport authorities use delay tactics in processing documents or in supply chain management to extort exporters and importers, to solicit bribes. Alleged delay tactics employed by the SLC and the SLPA make the nature of bribery coercive, as exporters and importers are bound by deadlines set by the shipping line to either on-board or off-board the goods.<sup>26</sup> For this reason, exporters and importers are sometimes forced to resort to bribery and corruption, wherein they reclassify such payments as incentives.

On the other hand, there are exporters and importers who resort to bribery and corruption to take advantage of a “short cut.”<sup>27</sup> This may take the form of bribes offered to receive clearance for sub-par quality goods.

Other allegations of tactics used by the SLPA include the abuse of regulations imposed by shipping lines.

21. Respondent G

22. Trade mis invoicing is a form of customs and/or tax fraud involving exporters and importers deliberately misreporting the value, quantity, or nature of goods or services in a commercial transaction - <https://www.cgdev.org/sites/default/files/illlicit-financial-flows-trade-misinvoicing-and-multinational-tax-avoidance.pdf>

23. Respondent Q

24. Respondent Q

25. Respondent E

26. Respondents G and E

27. Respondent E



*Some shipping lines have regulations that do not allow certain items aboard their ships. In such instances the SLPA may also not allow companies to remove such items from the port. In such instances exporters and importers are forced to provide an incentive to remove such items from the port.<sup>28</sup>*



Respondents also alleged that even large companies and Multi-National Corporations (MNC)s have engaged in corruption by way of misdescribing and undervaluing their goods. Therefore, whilst the likelihood of large companies engaging in corruption is less, it cannot be completely negated, as they too strive to evade the payment of duties or circumvent regulations. There is, however, a greater likelihood for smaller importers to engage in the non-payment or evasion of duty and the circumvention of restrictions.<sup>29</sup>



*Large importers are now importing their goods through smaller importers so that their operations remain clean. In essence, the larger companies have now begun to outsource their corruption.<sup>30</sup>*



### **Causes of Corruption Within the SLC and SLPA**

Respondents offered several reasons for the elevated level of corruption within the SLC. It was alleged that one of the main reasons for the high incidents of corruption within the SLC is the archaic Customs Ordinance No. 17 of 1869.



*The Customs Ordinance allows for Customs Officers to detain shipments even after the Director General orders its release.<sup>31</sup> Furthermore, officers are entitled to a third of the penalties they impose.<sup>32</sup> As a result of the incentive of personal financial gain to the customs officer, it is unlikely that they carry out just, impartial and fair inquiries. This is further exacerbated by a cumbersome appeals process, which may result in cargo being held by the SLC for a prolonged period.<sup>33</sup>*



As detained cargo could bankrupt an importer, they will often resort to a bribe to settle the matter.<sup>34</sup>

Other respondents alleged that the law was sufficient but suffered from weak implementation. It was alleged that the law does not provide for corruption, rather it is the implementing party behind the law that leads to corruption.<sup>35</sup>

Corruption within the SLC was also attributed to the attitude of customs officers.

28. Respondent L

29. Respondent Q

30. Respondent G and Q

31. Section 52, section 125 and section 163

32. Section 127 of the Customs Ordinance also vests customs officers with the power to arrest any individual who is 'under suspicion of commission of an offence' and impose a penalty up to three times the value of the duties and levies not paid or evaded. The officers determine the penalty based on the duties and levies that should have been paid, of which the officer is automatically entitled to claim a third, as a reward.

33. Respondent G

34. Echelon. (2016). Sri Lanka Customs: Judge & Jury. <https://www.echelon.lk/sri-lanka-customs-judge-jury/>

35. Respondent G and Q



*Customs officers' have a "you scratch my back, I'll scratch yours" attitude. This is further exacerbated as senior officers within the SLC have their hands tied, as they too have been guilty of engaging in corruption in the past, which is commonly known to their juniors. They are, therefore, unable to command their junior officers not to engage in corruption given their murky pasts.<sup>36</sup>*



Yet another reason that was alleged by Respondents for corruption in the SLC is that customs officers have become accustomed to a lifestyle financed by the gains of corruption. One respondent alleged that daily, a customs officer who handles import cargo takes home approximately LKR 200,000 of underhand money, whereas an honest officer will earn a salary of LKR 65,000 per month. As a result of the inadequacy of their wages, they are tempted to engage in corruption. The lavish lifestyle that corruption affords them incentivises them to continue to engage in corruption.

### **Mitigatory Measures**

To address corruption, the SLC has created an Internal Affairs Unit (IAU), which is vested with the power to handle complaints of corruption received from the general public.<sup>37</sup> The IAU was established with the objective of facilitating faster responses to complaints of corruption. The IAU has multiple channels to lodge complaints including dedicated emails, hotlines, complaint boxes and in person complaints to senior management. Respondents indicated that all complaints received will be referred to a committee of senior directors, who will assess the complaint and instruct officers to conduct a preliminary investigation. Officers of the IAU will be authorised to visit the site, take custody of records, and submit a preliminary report to the committee within 24 hours. Based on the preliminary report, the committee will decide whether to proceed with the investigation and report to the Director General what action should be taken. If an investigation were initiated against an officer on the grounds of bribery and corruption, such complaints would be referred to the Commission for the Investigation of Allegations of Bribery and Corruption (CIABOC) for action under the respective law.

Respondents also commended efforts by the SLC, revealing that the SLC has taken steps to set the tone at the top with the objective of changing customs officers' attitudes towards corruption. Some respondents were also optimistic that steps have been taken to introduce action plans, introduce merit based human resource management, and anti-corruption messaging by the senior management. The SLC also hopes to institute an enforceable code of ethics and conduct, along with an integrity development action plan, trainings for customs officers and for other stakeholders dealing with customs, i.e. customs house agents, exporters, and importers, which has significant potential to deter corruption.

The SLC sought to automate their operations with the introduction of the **Automated System for Customs Data** "ASYCUDA" system. This process introduced paperless document processing, electronic submission of manifests, an SMS alerting system to notify traders about the status of their Customs Declarations, a remittance management system, and the utilization of digital signatures. The SLC will also be launching another significant "ASYHUB" system under the Digitalizing Global Maritime trade, which is expected to facilitate risk-based pre-arrival processing of maritime cargo, speedier cargo clearance, and lower trade costs.<sup>38</sup> However, respondents alleged that despite the existence of digitised systems, customs officers still insisted upon the submission of physical documentation, presumably as a means of continuing corruption.<sup>39</sup>

It was also alleged that combatting corruption within the SLC is dependent on the person heading each directorate within SLC, which negates the sustainability of such interventions. Accordingly, some directorates have seen remarkable success in addressing corruption.

36. Respondent G

37. Lankanewsweb. Government Launches Internal Customs Unit to Combat Corruption. <https://lankanewsweb.net/archives/60419/government-launches-internal-customs-unit-to-combat-corruption/>; Sri Lanka Customs. Ceremonial Opening of the Internal Affairs Unit. <https://www.customs.gov.lk/ceremonial-opening-of-the-internal-affairs-unit/#:~:text=Internal%20Affairs%20Unit%20is%20dedicated,and%20complaints%20through%20flowing%20channels>.

38. Sri Lanka Customs. (2024). Sri Lanka Customs Strategic Plan 2024-2028. [https://www.customs.gov.lk/wp-content/uploads/2024/02/SP\\_ENGLISH\\_VERSION\\_compressed.pdf](https://www.customs.gov.lk/wp-content/uploads/2024/02/SP_ENGLISH_VERSION_compressed.pdf)

39. Respondents G, E and L

*One director took steps to engage with customs house agents and customs officers and express that corruption will not be tolerated. He also introduced a digitised system to allocate appointments, so that customs agents can no longer request for their favoured customs officer. Similarly, a fast-track system for compliant traders was also introduced by this director. He also introduced processes to ensure that customs declarations provide detailed information of the goods, which enables for more accurate value assessments which reduces the scope for corruption.<sup>40</sup>*

Whilst applauding these progressive steps, it is concerning that the adoption of anti-corruption measures is dependent on the personality at the top. As such, efforts must be made to institutionalise such processes so that customs operations are process driven regardless of who holds office.

### 2.1.2. Inland Revenue Department

The Inland Revenue Department (IRD) was alleged by many Respondents as being a corrupt public sector institution to engage with.<sup>41</sup> Corruption was alleged as likely to occur firstly, when companies deal with the IRD, and secondly, when companies try to evade taxation.

It was alleged that common tactics used by the IRD to solicit bribes include delay tactics and the intentional misplacement of files.

*Tactics used by IRD officials to solicit bribes include the misplacement of company tax files or the delay of credit vouchers which are required to clear imports, with the expectation of a bribe. Companies also offer IRD commissioner's valuable gifts and hampers to facilitate Value Added Tax (VAT) refunds.<sup>42</sup>*

It was also alleged that IRD Officers abuse the provisions on the Tax Appeals Commission Act No. 23 of 2011 to solicit bribes. As per the Act, when the IRD issues a tax assessment, a company is granted the right to appeal to the Tax Appeals Commission, and thereafter to the Court of Appeal, if they are dissatisfied with the assessment provided that companies deposit with the government 25% of the assessment value in order to proceed with the appeal.<sup>43</sup>

*IRD officers who are aware of this provision, falsify assessments to reflect exorbitant tax amounts irrespective of the legality of such action. As companies are aware that they will have to tie up a considerable sum of money for an extended period (5-6 years) if they appeal against the assessment, they opt to bargain with the IRD officers to change the assessment, rather than follow the formalised appeals process.<sup>44</sup>*

It was also alleged that the increase in tax rates has motivated companies to engage in corruption.

*When tax rates increase exponentially, there is a tendency for companies to go into the unrecorded or black economy. This form of corruption has increased in the past two years.<sup>45</sup>*

40. Respondent Q

41. Respondents C, G, I, Q and CC

42. Respondent G

43. Section 7(1)

44. Respondent C

45. Respondent C

Companies that do pay their taxes incur a heavy cost, therefore, avoiding taxation with the intention of bribing the IRD at a later date, is seen as a saving for the company. Companies that take this approach are also compelled to offer favours to their auditors to cover up the tax evasion. On the other hand, new entrants to the market are opting to remain out of the tax system altogether and simply do not register the company with the IRD.

It was also alleged that a tactic used by importers and exporters, is to abuse the temporary VAT mechanism.

*I have observed that importers and exporters register for temporary VAT which is applicable for those who have not yet obtained permanent VAT registration. As temporary VAT liability does not run beyond one year; importers have resorted to running their companies for 11 months and then closing the company and resuming operations under a new company with another temporary VAT registration to avoid tax liability.<sup>46</sup>*

Respondents were also concerned about steps being taken to remove the suspended VAT system.

*Suspended/simplified VAT enables companies with a VAT obligation of 36% with a refund of 18% to simply pay 18% VAT directly. Prior to the existing system, we had to first pay the VAT return of 36% and then apply for a tax refund of 18%. The current system simplified this process and enabled us to simply pay 18% only. The IMF has recommended that this system be removed. Reverting to the previous system would lead to an increase in the risk of corruption, particularly at the point of applying for the tax refund. Based on our past experience, we would have to place officers in the IRD permanently to facilitate the refund process. Obtaining tax refunds also takes a long time, which essentially ties up company money for a prolonged period. This acts as a disincentive for companies to pay taxes.<sup>47</sup>*

It was alleged that reverting to the previous system increases human interactions and cash transactions thereby creating a risk for corruption. The decision to remove the existing simplified VAT system has been suspended until March of 2025. Respondents are, therefore, hopeful that a more sustainable decision may be reached before then.

### **Causes of Corruption Within the IRD**

An untransparent and complex tax system that grants wide-ranging tax concessions to selected taxpayers while imposing a high tax burden on others, and frequent tax design changes has eroded taxpayer trust. As a result of which several respondents alleged that most companies would be willing to pay their taxes, provided they have a guarantee that the money would be put to beneficial use and an equal playing field could be assured. Long-lasting tax concessions remain and the process of identifying such projects still lacks transparency and a rules-based approach<sup>48</sup>. Similarly, the Special Commodity Levy, an industrial policy tool, continues to provide uncommon levels of ministerial discretion, jeopardizing revenue collections and introducing governance vulnerabilities.<sup>49</sup>

The IRD also lacks the means of detecting and sanctioning officials for improper behaviour and limited progress has been made in digitalizing processes for tax administration, reducing the ability to identify integrity issues through data analytics.<sup>50</sup>

46. Respondent Q

47. Respondent CC

48. Respondent P

49. Aydin, O., Beer, S., & Negus, C. (2023). Rebuilding Trust - Toward Good Fiscal Governance in Sri Lanka. *IMF PFM Blog*. <https://blog-pfm.imf.org/en/pfmblog/2023/12/18/rebuilding-trust-toward-good-fiscal-governance-in-sri-lanka>

50. Ibid.

## Mitigatory Measures

Some respondents noted that steps have been taken to address the risk of corruption. As such, the IRD has taken steps to digitise their operations with the objective of minimising interactions between taxpayers and IRD officials, to reduce discretionary opportunities and corruption vulnerabilities. Therefore, steps are being taken to maximise the use of e-services with the IRD including e-registration, e-filing, e-payment, and e-correspondence. Furthermore, a risk management unit has been established to look into minimising the interaction between IRD officers and taxpayers.<sup>51</sup>

The IRD issued the Prevention of Corruption guidelines which stated that a special committee would be appointed to investigate allegations of corruption made against IRD employees. Where more than 50% of the members of the committee are satisfied that there was substantial truth in the allegation, such a case will be referred to CIABOC for further action. Similarly, the IRD has taken steps to introduce an enforceable code of ethics and issued internal guidelines to officers regarding corruption. This has been further strengthened by CIABOC conducting anti-corruption trainings for 1000 IRD officials.<sup>52</sup>

Whilst noting the steps taken by the IRD to reduce the risk of corruption, some respondents questioned the practicality and efficacy of such measures.



*Although the introduction of an online portal to report tax evasion is salutary, the general public may be reluctant to submit information over the web-portal for fear of the information being traced and leaked.<sup>53</sup>*



It has also been highlighted that the IRD is hamstrung in its efforts by the lack of skills and expertise needed to implement policy reform. The IRD has been unable to recruit specialist information technology staff and data analysts needed to move away from the corruption-prone embedded work practices.<sup>54</sup> Therefore, whilst mitigatory steps are being taken to address corruption within the IRD, the practical implementation of these measures was seriously questioned.

### 2.1.3. Excise Department

Respondents alleged that the Excise Department was yet another state authority that was challenging to engage with.<sup>55</sup> These allegations were expressed particularly by respondents from the hospitality industry.



*Sometimes Excise officers will visit our restaurants and bars and order the most expensive food and drink. If we refuse to serve them it could lead to reprisals where they could harass us. Sometimes they find fault in our bookkeeping and in extreme cases operations may be stopped.<sup>56</sup>*



In light of the above, Respondents alleged that it was likely that most clubs and restaurants provide excise officers with these services to survive.



*Sometimes the excise officers visit establishments late in the night whilst intoxicated and request for liquor. When dealing with alcohol manufacturers, they purposefully contaminate their production as a means of harassing and/or pressuring the manufacturer to make a bribe.<sup>57</sup>*



51. Ranasinghe, I. (2024, 17 March). Killing corruption at IRD and Customs. The Morning. <https://www.themorning.lk/articles/DFa22axQtM3rLS57dtKJ>

52. Ibid.

53. Respondent C

54. IMF. (2023). Sri Lanka: Technical Assistance Report-Governance Diagnostic Assessment. Country Report No. 2023/340 <https://www.imf.org/en/Publications/CR/Issues/2023/09/29/Sri-Lanka-Technical-Assistance-Report-Governance-Diagnostic-Assessment-539804>

55. Respondents G, K, X, and AA

56. Respondent G

57. Respondent G



It was also alleged that obtaining annual liquor license renewals is yet another challenge that private companies face when dealing with the excise department.

*The documentation to renew a liquor license is the same each year, however, there is a tendency for excise officers to ask for new documents every year. However, if we ask them to show us which regulation calls for such documentation, they are unable to do so. Excise officers then use the absence of the new documents to solicit bribes, stating that they will renew the license regardless of the absence of the requested documentation.<sup>58</sup>*

It was also alleged that bribes were not only offered to excise department officers, but also to local authorities to obtain the requisite documentation required by the Excise Department.

*The regulations state that a liquor license cannot be obtained by an establishment if there is a school or temple within a stipulated distance from the establishment. I have heard of instances, where companies have bribed officers of the Surveyor General's department to obtain falsified survey plans which they then submit to the Excise department to obtain the liquor license. They may also offer gifts and donations to temples in the vicinity, the Grama Niladari and the local authorities in exchange for them saying that they have no objection to the company obtaining a liquor license.<sup>59</sup>*

It was also alleged that dealers and distributors also engage in several forms of corruption. It was alleged that a widespread practice is to sell liquor at a price that is above the maximum retail price.

*Some distributors dilute the liquor prior to sale. They also tend to operate in violation of their licensing conditions such as the prohibition on leasing distributorships. Companies that lease the license out, state that they have hired the lessee to manage the dealership and set up multiple bank accounts through which the money passes to the lessee's account, to avoid detection. Some distributors also manipulate their accounts book and enter lower sales figures. It may be reasonably assumed that an underhand payment is made to ensure that authorities turn a blind eye to such violations.<sup>60</sup>*

It was alleged that Manufacturers also try to avoid taxation. The Excise department has introduced a sticker system, where every bottle must have a sticker which can be scanned for verification. This allows the excise department to trace the bottles production date, the company that produced it, and if it has been taxed.<sup>61</sup> However, there are instances where manufacturers have used forged stickers to avoid taxation.<sup>62</sup>

Informal dealers, manufactures, distributors and restaurants are outside the scope of Excise department regulations.

*Establishments that operate without a license are not subject to the regulatory regime of the Excise department. They do not pay license fees and taxes. To continue in operations or to remain undetected, they must bribe the local authorities and the excise department. Some of these unregistered dealers, restaurants, and bars pay excise officials a monthly fee for them to turn a blind eye.<sup>63</sup>*

58. Respondent G

59. Respondent R

60. Respondent R

61. Excise Department. Security Features and Security Features Management System Project. [https://www.excise.gov.lk/index.php?option=com\\_content&view=article&id=129&Itemid=226&lang=en](https://www.excise.gov.lk/index.php?option=com_content&view=article&id=129&Itemid=226&lang=en)

62. Daily Mirror. *Distillers Cheat Government on Taxes Using Counterfeit Stickers*. <https://www.dailymirror.lk/print/news-features/Distillers-cheat-Govt-on-taxes-using-counterfeit-stickers/131-291550>

63. Respondent DD

Respondents also indicated that the Excise Ordinance No. 12 of 1912 was drafted with large companies in mind, and therefore, does not impose practical standards that smaller businesses can meet. Therefore, they are compelled to continue their operations unlicensed.<sup>64</sup>

One Respondent alleged that even if unregistered manufacturers/distributors were detected, the fine imposed by courts for operating without a license is considerably lower than the fines imposed by the Excise department for violations of the regulations. Therefore, some operators, particularly those operating out of Colombo are incentivised to continue as unlicensed establishments.<sup>65</sup>

### **Mitigatory Measures**

The imposition of high fines has had a positive impact on curbing corruption amongst dealers and distributors. Fines can be as high as LKR 500,000 resulting in significant reduction of underhand practices such as selling open bottles and overpriced liquor. The introduction of the sticker system which ensures traceability of the product has also contributed towards the reduction of tax evasion and other underhand practices. Furthermore, strong enforcement upon detection of violations, where manufacturers, distributors and dealers are compelled to pay the evaded taxes with surcharges, on top of which they are fined, on top of which the products are also forfeited, has led to greater compliance. Therefore, the imposition of high fines disincentivises companies from engaging in corruption as the gains of corruption are nullified by the high fines that they must pay.

One Respondent also highlighted several salutary steps taken by the Excise department.

*The Excise department takes strong disciplinary action against officers who are found to be guilty of corruption and refers such cases to CIABOC. Furthermore, all new entrants receive a training which touches upon the subject of bribery and corruption.*<sup>66</sup>

It was opined that the above initiatives may act as a deterrent to Excise officers engaging in bribery and corruption, as they are cognisant that it may negatively affect their prospects of promotion and job security.

### **2.1.4. Other Government Departments/Authorities**

Respondents alleged several other public sector institutions that pose a challenge to conducting clean business operations. Several respondents alleged that they faced challenges when approaching **local government authorities** for approvals and other regulatory matters. It was alleged that local authorities sometimes create double standards in enforcing regulations favouring some companies over others.

*Obtaining a simple approval for the size and placement of a name board could be a challenging endeavour particularly when a company is operating on an internal deadline. To meet such deadlines, the system pushes companies to gratify these authorities.*<sup>67</sup>

The general allegation of Respondents was that all public sector institutions with licensing authority pose a risk of corruption to the private sector as they use delay tactics which can frustrate business operations. Therefore, it is an accepted norm that if such services are to be expedited, that a payment must be made.

*The expectation of gratification can be as pervasive as the payment of LKR 500 per document submitted or the payment of a bribe to a peon to ensure that documents are placed on top of the list.*<sup>68</sup>

64. Respondent DD

65. Respondent R

66. Respondent R

67. Respondent AA

68. Respondent G

Respondents also alleged that government officials may pressurise companies to recruit their family members.

*I have come across instances where approvals were withheld until such time as the company agreed to provide someone in their family with a job or an internship. The moment this is agreed to, the required approvals are granted.<sup>69</sup>*

Respondents from the construction industry alleged that they faced challenges when approaching local government officials to obtain approvals for completed **construction projects**. They alleged that even if they had met all the criteria, when they applied for the Certificate of Conformity, officials would state that they had violated regulations. However, once a bribe is paid, all objections disappear, and the certificate is issued. As construction companies rely on debt financing for projects, they cannot afford to waste time in obtaining approvals, as they are time bound to sell the houses/apartments immediately, to repay their loans. Therefore, they are coerced in to paying bribes to obtain the necessary clearances.<sup>70</sup>

Respondents also alleged incidents of local authority officials acting in **conflict of interest**.

*Public officials use their private vehicles and assets to engage in business. They use their connections within the government and amongst the community, to undercut private sector businesses. Several tourism companies are struggling in our area as local authority officials hire out their private vehicles for tours. They use their connections with the hotels in the area to solicit tours and undercut the amount charged as they are confident of obtaining a steady stream of hires. The hotels are also reluctant to refuse them fearing that they will face some form of retaliation.<sup>71</sup>*

Respondents also alleged that **Public Health Inspectors (PHI)** are often corrupt. Respondents alleged that they often had to make grease payments for basic services such as garbage collection and waste disposal.

*The PHI often visits our restaurants and hotels with their family and expects a meal worth LKR 30,000 - 40,000 to be provided free of charge. Failure to provide them with this gratification will result in them unfairly penalising the establishment or imposing fines on false grounds.<sup>72</sup>*

It was alleged that obtaining approvals from the **health ministry** can be a challenge. Especially during the COVID-19 pandemic, it was alleged that some companies were expected to give the Ministry free face masks to obtain clearances and approvals. It was also alleged that Health Ministry officials also had an expectation of being given to eat and drink when they visited premises for inspections prior to granting approval.<sup>73</sup>

The **Sri Lanka Police** was also alleged by some respondents as posing a risk of corruption.

*The police sometimes visit our restaurants at night and call and ask for food and drink to be sent out to their vehicle. If we fail to do so, they harass our patrons, stopping every vehicle leaving the premises. However, if the police are obliged, they turn a blind eye even when our patrons violate traffic rules.<sup>74</sup>*

69. Respondent AA

70. Respondent EE

71. Respondents DD

72. Respondent K

73. Respondent G

74. Respondent G

Respondents alleged that some companies within the **finance sector** may obtain the support of the police or army to carry out their recovery operations which places undue pressure on the client. In addition to being unethical, this also involves some level of payment to the police.<sup>75</sup> Other respondents alleged that there is the potential for corruption to occur when companies must obtain security clearance from the police to set up new branches. It was alleged that there is usually an expectation of a payment to grant such clearances.

Other respondents alleged that dealing with **environmental authorities** can lead to bribery and corruption. Similarly, large corruption scandals within the **Central Environmental Authority (CEA)** have come to light.<sup>76</sup> It was also alleged that Companies themselves may offer facilitation payments<sup>77</sup> to expedite services.

*Officers of the CEA were wined and dined after they provide the company with the requisite approvals, licenses, and reports. Companies also offer such officers hampers and other gifts when an inspection is conducted to their satisfaction.<sup>78</sup>*

It was also alleged that officers of the CEA solicit bribes from companies. Recently it was alleged that bribes had been solicited by persons posing as officers of the CEA. It was also alleged that the CEA imposes timelines within which companies must submit project proposals to the CEA. Companies struggle to meet these timelines, and as a result, may resort to bribing the CEA or consultants hired to draft the project proposal and analytical reports. On a more encouraging note, however, it was also stated that the general public including companies, have begun to rely on the Right to Information Act No. 12 of 2016 to obtain technical reports from the CEA. It was opined that this could lead to a reduction in negligence in drafting reports and has ensured accurate record keeping. This also reduces the space for corruption to occur as officers will be more careful about their reports.

Some respondents also alleged that the classification department of the **Sri Lanka Tourist Development Authority (SLTDA)** obtains bribes and favours from private sector actors to change the classification of their property.<sup>79</sup> It was also alleged that there is also the likelihood of such staff being entertained as a part of the hotels public relations efforts to build relationships. Respondents also mentioned undue delays in service provision.<sup>80</sup>

Companies functioning under the **Board of Investment (BOI)** are also alleged a likelihood to experience corruption when interacting with the BOI. Most recently, the BOI approved the development of a USD 442 million wind power project by India's Adani Green Energy, amongst much controversy.<sup>81</sup> Respondents in this research, alleged how pervasive corruption is, having trickled down even into day-to-day business operations of the BOI.

*When BOI officers visit company premises to verify a company's permits, they usually expect a handout of LKR 200-1000 or the expectation of being entertained once a quarter to maintain good relationships. Failure to engage in such activities may result in inordinate delays, additional demands, and rejection of approvals.<sup>82</sup>*

75. Respondent AA

76. The CEA Chairman and two others were arrested by CIABOC for having solicited a bribe of Rs. 10 million. See The Sunday Times. (2023, 12 November). Alleged 10m bribe: CEA head remanded till tomorrow. <https://www.sundaytimes.lk/231112/news/alleged-10m-bribe-cea-head-remanded-till-tomorrow-538377.html>; CIABOC. (2023). Chairman of the Central Environmental Authority who solicited a bribe of Rs. 10 million and accepted it through two accomplices was arrested with the two accomplices. Retrieved 25 April 2024, from <https://www.ciaboc.gov.lk/investigation/detection-raids/1144-chairman-of-the-central-environmental-authority-who-solicited-a-bribe-of-rs-10-million-and-accepted-it-through-two-accomplices-was-arrested-with-the-two-accomplices>

77. A facilitation payment is a small bribe known as a 'grease payment' or a 'speed payment' typically solicited to facilitate or expedite the performance of a routine transaction or service to which the person or company making the payment is legally entitled to receive

78. Respondent S

79. Respondent K

80. See also Dias, S. (2019, 8 September). *John Claims Corruption Sweep at Tourism Agencies*. The Sunday Times. <https://www.sundaytimes.lk/190908/business-times/john-claims-corruption-sweep-at-tourism-agencies-366966.html>

81. The Diplomat. (2024). *Adanis Wind Power Project in Sri Lanka Hits Rough Weather*. <https://thediplomat.com/2024/06/adanis-wind-power-project-in-sri-lanka-hits-rough-weather/>

82. Respondent G

Respondents in the **finance and micro-finance sector** alleged that the industry is heavily regulated by the **Central Bank of Sri Lanka (CBSL)**. This requires approval from the CBSL for most activities. It was alleged that sometimes, there are officers in the CBSL who misuse their authority in expectation of some form of reward.



*CBSL officers may hold back approvals required for product launches, a new license, or for branch expansion etc. in expectation of gratification.*<sup>83</sup>



Other respondents alleged that there was a risk of corruption when engaging with the CBSL to bring money into Sri Lanka. Respondents alleged that when large sums of money are to be brought in, it requires the investor to have a political connection that they must then use to approach the CBSL. The investor is then expected to assure both the politician and the CBSL a cut of the amount brought in.

Respondents also alleged that corruption was likely to occur when interacting with public sector institutions such as the **Land Registry** and **Tea, Rubber and Coconut Plantation Fragmentation Control Board**. It was alleged that there was an expectation of a bribe at all levels of the land registry. Therefore, real estate agents, brokers and finance companies that provide mortgages alleged that there was a high likelihood of corruption when dealing with such public sector institutions.

Respondents from other districts also alleged that they had observed collusion between private sector companies and politicians to allocate land. It was alleged that, state land, may be allocated to large conglomerates based in Colombo, in rural districts based on political influence. There is a regulatory requirement that such lands should be developed, however, the larger companies that have obtained long-term leases on these lands, have not undertaken any development on the land for several years. It was alleged that they were able to continue to hold the land despite failing to develop it as the government authorities turned a blind eye.<sup>84</sup>

### 2.1.5. Public Procurement

It was alleged that Public procurement and the award of government contracts is a sphere of government activities that is particularly vulnerable to corruption, being at the meeting point of the public and private sector. Corruption in the awarding of government contracts manifests in different forms, including bribery, facilitation payments and collusion, conflicts of interest, bid-rigging, and trading in influence.

Although Sri Lanka has in place the public procurement guidelines of 2006, the absence of a procurement law creates ambiguity in the legal framework and has contributed to high levels of political engagement in the selection of procurement winners, poor contract management, limited transparency, and a lack of oversight of procurement processes and outcomes. Additional issues are generated by poor procurement planning, reliance on non-competitive means for contract awards, inadequate competition, and inconsistent attention to contract performance and the enforcement of contract terms. The lack of information on beneficial ownership<sup>85</sup> of companies increases the risk of conflict of interest in the awarding of contracts.<sup>86</sup> Therefore, responses received through the consultative process indicated that corruption within the government procurement process can be both coercive and collusive.

It was alleged that corruption at the point of procuring government contracts also occurs when Ministers utilise the budgets of their respective ministries for their own gain.



*Ministers incorporate companies, which then float tenders to supply the goods called for by the ministry, usually at an inflated price. This tactic is used to ensure that a sizeable portion of the ministry's budget underhandly goes to the Minister themselves.*<sup>87</sup>



83. Respondent AA

84. Respondent DD

85. A beneficial owner is a natural person or group of people who ultimately owns or controls a legal entity

86. IMF. (2023). Sri Lanka: Technical Assistance Report-Governance Diagnostic Assessment. *Country Report No. 2023/340* <https://www.imf.org/en/Publications/CR/Issues/2023/09/29/Sri-Lanka-Technical-Assistance-Report-Governance-Diagnostic-Assessment-539804>

87. Respondent O

Some respondents alleged that this risk arises due to the lack of ownership and leadership within public sector institutions. It was opined that the extent of corruption was less in the private sector when compared to the public sector, because owners have a stake in the company and would be concerned about the leakage of cash and funds from the company. Therefore, the level of monitoring and awareness is greater in a company. In the absence of such controls and ownership interest in the public sector, there is a greater tendency for public sector institutions to act contrary to the interests of the institution and the country. For the above reason, it was alleged that there is corruption when the private sector interacts with the public sector, particularly when they compete for contracts. Procurement of large-scale infrastructure projects and procurement of pharmaceuticals are emblematic of these shortcomings.

### **Procurement of Large-Scale Infrastructure Projects**

Respondents alleged that public procurement poses a challenge for industries which are dependent on government contracts. In this regard, respondents identified the **construction industry** as being particularly vulnerable to the risk of corruption, alleging a high probability of corruption occurring within the procurement process for large scale infrastructure projects.<sup>88</sup> In this regard, one Respondent alleged,

*In order to win a large project, there must be some form of facilitation payment made, regardless of how good the project is. Companies function with the assumption that large upfront payments are expected before the project even commences, sometimes even to win the project.*<sup>89</sup>

Whilst another Respondent alleged that,

*Such payments can be as much as 5%-15% of the entire contract value.*<sup>90</sup>

It was also alleged that corruption within the public sector results in projects being awarded to companies regardless of technical committee recommendation or the Economic Internal Rate of Return (EIRR) analysis for the project. Rather, the contract is awarded to the person lobbied for by external parties or to predetermined parties, even if the tender selected costs more.<sup>91</sup>

*Government procurement committees use obscure reasoning to disqualify viable tenders, often citing failure to comply with the Request for Proposals (RFP) for minute and insignificant oversights. In some instances, we observed that the RFP itself was not clear on a particular requirement, and this was used to disqualify the most suitable candidate in favour of the predetermined contractor. Another tactic that is used to approve projects which have not been passed by the technical committee is to reconvene, revise and restructure the committee with people who will vote in favour of the selected project. As a result of the above, I do not think that a single power project has been awarded on a clean tender, for the past 20-25 years.*<sup>92</sup>

It was also alleged that favouritism is a common form of corruption at the point of awarding tenders where it is given to a known person.

88. Respondent A, C, M, O and DD

89. Respondent L

90. Respondent M

91. Respondent M

92. Respondent m



*Corruption occurs throughout the tendering process. Firstly, it occurs at the time of framing the contract, where it is done in such a manner as to ensure that it goes to the preferred contractor. At the time of awarding, the procurement procedure is then manipulated to award the contract to the preferred party. This usually requires the passing of a monetary transaction from the preferred party to the deciding authority. Finally, once the project has been awarded and work has begun, bribes must be made to ensure that payments are released. This usually includes an agreement to pay the relevant Minister a certain sum of money upon the receipt of the outstanding payment.<sup>93</sup>*



It was also alleged that public authorities manipulate the law to eradicate viable tenders and thereby undermine market competition. For instance, prior to the enactment of the new Electricity Act, section 9(c) of the previous Electricity Act No. 20 of 2009 stated that a generation license may only be issued to companies which have a fifty percent shareholding belonging to the state. This in effect required foreign investors to enter a joint venture with a state-owned enterprise, to invest in power projects in Sri Lanka. One Respondent alleged that on a notable investment project, the state authorities requested for a golden share with management control. The investors did not want to concede management control, and the agreement was eventually not signed.<sup>94</sup> As such the law has often been manipulated to eradicate strong tenders or to garner an additional benefit for the public authority.

### **Procurement of Pharmaceuticals**

The pharmaceutical industry can be divided into two categories of pharma companies; first, companies that rely on government purchases and second, companies that operate in the private market. Respondents alleged there is a high incidence of corruption in the pharma industry when it comes to the former.<sup>95</sup> This is characterised by the prevalence of several state purchasing authorities. Earlier government purchasing was done by the State Pharmaceutical Corporation (SPC) which had a clear tender procedure and appeals committee. However, with the pandemic and economic crisis, other entities also began procurement such as the Medical Supply Department of the Ministry of Health. Similarly, funds received from the World Bank, Indian Credit Line and Asian Development Bank (ADB) were handled separately, which it was alleged opened several opportunities for companies to engage in corruption.

Another key factor that Respondents alleged as leading to corruption in the procurement process is the inefficiency of the government regulators the SPC and the National Medicine Regulatory Authority (NMRA).



*When companies approach the NMRA for certificate renewal, if the document should be issued in 6 months, it usually takes 8–9 months. Therefore, companies look for ways to avoid such delays and may resort to offering bribes. This creates the risk of corruption. This inefficiency also extends to how the different procuring agencies carry out procurement. Ideally, procurement should be based on a proper analysis of the quantity needed of a particular drug for an entire year, and a tender should be floated for the entire amount. However, the current practice is to float a tender for 80% of the requirement and then at the end of the year, float an emergency tender for the balance 20%. Emergency purchases allow companies to then take advantage of the urgency of the purchase and can lead to corruption.<sup>96</sup>*



Another key concern alleged in relation to public procurement of pharmaceuticals is the absence of testing to verify the quality of the drugs received.

93. Respondent M

94. Respondent M

95. Respondent C, J, O and P

96. Respondent J



*Tenders are selected solely on an analysis of the price. However, in choosing suppliers based on reduced prices realistically also means that the quality of the drug received is exceptionally low, as was evidenced by the recent immunoglobulin scandal<sup>97</sup>. Therefore, procurement should look at not only the price of the drug, but also the quality of the drug that is being imported. To give effect to this, post marketing surveillance should be introduced where drugs in the market are picked at random and tested.<sup>98</sup>*



Respondents also alleged that corruption also arises when public sector institutions interact with local manufacturers. The biggest advantage that manufacturers have is a buy back guarantee with the government. However, due to the economic downturn, the government is struggling to settle its bills with local manufacturers.



*When allocations are made by the treasury to settle outstanding bills, the payment is first made to manufacturers who are willing to offer a kickback or bribe.<sup>99</sup>*



It was also alleged that on the part of the companies, some suppliers obtain market authorisations to import medicines, but do not supply a single tablet. This is done either to block competition or to participate exclusively in government tenders.<sup>100</sup>

The NMRA has taken steps to digitise its operations with the objective of increasing transparency. This includes the digitisation of the submissions for registrations of medicinal products and the issuing of numerous licenses. In 2019 the NMRA also opened itself for a voluntary benchmarking audit by the World Health Organisation's (WHO) Regulatory Systems Strengthening Unit based in Switzerland. Media reports also stated that the NMRA is considering establishing a state-of-the-art Quality Assurance (QA) laboratory with guidance of the WHO and regional network of medicines regulators, however, this is yet to materialise.<sup>101</sup> Respondents also recommended that the NMRA should introduce regulations governing the marketing practices of the pharma industry, which would reduce the likelihood of pharma companies offering doctors benefits in order to persuade them to prescribe their drugs.<sup>102</sup>

## 2.2. Private-to-Private Corruption

Respondents had mixed views of the extent and nature of private-to-private corruption. Where some respondents were of the view that it is widely prevalent, others believed it occurred on a small scale. However, all respondents believed private-to-private corruption was less prevalent than public sector corruption. It was also observed that there was a tendency for the private sector to blame the government for corruption, whilst perpetuating it themselves. Some Respondents opined that companies that have limited interactions with the public sector are less likely to engage in corruption.

Intrinsic corruption that goes on within an organisation is hidden and difficult to detect. Respondents stated that corruption within the private sector often takes the form of asking for favours or kickbacks to award projects and that there is a substantial risk of corruption at the point of outsourcing services.

97. Daily Mirror. (2024, 18 April) *Import of Human Immunoglobulin, Medical Supplies Without Competitive Bids Challenged Before Court*. <https://www.dailymirror.lk/worldnews/breaking-news/import-of-human-immunoglobulin--medical-supplies-without-competitive-bids-challenged-before-court/108-280920>

98. Respondent J

99. Respondent J

100. Abayasingha, D. (2019, 24 October). *NMRA switches to digital to enhance transparency and efficiency*. DailyFT. <https://www.ft.lk/opinion/NMRA-switches-to-digital-to-enhance-transparency-and-efficiency/14-688200?fbclid=IwAR0WVVxmpHO0dyZFeA7I4WZmPcIGks6kZzs8m0BefJlIKMloUzR1lyVq-fk>

101. Abayasingha, D. (2019, 24 October). *NMRA switches to digital to enhance transparency and efficiency*. DailyFT. <https://www.ft.lk/opinion/NMRA-switches-to-digital-to-enhance-transparency-and-efficiency/14-688200?fbclid=IwAR0WVVxmpHO0dyZFeA7I4WZmPcIGks6kZzs8m0BefJlIKMloUzR1lyVq-fk>

102. Respondent J



### 2.2.1. Finance Sector

Industries which deal with high volumes of cash have demonstrated an increased vulnerability to the risk of fraud. As such the finance sector is particularly prone to the risk of fraud. There are strict regulations in place for the finance sector, yet they face a high risk of their employees engaging in fraudulent activities. As such, there is the risk that sales personnel may collect money from customers and then use it for their own gain.

*When customers settle the entire loan amount early, sometimes the loan officer who collects the money uses it for their personal gain and then replaces it later. They usually return the money to the company on a rolling basis, because of which the fraud may continue undetected for a period of time.<sup>103</sup>*

To carry out such frauds, employees often substitute their own details in place of the customers.

*Sometimes employees may collude with the customer and disburse large loans, with the agreement that the employee and the customer will split the loan amongst themselves. There are also instances where employees approve loans without following the proper approval criteria, just because they have some form of a relationship with the customer.<sup>104</sup>*

Respondents in the banking sector also alleged that they had observed a trend of entities using forged bank letters to submit bank guarantees when tendering for government contracts. In such instances the police refuse to act as there is no loss to the bank.<sup>105</sup>

Respondents also alleged that favouritism has become noticeable when approaching the banking sector for funding. This is particularly evident in relation to the allocation of development funds. In recent years, several international donor agencies have provided funds to develop the SME sector of Sri Lanka focussing on various industries such as agriculture and tourism. However, these donor agencies work through the government and the state treasury, through whom the funds are provided to private banks to disburse amongst their SME clientele.

*At the point of allocating funds, preferential treatment is given to the applications of companies that have a good relationship with the branch manager. This happens at the manager level, not necessarily the C-Suite level. Therefore, sometimes large well-established companies receive funds that are supposed to be given for the development of the SME sector. They can use their influence to negotiate cheap rates and beneficial payment plans.<sup>106</sup>*

### 2.2.2. Hospitality Sector

Respondents from the hospitality sector alleged that the expectation of kickbacks is high. Tour guides and tour agents collude with shops to negotiate a commission for themselves. Thereafter, they only take guests to the shops that pay them commissions.

*Some of the commissions can be as high as 30% - 40% of the price, where a guide may receive as much as LKR 100,000 on a single gem sale. As a result of this collusive kickback mechanism, tourists are charged exorbitant prices. For example, a spice garden was selling a small bottle of Siddhalepa which costs LKR 200, for LKR 3000.<sup>107</sup>*

103. Respondent AA

104. Respondent AA

105. Respondent BB

106. Respondent K

107. Respondent K

Another tactic used in the hospitality industry is to offer decision makers in hotels a favour to obtain a better rate. It was alleged that travel agents collude with hotels to negotiate a better rate for their company, with the agreement that they will kickback a part of the deduction to their counterpart in the hotel.

*Kickbacks on travel agent rates could be a few dollars, or travel for their family, or trips overseas etc. The hotel manager may agree to a reduction of USD 5 per room per day, with the understanding that the travel agent will give a part of that amount to the hotel manager. This is a practice that is evident overseas where a sales manager of a popular hotel could earn as much as USD 20,000 by way of commissions from foreign travel agents.<sup>108</sup>*

Respondents also alleged that there was space for corruption to occur in the procurement process. The hotel industry purchases in bulk daily. This sometimes leads to a practice of selecting suppliers based on those who are in the “good books” of the procurement or purchasing manager. The requirement of obtaining three quotations and selecting the quote with the best value for money, is circumvented by objecting to the quality of the product offered by the most suitable supplier. Therefore, on the grounds of quality assurance, the contract may be awarded to the purchasing manager’s preferred supplier.<sup>109</sup> There is also a practice of suppliers offering chefs and purchasing officers produce for their personal use free of charge, as a gratification for their continued patronage.<sup>110</sup>

Hospitality sector companies also face the risk of fraud perpetuated by employees. This usually occurs when employees collect cash from customers. For example, employees may manipulate the quantity reflected on the bill and then pocket the discrepancy. Alternately, they may manipulate the bills to add items and obtain those payments in cash.

### 2.2.3. Import and Export Sector

Importers who engage in customs clearances were alleged to be highly corrupt. Importers, exporters and shipping agents engage in the offering of gifts and hospitality.

*Companies may wine and dine their customers/clients with the objective of relationship building. This includes sponsoring clients for overseas conferences or training programmes, or the use of wine, women and song or gestures in kind such as paying to replace the tires for a senior manager’s car or paying for their car insurance. Some companies even consider how well they will be looked after when deciding which companies they should work with.*

Respondents also alleged that importers and shipping agents often expected kickbacks. Some companies will award contracts with the implicit understanding that a certain portion of the amount quoted must be set aside for them, and entities that agree with this requirement stand a better chance to win the quote. One Respondent alleged as follows,

*The Managing Director of a company may pay an agent extra with the expectation that the agent would accumulate the extra payment and then give it back to them. If a freight cost USD 1000, the Managing Director would pay the agent USD 1200 with the expectation that USD 200 would be given back to them. On the other hand, some Managing Directors may provide other companies with services for a period of about 6 months and then visit their showroom and select what items they want from the showroom free of charge. This method is used to ensure that no cash exchanges hands and that there is no credit card record of the kickback.<sup>111</sup>*

108. Respondent K

109. Respondent K and AA

110. Respondent AA

111. Respondent G

It was also alleged that companies also manipulate markets to create monopolies for their products in the market. Companies analyse market trends and when they know that demand for a particular product is going to increase, they influence various government entities including SLC to ensure that their competitors' goods are detained at customs.

*Imports are detained at customs on falsified grounds such as low quality, or for being in violation of Sri Lanka Standards (SLS) requirements etc. The monopolist then raises his price in the market, whilst benefiting from the increased seasonal demand. After the season has passed and demand has dropped, the monopolist then colludes with the authorities to have the detained shipments released. The importers whose products were unjustly detained face significant drawbacks as they must pay demurrage<sup>112</sup> to the line for the delay in clearing cargo, and by the time they receive the shipment, demand for the product has dropped and they are stuck with inventory.<sup>113</sup>*

It was also alleged that there have also been instances where monopolists have colluded with authorities, to allow low quality products to enter the market despite the introduction of SLS standards. They therefore engage in corruption to manipulate SLS certificates.

#### 2.2.4. Insurance Sector

As with the finance sector the insurance sector also faces the risk of fraud. For example,

*Insurance companies receive false claims from hospitals and doctors who manipulate the bills to obtain a higher insurance pay out. These are orchestrated frauds, where additional charges are added to the bill to increase the claim amount.<sup>114</sup>*

As a result of such practices, insurance companies have resorted to black-listing hospitals which have been identified as colluding with patients and issuing forged bills. Customers also engage in fraud where they collude with other private sector entities to perpetuate fraud upon insurance service providers. There has been an increase in motor insurance fraud due to the ban on imports.

*When a client wishes to paint their vehicle, they approach garages that sell condemned vehicle parts, have it fixed to their vehicle and then claim insurance for the damage.<sup>115</sup>*

Such collusion between private sector entities and clients creates a significant risk of insurance fraud. Respondents also alleged that employees may collude with garages and spare parts dealers to negotiate a kickback or commission for themselves. When insurance companies sell vehicles as salvage there is a possibility of the employee and spare parts dealer colluding to submit a manipulated bid, to ensure that the preferred party wins the bid. On the other hand, employees may also collude with garages and negotiate a kickback for every vehicle and claim that they refer to the garage.

#### 2.2.5. Pharmaceutical Sector

The pharmaceutical industry was alleged as being highly corrupt wherein they offer extravagant gratifications to doctors to ensure that they prescribe their brand. The general perception held by respondents regarding the pharma industry was that it was a standard practice for doctors to prescribe the drugs of companies that gratify them.<sup>116</sup>

<sup>112</sup>. Demurrage is a result of a failure to abide by the rules agreed to in a charter agreement. Specifically, it is when a charge is payable to the owner of a chartered ship on the failure to load or discharge the ship within an agreed time period. - <https://www.tradefinanceglobal.com/freight-forwarding/demurrage/>

<sup>113</sup>. Respondent G

<sup>114</sup>. Respondent I

<sup>115</sup>. Respondent I

<sup>116</sup>. Respondents C, J, O and P

*Doctors and their families are offered overseas trips; their children's education may be paid for or even their weddings. As a result of such gratification, doctors who are mandated to prescribe only generic drugs, prescribe brand names instead.*<sup>117</sup>

It is alleged that the pharmaceutical sector can afford such lavish gratifications as they maintain huge profit margins sometimes as great as 100-200%. Other Respondents, however, clarify that there may be instances where the company may agree to upgrade the General Practitioners clinic, or sponsor a doctor for an overseas congress with the intention of improving their skills and introducing new technologies and inventions to the country.

*Such sponsorships are subject to internal regulations, guidelines and restrictions which stipulate that only the doctor is entitled to attend, accommodation must be in a three-star or four-star hotel only, the airline ticket must be economy class, the duration of the trip must be for the duration of the conference, and the doctor must attend all the training programmes etc.*<sup>118</sup>

It was alleged that, it is likely, that the informal smaller players in the pharma industry may engage in the unethical practices described above. On the other hand, some respondents stated that the larger companies engage directly with the head offices of established hospitals and government agencies at high level meetings which may be corrupt in nature. Some respondents stated that laboratories may collude with doctors and agree upon commissions. It is agreed that laboratory would pay the doctor anywhere between 10%-40% of the total bill for each test that he requires that is done through the laboratory.<sup>119</sup>

It was also alleged that companies also collude with each other to create cartels<sup>120</sup> when bidding for government contracts, with an agreement to set a price and then split the profits. For instance, despite the submission of multiple tenders, closer investigation may reveal that all the tenders were submitted by agents of the same mother company. This in effect blocks market competition and undermines the tender process.<sup>121</sup>

## 2.2.6. Examples of Other Forms of Private-to-Private Corruption

Respondents narrated several other experiences and examples of allegations of private-to-private corruption which are not specific to any one sector. One Respondent alleged that a common form of corruption that takes place within companies is the **abuse of company funds and privileges for private gain**.

*Senior level staff who are required to travel overseas for work often purchase their airline ticket through the company with an implicit understanding with the ticketing agency, that they will issue a free ticket to the person travelling with them, which is usually a personal acquaintance and not a company employee.*<sup>122</sup>

Most Respondents also alleged that there was a high risk of **corruption at the time of procurement**. Marketing and procurement/supply chain management were two departments that were consistently identified as being highly corrupt or more vulnerable to the risk of corruption. Respondents were of the view that corruption within procurement departments has become a norm where the entire system revolves around some sort of kickback, and those positions expect the kickback almost as a form of remuneration.

117. Respondent O

118. Respondent J

119. Respondent EE

120. A *cartel* is an organization formed by producers to limit competition and increase prices.

121. Respondent P

122. Respondent G

“Corruption within the procurement process becomes evident when a company selects a few vendors despite the product being widely available. This indicates that the preferred suppliers have been able to eliminate the competition. Most companies have strict procurement procedures where all tenders must be evaluated fairly. However, there is a practice of eliminating tenders before they are even placed before the procurement committee to manipulate the process. It is possible to obtain multiple quotations from the same supplier. Therefore, a supplier who wants to win a contract, would issue his own quotation, as well as multiple other quotations from shops in the vicinity or on the letterheads of various companies. Therefore, the supplier themselves provides procurement officers with the requisite three quotations that must be submitted to procurement committees. However, upon closer inspection it has been revealed that the alternate quotations provided are from shops that do not even sell the product that is to be procured. As procurement teams and accountants do not look beyond the requirement of three quotations, such mechanisms are used to cheat the system.”<sup>123</sup>

Another Respondent alleged,

“Another tactic that is commonly used, is to manipulate quotations to ensure that a preferred supplier is selected. Companies will call for quotations and then inform their preferred supplier of the lowest quote received and ask them to match it or undercut it, thereby ensuring that the preferred supplier wins the contract. Such tactics often entail an unauthorised disclosure of confidential commercial information.”<sup>124</sup>

Another common form of corruption that occurs within the procurement process is the expectation of a commission in return for awarding a contract. Therefore, the purchasing company would pay a higher price for a service or good with the expectation that the seller will channel the overpayment back to the buyer in the form of a commission. Alternately, companies may pay a higher price as a member of the senior management may have a vested interest in the selling company. For example, a member of the senior management may give preferential treatment to a company which is run by his wife, thereby ensuring that the benefit of the preferential price trickles back to him. The practice of contracting with or recommending persons based on personal relationships amounts to a **conflict of interest**.

**Conflict of interests may also arise when** companies recruit retired public servants to benefit from their expertise and for the sake of easing access to the authority that they previously worked in. For example, a company may hire an ex-customs officer on contract for his familiarity with the customs laws and the customs processes.<sup>125</sup>

It was also alleged that Sri Lanka has a well-established corporate system which functions on the offering and receiving of **favours and gratifications**. Such favours may take the form of gifts or hospitality. This is best demonstrated by Sri Lanka's “hamper culture” where it is a well-accepted corporate practice to offer hampers to potential or loyal clients. Sometimes, hampers are even given with the objective of winning over business.<sup>126</sup>

It was also alleged that some companies use **corporate sponsorships** as a means of maintaining good business relationships. Therefore, sponsorships may be offered to a supplier or customer for the sake of maintaining the relationship. In general, however, it was observed that most companies view these practices as an extension of hospitality or business relationship building exercises and do not perceive them to be corrupt or likely to lead to corruption.

Respondents also observed that **favouritism** was another form of corruption that can occur within the company's day to day operations. This is particularly evident in the recruitment process which

123. Respondent O

124. Respondent N

125. Respondent L

126. Respondent G, I, S and AA

some respondents felt was prone to corruption. Such interviews are facilitated outside of the office where HR personnel may solicit favours from candidates to award them the job.<sup>127</sup>

Companies that are family owned and run, are particularly vulnerable to **nepotism**. Therefore, private companies may decide to hire their own family members and often the senior management of such companies include several members of the same family. In effect, companies use this as a strategy to ensure that they maintain board and management control of the company, by ensuring that all family members vote in accordance with the wishes of the controlling party.<sup>128</sup>

It was also alleged that companies may **lobby with political parties** in order to either gain a competitive advantage in government contracts, access limited governmental goods (such as permits and licenses), lower taxes, and regulatory leniency.<sup>129</sup> Respondents alleged that some companies lobby politicians to change regulations that are disadvantageous to their businesses.

*It is speculated that the almost immediate suspension of parate execution,<sup>130</sup> was a result of lobbying by the private sector. Similarly, the exceptions and concessionary tax rates set out in the IRD Act prior to 2017 were designed with specific companies and industries in mind.<sup>131</sup>*

Lobbying creates an unfair advantage for companies that are able to influence legislation and regulations to their benefit. Lobbying by companies at the political level can take the form of coercion, promises for funding, money, or even campaign financing. Companies provide politicians with these favours with the expectation of receiving something in return. There could be special concessions canvassed where companies lobby for certain industries to either have higher taxation or duty rates imposed, to discourage new entrants from entering the market. Therefore, lobbying by companies can create barriers of entry to markets. This is evident wherein certain protectionist taxes have been introduced to give unfair profits to import substituting domestic producers, which then creates an environment ripe for smuggling, and corruption of customs authorities.<sup>132</sup>

Some respondents also highlighted that private sector organisations pay particular attention to their lobbying activities. Therefore, key persons within the private sector will be well aware of who the senior management in the government authorities are, when their birthdays are, when they will retire and who will be their successor.<sup>133</sup> This indicates a significant degree of influence wielded by the private sector over state affairs and policy level decisions.

Some respondents also alleged that the current election system creates space for lobbying by the private sector, as vast sums of money are required to launch an effective election campaign. This raises the question of where candidates obtain such funds, with a reasonable assumption being that funding is received from companies. Elected candidates are then under obligation to the companies that financed their campaign which enables the private sector to wield considerable influence over state policy. On the other hand, it was alleged that companies may feel pressured to provide such funding to survive in a highly politicised system. Furthermore, as politicians are often perceived as being linked to criminal networks and other powerful political allies, companies may feel like they need to engage in campaign financing or other favours to avoid adverse political interference into their operations. However, with the enactment of the Regulation of Election Expenditure Act, No. 3 of 2023 which includes requirements on disclosures relating to campaign finance, companies may be reluctant to provide such financing to avoid being seen as politically aligned.<sup>134</sup>

127. Respondent G and N

128. Respondent O and P

129. Forgues-Puccio, G. F. (2013). Corruption and the Private Sector: A review of issues. *Economic And Private Sector Professional Evidence and Applied Knowledge Services*. <https://www.gov.uk/research-for-development-outputs/corruption-and-the-private-sector-a-review-of-the-issues>

130. Parliament of Sri Lanka. CoPF approves, subject to conditions, the bill to suspend the "parate law" until December 15. <https://www.parliament.lk/en/committee-news/view/4025?category=33#:~:text=The%20Committee%20on%20Public%20Finance,Law%20until%20December%2015%202024.>

131. Respondent A and P

132. Claims have been made that such taxes were imposed on the import of Ulundu. *Economy Next*. (2023, 2 December). Sri Lanka's ulundu corruption driven by nationalist autarky mafia under fire. <https://economynext.com/sri-lankas-ulundu-corruption-driven-by-nationalist-autarky-mafia-under-fire-142183/>

133. Respondent C

134. Regulation of Election Expenditure Act, No. 3 of 2023. <https://www.parliament.lk/uploads/acts/gbills/english/6287.pdf>

### 2.3. Gender and Corruption in the Private Sector

Respondents alleged that sexual favours, sexual harassment, and sexual bribery are prevalent within the private sector workforce.<sup>135</sup> They also observed that women face greater challenges in the workforce, including the solicitation of sexual favours in return for services and to determine promotions.

*For women it is much harder as the challenges are multiplied severalfold for them. It can even take the form of sexual favours to get a job done.*<sup>136</sup>

Another Respondent alleged,

*Trainees may be sent on foreign tours where their superior then joins them overseas to “claim their reward.” Women have a better chance of climbing the corporate ladder if they were willing to trade in sexual favours.*<sup>137</sup>

It was also highlighted that although women’s awareness on sexual harassment, bullying, harassment, and discrimination was fairly high, their personal experiences of the same was also high.

*Women working in companies that have implemented policies and processes to support women, still experience sexual harassment. They often lack faith in the system and do not believe that their complaints will be given adequate attention because usually when such complaints are made, all that is done is that the HR department speaks to the perpetrator and warns them not to repeat such behaviour. This places the victim in a worse situation as the perpetrator will know that she has complained, usually resulting in the victim leaving the company or facing serious psychological distress.*<sup>138</sup>

Challenging as it is for women, it is even more difficult for female entrepreneurs who face a greater range of sexual and gender-based harassment. This is further exacerbated by their lack of knowledge regarding their rights and the absence of systems within their fledgling organisations to address it.

On the other hand, it was also stated that women who are confident and stand up to bullying, sexual harassment and discrimination in the workplace are likely to be maligned by the perpetrator. When it comes to female employees dealing with the public sector, companies are conscious that there may be a risk of sexual harassment. Therefore, companies will be cautious in sending female employees to government authorities if they know that the person they will be dealing with is likely to harass them.

Respondents also observed that whilst sexual harassment within the workplace could occur within the superior-subordinate relationship structure, there was a greater likelihood of the perpetrator being a third party i.e., outsiders or employees from other departments or branches. As such, there is a lack of security for women when they are dealing with third parties which leaves them vulnerable to the risk of sexual forms of corruption.<sup>139</sup>

In addition to the above, it was also highlighted that men face similar forms of harassment within the workplace.

*In some industries the gender and sexual harassment committees see several cases regarding males who had been harassed and bullied, but only a handful of cases where women were the victims.*<sup>140</sup>

135. Respondents G, H, K, N, AA and CC

136. Respondent N

137. Respondent G

138. Respondent N

139. Respondent N

140. Respondent K

Sexual harassment in the workplace is also influenced by social factors.



*For example, social factors such as caste, which is more evident in the Northern parts of the country, and class and wealth which is more pertinent in the South. Therefore, belonging to a particular caste, or being from a poor socio-economic background may increase a woman's vulnerability to sexual harassment within the workplace. Language also plays a role in creating vulnerability where women who speak good English are perceived to be powerful and thereby less likely to be harassed, whereas those who do not are more vulnerable to harassment.<sup>141</sup>*



Some respondents alleged that there is a risk of sexual favours being solicited from customers by company employees. There is a perception that this is common in the finance and micro-finance industry.<sup>142</sup> As a result, women have a particularly challenging time when approaching banks to obtain loans. They were either asked for a bribe, which in some instances may be sexual in nature, or granted a lower amount on the presumption that they would not be able to repay the loan. It was alleged that such corruption was prevalent across the bank hierarchy where the request may emanate from an area manager or the officer handling the file.<sup>143</sup>

141. Respondent G, EE and FF

142. Respondent H and AA

143. Respondent EE





### 3. COMMON PERCEPTIONS OF PRIVATE SECTOR CORRUPTION

Private sector corruption may take different forms. However, overwhelmingly, respondents stated that the most common form of corruption was the offering of bribes. Almost all respondents alleged that bribes were offered in the form of cash when dealing with public sector institutions<sup>144</sup>. Some respondents indicated that smaller companies may offer cash bribes whereas larger conglomerates and more regulated companies (either internally or externally) may resort to other methods such as the award of contracts, favours to the other party's family, hampers, sponsorships for staff events etc. These companies may outsource activities that are likely to have an element of corruption to agents.



*The agent will bunch all the illegal handouts given to people and bill it as an agency fee.*<sup>145</sup>



One Respondent alleged that larger companies were seen to be “clean” because they are better able to afford qualified accountants and staff who are able to effectively hide the corruption.<sup>146</sup> On the other hand, it was also observed that some companies, particularly, large conglomerates are adopting a zero-tolerance approach to corruption and adhering to it. As such, larger companies are refusing to offer bribes and refusing when solicited.

It was also observed however, that smaller companies which do not have the same bargaining power as large conglomerates, may resort to corruption to facilitate their business operations. This tendency comes from a lack of awareness of the impact of corruption, but also perhaps from a lack of skills on the part of MSMEs and SMEs to compete in the market. It was further highlighted, that smaller companies are also more likely to fall victim to corruption. Due to their weak bargaining power, smaller companies embark upon work without ensuring that they are legally protected. For example,



*Small companies in the construction industry undertook projects without contracts as these projects are obtained through corrupt means. As they did not have contracts, these companies were not paid for the work they had undertaken when the economic downturn hit. Whilst the government offered support to the larger companies that had contracts, the smaller companies were offered no such support, and several small players were forced to wind up their businesses.*<sup>147</sup>



Within the organisational structure, the procurement and sales department were identified as the departments most likely to engage in corruption. The procurement department was identified as the department most likely to manipulate contracts with the expectation of enriching themselves, whilst sales teams were perceived to be more likely to offer favours to meet sales targets.

Another common observation made by several Respondents was that corruption could occur at various levels of an organisation. Some stated that corruption happened at the senior most levels, where Managing Directors of companies were likely to bribe politicians or friends to enrich themselves or the company. It was observed that in some companies, private-to-private corruption may occur amongst the lower levels of staff.

144. Respondents E, G, K, L, O and AA

145. Respondent G

146. Respondent O

147. Respondent M

Another common observation made by most Respondents was that corruption in the private sector was more collusive wherein the private sector engages in corruption for their own benefits. Most respondents were of the view that such collusive forms of corruption were the result of widespread systemic corruption in Sri Lanka. It was highlighted that this was best demonstrated by the Airbus scandal.<sup>148</sup>



*The aircraft industry is nearly monopolistic with two major players, namely; Boeing and Airbus. In such an instance, there was very little necessity for Airbus to offer a bribe to secure a contract with Sri Lanka. This is particularly so, when Sri Lankan airlines had been using Airbus aircrafts for several years and therefore were best equipped to handle Airbus aircrafts. Therefore, even though Airbus had a niche product, they still engaged in bribery, highlighting the purely collusive nature of such corruption.*<sup>149</sup>



Other respondents alleged that the present context within the country has created a trend wherein scams are perpetuated which may include an element of private sector corruption. These scams may vary from stealing people's One-Time Passwords (OTPs) to access their accounts, to imitations of legitimate company websites, online lending in the name of legitimate finance companies, and seeking money to clear customs on social media platforms. It was also opined that in a period of economic downturn and restricted public finance, there would be an uptick in bribery and corruption.

Another common opinion of Respondents was that corruption is now engaged in more openly or brazenly. In the past, money was passed in isolated places and closed enclosures. However, now money is solicited openly in the solicitor's own offices as they are sure that their offices are not under CCTV surveillance etc. It is also alleged that corruption has become pervasive even amongst the lower levels of government institutions, where the official will not ask for a bribe, however, it is expected. Failure to facilitate the bribe will result in the official either rejecting the request or delaying the request. Another interesting phenomenon is the development of brokers or intermediary groups, who do not add any value addition but simply facilitate the process for a fee. Respondents were also of the view that older government service officers were more likely to solicit and take a bribe, whereas the younger generation are not so corrupt.

148. Kotoky, A. (2020, 11 February). 'Shocking' Airbus Scandal Spurs SriLankan to Pursue Compensation. Bloomberg. <https://www.bloomberg.com/news/articles/2020-02-12/-shocking-airbus-scandal-spurs-srilankan-to-pursue-compensation#:~:text=Airbus%20two%20weeks%20ago%20admitted,U.K.'s%20Serious%20Fraud%20Office.>

149. Respondent O





## PART II

## 4. CORRUPTION RISKS IN THE PRIVATE SECTOR

An analysis of the responses received from KIIs and FGDs indicated that the risks or vulnerability to corruption in the private sector varied across industries. There is some overlap, and these varying factors highlighted below clearly demonstrate the risk for corruption within the private sector. The most notable risks observed are:

- The inadequate implementation of the regulatory framework
- Increased interaction with the public sector
- Weak or absence of regulatory authorities
- Unequal playing field
- Weak corporate governance practices
- Unconducive business environment
- Socio-cultural and economic factors
- Informality
- Fear of reprisals

### 4.1. Inadequate Implementation of the Regulatory Framework

This section examines the laws and regulations that apply to private sector bribery and corruption in Sri Lanka. There are several international legal instruments that govern private sector corruption, foremost of which is the United Nations Convention Against Corruption (UNCAC) which Sri Lanka has ratified.<sup>150</sup> Article 12 of UNCAC stipulates that state parties “shall take measures...to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.” Further, article 26 requires states to hold legal persons liable for committing acts of corruption. In addition to Sri Lanka’s UNCAC obligations, Goal 16 of the Sustainable Development Goals (SDGs) targets to “substantially reduce corruption and bribery in all their forms.”<sup>151</sup> UNCAC also provides the legal framework for the United Nations Global Compact principle 10, “Businesses should work against corruption in all its forms, including extortion and bribery”.

Sri Lanka’s domestic legal framework is spread across a gamut of laws. These include the Anti-Corruption Act No. 09 of 2023,<sup>152</sup> the Colombo Stock Exchange Listing rules, corporate governance rules and best practices, accounting and auditing standards and a comprehensive anti-money laundering legal framework. Overwhelmingly respondents were of the view that Sri Lanka’s domestic legal framework was adequate to address private sector corruption but was plagued by weak enforcement.<sup>153</sup> It was alleged that even in instances where action could have been taken under the previous law, no initiative was taken to institute action against private sector actors such as Airbus, for engaging in corruption.

It was also alleged that having laws in place which are not enforced would harm the rule of law. This is particularly so, as corruption occurs in an informal manner, in a vacuum from the law. In this regard, the increased scope of offences and higher fines in the new Anti-Corruption Act makes the Act more of a deterrent which should lead to a stronger compliance culture. However, it was clarified, that such a compliance culture will arise out of an obligation that companies owe to their shareholders, rather than due to the strict enforcement of the law.

It was alleged that companies which do try to adhere to the law and refrain from corruption, may be exposed to threats and reprisals.

150. CIABOC. (2015). United Nations Convention Against Corruption. <https://ciaboc.gov.lk/media-centre/international-relations/517-united-nations-convention-against-corruption#:~:text=Sri%20Lanka%20signed%20the%20Convention,it%20on%2031%20March%202004.>

151. Target 16.5

152. Anti-Corruption Act No. 09 of 2023 <https://parliament.lk/uploads/acts/gbills/english/6296.pdf>

153. Respondents H, L, M, N, O, P and Q

*“The prevailing culture, where a gun for hire can easily be found, creates a difficult operating environment for companies to strive to abide by the law. The lack of rule of law is particularly of concern, as there is no practical protection for whistleblowers, because of which whistleblowers will not come forward.”<sup>154</sup>*

It was also alleged that weak implementation of the law also arises due to weak governance within public sector institutions.

*“Due to a lack of good governance within public sector institutions, often decisions are taken based on political factors. Therefore, the effectiveness of an institution in policing an industry depends on how that institution is governed and how they function as a decision-making authority. The lack of principles of good governance within public sector institutions also prevent them from effectively imposing requirements of good governance upon the private sector.”<sup>155</sup>*

While Sri Lanka has started to enforce anti-corruption laws, enforcement remains constrained by a lack of resources and technical expertise, and powerful political elites often go unpunished for committing corruption crimes.<sup>156</sup> Therefore, whilst the new Anti-Corruption Act recognised private sector bribery for the first time, if it is not enforced and seen to be enforced, it could lead to a further sense of impunity among corporates, leading to a loss of belief in the rule of law, which would only serve to perpetuate and enhance private sector bribery and corruption. This next section explores these claims in detail.

#### 4.1.1. The Commission to Investigate Allegations of Bribery or Corruption

The 19th Amendment to the Constitution provided for the establishment of the Commission to Investigate Allegations of Bribery or Corruption (CIABOC) and empowers it to implement the UNCAC. Respondents believed the implementation of the Anti-Corruption Act must be vested with a strong authority with the teeth to implement it. Respondents alleged that CIABOC disproportionately focused on the small players, rather than addressing more systemic issues of corruption.

*“Such an approach, signals to the private sector that CIABOC lacks the teeth required to pursue larger cases resulting in companies viewing corruption with impunity. As such, CIABOC needs to correct its image, and be seen to be enforcing the law transparently across the board, for them to be perceived as a deterrent to corruption.”<sup>157</sup>*

In this regard, lessons could be learned from the implementation of the FCPA and the United Kingdom Bribery Act which mandate that companies must conduct audits which go beyond the scope of financial audits.

*“These authorities conduct specific corruption related monitoring exercises and if proof of corruption is found, companies are charged exorbitant fines. This is a penalty that organisations would want to avoid.”<sup>158</sup>*

Therefore, it was recommended that CIABOC too, should adopt a monitoring role and conduct specific anti-corruption audits (like the subject specific audits conducted by the FIU), to ensure that companies conform to the requirements of the act.

<sup>154</sup>. Respondent P

<sup>155</sup>. Respondent A

<sup>156</sup>. GAN Integrity. (2020). Sri Lanka risk report. <https://ganintegrity.com/country-profiles/sri-lanka/>

<sup>157</sup>. Respondent O

<sup>158</sup>. Respondent O

#### 4.1.1.1. Provisions Governing the Private Sector

The primary piece of legislation that previously governed bribery and corruption in Sri Lanka, was the Bribery Act No. 11 of 1954, which criminalised all forms of bribery within the public sector. The Act, however, did not criminalise private sector bribery, but it made it an offence for a “person” to offer a gratification to public officials, including legal persons. The Anti-Corruption Act (ACA) No. 09 of 2023 for the first time recognised private sector bribery as an offence, even between two private parties.<sup>159</sup> The Act defines a private entity as a Specified Business Enterprise (SBE) as defined in section 5 of the Sri Lanka Accounting and Auditing Standards Act No. 15 of 1995.<sup>160</sup> Section 40 of the ACA empowers CIABOC to introduce codes of conduct for prevention and eradication of bribery and corruption, which shall be adhered to by private sector entities. It also empowers CIABOC to take steps to prevent corruption in contractual relations between the Government and private sector entities. Section 116 stipulates that every director or officer or agent of a body corporate shall be liable to a fine if found guilty under provisions of the ACA. However, a director or an officer or agent shall be deemed not guilty if he proves that such offence was committed without his knowledge or that he used all due diligence to prevent the commission of such offence. CIABOC has exercised its new powers over the private sector by conducting its first raid in the private sector against an Accountant cum Manager of a private hotel in Dambulla, who allegedly solicited a sexual gratification from an employee.<sup>161</sup>

The Act also introduced a whistleblowing provision which enables citizens including private sector entities, to report incidents of corruption directly to CIABOC. Section 73 of the Act protects the confidentiality of commission informers and protects them from adverse conditions of employment, reprisal, coercion, intimidation, retaliation, harassment, any injury to their person, or threats. Section 74 provides whistle-blowers with similar protections and guarantees that no disciplinary action shall be taken against them for whistleblowing. Some respondents were hopeful that the inclusion of whistleblowing protections in the Act would encourage more employees to report corruption.<sup>162</sup>

The ACA also introduces Deferred Prosecution Agreements (DPAs), where CIABOC may defer prosecution for a period not less than five years and not exceeding ten years. DPAs may be made, subject to companies either publicly expressing remorse and apology before the High Court, providing reparation to victims of the offence, publicly undertaking to refrain from committing an offence under the Act, or paying compensation to the State.<sup>163</sup> DPAs allow businesses to avoid damage to the company as there is no finding of guilt, while committing to reform itself.<sup>164</sup> However, one expert was sceptical about the efficacy of DPAs in Sri Lanka, alleging,

*It is unlikely that DPAs would practically work in Sri Lanka as it is premised on companies perceiving a real threat of conviction. If companies do not perceive a real threat of conviction, there is no motivation for them to enter a DPA. One of the key problems is that DPAs are often opted for when the prosecution is unable to or does not wish to gather the evidence required to prosecute the company or its management. As prosecutions in Sri Lanka are prolonged, it is likely that information will leak that CIABOC may not have adequate evidence to prosecute. On the other hand, as cases take several years, companies are unlikely to perceive this as negatively affecting their bottom line.*<sup>165</sup>

Therefore, whilst some respondents were cautiously optimistic about the expanded scope of the ACA, serious concerns remain about how effectively it will be implemented.

159. Section 106

160. Parliament of Sri Lanka. (2023). For the first time in history, a private sector entity committing an offence of bribery to be convicted under the Anti-Corruption Bill – Sectoral Oversight Committee on Just and Law-Abiding Society discuss. Retrieved 25 April, 2024 from <https://www.parliament.lk/committee-news/view/3315>

161. CIABOC. (2024). The Commission to Investigate Allegations of Bribery or Corruption conducts the first raid in the Private Sector. Retrieved 25 April, 2024 from <https://www.ciaboc.gov.lk/investigation/detection-raids/1171-the-commission-to-investigate-allegations-of-bribery-or-corruption-conducts-the-first-raid-in-the-private-sector>

162. Respondent C

163. Section 71(3)

164. Van Scheltinga, C T. (2019). UK Bribery Act Enforcement: Lessons For 2019. GAN Integrity. <https://www.ganintegrity.com/blog/uk-bribery-act-enforcement-lessons-for-2019/>.

165. Respondent P



#### 4.1.1.2. Preventative Measures

CIABOC is at the centre of the new legal and organizational framework stipulated under the new Act. It is vested with new and extensive responsibilities relating to the development of anti-corruption strategies, the prevention, investigation, and prosecution of corruption offences, and the establishment of mechanisms to coordinate anti-corruption efforts across the whole of government.

The new Act envisions CIABOC playing a preventative role in promoting anti-corruption. Accordingly, section 2(g) stipulates that CIABOC shall conduct and coordinate educational activities on the prevention of bribery and corruption; whilst section 40 authorises the commission to take measures to enlist and foster public support against corruption. CIABOC is also vested with the authority to take measures to raise public awareness on corruption,<sup>166</sup> and they have conducted several awareness raising workshops in this regard.<sup>167</sup> Towards this, CIABOC held the first awareness raising programme for private sector companies and corporations on 22.03.2024. The programme covered the scope of the new Act and the legal obligation and responsibility for private-sector entities, companies, corporations, and listed companies in formulating anti-corruption policies. It also focused on facts that should be considered while formulating policies on Gift Rules and Conflicts of Interest.<sup>168</sup>

#### 4.1.2. Listing Rules

The Securities and Exchange Commission is vested with the power to create, maintain, and regulate a fair, orderly, efficient, and transparent securities market under the Securities and Exchange Commission Act No. 19 of 2021. The commission can inquire and conduct investigations into any activity of a listed public company for alleged violation or contravention of the provisions of the Act, or any regulation, rule, directive or instruction thereunder.

The Colombo Stock Exchange (CSE) is the licensed market operator for Sri Lanka's securities market. Companies listed on the stock exchange are governed by the CSE Listing Rules which stipulate compliance and disclosure requirements for all listed companies. The CSE insists on transparency in companies' dealings vis-à-vis investors, but not in terms of corruption, per se. The CSE's corporate disclosure policy expects listed companies to maintain complete transparency in terms of financial disclosures. The CSE also mandates corporate governance rules.<sup>169</sup> It addresses conflicts of interest, the establishment of a committee on related party transactions, the appointment of independent directors, the establishment of audit committees chaired by an independent director, and the establishment of a nominations committee consisting of independent directors.<sup>170</sup> These rules function to strengthen the corporate governance practices of listed companies.

By a recent amendment to the CSE Listing Rules, companies were required to introduce twelve key policies including an Anti-Bribery and Corruption (ABC) policy.<sup>171</sup> By virtue of this amendment, the CSE has taken the first step in insisting that companies look at corruption as a part of their internal corporate governance systems. It is envisaged that the introduction of CSE mandated, board

166. Section 35

167. CIABOC. (2024). *Awareness Raising Programme for Officers of the Department of Motor Traffic - 20.01.2024*. Retrieved 25 April, 2024 from <https://www.ciaboc.gov.lk/prevention/prevention-news/1186-awareness-raising-programme-for-officers-of-the-department-of-motor-traffic-20-01-2024>

CIABOC. (2024). *CIABOC Prevention Unit Empowers Ceylon Electricity Board Against Corruption*. Retrieved 25 April, 2024 from <https://www.ciaboc.gov.lk/prevention/prevention-news/1189-ciaboc-prevention-unit-empowers-ceylon-electricity-board-against-corruption>; CIABOC. (2024). *Prevention Programme at Ceylon Electricity Board*. Retrieved 25 April, 2024 from <https://www.ciaboc.gov.lk/prevention/prevention-news/1214-prevention-programme-at-ceylon-electricity-board>

CIABOC. (2024). *Prevention Programme for Officers of the Department of Agrarian Development*. Retrieved 25 April, 2024 from <https://www.ciaboc.gov.lk/prevention/prevention-news/1192-prevention-programme-for-officers-of-the-department-of-agrarian-development>

CIABOC. (2024). *Prevention Programme for Officers of the Colombo Municipal Council*. Retrieved 25 April, 2024 from <https://www.ciaboc.gov.lk/prevention/prevention-news/1193-prevention-programme-for-officers-of-the-colombo-municipal-council>

CIABOC. (2024). *Prevention Programme at Sri Lanka Ports Authority*. Retrieved 25 April, 2024 from <https://www.ciaboc.gov.lk/prevention/prevention-news/1212-prevention-programme-at-sri-lanka-ports-authority>

CIABOC. (2024). *Prevention Programme for Newly Recruited Assistant Commissioners of the Department of Inland Revenue - 19.01.2024*. Retrieved 25 April, 2024 from <https://www.ciaboc.gov.lk/prevention/prevention-news/1168-prevention-programme-for-newly-recruited-assistant-commissioners-of-the-department-of-inland-revenue-19-01-2024>

168. CIABOC. (2024). *Awareness Programme on Strengthening the Private-Sector Anti-Corruption Programme*. Retrieved 25 April, 2024 from <https://www.ciaboc.gov.lk/media-centre/latest-news/1208-awareness-programme-on-strengthening-the-private-sector-anti-corruption-programme>

169. [https://cdn.cse.lk/cmt/upload\\_report\\_file/hPLxglBoBHBOZRNs\\_11Sep2023051530GMT\\_1694409330850.pdf](https://cdn.cse.lk/cmt/upload_report_file/hPLxglBoBHBOZRNs_11Sep2023051530GMT_1694409330850.pdf)

170. Colombo Stock Exchange Listing Rules

Rule 9.8.2 – Minimum Number of Independent Directors on the Board

Rule 9.11 – Nominations and Governance Committee

Rule 9.12.6 (1) – Composition of the Remuneration Committee

Rule 9.13.3 – Composition of the Audit Committee

Rules 9.13.4 and 9.13.5 – Functions and Disclosures in the Annual Report relating to the Audit Committee)

171. Colombo Stock Exchange Listing Rules Rule 9.2 ([https://cdn.cse.lk/cmt/upload\\_report\\_file/hPLxglBoBHBOZRNs\\_11Sep2023051530GMT\\_1694409330850.pdf](https://cdn.cse.lk/cmt/upload_report_file/hPLxglBoBHBOZRNs_11Sep2023051530GMT_1694409330850.pdf))

approved policies will require companies not only to introduce such policies, but also, adhere to them. The CSE has not provided companies with guidelines on what the policies should contain. However, one expert recommended that steps should be taken to analyse the gaps in policies once published and if necessary, promulgate a framework and guideline for such policies. Some respondents however were cautious about how effective these rules would be. One respondent alleged,

*Whilst listed companies will comply with the new rules, there is no guarantee that their subsidiaries and sub-subsidiaries which are not listed, will be held to a similar standard, wherein companies may resort to using their subsidiaries and sub-subsidiaries as vehicles for corruption in order to avoid violating the new rules.*

The CSE also conducts awareness raising sessions for company secretaries and directors, to educate them on the new CSE Listing rules, corporate governance rules and good governance practices.

#### 4.1.2.1. Monitoring and Enforcement

The CSE has several enforcement mechanisms in place. When a company is identified as being non-compliant with the listing rules, the company is moved to the “Watch List.” If companies on the watch list fail to rectify their non-compliance, the CSE may then suspend trading of those securities. Continued non-compliance will eventually result in the delisting of the company from the CSE.

The CSE can also impose fines on companies and their directors for certain violations such as non-disclosure of certain information and delayed financial statements. Therefore, if there is a delay in submitting financial reports, the CSE can fine the directors of a company up to LKR 5 million.<sup>172</sup> The CSE has already started imposing fines upon directors which has made companies more cautious, one expert stated. This demonstrates that it is essential to have an effective enforcement mechanism which has teeth.

The CSE also monitors listed companies to determine if they have engaged in insider trading<sup>173</sup> and market manipulation.<sup>174</sup> In the event such activity is detected, the CSE informs the Securities and Exchange Commission (SEC) who then pursues investigative action. Prior to the recent amendment to the SEC Act, it was alleged that it was a challenge to obtain guilty verdicts for insider trading as jurisdiction was vested with the Magistrates Courts, and Magistrates lacked an adequate understanding of complex securities issues. The Act now allows the SEC to pursue civil action for restitution and damages before the Commercial High Court. This is likely to improve the enforcement and act as a deterrent for insider trading.

#### 4.1.3. Financial Reporting and Auditing Standards

Measures pertaining to record-keeping, preparation of financial statements, accounting and auditing in the private sector, are prescribed in the Accounting and Auditing Standards Act No. 15 of 1995, the Companies Act No. 07 of 2007, the Securities and Exchange Commission Act No. 19 of 2021, the Monetary Law Act No. 58 of 1949, the Banking Act No. 30 of 1988, the Regulation of Insurance Industry Act No. 43 of 2000, and the Finance Business Act No. 42 of 2011.

The Companies Act requires all companies formed under the act to maintain correct accounting records<sup>175</sup>, prepare financial statements,<sup>176</sup> appoint an auditor,<sup>177</sup> and make company records available for public inspection.<sup>178</sup> In addition to this, the Accounting and Auditing Standards Act states that the act is applicable to SBEs including private companies and banks.<sup>179</sup> SBEs are required to audit their accounts with the objective of presenting a true and fair view of the financial performance and financial conditions of such enterprises,<sup>180</sup> and non-compliance is punishable by law.<sup>181</sup>

172. [https://cdn.cse.lk/cmt/upload\\_report\\_file/8KMO5qo4llgTcti8\\_18Oct2023101020GMT\\_1697623820051.pdf](https://cdn.cse.lk/cmt/upload_report_file/8KMO5qo4llgTcti8_18Oct2023101020GMT_1697623820051.pdf)

173. Insider trading may be understood as the trading of securities on the stock exchange using confidential information. The elements of the offence of insider trading are set out in Chapter 2 of the Securities Exchange Commission Act No. 19 of 2021.

174. This may be understood as a deliberate attempt to interfere with the free and fair operation of the market

175. Section 148

176. Sections 150–153

177. Sections 154–160

178. Sections 120

179. Section 5

180. Section 6

181. Sections 6, 7 and 27

The key shortcoming in these laws is their limited scope of application. Since the Accounting and Auditing Standards Act only applies to SBEs, it excludes a large part of the private sector. Nearly 75% of businesses in Sri Lanka are SMEs,<sup>182</sup> which do not meet the thresholds defined to be an SBE.<sup>183</sup> Similarly, it was highlighted that although the Companies Act requires all companies registered under the Act to maintain financial accounts and audits, that these requirements are not adhered to by smaller companies.



*Small companies very rarely maintain proper financial statements. Another practice that is observed, is that they get their auditor to handle both their accounts and to perform their audit.*<sup>184</sup>



Towards this, the Institute of Chartered Accountants of Sri Lanka (ICASL) has adopted the Accounting and Auditing Standards, which regulate accounting and auditing standards in the private sector. The ICASL and its members are vested with the statutory authority to carry out audits of companies. Similarly, the members of the ICASL are authorised by the Inland Revenue Department (IRD) to certify tax returns. Therefore, the ICASL plays a watchdog role within the private sector.

The implementation of these standards is monitored by the Sri Lanka Accounting and Auditing Standards Monitoring Board (SLAASMB) which refers suspected cases of corruption to law enforcement authorities. Likewise, the CSE also monitors listed companies to determine if they are in compliance with the accounting and auditing standards. In this regard, the SLAASMB and the CSE complement each other and share information on discrepancies noted. The SLAASMB has identified the necessity to enhance the quality of auditing financial statements in Sri Lanka and is moving towards enhancing the quality of the audits with the aim of aligning the monitoring mechanism to global standards.<sup>185</sup>

#### 4.1.4. Anti-Money Laundering

The Prevention of Money Laundering Act No. 5 of 2006, the Financial Transactions Reporting Act No. 6 of 2006, and the Convention on the Suppression of Terrorist Financing Act No. 25 of 2005, govern Anti-Money Laundering (AML) efforts in Sri Lanka. These laws strive to regulate the flow of money obtained through corruption.

The Financial Actions Task Force (FATF), an inter-governmental body on anti-money laundering has introduced 40 Recommendations to combat money laundering.<sup>186</sup> The FATF through its regional body, the Asia Pacific Group on Money Laundering, periodically evaluates Sri Lanka to assess the country's compliance with the FATF Recommendations. FATF Recommendation 2 requires countries to have national AML policies, informed by money laundering risks identified in the country, which should be regularly reviewed. It further requires countries to ensure that policymakers have effective mechanisms in place which enable them to cooperate, and, where appropriate, domestically coordinate and exchange information with each other concerning the development and implementation of such policies.<sup>187</sup>

The National Risk Assessment 2021/22 conducted by the Financial Intelligence Unit (FIU) of the Central Bank of Sri Lanka (CBSL) identified the risk/threat of bribery and corruption and trade-based money laundering as a medium-high level threat. The assessment observed that the party offering the bribe in terms of public sector bribery may be a private sector party. One Respondent was of the opinion,

182. Niroshini Rathnasinghe, (2024). Small and Medium-sized Enterprises (SMEs) of Sri Lanka. <https://www.freiheit.org/south-asia/small-and-medium-sized-enterprises-smes-sri-lanka#:~:text=The%20SMEs%20in%20Sri%20Lanka,contribute%2052%25%20to%20the%20GDP%20>.

183. SLAASMB. Specified Business Enterprises. <https://slaasmb.gov.lk/specified-business-enterprises/>

184. Respondent AA

185. Daily FT. (2016). SLAASMB Brings Intl. Expert to Help Enhance Audit Quality. <https://www.ft.lk/Financial-Services/slaasmb-brings-intl-expert-to-help-enhance-audit-quality/42-581876>

186. FATF. (2012). FATF Recommendations. <https://www.fatf-gafi.org/en/topics/fatf-recommendations.html>

187. Central Bank of Sri Lanka. (2023). National Policy on Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) of Sri Lanka 2023 – 2028. [https://fiu.srilanka.gov.lk/docs/Other/National\\_AML\\_CFT\\_Policy\\_2023-2028.pdf](https://fiu.srilanka.gov.lk/docs/Other/National_AML_CFT_Policy_2023-2028.pdf)



*It is a challenge to identify private-to-private corruption as suspicious transaction reports submitted by banks do not capture private-to-private bribery or corruption. This is because these transactions are viewed by some banks merely as a transaction between two parties. Therefore, it is unlikely that such transactions would be flagged unless there is a tip off, or specific identification, or a third party reveals to the bank that someone is planning to carry out a transaction that is corrupt. Similarly, the offence of money laundering occurs if the proceeds of a crime are transacted with. However, as private-to-private corruption was not an offence until 2023, the proceeds of such corruption was not considered under the ambit of money laundering.<sup>188</sup>*



The National Risk Assessment also recognised gaps in the legal and institutional framework, particularly in relation to the identification of beneficial owners of companies.<sup>189</sup> The National Policy on Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) of Sri Lanka 2023 - 2028 has recognised the importance of enhancing the transparency of legal persons and arrangements, and beneficial ownership requirements. In this regard, an amendment to the Companies Act was proposed in September 2024. The proposed amendment requires the Registrar General of Companies to maintain a separate register on beneficial ownership.<sup>190</sup> However, the bill was limited in scope as it excluded offshore and overseas companies and only provided for limited public access to beneficial ownership information.

The Financial Transactions Reporting Act places a duty upon institutions to maintain proper records regarding customers/clients and conduct due diligence on any business relationship on an ongoing basis. It is the duty of a financial institute to coordinate with the FIU to ensure that all relevant information is properly disclosed regarding financial transactions.<sup>191</sup> The FIU supervises institutions' compliance with the Act, including on-site inspections, the imposition of administrative penalties, issues directives and refers matters to the courts. The FIU also monitors suspicious transactions and requires supervised entities to monitor their transactions to flag suspicious transactions which must be then reported to the FIU.

The FIU has issued directions on Customer Due Diligence (CDD), to be followed by specific sector institutions and associated professionals.<sup>192</sup> These regulations have been effective in relation to the banking and financial sector, as the FIU carries out stringent monitoring and supervisory activities. The FIU has also issued penalties to companies that are non-compliant with the regulations.<sup>193</sup> It was further highlighted that the imposition of penalties had led to improved implementation on the part of banks and finance companies.

Towards improving its efforts, the FIU has signed a Memorandum of Understanding (MOU) with CIABOC, with the objective of strengthening the fight against financial corruption. The MoU signifies a commitment to foster cooperation and mutual interest between the two institutions with the primary aim of exchanging intelligence pertinent to investigations. The agreement explicitly outlines the scope of cooperation to gather and exchange information with each other, concerning financial transactions suspected of being related to money laundering, terrorist financing, bribery, or corruption.<sup>194</sup>

188. Respondent V

189. A beneficial owner is a natural person or group of people who ultimately owns or controls a legal entity

190. Companies (Amendment) [http://www.documents.gov.lk/files/bill/2024/9/563-2024\\_E.pdf](http://www.documents.gov.lk/files/bill/2024/9/563-2024_E.pdf)

191. Pinto-Jayawardena, K. & Karunatilaka, N. (2023). Bribery & Corruption in Sri Lanka's Public Revenue System: An Unholy Nexus?. *Asian Human Rights Commission*. <http://www.humanrights.asia/resources/journals-magazines/article2/0903-2/bribery-corruption-in-sri-lankas-public-revenue-system-an-unholy-nexus/>

192. The Financial Institutions (Customer Due Diligence) Rules of 2016, issued by the Financial Intelligence Unit, apply to all financial institutions as defined in the Financial Transactions Reporting Act. The Rules set out obligations with regard to money-laundering risk management and internal controls, know-your-customer standards, customer due diligence, enhanced scrutiny for persons and accounts, correspondent banking, wire transfers and record-keeping.

193. 43 Financial Intelligence Unit. (2024). Administrative Penalties imposed by the Financial Intelligence Unit (FIU) on Financial Institutions from 27 September to 31 December 2023. [https://sri.lankamirror.com/wp-content/uploads/2024/02/press\\_20240219\\_administrative\\_penalties\\_imposed\\_by\\_fiu\\_on\\_financial\\_institutions\\_e.pdf](https://sri.lankamirror.com/wp-content/uploads/2024/02/press_20240219_administrative_penalties_imposed_by_fiu_on_financial_institutions_e.pdf); DailyFT. (2023). FIU Slaps Rs. 5.5 M Penalty on Six Banks for Non-Compliance Of FTRA. <https://www.ft.lk/front-page/FIU-slaps-Rs-5-5-m-penalty-on-six-banks-for-non-compliance-of-FTRA/44-748106>

194. CIABOC. (2024). Memorandum of Understanding Signed Between the Commission to Investigate Allegations of Bribery or Corruption and the Financial Intelligence Unit of Sri Lanka. Retrieved 25 April, 2024 from <https://www.ciaboc.gov.lk/media-centre/latest-news/1177-memorandum-of-understanding-signed-between-the-commission-to-investigate-allegations-of-bribery-or-corruption-and-the-financial-intelligence-unit-of-sri-lanka>

#### 4.1.5. Corporate Governance

The relation between corruption and poor corporate governance is a vicious cycle because corruption drives bad corporate governance, and the inverse is also true.<sup>195</sup> As such, employees of poorly governed companies are more likely to engage in corrupt activities. To address this, the ICASL has adopted a Code of Best Practice on Corporate Governance<sup>196</sup> which provides guidance on board composition, nomination and election of independent directors, the establishment of committees to review related party transactions, and the requirements and best practices in conducting independent audits.

Codes of best practices in corporate governance have also been adopted for licensed banks and finance companies. The CBSL issued a circular to such companies under the Finance Business Act Directions No. 05 of 2021, which requires such companies to make key corporate governance disclosures. These disclosures include statements attesting the establishment of a whistleblowing policy, which allows for confidential whistleblowing and protects the whistleblower from reprisals, a commitment to adhere to the legal framework, and the adoption of a code of conduct for directors, senior management, and employees etc. The Direction further mandates that companies should disclose such information in their Annual Report. Furthermore, the CBSL released a mandatory corporate governance code for licensed commercial banks in 2008. This bank regulation embedded comprehensive guidelines on the responsibilities and composition of boards, assessed aptness and propriety of directors, defined the managerial functions delegated by the board and the roles of the Chairman and Chief Executive Officer (CEO), required the creation of board committees, and demanded the disclosure of related party transactions.<sup>197</sup>

Some Sri Lankan companies have voluntarily improved their corporate disclosure practices. Therefore, several companies have begun to implement sustainability reporting practices following the integrated reporting framework introduced by the International Integrated Reporting Council (IIRC) and Global Reporting Initiative (GRI).

As with the accounting and auditing standards, the scope of enforcement for corporate governance rules is limited. The ICASL code is a voluntary code and therefore, not mandatory for the entirety of the private sector. Other respondents alleged that the various professional codes of conduct, best practices and guidelines were ineffective as there are no mechanisms to hold persons accountable for violating the codes. It is only companies that fall under the ambit of the United Kingdom's Bribery Act<sup>198</sup> and the United States' Foreign Corrupt Practices Act (FCPA)<sup>199</sup> that are to some extent, compliant with anti-corruption requirements, primarily due to the strong enforcement of these laws by these respective jurisdictions.

Corporate governance in Sri Lanka is not law driven, instead, it is best practice driven and self-governed because of which, a compliance culture is still in its formative stages. Whilst some companies have gone beyond regulatory requirements and adopted voluntary codes and best practices, this is not widespread. One respondent highlighted that the Transparency in Corporate Reporting assessment conducted by Transparency International Sri Lanka demonstrated that companies had a greater tendency to disclose information where it was required by law.<sup>200</sup>

Overall, in when addressing the adequacy of the laws, Respondents opined that that the introduction of legal requirements and enforcement mechanisms would be a strong motivator to propel companies towards adopting a compliance culture. On the other hand, some Respondents also alleged that given the systemically corrupt context prevailing in Sri Lanka, law and enforcement is not a real threat to businesses that engage in bribery or corruption. Therefore, even where steps have been taken by the CSE and other regulatory authorities to amend the listing rules to promote better corporate governance, respondents were sceptical of the efficacy of these rules applying to smaller companies and family-owned businesses. This creates a unique conundrum for Sri Lanka, wherein a tight line must be drawn between pushing for legally mandated anti-corruption and corporate governance standards and encouraging self-regulation.

195. Boateng, A., Wang, Y., Ntim, C., & Glaister, K. W. (2021). National culture, corporate governance and corruption: A cross-country analysis. *International Journal of Finance & Economics*, 26(3), 3852–3874.

196. ICASL. (2023). Code of Best Practice on Corporate Governance. [https://www.casrilanka.com/casl/index.php?option=com\\_content&view=article&id=250&Itemid=209&lang=en](https://www.casrilanka.com/casl/index.php?option=com_content&view=article&id=250&Itemid=209&lang=en)

197. Nazliben, K.K., Renneboog, L. & Uduwalage, E. Corporate Governance from Colonial Ceylon to Post-Civil War Sri Lanka. *J Manag Gov* 28, 265–335 (2024). <https://doi.org/10.1007/s10997-023-09678-5>

198. Bribery Act 2010. <https://www.legislation.gov.uk/ukpga/2010/23/contents>

199. Foreign Corrupt Practices Act. <https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2012/11/14/fcpa-english.pdf>

200. TISL. (2023) Transparency In Corporate Reporting. <https://www.tisrilanka.org/wp-content/uploads/2024/02/TRAC-2023.pdf>

## 4.2. Increased Interaction with the Public Sector

As discussed in the previous section on private-to-public corruption, several Respondents alleged that there was a higher risk of corruption when dealing with the public sector. It was alleged the lack of effective engagement with public sector institutions creates a risk for corruption to flourish. Some respondents alleged that public sector institutions sometimes deliberately maintain opaque lines of communication with the private sector to create opportunities for corruption.

Some respondents alleged that whilst the senior management of public sector institutions have endorsed anti-corruption policies, it had not translated to the grassroots level employees where the corruption actually happens. Therefore, when engaging with lower-level officials there was a higher risk of corruption observed. It was also alleged that there is a reluctance on the part of some public sector institutions to take progressive steps to address corruption. For example, proposals have been made to introduce a digitised single window concept<sup>201</sup> for handling exports and imports into Sri Lanka. However, certain key public sector institutions have refused to adopt the single window concept for various reasons such as the lack of IT infrastructure, and personnel. Respondents allege that these institutions refuse to digitise their operations to keep avenues open for corruption.

*The lack of political will to adopt digital solutions is particularly glaring as there are several donors willing to support this project. For example, some authorities have introduced systems that enables digital submission of documents, yet the authorities still insist on both the manual and digital copy being submitted because this allows them to maintain human interactions which creates space for corruption.*<sup>202</sup>

In such a context, it was opined there is a higher risk of corruption for the private sector when dealing with certain public sector institutions. On the other hand, some respondents alleged that they had noticed an improvement in government responses to anti-corruption measures, while others indicated that the public sector/regulatory authorities were a major causation factor of corruption.

*Senior officials of SLC are more open to engaging with the private sector and participating in meetings with the private sector.*<sup>203</sup>

Respondents were optimistic that the openness to the private sector reflected at the top would trickle down to lower operational level employees. Some respondents believed the positive impact of this was already beginning to show.

*Our open engagement with the senior management of certain public authorities has instilled a degree of fear within the lower strata of the institution. The operational staff are fearful that as companies we will complain about corruption and that they will be pulled up.*<sup>204</sup>

Improved engagement with public sector institutions will allow the private sector to raise the issues they face, and to raise concerns as and when they arise. This minimises the space for corruption to continue beyond the first instance of complaint. As such, improved engagement with the private sector by public sector institutions is a necessary change that could lead to improved anti-corruption interventions.

### 4.2.1. Politicisation of the Public Services

It was alleged that the positive engagement with public sector institutions is often dependent on the person heading the institution, and if they have the will to prioritise anti-corruption measures. As a result of this, positive engagements with public sector institutions are not uniform across the public sector but are rather personality driven. This impacts the sustainability of such approaches.

201. A single window system is a trade facilitation concept that allows traders to submit information to a single agency to fulfill regulatory requirements for import, export, and transit.

202. Respondent G

203. Respondent L

204. Respondent L

It was alleged that one of the factors that undermines the efficacy of public sector institutions is the absence of clear strategic direction for such institutions. There is no consistent policy or strategy that the public sector institutions must follow. Rather it is a matter of adopting the individual vision and mission of the person heading the institution for the duration of their term. It was alleged that political appointees do not adopt long-term plans; instead, they choose to adopt shorter, five-year plans, with the assumption that their position will change with the next election. As a result of such an ad hoc approach, private sector companies are forced to adjust and adapt their operations every time a new head is appointed to the public sector institution. It was further alleged the lack of a proper organisational goal is further exacerbated by the high turnover of senior management within public sector institutions based on political changes at the national level. As such, within the span of two to three years, certain institutions have seen a turnover of approximately three to four Ministers and therefore, in turn, CEOs and Chairpersons as well.

Promotions within the state apparatus are often based on seniority with no regard to merit, skill, or leadership ability, or whether the person has compromised integrity in any way.<sup>205</sup> Therefore, it was alleged that even institutions that have taken the initiative to hold consultative stakeholder meetings to draft a 10-year strategic plan, have not been successful in implementing these plans due to high turnover. High turnover also impedes the activities of proactive companies and chambers of commerce that seek to engage with public sector institutions and regulatory authorities to improve anti-corruption efforts. Each time there is a change in office, all progress made by the company or chamber is undone. This is evident within the IRD where commissioner generals' have always been internally appointed from the next most senior official, typically with an average tenure of around one year.<sup>206</sup>

It was alleged that the lack of an organisational plan along with high turnover, results in anti-corruption measures being ignored or forgotten. As such, anti-corruption is often not prioritised or institutionalised within public sector institutions. It was further alleged that the absence of anti-corruption concerns governing their internal and external operations, increases the risks of such public sector institutions engaging in corruption and being open to either coercive or collusive forms of private sector corruption. The appointment of the chairperson and secretary of any public sector institutions should be based purely on meritocracy with the hope that they will remain in office for a prolonged period, rather than a political appointment held only for the duration of a single election at best. The administrative service should remain intact regardless of change in government. This would strengthen the continuity of anti-corruption interventions by companies and chambers and give senior management of agencies the time needed to implement such plans. Moreover, the implementation of a common long term strategic plan for certain public sector institutions is essential, as there is no coordination and cohesion between public sector institutions which significantly reduces the ease of doing business in Sri Lanka. It was alleged that the lack of such coordination mechanisms has created a sense of distrust amongst public sector institutions which has led to information sharing between institutions becoming a challenge. Therefore, the creation of a cohesive and comprehensive strategic plan for inter-connected institutions which clearly delineates the role of each institution and creates a platform for collaboration is of vital importance. The failure to adopt a cooperative and collaborative approach between public sector institutions also undermines their ability to combat corruption by the private sector. It also creates space for corruption to occur as the lack of cooperation often requires the private sector to approach multiple public sector institutions instead of adopting a "single window" approach.

#### **4.2.2. The Lack of Infrastructure and Personnel**

Government institutions are facing a serious shortage of staff. It was opined that this hampers government institutions from acting in a time effective manner resulting in bribes being offered to speed up services. The lack of staff also impedes their ability to effectively regulate and monitor the respective industries that they govern.

205. 53 IMF. (2023). Sri Lanka: Technical Assistance Report–Governance Diagnostic Assessment. Country Report No. 2023/340 <https://www.imf.org/en/Publications/CR/Issues/2023/09/29/Sri-Lanka-Technical-Assistance-Report-Governance-Diagnostic-Assessment-539804>

206. 54 Ibid.



***The NMRA lacks the necessary cadre of staff to test medication in a timely manner. If side effects of a drug are noticed, the NMRA should be notified immediately. However, due to weak process management, it takes a long time for the NMRA to be informed, by which time the entire stock has been liquidated. The NMRA is operating with 10–12 drug inspectors, which is not enough to carry out post marketing surveillance and maintain a proper mechanism to address compliance.***<sup>207</sup>



Similarly, the SLC is functioning with a significant shortage of officials, lacking nearly one-third of the required staff, due to the government policy restricting recruitment in response to the economic crisis, which affects the quality of the service. Furthermore, improper allocation of the limited staff and the existing transfer procedure exacerbate the problem.<sup>208</sup>

It was also highlighted that the salary scales of government officials need to be amended. Respondents alleged that the low remuneration and incentive packages of government officials also creates a temptation for them to engage in corruption simply to manage their expenses. This raises a risk of corruption, especially when such officials engage with the private sector. To motivate and strengthen the workforce further, it needs an attractive salary and incentive scheme for officials, along with a merit-based promotion system.

Respondents also alleged that there was a reluctance on the part of government officials to report corruption. Public officials are reluctant to report incidents of corruption, as legal cases take a prolonged period of time. It is likely that the officer will be transferred out of the jurisdiction of the court hearing the case and therefore will have to travel a long distance on each court date. They are not adequately compensated for their time and effort when attending such cases.



***Officers may decide to turn a blind eye to avoid the inconveniences caused to them when they report corruption. The lack of protection afforded to public officers is yet another concern that causes them to turn a blind eye. Many private sector entities that engage in corruption do so with political backing. As a result, public officials are fearful of raising complaints for fear of reprisals. Some private sector entities may even threaten officials to ensure that they remain silent.***<sup>209</sup>



It was alleged that public sector institutions lack the expertise required to conduct forensic investigations to identify corruption. Current auditing standards do not inquire in to purchases beyond the three quotations obtained, they do not review the customs declarations, quotations from the original manufacturer, nor do they ask suppliers to show their commissions/profit margins. As such, the lack of auditing and forensic auditing expertise is a huge barrier to the effective identification of corruption.

Finally, public sector institutions also struggle with infrastructure shortages. It was alleged that some institutions do not have proper email domains or infrastructure, to bring in digitisation. For example, the SLC still faces shortages in logistics and infrastructure, which are crucial for delivering quality services. Some identified requirements, among others, include a cargo examination facility with SMART technology, an accredited Customs lab, and a suitable internal communication system among the directorates of the SLC.<sup>210</sup>

207. Respondent J

208. Sri Lanka Customs. (2024). Sri Lanka Customs Strategic Plan 2024–2028. [https://www.customs.gov.lk/wp-content/uploads/2024/02/SP\\_ENGLISH\\_VERSION\\_compressed.pdf](https://www.customs.gov.lk/wp-content/uploads/2024/02/SP_ENGLISH_VERSION_compressed.pdf)

209. Respondent R

210. Sri Lanka Customs. (2024). Sri Lanka Customs Strategic Plan 2024–2028. [https://www.customs.gov.lk/wp-content/uploads/2024/02/SP\\_ENGLISH\\_VERSION\\_compressed.pdf](https://www.customs.gov.lk/wp-content/uploads/2024/02/SP_ENGLISH_VERSION_compressed.pdf)



### 4.3. Weak or Absence of Regulatory Authorities

The presence of a strong and independent regulatory authority to govern an industry within the private sector has had positive impacts on anti-corruption efforts. Regulatory authorities which undertake strict monitoring and impose penalties for failure to meet regulatory standards have had greater success in ensuring that industries self-regulate, including in terms of anti-corruption. The banking and finance industry and the insurance industry were highlighted as examples of strong regulatory oversight which successfully strengthen the anti-corruption framework within these industries. Conversely, a weak regulator or the absence of a regulator was seen as increasing the risk of corruption in certain industries.

It was observed that if the regulatory authority itself is seen to be corrupt, that it is then difficult to encourage or incentivise companies operating within that industry to remain corruption free. Such authorities often fail to implement the laws governing the industry to its fullest extent. Often, they also lack independent grievance handling mechanisms, appeals committees, and decision-making bodies. It was alleged that the politicisation of appointments to such authorities is a key reason for the ineffective functioning of such authorities. The politicisation of appointments results in the head of the authority being changed often.

These authorities are meant to play a regulatory and monitoring role of private sector entities which they oversee. However, it was alleged that the most corrupt authorities have created for themselves a facilitator role in addition to their regulatory role, wherein they create processes which are dependent on their intervention. By creating this facilitatory role for themselves, such authorities have also created opportunities to engage in corruption.

The absence of regulations or the promulgation of regulations which are not suited to the realities of a particular industry also creates a risk of corruption. It was alleged that this is best embodied in the micro-finance industry of Sri Lanka. The CBSL when drafting the Micro-Finance Act of 2016 focussed primarily on regulating depositors when the real issue that plagued the industry was in relation to credit. Furthermore, the Act introduced regulations with thresholds that were too high, resulting in only 4 companies being able to register under the Act. Therefore, the proposed regulations served to exclude companies within the industry from regulation rather than include them. As a result of such weak regulations, at present, anyone can lend regardless of registration, which led to a proliferation of "*Poli Mudalali's*"<sup>211</sup> who form their own organisations which lend on a daily collection basis at high rates. These organisations call themselves microfinance institutions and have flourished due to the lack of regulation. Therefore, the lack of regulation breeds informality within an industry. Informality in turn creates other barriers which facilitate corruption, such as the lack of a proper information sharing mechanisms.<sup>212</sup>

Not only did the informal sector thrive due to weak regulations in the micro-finance industry, but so did large companies, wherein large finance companies exploited the absence of regulations to take deposits at around 10% and lend such funds at about 25% and thus, bolster their profits. This often-placed customers in a debt trap which was then exploited by several employees of such companies, to solicit sexual bribes, as most customers were women.<sup>213</sup> Therefore, the unregulated nature of the industry has allowed companies to operate without accountability or fear of penalisation. A new bill was presented to parliament to address the shortcomings in the previous Act, which states that lending will be an offence if the institution is not regulated by the Act, or any other Act introduced prior.<sup>214</sup> This is a positive step, as without having such a legal framework, the exploitation of lending cannot be controlled. However, the bill was subsequently withdrawn due to several regulation issues identified by interested stakeholders.

211. Informal money lenders who charge exorbitant interest rates, either daily, weekly or monthly. The Sinhala equivalent of a loan shark.

212. For example, it was highlighted that the main causation factor for corruption in the microfinance industry is the absence of a system to evaluate the customers' previous borrowing. If all lenders are regulated, a system similar to the CRIB that is used by banks and finance companies could be introduced to ensure that there is cohesive information sharing amongst microfinance lenders.

213. The Morning. (2022). Microfinance still forcing women to provide sexual bribes.

<https://www.themorning.lk/articles/208796>

214. MICROFINANCE AND CREDIT REGULATORY AUTHORITY BILL [https://compfie.aparajitha.com/wp-content/uploads/2023/11/03112023\\_FCCLK\\_02.pdf](https://compfie.aparajitha.com/wp-content/uploads/2023/11/03112023_FCCLK_02.pdf)

On the other hand, the presence of a strong regulator has been observed as reducing the risk of corruption within some private sector industries. The Insurance Regulatory Commission of Sri Lanka (IRCSL) has been identified as engaging positively with insurance providers whilst playing a strict monitoring role. They have established effective grievance handling processes, which enables customers to approach either the Authority or an Ombudsman if they feel that an insurance claim is unfairly denied by the insurance company. The IRCSL adopts an impartial inquiry based on the facts and reaches a determination. The creation of clear lines of communication such as the above, empowers customers to raise complaints of corruption, whilst incentivising companies to reduce fraudulent and corrupt activities as they are conscious that they may be reported to the authority. Similarly, strict monitoring by regulatory authorities acts as a deterrence to engaging in corruption. Strict monitoring must be accompanied by strict implementation and penalties, where action must be taken for failure to meet regulations or regulatory deadlines. This could even include measures such as suspending licenses. The conducting of regular audits to ensure that regulations are adhered to also acts as a deterrent for companies to engage in corruption.

Most listed companies have implemented a governance framework, including those mandated by the CSE Listing Rules and the Code of Best Practice on Corporate Governance. However, it was alleged that the implementation of these rules has become a tick the box exercise for some companies. Contrary to this however, effective implementation of corporate governance rules has been witnessed in the banking and financial sector which may be attributed to the strong monitoring role that the CBSL plays and the annual audits it carries out. A best practice observed was the CBSL fit and proper requirement for all Key Responsible Persons<sup>215</sup> which requires such persons to promote good governance, and be someone with demonstrated honesty, integrity, and reputation. As the regulatory authority actively requires the companies within the industry to regularly report back to them on their corporate governance systems, the finance and banking industry generally has more robust corporate governance practices in place.

Therefore, it is essential that regulatory authorities establish and demonstrate a strong commitment to anti-corruption. They must also extend support to the private sector to bolster their anti-corruption efforts. It was alleged that weak buy in on the part of the regulatory authority discourages companies from self-regulating and may even undermine the anti-corruption efforts of individual companies and chambers. Progressive steps by chambers of commerce to introduce codes of conduct and anti-corruption programmes have been undermined by the lack of commitment displayed by the regulatory authority.

The foregoing demonstrates that the existence of a regulatory authority alone is inadequate to deter corruption. Rather, it is dependent on how corrupt the regulatory authority is, and is seen to be, and the efficacy of its monitoring and enforcement mechanisms.

#### 4.4. Unequal Playing Field

It was alleged that the systemic corruption of the state sector creates an unequal playing field for companies because of which they feel compelled to offer bribes to obtain contracts and faster services. Respondents also highlighted that competition within the private sector could be a factor which leads to corruption when companies compete for government tenders. Even if companies are aware of the disadvantages of corruption, they may consider bribery and corruption a necessity to remain competitive due to the undue advantage afforded to companies that do engage in corruption. This creates an unequal playing field favouring companies that are willing to engage in corruption which coerces other companies to also engage in corruption to remain competitive.



*In industries such as construction, imports and pharmaceuticals, companies may resort to corruption simply to remain in the running as their competitors engage in corruption. This arises from the loss of faith in the system as companies view corruption as being systemic.*<sup>216</sup>



As companies use corrupt practices to gain a competitive advantage, they create a snowball effect throughout their industries, prompting other companies to engage in similar practices to remain competitive in the market.<sup>217</sup>

215. Banking Act No. 30 of 1988 s.42(2)(c)(d); Finance Business Act No. 42 of 2011 s. 21(1)(b)

216. Respondent M

217. United Nations Office on Drugs and Crime. (n.d.) University Module Series on Anti-Corruption, Module 5 – Private Sector Corruption.

Some Respondents opined that the loss of faith in the system was best demonstrated by companies' willingness to pay taxes and customs duties in accordance with the law, provided that the government could ensure a level playing field. However, in practice, local manufacturers are unwilling to pay taxes to the government because importers import the same product at a much lower price by evading customs.

*The local manufacturer then has to offer the product at a lower price to remain competitive, which eats into their profits. Paying taxes on top of this, then threatens the viability of the manufacturers business. Importers on the other hand, stated that they cannot be competitive if they declare the imports and pay the correct import duty.*<sup>218</sup>

As such, it was alleged that systemic corruption negates a level playing field and seriously undermines market competition. Likewise, systemic corruption has also resulted in a distortion of free market principles, as market forces no longer determine the price of products. Instead, prices, demand and supply are strongly influenced by corruption. The belief that corruption is essential to level the playing field, inadvertently therefore, creates a risk of corruption and serves to perpetuate the practice of corruption within the private sector. It functions in a cyclical manner to perpetuate corruption within the private sector.

## 4.5. Weak Corporate Governance Practices

### 4.5.1. Corporate Culture

Setting the tone from the top has been recognised as one of the key elements to ensuring clean business practices within companies. Therefore, corporate cultures characterised by owners siphoning out funds from the company, weak enforcement, and a willingness to turn a blind eye create an implicit environment for corruption to flourish. When employees see that the top is unethical, they adopt the same attitude. If the top management condones corruption, it sets the tone for the rest of the organisation. Therefore, it is the tone from the top that creates a risk of corruption.

Employees are also more likely to engage in corruption if the senior management is perceived to be oblivious or out of touch with business realities.

*International companies with foreign managers, may be more vulnerable to the risk of corruption, as the senior management is unfamiliar with the Sri Lankan business landscape. They are dependent on mid-level management who then exploit this to their own benefit. Due to their unfamiliarity with the landscape, they are also more likely to turn a blind eye to corruption, as they are unaware of the systems and sometimes assume that corruption must be engaged in to achieve their purposes.*<sup>219</sup>

The risk of corruption also arises when companies introduce codes of conduct and policies without introducing mechanisms to implement such policies. The failure to introduce proper implementation mechanisms causes employees to lose faith in the system and undermines the creation of a clean corporate culture. Failure to implement policies also instils in employees the belief that such policies are merely on paper, and they are therefore disregarded.

218. Respondent C

219. Respondent K

*Companies may have whistleblowing and anti-sexual harassment policies in place, and the senior management may assume that the company is a harassment free workplace as they do not receive any complaints through the reporting mechanisms that are established. However, this does not mean that corrupt activities are not taking place. Therefore, there must be buy-in from the top, wherein they must not only adopt policies and codes of conduct but also implement them and introduce mechanisms to monitor the implementation of the same. Therefore, companies need to walk the talk and take action when corruption is observed and punish perpetrators.<sup>220</sup>*

Corporate culture must extend beyond the employees of the company to third parties that deal with the company. Respondents stated that one of the biggest challenges that companies that have a large cadre of agents/independent contractors face, is ensuring that third parties and agents/independent contractors abide by the same standards and principles implemented in the company.

#### 4.5.2. Undue Budgetary Pressures

Companies function with a profit motive, and this often includes severe budgetary pressure on staff to meet their targets. Some corporate pay structures pin incentives and commissions to the achievement of targets. As a result of this, employees are tempted to engage in fraudulent or corrupt activities to meet their targets. For example,

*An insurance agent may introduce a bogus policy in order to bridge the shortfall in their target.<sup>221</sup>*

Therefore, budgetary pressure is an issue that poses a risk of corruption, as companies cannot amend pay structures as it may affect their viability. While on the part of the employee, it compels them to engage in underhand activities to earn a living.

Budgetary pressures also place pressure on managers and operational staff to speed up operations. Such pressures may lead to a culture of doing “whatever it takes” to ensure that targets are met. As a result of such pressure, companies may fail to adopt adequate internal controls. It was opined that this was observed in the micro-finance industry where micro-finance institutions (MFIs) which received low-cost funding began distributing loans instead of approving loans regardless of the creditworthiness of the customer. This in turn, led to a promulgation of claims of sexual bribery, suicides, extortion, and the use of other coercive collection methods. Therefore, budgetary pressures and weak internal controls creates a risk for corruption within the private sector.

#### 4.5.3. Lax Organizational Transparency

Corporate structures are a convenient means through which individuals may hide their identity and ownership, to engage in illegal financial activity and corruption. It is for this reason, that the CBSL has recognised that the lack of adequate, accurate and timely information pertaining to beneficial ownership, may increase incidents of money laundering and the financing of terrorism, by disguising the identity of known or suspected criminals, the true purpose of the transaction and the true source or use of funds.<sup>222</sup> Veiled beneficial owners also leads to a risk of corruption, as often boards and key managerial positions are held by “yes men” of the controlling party. As such, opaque organizational structures are used to enable a few individuals to control large firms by means of ownership pyramids, crossholdings, or intermediate private firms.<sup>223</sup> Controlling parties can use companies as intermediate investment vehicles ensuring that they control significant share

220. Respondent N

221. Respondent I

222. Guidelines for Designated Non-Finance Businesses on Identification of Beneficial Ownership, No. 02 of 2019. <http://fiusrilanka.gov.lk/docs/Guidelines/2019/Guideline-02-2019.pdf>

223. Mapitiya, G. S., Ajward, A. R., & Senaratne, S. (2016). Ownership concentration and degree of compliance with corporate governance best practices of public listed companies in Sri Lanka. *NSBM Journal of Management*, 1(1), 103–118.

blocks. As a result of such mechanisms, when the controlling party holds a majority ownership in a company, shareholder monitoring becomes lax. This in turn, reduces the need for companies to act in a manner accountable to their shareholding and as a result may lead to companies engaging in corruption due to the lack of monitoring.

The accounting and auditing standards require companies that have overseas operations to disclose financials for such operations as segmental reporting either geographically, product wise or by country. Despite companies being statutorily required to do this, there is no way to accurately monitor if companies are adhering to this standard. There can be instances where companies have set up overseas companies without disclosing such operations. It is more difficult for listed companies to move funds across borders, however, money moved out of unlisted companies may be hard to track.<sup>224</sup>

Despite the numerous risks associated with veiled beneficial owners, the disclosure of the ultimate beneficial owner of a company is not regulatorily required in Sri Lanka at present although an amendment was proposed to the Companies Act to introduce such a register.<sup>225</sup> Due to the absence of regulatory pressure, it was alleged that many large conglomerates are controlled by private companies or single shareholder companies. A requirement that all companies must disclose their ultimate beneficial owner would largely address the above shortcomings. Respondents were hopeful that the proposed law would deter companies from using subsidiaries as vehicles for corruption. Such a requirement would allow for monitoring of where corrupt transactions take place, whilst also highlighting Politically Exposed Persons (PEPs) that have private interests. Therefore, respondents were cautiously optimistic about the impact of such a law. Other respondents, however, were concerned that the CSE does not have the requisite infrastructure to trace the ultimate beneficial owner of a company, particularly, for highly divested companies.

#### 4.5.4. Weak Internal Controls

Weak internal controls within a company also pose a risk of corruption. To mitigate the risk of corruption within a company, the company must have in place strict processes that create checks and balances on persons with authority. Similarly, stringent monitoring mechanisms must be in place to regularly review and evaluate the efficacy of a company's internal controls. Towards this, many best practices in corporate governance envisages companies having an independent board of directors entrusted with the overall management of the company, strong internal audit committees and procurement committees, to name a few.

According to the corporate governance code of 2023<sup>226</sup>, companies must ensure board independence. Despite this requirement, there is a tendency for companies to make appointments regardless of independence. Respondents stated that directors may be appointed not based on their experience and skillset but rather based on their past employment within the public sector or based on the political connections that they have. Politicised boards increase the risk of corruption when engaging in procurement of government contracts and an increased tendency for political donations.<sup>227</sup> Respondents alleged that this was particularly concerning as Ministers requested for commissions and bribes even for Corporate Social Responsibility (CSR) donations. Such political connections can result in the company becoming beholden to politicians, to the detriment of the company, wherein they may be expected to make donations at the request of the politicians or recruit political favourites regardless of merit.

Furthermore, there are several family-run companies, which appoint family members to key managerial positions, and maintain strong holds upon the board of directors. Accordingly, nepotism in such appointments undermines board independence and monitoring power is weakened.<sup>228</sup> In effect, such boards become mere rubber stamps to the wishes of the controlling family. In this regard, single owner companies or family-owned companies may overlook all forms of governance in favour of increasing profits, which increases the likelihood of corruption.

**A best practice of corporate governance requires companies to adopt internal auditing functions. However, non-listed companies have no regulatory compulsion to adopt internal auditing**

224. Respondent A

225. Companies (Amendment) [http://www.documents.gov.lk/files/bill/2024/9/563-2024\\_E.pdf](http://www.documents.gov.lk/files/bill/2024/9/563-2024_E.pdf)

226. ICASL. (2023). Code of Best Practice on Corporate Governance. [https://www.casrilanka.com/casl/index.php?option=com\\_content&view=article&id=250&Itemid=209&lang=en](https://www.casrilanka.com/casl/index.php?option=com_content&view=article&id=250&Itemid=209&lang=en)

227. Nazliben, K.K., Renneboog, L. & Uduwalage, E. Corporate Governance from Colonial Ceylon to Post-Civil War Sri Lanka. *J Manag Gov* 28, 265–335 (2024). <https://doi.org/10.1007/s10997-023-09678-5>

228. Ibid.

mechanisms. On the other hand, in listed companies where such committees are functional, their independence may be questioned as they are either chaired by the CEO or an Executive director. This seriously impedes the efficacy of an internal audit mechanism. Respondents also highlighted that though audit committees may have many findings, these findings are rarely closed and concluded. Instead, companies justify audit findings or turn a blind eye to them.

Robust procedures must be in place to ensure that procurement is conducted in a transparent and accountable manner. It was however, highlighted that there is generally a lack of transparency when selecting vendors. This is further exacerbated by the fact that companies still undertake large volumes of cash transactions which creates space for fraud and corruption. It also creates an increased risk for the free flow or proceeds of crime and corruption.

It was also highlighted that companies that are incorporated and operating outside of Colombo have not adopted several of these internal controls. Their operations are often dependent on a handful of people who play multiple roles across the company. Therefore, these companies do not have dedicated HR, procurement, audit, and finance departments. It is highly likely, the founder may handle several of these functions themselves, including the financials which creates a serious risk for corruption. It was also highlighted that these companies do not have codes of conduct and Anti-Bribery and Corruption (ABC) policies in place. Therefore, whilst there has been an upsurge in ABC, corporate governance and Environmental, Social and Governance (ESG) concerns amongst the larger conglomerates in Colombo, this trend has not yet developed in other commercial hubs across the country.

#### 4.5.5. High Costs and Weak Infrastructure

The biggest challenge is in terms of resource constraints particularly in terms of introducing a compliance division. A significant amount of funding is taken away from normal business operations when allocating resources for compliance. To introduce effective anti-corruption programmes, changes must be made to the company's monitoring mechanisms, data entry and follow up systems. Similarly, anti-corruption programmes require a separate internal audit department and training programmes for the entire company on a regular basis, all of which are costly initiatives that are perhaps not a priority for companies, particularly when they are facing severe pressure on their bottom line. However, whilst the initial commitment may be cost-heavy, once it is done and a compliance mechanism is established, there are significant cost gains that arise due to improved compliance.

Some companies indicated that whilst they had strong anti-corruption measures in place, the practical implementation of such processes at the grassroots level was a challenge. For example, companies in the banking, finance and insurance sectors have in place regulations governing AML and PEPs. Whilst such companies have internal databases of PEPs and the National Identity Card (NIC) Number of persons involved in fraudulent activity, the cascading of such information to the branch level can be difficult. If a person listed on the above databases approaches a branch office, the branch level employee may not be equipped to check the system to determine if they are on the database or not. Such persons are flagged only when the file is received at the head office. Furthermore, it is unlikely that branch level employees will be able to identify "red flags" for fraudulent transactions or PEPs. Therefore, despite continuous efforts to train staff at all levels on anti-corruption, the lack of infrastructure at the branch level and weak human resources may result in weaker implementation of such policies at the grassroots level.

#### 4.6. Unconducive Business Environment

Several respondents alleged that the Sri Lankan business environment was not conducive for businesses, particularly for startups and new entrants to the market. In addition to the unpredictability that corruption causes, they also highlighted that the Sri Lankan regulatory framework poses serious barriers to most startups. For example, banks only provide loans against tangible securities. However, most startups operate out of home offices and do not have a tangible product, and their ideas may be risky to traditional bankers, which discourages banks from offering loans.<sup>229</sup> This is further exacerbated as Sri Lanka has a weak venture capital/angel investing networks.<sup>230</sup> Respondents operating outside of Colombo also alleged that apathy on the part of regulatory authorities created

229. Sri Lanka Association of Software and Services Companies & PricewaterhouseCoopers. (2019). Sri Lanka Startup Report 2019. <https://www.stockholm.embassy.gov.lk/wp-content/uploads/2020/04/Sri-Lanka-Startup-Report-2019.pdf>

230. Venture capital (VC) is a form of private equity and a type of financing for startup companies and small businesses. An angel investor provides initial seed money for startup businesses, usually in exchange for ownership equity in the company.

a challenging business environment. Therefore, it was alleged that registering a company can take anywhere between 6 months to 1 year in some areas of the country, because of which some businesses avoid formal registration or resort to corruption to expedite the process.

As such, business becomes a high-risk endeavour which is particularly challenging for new entrants without established financial stability or access to corrupt or political networks. Therefore, new entrants are primarily dependent on debt financing to set up operations. One Respondent alleged,

*In order to obtain the required loan for the business, a new company was compelled to approach a member of a local government authority and offer him a payment of LKR 300,000, with the understanding that they would ensure the loan proposal received credit committee approval from the bank. The company would not be able to secure adequate funding from a bank without such influence, as it was a new company and could therefore only submit financial records for a short period of time. Despite offering such an incentive, nothing came of it, and the company was reluctantly compelled to wind up operations.<sup>231</sup>*

It was also highlighted that women entrepreneurs faced a greater challenge in accessing such funds, particularly those who operate out of Colombo.

## 4.7. Socio-Cultural and Economic Factors

Respondents believed economic downturns increased the risk of corruption, wherein companies facing economic hardship are more likely to engage in corruption to ensure their survival. This is particularly so, as high interest and tax rates creates a tendency for corruption as companies are likely to resort to underhand activities to maintain their profits. Therefore, because of the economic downturn, there is a perception that the level of corruption amongst the private sector has increased over the past two years.

The current economic downturn has also reduced individuals' affordability which creates a temptation for corruption at the granular level. Employees are struggling to sustain themselves on their salaries, making them more vulnerable to accepting bribes, kickbacks and/or commissions. It was opined that those who resort to corruption do so not due to a lack of integrity, but rather due to desperation. This was alleged as being particularly prone to occur in the public sector, as public servants are inadequately remunerated and incentivised. There is a drastic discrepancy in the level of remuneration that a public sector employee would receive compared to a private sector employee of similar skill and experience. Low remuneration of public servants, therefore, makes them vulnerable to accepting bribes offered by companies. Respondents were however quick to clarify that this was further exacerbated by greed.

### 4.7.1. Social Attitudes Towards Corruption

The Global Corruption Barometer (GCB) observed that corruption in the private sector was perceived as either a fairly minor problem, or not a problem.<sup>232</sup> This was substantiated as this Corruption Risk Mapping Research revealed that there is a general tendency in the private sector to presume that they are not corrupt. However, it becomes evident that companies may be engaging in many unethical practices to conduct business and may not realise that unethical practices have become a part of how they operate. For example, an HR manager may be more inclined to recruit persons from his own communities and fail to consider such nepotistic relations as corrupt or unlawful.<sup>233</sup> Considering the above, steps need to be taken to raise awareness on what constitutes private sector corruption, as in the current context, companies engage in corruption without realising it.

Some Respondents indicated that Sri Lanka has a culture of one-upmanship. This creates an inherent vulnerability to corruption as individuals attempt to live beyond their means and are therefore required to resort to corrupt means to fund their lifestyles. On the other hand, some respondents believed the public has a very flippant view of corruption, where it is not viewed as

231. Respondent AA

232. Transparency International Sri Lanka. (2019). Global Corruption Barometer 2019 Sri Lanka. <https://www.tisrilanka.org/wp-content/uploads/2019/12/GCB2019.pdf>

233. Nazliben, K.K., Renneboog, L & Uduwalage, E. Corporate Governance from Colonial Ceylon to Post-Civil War Sri Lanka. *J Manag Gov* 28, 265–335 (2024). <https://doi.org/10.1007/s10997-023-09678-5>

wrong or unethical. This attitude permeates into their behaviour and actions within a corporate entity as well. At a grassroots level, individuals do not understand the impact of corruption on the company, the industry, the country or even themselves. Even when efforts are made to explain the adverse effects of corruption, individuals at operational levels are detached from it, as they see it as not being their responsibility or problem. This is particularly evident amongst lower-level staff of public institutions.

Therefore, corruption has become an accepted way of doing business and companies suffering because of corruption by other companies are not willing to expose them, as that would mean revealing their own involvement in corruption.<sup>234</sup> Moreover, corrupt practices have become accepted, entrenched, and generalised.<sup>235</sup>

#### 4.8. Informality

Informality within the private sector leads to corruption in many forms. Respondents from a cross section of industries highlighted how informality is a tool used to evade good corporate governance and thereby perpetuates corruption.

Informality in the tourism sector is observed particularly in relation to accommodation and eateries.

*There is a new trend where foreigners are setting up bars, cafes, and eateries along the southern belt. These business units are not registered, and they are set up by foreigners who do not have work permits. As they are unregistered businesses, none of the money goes back into the local economy as it is sent overseas. For such businesses to continue in operations, they must pay off the local government authorities to turn a blind eye. This also means that they are not subject to inspections, raids and regulations of the local authorities and regulatory authorities such as the Excise department, nor do they pay taxes. Therefore, informal businesses in the tourism sector rely on the systemic corruption within the public sector to ensure the continuity of their business operations.*<sup>236</sup>

A similar observation may be made for the micro-finance industry. The CBSL has estimated that there are approximately 11,000 informal lending institutions.<sup>237</sup> As these institutions operate within the informal sector, they exploit borrowers, and this creates a risk of corruption within the industry.

Another trend observed in recent years, is the proliferation of self-employed businesses. Employees work for a company for a period of five years or so and then break away from the company to start their own business in the same industry. There are also instances where some employees set up their own companies whilst being employed, which is a conflict of interest. Sometimes, they also utilise the resources of their employers to set up their new business. For example,

*In the finance industry, money that employees lend privately is usually money they have recovered from loans given by their employer. This practice of creating their own company has caused employees to freely engage in fraud and corruption even when they are still employed by other companies. Such employees have learned the industry well, and they know they will be terminated if they are found guilty of corruption. However, they are also aware of the fact that they can start their own business in the same industry with a little capital. So, employees are confident that they can create a livelihood for themselves even if they are terminated. This knowledge encourages them to resort to fraud and corruption. Once they leave the company and start their own business, the startups are usually unregulated and therefore more likely to engage in corruption.*<sup>238</sup>

234. CMI U4 Anti Corrupting Resource Centre. (n.d.) Corruption in the private sector. <https://www.u4.no/topics/private-sector/basics>

235. Forgues-Puccio, G. F. (2013). Corruption and the Private Sector: A review of issues. Economic And Private Sector Professional Evidence and Applied Knowledge Services. <https://www.gov.uk/research-for-development-outputs/corruption-and-the-private-sector-a-review-of-the-issues>

236. Respondent K

237. The Morning. (2024). New microfinance act to stop unlicensed credit providers.

<https://www.themorning.lk/articles/25FdwevchicCllluy8P#:~:text=According%20to%20the%20Finance%20Ministry,registered%20with%20the%20Central%20Bank.>

238. Respondent AA



#### 4.9. Fear of Reprisals

A key challenge highlighted by respondents was the reluctance of companies to come forward and highlight corruption due to the fear that they will face reprisals. It was alleged that when bribes are solicited by public sector institutions, companies are reluctant to name the persons making such requests or even to name the institution involved, for fear that they will face adverse consequences. Respondents alleged that some public sector institutions can be vindictive if complaints are raised, by causing inordinate delays when dealing with the institution in the future. Therefore, the reluctance to bring corruption to light is a challenge to addressing corruption in the private sector.

The fear of reprisals results in advocates speaking to public sector institutions only in general terms without mentioning specific incidents of corruption. It was further alleged that public sector institutions use this as an excuse to avoid taking action. They use this as a defence asking complainants to name the incident, the party, the time etc. If a complainant fails to provide such information, it was alleged that public sector institutions state that they are not able to investigate those complaints.



## 5. MITIGATORY MEASURES ADOPTED BY THE PRIVATE SECTOR

Several companies in certain industries have had remarkable success in self-regulation and adopted anti-corruption responses which exceed regulatory requirements. This next section discusses responses and steps that have been taken to address the risk of corruption within the private sector.

### 5.1. Codes of Conduct and Zero Tolerance Policies

Companies that have foreign suppliers, shareholders or that are agents for foreign companies were more likely to have stronger anti-corruption responses, as their foreign counterparts require higher standards of governance. These companies are contractually bound to abide by their foreign parent company's anti-corruption, anti-money laundering and corporate governance policies. Foreign companies often enforce these requirements strictly as they are heavily regulated.



*Our foreign counterparts pay particular attention to Sri Lankan operations, even though their Sri Lankan subsidiaries form only a small fragment of their global operations, as non-compliance in Sri Lanka could impact their entire business structure.*<sup>239</sup>



Strict enforcement of corporate governance standards by foreign companies with agents in Sri Lanka has resulted in industries that interact closely with foreign counterparts adopting higher standards of corporate governance than domestically required.

Some foreign parent companies even conduct anti-corruption trainings and require the signing of binding compliance documents. They also have in place effective whistleblowing channels which allows third parties of their local agents to raise complaints of corruption if their local agent engages in corruption. Local agents in turn, cascade these requirements down to their distributors and retailers, in order to avoid violating their contracts with the foreign parent company. Therefore, engaging with a foreign supplier or parent company is a strong motivator for companies to adopt anti-corruption programmes not only within the company, but across their supply chain. In the absence of such compulsion, companies are only bound by the local rules and regulations which is not a strong enough motivator. As such, Sri Lankan companies operating within foreign jurisdictions, as well as those acting as agents for or supplying to companies within such jurisdictions, would need to have satisfactory compliance programmes in place irrespective of whether domestic law contains such provisions or not. In this regard, strict enforcement of these standards has been key to achieving such a high level of compliance.



*The MNCs hold directors personally liable in some instances and have even taken steps to remove country heads and CEOs for failure to adhere to their standards.*<sup>240</sup>



On the other hand, some companies have voluntarily adopted high standards of corporate governance including anti-corruption programmes for the purpose of fostering a strong shareholder base. Therefore, companies that have foreign shareholders are more likely to have at a minimum, an ABC policy, sustainability policies, gender equality policies etc. The maintenance of strong internal corporate governance practices is essential for companies that wish to canvas a shareholding of foreign institutional investors<sup>241</sup>. The adoption of strong corporate governance practices, therefore, creates opportunities for companies to find overseas shareholders.

Companies that have strong anti-corruption programmes that outpace legal requirements, are better able to pass due diligence requirements of conscientious MNCs. Therefore, adopting ABC policies is a competitive advantage to companies acting ethically, especially in corrupt markets.<sup>242</sup> This can increase their scope for transnational opportunities without limiting them to similarly corrupt markets. Towards this all companies, not just those with foreign counterparts, must take steps to introduce and operationalise strict codes of conduct and zero tolerance policies.

239. Respondent I

240. Respondent I

241. Respondent A and Z

242. Kompanek, A. (2019). Understanding Compliance Is a Competitive Advantage. Anti-Corruption & Governance Center. <https://acgc.cipe.org/business-of-integrity-blog/understanding-compliance-is-a-competitive-advantage/>.

ABC policies must be signed off at the Board level with an explicit commitment that the Board and employees will not engage in fraudulent or corrupt activities. These policies should include provisions on gifts and hospitality, which set out value thresholds and require that gifts must be declared to the company. Some respondents stated that their companies were able to eradicate the hamper culture through the introduction of such policies. Other respondents stated that they had seen significant success with the introduction of stringent anti-sexual harassment policies, which had improved the working conditions for women in the workplace drastically. Several respondents stated that codes of conduct were strictly enforced where employees found to be fraudulent or corrupt are terminated following a disciplinary inquiry. As with the implementation of foreign standards, companies with strict enforcement mechanisms have seen the most progress in implementing these policies.

Respondents also stated that they reviewed their policies yearly, and when audit queries were raised highlighting shortfalls in the policy. This process ensures that policies improve the quality of the controls in place to prevent the risk of fraud and corruption.

*Company policies must be available in all three local languages and made available to all employees. Employees are also taught the policies at orientation within their first week of recruitment. They also receive a pack with all the policies and the policy is made available to employees on the company intranet.*<sup>243</sup>

Respondents cautioned that as the organization grows larger, there is a tendency towards complacency where even though the document is available, it is not taught regularly or internalized by the employees.

*In order to overcome this, companies have initiated training policies which require employees to obtain an annual certification where employees must go through a test annually irrespective of the number of years in service. They also take steps to introduce refresher courses, quizzes and inter-department competitions which are more fun ways of getting these messages across.*<sup>244</sup>

Other respondents cautioned against the adoption of codes of conduct and zero tolerance policies simply for the sake of adhering to foreign standards. It was highlighted that some foreign parent companies do not enforce their standards uniformly across their foreign subsidiaries. Others highlighted that as Sri Lanka is usually a small market for MNCs, the number of audits done in Sri Lanka may not be significant or adequate to detect and prevent corruption.<sup>245</sup> As such, respondents were of the view that companies should strive to improve their anti-corruption programmes organically as a matter of sound business strategy, regardless of their foreign counterparts.

## 5.2. Strong Internal Controls

Several companies highlighted best practices that they have adopted which has contributed to the reduction of corruption or the risk of corruption within their business operations. A key commonality of these practices was the establishment of strong monitoring systems and adequate checks and balances, which includes multiple levels of approvals, including approval from the senior management. Other companies that deal with a large number of customers stated that they maintain checks and balances by introducing independent information verification systems.

*For example, the introduction of a call centre, which independently reaches out to customers, vendors, agents and other third parties to verify information provided to the company, has significantly reduced the potential for private-to-private corruption to occur. The introduction of such a verification system also ensures that incidents of fraud or corruption are flagged early and resolved swiftly.*<sup>246</sup>

243. Respondent AA

244. Respondent Y

245. Respondent O

246. Respondent AA and I

In general, companies should introduce processes which include dual control, i.e. where two employees must sign off for a decision to be made.

Companies which had strong procurement policies in place, stated that they had made substantial investments in adopting back-office systems which track every bid and ensures that historical data can be reviewed at any time to know why a particular vendor was selected over another. Other companies go a step further and ensure that their rates are transparently published on the company website, thereby eliminating any space for employees to solicit kickbacks.

It was also highlighted that the implementation of robust reporting structures on a monthly, quarterly, and yearly basis, served to reduce the risk of corruption. Regular reporting increased chances of early detection of corruption. Thereafter, steps are taken to assess the frequency of occurrence of a particular type of fraud or corruption, based on which, the management comes up with corrective action to address it. These issues are also escalated to the audit committee, with the purpose of resolving the immediate risk of corruption, but also to formulate preventive action that can be taken to prevent reoccurrence. This process enables companies to continuously improve their internal controls to meet new risks of corruption. Therefore, regular reporting, backed by robust auditing, with the purpose of ensuring that companies are compliant with not only government regulations but also the company's own internal standards, has proved to be an effective tool in combatting corruption for some companies.

Respondents also stated that it is essential to maintain a healthy balance between the risk function and operational function of a company. There should be a balance between social and governance concerns and profitability. To achieve this balance, companies must increase their focus on governance which should also be audited regularly. Therefore, audits should not only address operational and financial factors, but also social performance and governance factors. This balance must also be reflected amongst the senior management of the company, who should demonstrate a diversity of skill in both social management and operational excellence.

Well-regulated companies also mentioned that they take steps to reduce the volume of cash transactions that are handled by their employees. Simple steps such as informing customers and suppliers of the company's bank account and asking them to make direct transfers can significantly reduce the likelihood of corruption.

Respondents also highlighted that in well governed companies, all recruitments are based on pre-determined criteria and processes. Recruits are well screened prior to recruitment. It was also highlighted that the recruitment of professionals to senior roles based on meritocracy, reduced the likelihood of corruption, as professionals are bound by various codes of conduct and ethics issued by professional bodies.

### 5.3. Initiatives by Chambers of Commerce

#### 5.3.1. Codes of Conduct

Several chambers of commerce highlighted that they have adopted voluntary codes of conduct and zero tolerance policies for their member organisations. Some chambers stated that they had extended these codes to their public sector counter parts, who had endorsed the code. These policies state that members will not issue bribes and/or commissions. Some chambers have highlighted that public sector institutions can use these policies as promotional material, when interacting with foreign companies. It was opined that this must be encouraged, as if public sector institutions promote themselves as adopting a zero-tolerance approach to corruption, it also compels them to implement the policy.

Some chambers stated that they had introduced an ethical trading certification for their members, which also includes anti-corruption measures. Certifications are issued following a self-assessment by the company and an audit by the chamber. Further, steps have been taken to sign MOUs with foreign chambers and counterparts, thereby ensuring that the certification is internationally recognised. Whilst the certification remains voluntary, the international recognition of the certificate acts as a strong motivator for members to become certified.

Chambers have encouraged their members to also adopt self-reporting mechanisms as a measure of monitoring their progress against the codes. Similarly, as a best practice, some chambers stated that it was imperative to include practical consideration into the codes. For example, members should be given time to adopt the provisions of the code, instead of making it mandatory immediately.

Some chambers stated that members who were found to be in breach of the code of conduct, were removed from the chamber. They also mentioned that they conduct strict due diligence before admitting members to the chamber. Others mentioned that they were trying to appoint independent Ombudsmen or parties, to oversee instances of non-compliance with the codes.

### **5.3.2. Advocacy and Lobbying**

Private sector companies that regularly engage with their public sector counterparts to raise awareness on the impact of corruption, have made some leeway in adopting a zero-tolerance approach to corruption when interacting with public sector institutions. Chambers of commerce have also taken on a role in advocating for processes to mitigate the risk of corruption. This includes policy level work to push for digitisation within public sector institutions. Companies and chambers of commerce alike, should lobby for an equal playing field. However, it was cautioned that when engaging in lobbying, chambers and companies must be mindful to ensure that the reforms they push for benefit a considerable number of people.

Chambers also function as lobby groups to represent the grievances of their members, while assisting the government to introduce policies to develop their specific industries. Chambers of commerce which hold regular meetings with public sector institutions and transparently report any complaints of corruption that they receive from their members, have seen positive results within a few months where the public sector institutions have taken action against the guilty party. They also encourage their membership to take a collective stand and stop engaging in corruption. However, this has had a varied impact, as larger companies with greater bargaining power have begun taking a stand, but SMEs tend to continue to engage in corruption as a means of doing business.

### **5.3.3. Awareness Raising**

Chambers of commerce also work to raise awareness amongst their member organisations. They educate their members on how they can eradicate corruption and the value of adopting process driven operations instead of people centric business operations. Chambers also conduct trainings, workshops, and webinars for members to ensure that they are apprised of good governance and ethical trading measures, of which one component is anti-corruption. Some chambers also have regular trainings on their codes of conduct. Others stated that they had introduced ethics committees to engage with third parties, members, and other stakeholders to raise awareness of codes of conduct and to ensure that they are practiced.

Chambers also conduct programmes to encourage members to adopt policies, processes, and codes of conduct. They also encourage companies to conduct induction and orientation programmes when new recruits join the company. Awareness programmes are also conducted for entrepreneurs entering the market as they have more issues and less knowledge on how to maintain a clean business operating environment.

### **5.3.4. Informal Information Sharing Mechanisms**

Some industries have established informal information sharing platforms amongst industry players. This has been successful amongst regulated industries, such as the insurance and banking sector, which have a limited number of companies. These platforms are used to share information on current trends of fraud and corruption observed and best practices. Some industry members have also initiated unofficial blacklists of staff members who have been terminated for fraud or corruption or any other form of unacceptable conduct. This information sharing is undertaken with the intention that all companies in the industry will be able to safeguard themselves from corruption and adopt measures to deter such practices from occurring.



## 6. EFFECTS OF CORRUPTION

Private sector corruption affects the entire supply chain, as it distorts markets, undermines competition, and increases costs to firms. It prevents a fair and efficient private sector, reduces the quality of products and services, and leads to missed business opportunities.<sup>247</sup> Reputational risk, creation of a less conducive business environment that leads to less investment, affecting staff loyalty and the ethical culture of the organisation are all costs of engaging in or tolerating corruption. Companies are now realising the importance of not engaging in corruption. Instead, it was opined that companies are ensuring that all their internal affairs and documentation are in order thereby compelling the public sector institutions to give them the services that they are rightfully entitled to. While these companies can get things done without resorting to bribery and corruption, it may take a longer time than it would if they had offered some form of gratification. If the company's annual budget places an activity in the first quarter, it may not be achieved until the third quarter as companies have to wait out the entire process. In some instances, it may also create an additional hassle for companies as they must keep sending letters back and forth before ultimately getting the requisite approvals. It takes an unacceptably long time and because of this, break-even points for such projects may even get pushed to the next fiscal year. Despite these challenges, companies have recognised the effects of corruption and are moving towards cleaner operations.

### 6.1. Deters Investment

Corruption can increase the cost of doing business, reduce the quality of goods and services, and ultimately lead to lower profits. This can discourage investors from entering the market and cause existing investors to exit.<sup>248</sup> Corruption in the private sector undermines investor confidence, particularly when corruption is seen to be systemic.



*If investors perceive the Sri Lankan business landscape as corrupt, it becomes difficult to attract genuine long-term investors as they will be wary of investing in Sri Lanka, as they are unable to make unexpected payments and favours in order to get into business and operate the business.*<sup>249</sup>



Investors often must navigate a complex web of regulations, bureaucracy, and red tape, which is compounded by corruption. As a result of corruption within the private sector, it was highlighted that several MNCs refuse to invest or trade with Sri Lankan companies, opting instead to invest in other countries. Certain international buyers, refuse to buy from local companies as they are unable to comply with international standards and regulatory requirements. The attractiveness of Sri Lanka to foreign firms is hindered by the absence of good governance, and by corruption, political instability, bureaucratic inertia, and poor law and order.<sup>250</sup> This directly impacts the volume of foreign trade and investment that Sri Lanka gets. Respondents opined that corruption must be eradicated, and the rule of law must be strengthened to attract investment to Sri Lanka.

Corruption in the private sector not only discourages foreign investors but also discourages local investors as well. Local investors may be reluctant to invest in an industry that is seen to be corrupt, and this will impact the overall business environment. As a result of corruption, local businesses deliberately stay small to avoid scrutiny and harassment.<sup>251</sup> Respondents alleged that this, along with the perception that Sri Lanka is systemically corrupt, has led to the general public losing faith in the system, leading to a mass exodus of professionals and businesspersons.

247. United Nations Office on Drugs and Crime. (2013). Resource Guide on State Measures for Strengthening Corporate Integrity. Vienna [www.unodc.org/documents/corruption/Publications/2013/Resource\\_Guide\\_on\\_State\\_Measures\\_for\\_Strengthening\\_Corporate\\_Integrity.pdf](http://www.unodc.org/documents/corruption/Publications/2013/Resource_Guide_on_State_Measures_for_Strengthening_Corporate_Integrity.pdf)

248. Opanayake, V. (2023, 7 May). Corruption: A blockage for investment? TheMorning. <https://www.themorning.lk/articles/vx3q2ixwrou5LyRZl956>

249. Respondent B

250. Nazliben, K.K., Renneboog, L. & Uduwalage, E. Corporate Governance from Colonial Ceylon to Post-Civil War Sri Lanka. *J Manag Gov* 28, 265–335 (2024). <https://doi.org/10.1007/s10997-023-09678-5>

251. Echelon. (2016). Sri Lanka Customs: Judge & Jury. <https://www.echelon.lk/sri-lanka-customs-judge-jury/>



## 6.2. Undermines Market Competition

Corruption distorts the market<sup>252</sup> because bribery can lead to certain companies obtaining market share or contracts as a result of corruption, detracting from fair competition and merit-based success.<sup>253</sup> Private sector bribery provides the briber with an unfair competitive advantage, by eliminating from consideration products or services offered by the bribing company's competitors in the usual course of business.<sup>254</sup>

*When single source contracting occurs, companies which have an incentive to engage in government contracts would lose out due to nepotism or large-scale kickbacks. This may affect their continuity and profitability and may also act as a deterrent from companies entering specific industries. Private sector corruption may severely disadvantage industry competitors, potentially forcing them from the marketplace, and distort the smooth functioning of markets.*<sup>255</sup>

Respondents stated that women entrepreneurs were less likely to enter the market in certain industries due to the perception of corruption.

*Women perceive industries such as the construction industry, as being a man's world which has no room for women. Therefore, even if women have a business venture to explore, they believe from the beginning that it is corrupt and do not enter the business at all. They do not even engage with the tenders and believe that even if they do apply, that they will receive additional requests because they are women.*<sup>256</sup>

Corruption also reduces the competitiveness of local business in the international market. For example, it was alleged that due to corruption within the public sector, Sri Lanka has one of the highest industrial power rates within the region. This translates to a phenomenal cost for export-based industries which makes them uncompetitive in the international market.

*The construction industry has seen a drop in domestic material consumption of nearly 50% due to the slump in the industry since 2019. Despite the decrease in consumption, manufacturers are unable to diversify and export their products as they are not competitive on the global market, due to their inflated cost of production.*<sup>257</sup>

The lack of competitiveness also discourages foreign direct investments as MNCs are unlikely to invest in Sri Lanka if their production cannot compete on the global market.

Corruption also effects a company's bottom line. The risk of corruption, therefore, acts as a disincentive for people to enter business, innovate or expand their business as they cannot depend on the regulatory context to remain the same. Engaging in corruption could seriously eat into a company's profit margins and impede the viability of their business. Corruption creates a vicious cycle as once a company is identified as corrupt; it leaves the company with no standing to refuse future solicitation for bribes. It also leaves them without legal protection for corrupt transactions that they enter. Once companies have fallen into this cycle, it limits their opportunity for growth as they are then bound to allocate a kickback for every project that they undertake. This is particularly detrimental for smaller companies as they have smaller margins. As such, it reduces market competition and companies are unable to grow to compete organically within the market and may eventually wind up.

252. Cuervo-Cazurra, A. (2008). The Effectiveness of Laws against Bribery Abroad. *Journal of International Business Studies* 39 (4): 634–51. <https://doi.org/10.1057/palgrave.jibs.8400372>.

253. Almond, M. A., & Scott D. S. (1997). *Beyond Compliance: Corruption, Corporate Responsibility and Ethical Standards in the New Global Economy*.

254. Transparency International. (2018). *Regulating Private Sector Corruption*. ([https://knowledgehub.transparency.org/assets/uploads/helpdesk/Regulating-private-to-private-corruption\\_2018.pdf](https://knowledgehub.transparency.org/assets/uploads/helpdesk/Regulating-private-to-private-corruption_2018.pdf))

255. Respondent P

256. Respondent N

257. Respondent M

Corruption induced informality can also limit the growth of businesses. Firms that remain in the informal sector do not have the same advantages as firms operating in the formal sector in terms of access to the formal financial system and public services. This situation limits their growth perspectives and diminishes their productivity. In addition, to remain unnoticed, firms operating in the informal sector must deliberately limit their expansion to avoid attracting unnecessary attention.<sup>258</sup>

### 6.3. Reputational Damage

Many respondents highlighted that reputational risk is one of the key motivators to avoid engaging in corruption. If companies are perceived as being unaware of corruption within their ranks or as failing to address corruption within their ranks, it could seriously impact their reputation. Fair and ethical business practices have become a key consideration for market consumers. Therefore, ethical business practices are essential for companies to survive in the current market. In such a market context, allegations of bribery and corruption could seriously damage a company's image.

### 6.4. Social Impact

The cost of corruption is remarkably high and felt acutely by the public. Several respondents stated that bribery and corruption results in an increase in price of end goods and services that are offered to the public. It was highlighted that the cost of corruption is often embedded into the price of goods and services.



*Corruption also raises the cost of tenders and government procurement. Therefore, corruption creates a higher cost of services and government expenditure, as it is presumed that 25% of the cost of service is due to corruption at various levels by intermediaries. Therefore, it was highlighted that the public, either aware or unaware, pays the price for corruption.*<sup>259</sup>



Respondents who stated that they had adopted a zero-tolerance approach to corruption, observed that they had seen their costs decreasing as a result.

Respondents also stated that corruption leads to inferior quality goods and services entering the market as companies try to recoup their losses arising from corruption, by cutting corners. Therefore, in the construction industry, because of the large kickbacks offered to win contracts, it was stated that companies may use inferior quality materials to cut down on expenditure. This affects the quality of the construction and can be a safety concern. It was alleged that the approval of public construction projects at the planning and design stage, contracts given as a result of political party influence at the award stage, contractors allocating too many staff on a claim, charging for many hours, giving clients over-optimistic advice at the construction stage, and creating a monopoly of supply during the maintenance period amplify the cost of construction.<sup>260</sup> It was further alleged that such actions when done in relation to large scale government contracts, increases the cost to the general public whilst also reducing the quality of the product received by the general public.

It was alleged that corruption could also lead to the procurement of inferior quality goods by the government.



*Government entities that engage in procurement take decisions based on the lowest bid. This in turn may result in the government purchasing sub-par goods and services as the private sector is compelled to drive down the quality of the goods and services to ensure that their bid is the lowest bid as evident in the government procurement of pharmaceuticals.*<sup>261</sup>



258. Forgues-Puccio, G. F. (2013). Corruption and the Private Sector: A review of issues. Economic And Private Sector Professional Evidence and Applied Knowledge Services. <https://www.gov.uk/research-for-development-outputs/corruption-and-the-private-sector-a-review-of-the-issues>

259. Respondent O

260. Hadiwattege, C., De Silva, L., Pathirage, C. (2010). Corruption in Sri Lankan Construction Industry. Conference: W107 - Special Track 18th CIB World Building Congress. [https://www.researchgate.net/publication/346894187\\_Corruption\\_in\\_Sri\\_Lankan\\_Construction\\_Industry](https://www.researchgate.net/publication/346894187_Corruption_in_Sri_Lankan_Construction_Industry)

261. Respondent P

It was also stated that patients were the ones who were most affected as a result of corruption when procuring pharmaceuticals.<sup>262</sup> When the government decides all medicines based on price and if the supplier has to give commissions to multiple parties to win the contract, they reduce the quality of the product. Therefore, patients do not get drugs of adequate quality, which has long term impacts.

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262. Abeyratne, R. (2023, 7 August). Public Health and Corruption In Sri Lanka. Sri Lanka Guardian. <https://slguardian.org/public-health-and-corruption-in-sri-lanka/>



## 7. CONCLUSION

The present research sought to document the private sector's alleged experiences of corruption. In this regard, the private sector's experience of corruption can broadly be understood as occurring between private-to-public and private-to-private actors. There was a common allegation that companies that had regular interactions with the public sector faced a higher risk of corruption. Several allegations detailed the occurrence of corruption when dealing with the Sri Lanka Customs, Inland Revenue Department and the Excise department. Even in industries that did not directly deal with these public sector institutions, respondents had heard of anecdotal cases of corruption in relation to these institutions. Respondents also alleged that there was an increased vulnerability to corruption when bidding for government contracts. The public procurement process was alleged as being rife with corruption, with private sector entities engaging in corrupt activities such as bribery, conflicts of interest, and favouritism.

Another key finding of the research is that there is a prevalence of private-to-private corruption in Sri Lanka. The forms of these corrupt transactions may vary from industry to industry. Some common forms included the expectation of kickbacks and commissions, the offering of gratification and favours in exchange for business, nepotism and favouritism etc. The research also revealed certain gendered aspects of corruption. In certain sectors, women were seen as being vulnerable to sexual bribery and other forms of sexual harassment. Interestingly, the research also revealed that there were some sectors in which males were more vulnerable to these non-financial forms of corruption.

Generally, Respondents believed corruption within the private sector was less than corruption within the public sector. However, some Respondents indicated that this perception may be a result of a weak understanding of corruption or due to the normalisation of corrupt activities as a part of doing business. Most Respondents opined that the procurement and sales departments of a company were most vulnerable to corruption, whilst other Respondents were of the view that corruption could occur at any level of the company structure regardless of departments, designation or rank.

Several risk factors that created vulnerabilities to corruption were identified throughout the research. The weak implementation of the law was seen as a risk factor as it limits the law's deterrent effect. Similarly, the interaction with public sector institutions was seen as a key risk factor. In this regard, the politicisation of the public sector was alleged as encouraging corruption within these institutions and in their interactions with the private sector. Industries that had weak regulators or were not regulated at all were alleged to have a higher risk of engaging in corruption. Several risks were identified within the company structure as well. These include the adoption of profit motivated corporate cultures, the imposition of strict budgetary pressures and targets, and the failure to adopt strong governance controls. It was also revealed that new companies were at a higher risk of engaging in corruption, due to the lack of support services for entrepreneurs. They were also likely to engage in corruption to gain a competitive advantage over their competitors thereby creating an unequal playing field.

Several companies have identified the risk of corruption and taken steps to mitigate the risk. First, companies that act as local agents for foreign companies have adopted strong internal controls and anti-corruption measures as mandated by their foreign parent companies. Several industry specific chambers of commerce have also started adopting measures to combat corruption. This includes the adoption of voluntary codes of conduct, advocacy activities and awareness raising and trainings for their membership.

The negative effects of corruption are undeniable. It impedes market competition, deters foreign investment, creates serious reputational risks and introduces significant social harms to society. Several respondents gave anecdotal evidence of the impact that corruption has had on their businesses such as the exclusion from new markets or the forced winding up of operations due to their inability to compete if they adopted a zero-tolerance approach to corruption.

Respondents believed companies that refrain from corrupt activities, do so due to their own ethical principles and to maintain a clean image. The Sri Lankan context has changed, placing a greater urgency on companies to exhibit a higher standard of transparency, accountability, and integrity. The Sri Lankan public over the past two years has demonstrated a greater outrage over the impact of corruption, which shows that the anti-corruption appetite of the public has increased. This has created an impetus for companies to adopt behavioural changes in favour of stronger

anti-corruption programmes and policies. Companies are therefore, for the first time, feeling the pressure of having to be accountable for their actions socially, at least if not legally and politically. The public, investors, shareholders, and consumers must seize this momentum to impose a sense of urgency upon companies and ensure that they adhere to the higher standard of integrity that the general public is calling for. Corporate transparency and integrity are essential to secure public trust in an era where consumers are placing an increasing importance on transparency in business.

Towards the above objective, steps must be taken to prevent corruption in the private sector, some of which are set out below.



## 8. RECOMMENDATIONS

The foregoing recommendations made by TISL are a summary of recommendations suggested by Respondents in the KIIs and FGDs conducted for this research, along with certain identified international best practices.

### 8.1. Recommendations for the Private Sector

#### 8.1.1. Establishing Strong Robust Compliance Programmes

Having compliance programmes makes business sense because corruption is expensive for companies<sup>263</sup>. 'Compliance' has been defined as "the internal programmes that corporations adopt in order to educate employees, improve ethical norms, and detect and prevent violations of law".<sup>264</sup> Robust compliance programmes should focus on improving processes and systems within a company, rather than individuals. Companies which have proper systems and processes in place are better geared to prevent corruption, regardless of employee turnover. Respondents stated that there is a reluctance on the part of some companies to divert funds towards implementing compliance programmes as they are viewed as "no-reward" investments. This perception is wrong, as companies reap long-term benefits from having effective compliance programmes.

##### 8.1.1.1. Anti-Bribery and Corruption Policies and Codes of Conduct

ABC policies need to be entrenched within the organizational culture. This needs to focus not only on preventing large scale corruption, but rather on creating a culture of integrity in which all unethical practices are eliminated. The adoption of a stringent ABC policy will prevent, at an individual level, employees from engaging in practices that could harm the organization. The introduction of a policy must be supported by awareness programmes and regular training, to ensure that all employees and third parties that deal with the company are aware of the policy. Policies must be strictly enforced within the company and upon third parties as well. Companies must also work towards creating a public image that clearly demonstrates its zero-tolerance for corruption. ABC policies should include key elements such as: an explicit and public anti-corruption commitment, controls, training, communication, reporting mechanisms and regular auditing and monitoring.<sup>265</sup> They should also include information on how employees can identify and flag corruption and how such incidents should be reported.

ABC policies should be backed with strong enforcement processes. Companies should introduce processes to conduct investigations pursuant to complaints, formal inquires and disciplinary processes. HR personnel must be trained on conducting corruption related disciplinary inquiries. There should also be other mechanisms in place to determine if the ABC policies are internalised and operationalised.

##### 8.1.1.2. Whistleblowing Policy

It is essential that ABC policies include effective whistleblower mechanisms which are applicable across the company. Whistleblower policies should guarantee the protection of the whistleblower and ensure that they will be free from reprisals. When implementing whistleblower policies, companies should be mindful of practical considerations to ensure the anonymity and confidentiality of the complainant. Whistleblowing complaints should be escalated and dealt with promptly whilst maintaining open lines of communication with the whistleblower. Furthermore, internal, and external messaging on whistleblowing channels should encourage employees to report any incidents that make them feel uncomfortable, or which they feel is unethical. Mechanisms must also be introduced to allow for persons outside of the organisation to whistle blow. These may include dedicated hotlines for customers which grant them direct access to the CEO of the company, or a dedicated ombudsperson.

263. Wickberg, S. (2013). Literature Review on Corruption in Cross-Border Business. Transparency International. [https://www.transparency.org/files/content/corruptionqas/Literature\\_review\\_on\\_corruption\\_in\\_cross-border\\_business.pdf](https://www.transparency.org/files/content/corruptionqas/Literature_review_on_corruption_in_cross-border_business.pdf).

264. Baer, M. H. (2009). Governing Corporate Compliance. *Boston College Law Review* 50: 72.

265. UN Global Compact. (2013). A Guide for Anti-Corruption Risk Assessment. <https://unglobalcompact.org/library/411>



### **8.1.1.3. Sponsorships and Donations**

ABC policies should explicitly prohibit employees from making political donations. In the event companies do make political contributions, these should be clearly disclosed and reported. Companies should also adopt clear policies and processes that govern corporate sponsorships and donations. Sponsorships should only be given for causes that are in line with the company's overall objectives and values.

### **8.1.2. Audit and Compliance Control**

Companies need to establish multiple lines of defence against the risk of corruption. This should take the form of a robust internal audit department and committee, a dedicated compliance department or officer, and finally, external audits.

Arrangements should be made to guarantee the quality of the internal audit, as well as the appointment of independent external audit firms. Further, the audit team should be vested with the authority to act across the organization. Any area of the organization can be audited, and the findings must be disclosed and reported independently. Audit findings should be dealt with promptly and reviewed for preventative action to prevent reoccurrence. Audits should also include checks on aspects such as social and environmental issues, and good corporate governance requirements. This may even include the introduction of subject specific anti-corruption audits.

Companies should engage independent external auditors to carry out regular audits of their financial statements. When engaging an external auditor, steps must be taken to ensure that there is no conflict of interest between the auditors and the company. Companies should also take steps to undertake external social audits. This could be in the form of social performance management certifications.

Companies should consider introducing dedicated compliance departments or officers depending on the size of their operations. Compliance officers would be charged with the responsibility of ensuring that the company has effective ABC mechanisms in place and conducting awareness building and policy development.

### **8.1.3. Conduct Regular Corruption Risk Assessments**

Regular risk assessments should be conducted to understand the nature and extent of risks within a company's operations. This is a critical first step in implementing adequate compliance programmes. Formal processes should be introduced for assessing and monitoring the risks to which companies are exposed in an on-going manner.<sup>266</sup> Corruption risk assessments are essential to ensure that resources are being applied where they most matter. To prevent and fight corruption effectively, the company needs to know how and where the corruption happens. Such knowledge enables the targeting of real and not just perceived problems within a given organization's processes and structures and, eventually, the identification and application of relevant measures aimed at resolving these problems.<sup>267</sup>

### **8.1.4. Introduce Strong Procurement Controls**

Companies should have clear procurement guidelines that are strictly enforced. Prior to engaging with a supplier, companies must carry out a comprehensive due diligence of the supplier which should also evaluate their social practices. Due diligence takes into consideration whether third parties have the same standards, ethics, and principles as the company. When contracting with suppliers, the contract should clearly set out the standards they are expected to adhere to. Risk mitigation measures range from getting the suppliers acknowledgment and commitment to abide by the law and by the company's code of conduct, to establishing contractual safeguards, including audit and termination rights, and carrying out anti-bribery and corruption training.<sup>268</sup> Companies should also conduct regular supplier audits which should include considerations of social and corporate governance. Companies should also introduce strong procurement processes. The

266. CIPE. (2020). Corruption Risk Assessment Framework For Business Associations And Chambers Of Commerce. <https://www.cipe.org/resources/corruption-risk-assessment-framework-for-business-associations-and-chambers-of-commerce/>

267. United Nations Office on Drugs and Crime. (n.d.) University Module Series on Anti-Corruption, Module 5 – Private Sector Corruption.

268. United Nations Office on Drugs and Crime. (n.d.) University Module Series on Anti-Corruption, Module 5 – Private Sector Corruption.

implementation of computerised procurement systems enables companies to better monitor procurement. This may improve their ability to flag corruption.

### 8.1.5. Strong Accounting Controls

Companies should adopt the International Financial Reporting Standards when carrying out their financial reporting function. Further, companies need to have strong accounting controls in place which are geared to capture payments such as inter-company transfers and management fees, even when these transfers are conducted across borders. The implementation of such controls will reduce the opportunities available to pay a bribe to get an unfair advantage.

### 8.1.6. Related Party Transactions

Related Party transactions<sup>269</sup> are legitimate. However, they could pave the way to mislead financial information in financial statements and conceal the economic substance of transactions or fraud in entities. Many entities operate through a complex range of relationships and structures, and the complexity of Related Party transactions is increasing; as the existence of related party relationships is often unknown, or they may be intentionally concealed by management. Therefore, steps must also be taken to ensure transparency of related-party transactions which is key to expose conflicts of interest. Companies should have a Related Party Transactions Review Committee where its primary function is to review Related Party transactions as prescribed by Section 9 of the Listing Rules of the CSE.<sup>270</sup>

### 8.1.7. Ensure Independent Boards of Directors

The absence of independent, diverse, and representative boards can create a significant risk of corruption. In addressing this, companies must take steps to ensure board diversity. Furthermore, truly independent non-executive directors need to be appointed based on meritocracy. As a best practice, companies must also prohibit the appointment of politically connected directors and refrain from appointing politically exposed persons and retired public officials as directors.<sup>271</sup> Companies should also ensure that all board committees are appointed and fully operationalised. In India, corporate governance reforms have also emphasized the role of independent directors in boards wherein they require the CEO and CFO on the effectiveness of internal accounting controls.<sup>272</sup>

### 8.1.8. Corporate Culture

The major components of establishing a conducive corporate culture that prioritises a zero tolerance to corruption, is setting the ‘tone from the top’ and ethical leadership that carries through to lower levels of a company.<sup>273</sup> It is also essential that the leadership must walk the talk. It is important to build a conducive culture which balances performance management with social best practices. Companies should implement an approach that goes beyond a tick-the-box exercise, i.e., beyond compliance with rules and regulations, and towards fostering a positive culture of integrity.<sup>274</sup> Management should deliver messages on the importance of ethics and compliance in team meetings and in written internal communications to establish a “tone at the top” that prioritizes compliance.<sup>275</sup> The messaging should highlight that corruption should not be engaged in and the attached consequences, but it should also showcase<sup>276</sup> the type of behaviour that the company expects from its employees.<sup>277</sup>

269. A related party transaction is a transfer of resources, services or obligations between an entity and a related party regardless of whether a price is charged. [https://casrilanka.com/casl/images/stories/content/publications/publications/accounting\\_standards/bound\\_volume/lkas\\_24.pdf](https://casrilanka.com/casl/images/stories/content/publications/publications/accounting_standards/bound_volume/lkas_24.pdf)

270. Colombo Stock Exchange Listing Rules. <https://www.cse.lk/pages/listing-rules/listing-rules.component.html>

271. Nazliben, K.K., Renneboog, L. & Uduwalage, E. Corporate Governance from Colonial Ceylon to Post-Civil War Sri Lanka. *J Manag Gov* 28, 265–335 (2024). <https://doi.org/10.1007/s10997-023-09678-5>

272. Ibid.

273. Bussmann, K. D., & Niemecek, A. (2019). Compliance Through Company Culture and Values: An International Study Based on the Example of Corruption Prevention. *Journal of Business Ethics* 157 (3): 797–811. <https://doi.org/10.1007/s10551-017-3681-5>.

274. United Nations Office on Drugs and Crime. (n.d.) University Module Series on Anti-Corruption, Module 5 – Private Sector Corruption.

275. CIPE. (2020). Corruption Risk Assessment Framework For Business Associations And Chambers Of Commerce. <https://www.cipe.org/resources/corruption-risk-assessment-framework-for-business-associations-and-chambers-of-commerce/>

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### 8.1.9. Human Resource Management

Companies should have clearly defined HR processes in place, including strict anti-sexual harassment policies and non-discrimination policies. Recruitment, promotion, and career advancement should be based on pre-determined criteria. Furthermore, employees must be given clear job roles, and levels of authorities must be clearly established. Companies should also have clear performance management processes in place.

In creating a clean corporate culture, new recruits need to be socialised into the company's culture. Employees should receive a comprehensive induction training upon joining the company, which educates them on the company's principles and policies. Thereafter, regular trainings should be conducted for all employees.

### 8.1.10. Raising Awareness

Recognition and awareness must be built within companies, amongst the staff and management, about corruption. Awareness raising should highlight what corruption is and what forms it can take. Whilst highlighting the disadvantages of corruption, awareness programmes for employees must be practical. Employees should be given the actual and literal tools that they need to stand up to corruption. Companies should also take steps to keep employees informed on incidents of corruption and fraud that occur within the company. They should be provided with the information they need to identify such corruption and what action must be taken to mitigate it.

### 8.1.11. Collective Action

"Collective action" is a collaborative and sustained process of cooperation between stakeholders. It is an agreement, like a multiparty contract, in which different stakeholders commit themselves to a new normative balance. For this approach to work, most stakeholders must have the expectation that their peers will abide by and make others comply with these new rules.<sup>278</sup> Collective action envisages companies within a particular industry grouping together and taking a stance against corruption. If all companies agree to adopt a zero-tolerance approach, it evens the playing field and reduces the risk for corruption.

## 8.2. Recommendations for the Government

### 8.2.1. Strengthen Regulatory Authorities

It was recommended that regulatory authorities entrusted with the regulation of the private sector, need to be regulators with teeth. Therefore, regulatory authorities should be strengthened, and the scope of their role expanded to enable them to monitor the private sector. They should also be strengthened to enforce penalties for non-compliance with standards set by the regulators.

### 8.2.2. Digitalisation and Digitisation

Steps must be taken to promote digitalisation and digitisation within public sector institutions. Focus must be paid to digitising documentation processes and the adoption of digital systems. Digital systems offer superior transparency, thereby reducing fraud and corruption, and significantly reducing risks inherent in paper trails. Digitisation and digitalisation promote transparency and removes human interaction.

### 8.2.3. Improve Good Governance Within the Public Sector

Weak governance within the public sector poses a significant risk of corruption. There needs to be political will from the very top if corruption is to be reduced in Sri Lanka. Appointments to key regulatory authorities should not be politicised but based on merit. This is imperative to ensure that

278. United Nations Office on Drugs and Crime. (n.d.) University Module Series on Anti-Corruption, Module 5 - Private Sector Corruption.

appointees continue to hold office regardless of government changes. It was also suggested that the expertise of regulatory authorities need to be improved. Further steps must be taken to strengthen the monitoring and implementation capacity of public sector institutions. The introduction of effective whistleblower policies for public sector institutions will instil a degree of fear in the officers who solicit bribes, thereby acting as a deterrent to corruption. Steps must also be taken to promote cooperation between law enforcement agencies and relevant private entities.

#### **8.2.4. Government Procurement Practices**

Promoting transparency at all stages of the procurement cycle, open contracting, integrity, and accountability mechanisms, are some of the main steps to reduce the engagement of state officials and private sector companies in corruption, during public procurement. Integrity Pacts are a tool for reducing the opportunities of corruption in public contracting. This tool consists of an agreement between the government agency offering a contract and the bidding companies, to abstain from bribery, collusion, and other corrupt practices for the extent of the contract. Integrity Pacts provide improved access to information, increasing the level of transparency in public procurement.<sup>279</sup> It is essential to have a mechanism in place to make sure the contract is implemented properly, without changes in costs or level of quality, including online reporting, to increase transparency and accountability to the public of post-award contract performance. This can be done through a centralized website providing the financial and non-financial performance status of procurement packages, through qualitative and quantitative information.<sup>280</sup>

#### **8.2.5. Awareness Raising**

Public sector institutions should conduct awareness programmes for their staff at the grassroots level. Such awareness programmes must be conducted by the public sector institutions themselves, as programmes conducted by outside parties are not effective. For there to be buy in at the very lowest levels of public sector institutions, the training must come from their own senior managerial staff. The training for operational employees must focus on the impact of them engaging in corruption.

#### **8.2.6. Creating a Conducive Business Environment**

The Sri Lankan business operating environment should be developed to support new companies and entrepreneurs. It is important for the government to adopt measures to cater to the needs of fledgling startups whose requirements may differ from those of traditional businesses.<sup>281</sup>

279. U4 Anti Corrupting Resource Centre. (n.d.) Tools to reduce private sector engagement in grand corruption during the award of public contracts, concessions and licenses. [https://knowledgehub.transparency.org/assets/uploads/helpdesk/369\\_Tools\\_to\\_reduce\\_private\\_sector\\_engagement\\_in\\_grand\\_corruption.pdf](https://knowledgehub.transparency.org/assets/uploads/helpdesk/369_Tools_to_reduce_private_sector_engagement_in_grand_corruption.pdf)

280. U4 Anti Corrupting Resource Centre. (n.d.) Tools to reduce private sector engagement in grand corruption during the award of public contracts, concessions and licenses. [https://knowledgehub.transparency.org/assets/uploads/helpdesk/369\\_Tools\\_to\\_reduce\\_private\\_sector\\_engagement\\_in\\_grand\\_corruption.pdf](https://knowledgehub.transparency.org/assets/uploads/helpdesk/369_Tools_to_reduce_private_sector_engagement_in_grand_corruption.pdf)

281. Sri Lanka Association of Software and Services Companies & PricewaterhouseCoopers. (2019). Sri Lanka Startup Report 2019. <https://www.stockholm.embassy.gov.lk/wp-content/uploads/2020/04/Sri-Lanka-Startup-Report-2019.pdf>



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